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**2015 Annual Local Government
Officials' Conference**

**VILLAGE LEGAL
UPDATE**

Presented by:
Kristen L. Martin
Assistant Legal Counsel

Ohio Auditor of State
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www.ohioauditor.gov

What's on the Agenda?

- AOS Legal Division Overview
- AOS Bulletin Topics
- Attorney General Opinions
- Legislative Update
- Ethics Reminders
- Public Records/Open Meetings Act Overview



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What Are the Responsibilities of the Auditor's Legal Staff?

- Provide the Auditor of State and field auditors with legal advice
- Prospectively help public offices comply with legal and audit requirements
- Provide continuing education to elected officials and government employees



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Bulletin

Auditor of State Bulletin

Auditor Of State Bulletin Topics



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Auditor of State Bulletin 2014-001
**Allocating Premiums from Local
Government Bond and Note Sales**
(R.C. 133.32 and R.C. 5705.10(E))

- May premiums from bond/note sales be applied to project funds or must they be applied to bond retirement funds?
- Revised Code generally requires premiums to be applied solely to bond retirement funds.
- For bonds/notes issued on or after July 1, 2014, AOS will issue FFA's when public entities apply premiums to project funds instead of bond retirement funds.



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Auditor of State Bulletin 2014-003
**Alcoholic Beverages Purchased for
Resale at Public Events**

- Public funds may be used to purchase alcoholic beverages, if:
 - Subdivision obtained a valid permit from the Ohio Division of Liquor Control;
 - Subdivision complied with the terms of the issued permit;
 - Subdivision purchased the alcoholic beverages solely for resale to the public;
 - The expenditure is reasonable; and
 - The proceeds are applied as required by any applicable statute or other controlling law.
- If conditions above not satisfied, the entity will be subject to appropriate audit findings.



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Auditor of State Bulletin 2014-004

Telephone ("Tele") Town Hall Meetings



- Applying AG Opinion 2014-005
- Promoting partisan politics is not a proper public purpose (Be aware of R.C. 9.03)
- Bulletin provides list of documents which will constitute a "safe harbor" for auditing purposes.
 - Such documents not required, but provide prima facie evidence that the auditee legally expended public money and AOS will not issue findings.
 - Auditee may also choose own controls and procedures.

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MIKE DeWINE
OHIO ATTORNEY GENERAL

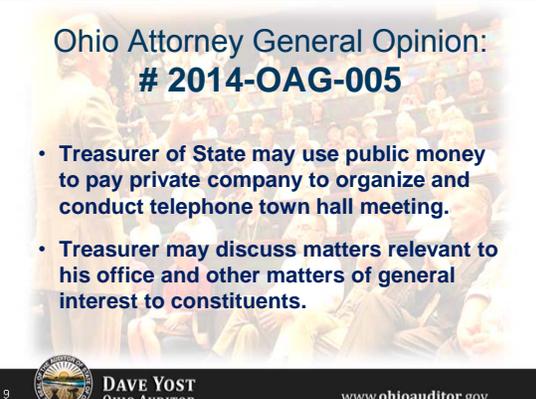
Opinion Section
Office 614-725-6417
Fax 614-866-0113

OPINION NO.

Attorney General Opinions

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Ohio Attorney General Opinion: # 2014-OAG-005

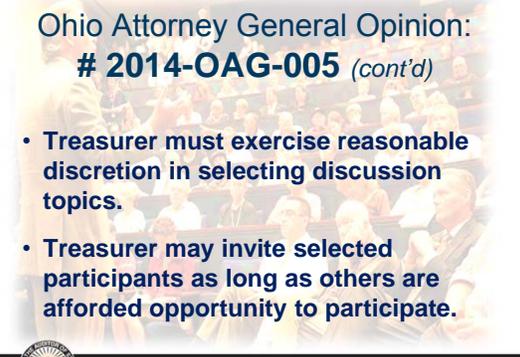


- Treasurer of State may use public money to pay private company to organize and conduct telephone town hall meeting.
- Treasurer may discuss matters relevant to his office and other matters of general interest to constituents.

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Ohio Attorney General Opinion:
2014-OAG-005 (cont'd)

- Treasurer must exercise reasonable discretion in selecting discussion topics.
- Treasurer may invite selected participants as long as others are afforded opportunity to participate.



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Ohio Attorney General Opinion:
2014-OAG-009

- For the purposes of public records law, a county auditor makes a document **available for inspection** when access to it is provided online.
- Thus, a county auditor may not charge a fee for making public records available online.



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Ohio Attorney General Opinion:
2014-OAG-013

- A county may use the proceeds of an ambulance or emergency services levy to pay costs incident to a 9-1-1 center.
- Costs must be reasonably related.
- Administrative procedures to allocate must be undertaken.



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**Ohio Attorney General Opinion:
2013-OAG-034
Compatibility of Office**

- A person may serve simultaneously as administrator and chief of police for a village. As the administrator he may not approve invoices, estimates, contracts, or other expenditures for the village police department without the approval of the village's legislative authority. As village chief of police he must remove himself for any investigation concerning the office of village administrator.
- As village police chief, the individual must remove himself or herself from any investigation concerning the office of the village administrator



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**Ohio Attorney General Opinion:
2013-OAG-034
Compatibility of Office**

Seven Test Elements



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**Ohio Attorney General Opinion:
2014-OAG-002
Compatibility of Office**

- A person may serve simultaneously as a member of the legislative authority of a village and as clerk of a municipal court within the same jurisdiction.



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Ohio Attorney General Opinion:
2014-OAG-002
Compatibility of Office



Seven Test Elements



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Ohio Attorney General Opinion:
2014-OAG-029

Personal e-mail addresses of members of public used by township fiscal officer to send out e-mail:

May be public record as to which disclosure is mandatory:

- Case by case determination
- Document public processes? (ORC 149.011(G))
- Will disclosure facilitate public's monitoring of township?
- Actually used in making decisions or performing functions?



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Ohio Attorney General Opinion:
2014-OAG-033



The Patient Protection and Affordable Care Act

- Sets certain minimum coverage mandates
- Preempts in-term pay change prohibition
 - Article II, Section 20, Ohio Constitution

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Ohio Attorney General Opinion: # 2014-OAG-034

County commissioners may consider tobacco usage in setting health insurance premiums for employees and spouses.

- Can county test for tobacco use:
 - Case by case/must be determined by court
 - Appears unlikely

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Ohio Attorney General Opinion #2014-OAG-036

- Municipal court judges and their spouses and dependents and municipal court clerks, deputy clerks and their spouses and dependents shall be provided group health care coverage.
- Municipal Corporation is not required to provide such coverage a no cost.

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Ohio Attorney General Opinion: # 2014-OAG -044

- County duty to care for graves of veterans, etc. (ORC 5901.35)
- County duty to care for veterans monuments, memorials, and burial grounds in cemeteries (ORC 5901.37)
- Public cemetery annexed to city becomes property of city (ORC 759.08 and 759.09)

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Legislative Search Tools



Legislative Update

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KLM2 

House Bill 10

Effective March 23, 2015

- Establishes procedures for removing local fiscal officers from office for purposely, knowingly or recklessly failing to perform fiscal duty or committing any act prohibited by law.
- Establishes initial and continuing education programs for village fiscal officers, village clerk-treasurers, village clerks, and similar fiscal officers designated by the charter of a chartered municipal corporation.

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HOUSE BILL 483 AMENDMENTS

Effective September 15, 2014

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KLM2 This goes in Legislative update section
Kristen L. Martin, 2/3/2015

Legislative Update
Payments To Art Museums By School Boards and Local Governments
(R.C. 757.03 through 757.08)

- Art museums are added to the current entities (i.e. symphony associations, area arts council and similar nonprofit organizations) that are allowed to receive annual payments, calculated on the basis of taxable property values, from school boards and local governments.
- In addition, similar conditions are imposed on art museums as those required of current entities.



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Legislative Update
Transfer of Public Property to or by Community Improvement Corporations
(R.C. 1724.10)

- The authority to convey, sale, or lease "real property" (which may include buildings, structures, and other types of improvements attached to land) is expanded by the act.
- Formerly, the law permitted only the conveyance of "lands".



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OHIO SHARED SERVICES
 A DIVISION OF THE OFFICE OF BUDGET AND MANAGEMENT
Legislative Update
Shared Services
(R.C. 9.482, 126.21 and 126.25)

- Office of Budget and Management (OBM) may operate a shared services center to consolidate common business functions and transactional processes for any state agency or political subdivision.
- OBM may also establish and administer payment card programs that enable political subdivisions to purchase equipment, material, supplies or services.
- A political subdivision may enter into an agreement with a state agency to exercise any power, perform any function, or render any service for the political subdivision.

<http://ohiosharedservices.ohio.gov/Home.aspx>



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<https://ohioauditor.gov/publications/share-ohio.pdf>



Ethics . . .

Reminders

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Ethics Reminders

OEC Advisory Op. No. 2010-03

Family Member Employment

- Public Officials cannot:
 - hire or use their positions to hire family members;
 - recommend or nominate family members for public jobs with any public agency;
 - give family members, or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.

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ETHICS UPDATE OEC Advisory Op. No. 2010-03

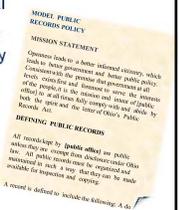
Family Member Employment (cont'd)

- Two family members can work for the same public agency if both are able to comply with these restrictions.
- For these purposes, the term "public official" includes elected and appointed officials, as well as public employees.

PUBLIC RECORDS/OPEN MEETINGS ACT OVERVIEW

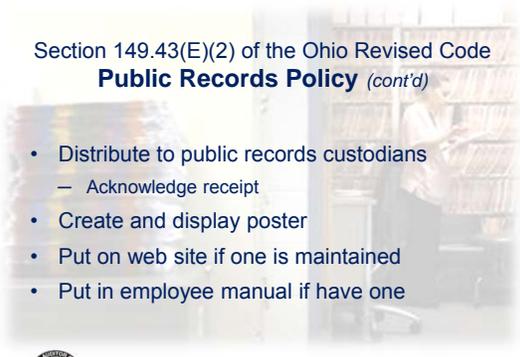
Section 149.43(E)(2) of the Ohio Revised Code Public Records Policy

- Mandated for each public body
- Guidance from Ohio Attorney General ohioattorneygeneral.gov; "Sunshine Law Publications"; model public records policy
- May not
 - Limit number of items to be provided
 - ☞ To a single person
 - ☞ During a determined period
 - Set a time for response



Section 149.43(E)(2) of the Ohio Revised Code
Public Records Policy (cont'd)

- Distribute to public records custodians
 - Acknowledge receipt
- Create and display poster
- Put on web site if one is maintained
- Put in employee manual if have one



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Definitions – The “Who?” of Public Records

- **Public Office** – R.C. 149.011(A)
- **A person responsible for public records**
- Any private entity that is the **functional equivalent** of a governmental entity



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Definitions – The “Who?” of Public Records

Factors considered in “Functional Equivalence”:

- Whether the entity performs a **governmental function**
- Level of **government funding**
- Extent of **government involvement or regulation**
- Whether the entity was **created by the government or to avoid the requirements of the Public Records Act**

State ex rel. Oriana House, Inc v. Montgomery (2006), 110 Ohio St. 3d 456.

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Definitions – The “What?” of Public Records

Records – R.C. 149.011(G):

- Have information stored on fixed media (paper, tapes, electronic text, photos, films, videos, etc.) **and**
- Are created or received by, or come under the jurisdiction of, a public office, **and**
- Document what the public office does: the organization, functions, policies, decisions, procedures, operations, or other activities **of the office**



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Definitions – The “When” of Public Records

Public Records – R.C. 149.43(A) includes records “kept by” any public office

“**Kept by**” means any record that is actually in existence and in the possession of the public office or person responsible for public records

- Examples of records **not “kept by”** a public office:
 - (1) a record not yet in existence,
 - (2) a record that has been disposed of lawfully

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Rights and Obligations

- Any “**person**” can make a public records request, including corporations and other governmental agencies
- **No special format** or **special language** is required
- A request may be **oral** or **written**
- The requester’s **motive is not relevant**. However, the request must at least be specific and describe in detail the records being sought
- A public office cannot require the requester to reveal his/her **identity**

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Rights and Obligations

- Promptly, or reasonable period of time
- Reasonable times during regular business hours
- Choice of copy media from normal office operations
- Copies at "cost"
- Payment in advance (optional)
- Methods of delivery



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Who is Subject to the Open Meetings Act and When? Definitions



Public Body:
Any decision-making body of the state, its political subdivisions, and school districts (**including any committee or sub-committee of each body**)

Meeting: (1) **Prearranged** gathering of
(2) a **majority** of members of public body
(3) conducting or discussing **public business**

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Looking Deeper: What is a Meeting?

Discussion/Deliberation vs. Information Gathering:

- Discussion and deliberation involve the weighing of reasons for/against a course of action and **must be conducted in open**
- Gatherings **solely** to receive factual information **may** not be meetings – **but consult legal counsel first!**

Work sessions:

- **Prearranged** work sessions, retreats, etc. where **public business is discussed** among a **majority of the members** of the public body are "meetings" and must be as noticed and open as any other meeting

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Obligations

Give appropriate **notice**
R.C. 121.22(F)

Take action & deliberate on public
business in **open** session
R.C. 121.22(C)

Take & file **minutes**
R.C. 121.22(C)



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Obligation 1: Notice (by rule)

Types of Meetings and the Notice Required

Regular Meetings → Meetings held at prescheduled intervals
Notice = time and place

Special Meeting → Any meeting that is not a regular meeting
Notice = at least 24 hrs advance notice of time, place, and purpose, **unless** it is:

Emergency Meeting, where notice must still be given immediately to news media who have so requested



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Obligation 2: Openness

Take Action & Deliberate in Public

Where must public meetings be held?

- In a public forum within the area that the public body serves

Does the public have a right to speak at public meetings?

- Not required by the OMA, but may otherwise be permitted or required

Can members of the public record proceedings?

- Yes, if it does not disrupt the meeting



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Obligation 3: Minutes

“The minutes of a regular or special meeting of any public body shall be **promptly prepared, filed, and maintained and shall be open to the public.**”
 – R.C. 121.22(C)

- Minutes do not have to be a verbatim transcript of the proceedings but must be **full and accurate** and enable the public to understand the rationale behind the public body’s decisions.
- There is no requirement to keep minutes of executive sessions.

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Executive Sessions

Proper Procedures:

- Must be preceded by specific motion, second, and roll call vote
- Motion should state the specific permissible topic(s) to be discussed
- Meetings must always begin & end in open session

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Executive Sessions 

Acceptable Topics for Discussion:

- Personnel (**must** state specific type of personnel matter to be discussed, but **not** identity of the person)
- Certain property sale or purchase issues
- Court action (only with the body’s attorney)
- Collective bargaining preparation and sessions
- Matters required to be kept confidential by **codified** law
- Security arrangements
- Certain public hospitals’ trade secrets

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Executive Sessions

Present in Executive Sessions:

Who may members include?

- anyone who is invited to stay

Who may the members exclude?

- any other members of the public



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Restrictions On Executive Session

- There can be **no decision-making**
- **No voting**, including "straw polls"
- Non-permitted matters may **not** be discussed in executive session, even if intertwined with permitted matters





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Executive Sessions - Records

- Executive sessions provide private space for discussion, but they do not **make** any materials confidential, including documents that are handed out
- Analyze public records issues separately, as though taking place outside of executive session
- No minutes need to be taken (and probably shouldn't be) of executive session discussions



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