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Ohio Auditor of State
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*2016 Local Government
Official's Conference*

**Legal Update for
Townships**

Presented by:
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**Ohio Attorney
General Opinions**



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**Joint Economic Development District
(JEDD)
OAG 2015-002**

ORC § 715.74 does not authorize contracting governments to exempt net profits of businesses from an income tax levied in the portions of the JEDD in which the businesses operate.




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Joint Fire District OAG 2015-010

Any tax levied by a joint fire district must be levied uniformly throughout the joint fire district.



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Americans with Disabilities Act Reasonable Accommodation OAG 2015-012

Reasonable Accommodation under ADA -- a judge with a neurological condition which leaves him unable to use his arms or hands to sign his name is permitted to use a rubber stamp facsimile signature.



John Smith



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Affordable Care Act OAG 2015-021



Reimbursements for healthcare insurance premiums under ORC 505.60(D) and 505.601 are not permitted under federal law because the required annual dollar limit is prohibited by federal law.

The ACA preempts the Ohio prohibition against in-term changes when compliance with the Ohio prohibition would make it impossible to comply with federal law.



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Prosecuting Criminal Offenses OAG 2015-031



Neither a statutory township nor a limited home rule township has the authority to employ an attorney to prosecute municipal court offenses that arise from the unincorporated areas of the township.

Township may enter into an agreement with municipal corporation to reimburse the municipal corporation for costs incurred in employing a part-time prosecutor to prosecute in municipal court criminal offenses that arise from unincorporated areas of the township.



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Township Repair Services on County Roads OAG 2015-034



Employees of Township may perform services on county roads for a county engineer pursuant to terms of an agreement authorized by ORC 5535.08(C)(1) – Authorizes road and street construction agreements between political subdivisions.

County Engineer may reimburse Township for compensation paid to its employees for performing such repair services if included in agreement.



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Case Law Update



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Public Records Act
ORC § 149.43

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Quolke v. Strongsville City School District Board of Education

Personal Information Exemption

Personal information must be released unless a specific exemption applies.

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Santefort v. Wayne Twp. Bd. of Trustees

Personal notes are usually not considered public records.

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Ohio Auditor of State Bulletins

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Eligibility for Agreed Upon Procedures (AUP)
Bulletin 2015-001

Bulletin clarifies eligibility requirements for AUP and details changes based upon the passage of ORC § 117.114.

- Checklists may be found on ohioauditor.gov
- Additional information in AOS Bulletins 2009-012 and 2012-007

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Eligibility for Agreed Upon Procedures (AUP)
Bulletin 2015-001 (cont'd)

- Unauditable subdivision declaration – ineligible for AUP
- Fiscal emergency declaration – ineligible for AUP
- No audit opinion will be issued on GAAP financial statements in AUP
- Initial audit – ineligible for AUP
- Must file financial statements with AOS – ORC § 117.38
- Must meet documentation deadline
- Eligibility determined by annual budgeted expenditures – Under \$5 million
- Fiscal Officer must not leave office at any time during audit period in question
- No audit fees in arrears

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Force Account Projects in Conjunction with ODOT



Bulletin 2015-003

- Statutory limit for ODOT force-account projects to \$30,000 per centerline mile of highway and \$60,000 for any traffic control signal or any other single project.
- Certain projects not subject to force account requirements
- Municipal projects in conjunction with ODOT may use Enterprise Information Management System, (EIMS) estimates in lieu of AOS force account project assessment form.

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Abuse Standards

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Abuse Standards



- "Abuse" involves behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary business practice given the facts and circumstances
- "Abuse" also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate.
- Warranted in situations in which there is no violation of law or unethical beneficial conduct, which involve conduct so capricious and irresponsible that some response is required.



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Finding Of Abuse Procedure



- Auditors will report abuse on the part of any public official.
- If abuse is discovered, notice to the public official and opportunity for comment will be provided.
- Public official will be afforded 5 days to respond with explanation/other pertinent information.
- Before including abuse finding in report, auditors will consider explanation, information, and data provided in public official's response.
- IPA's will also follow the notification and response procedures noted above and notify AOS Regional Office when potential abuse is identified.

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Abuse Example #1

- Village council adopted following policy: "employees would exercise same care incurring travel expenses that a prudent person would exercise if traveling on personal business and expending personal funds."
- While attending a conference members of the board stayed at a hotel at a room rate of \$319 per night, per person, valet charges of \$69/night were incurred by 2 members, and public body spent \$3,699 for expenses incident to the attendance of 4 officials.
- There were many other nearby hotels charging approximately \$100/night.
- A prudent person would not spend 200% more than was necessary to secure lodging for each night.



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Abuse Example #2



- Village council entered into contract with a manager requiring board to pay employee's previously incurred undergraduate and graduate debt.
- Contract did not specify amount of indebtedness it would pay, and no evidence board was aware of amount of indebtedness.
- The amount of indebtedness was in excess of \$170,000
- Board also approved payment of \$80,000 to cover employee's MBA cost at a private university.
- Failure of board to ascertain undertaking and potential impact of payments on financial status of district demonstrates indifference to the board's public responsibility and lack of prudence.

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Ohio Ethics Commission

Opinion 2010-03 (cont'd)

Family Member:

Parents or step-parents

Grandchildren

Grandparents

Siblings

Spouse

Any other blood or marriage relative

Children or step-children
(Dependent or not)

Living in same household



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Ohio Ethics Commission

Opinion 2011-07

Can a public employee take spouse on work-related travel?

- Yes
- Provided no additional expense to public entity
- Private funds for any expenses of spouse

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Ohio Ethics Commission

Opinion 2011-08

Public entity has contract with vendor

- Vendor routinely offers discounts to customers' employees
- Can official or employee accept discount



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Ohio Ethics Commission

Opinion 2011-08 (cont'd)

- Yes, if:
 - Does not negotiate or authorize contract
 - Same discount to all customers
 - Not offered in exchange for performance of duties
- Can't be used by employee or official who authorizes or negotiates
- Official or employee cannot suggest discount



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Ohio Ethics Commission

Opinion 2011-08 (cont'd)

Opinion 92-015

- No discounts for police officers
- Of substantial value
- Selective or limited class

Opinion 2001-08

- Same discount to all or large class okay
- Can't limit to employees who affect vendor's interests
- Must be consistent



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Legislative Update



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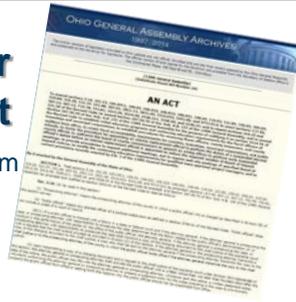


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Fiscal Officer Integrity Act

- Law establishes minimum training/education requirements for fiscal officers and treasurers at the local level
- New rules put into place establishing minimum requirements for appointed fiscal officers



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Removal from Office

Standard For Removal:

The public officer purposely, knowingly, or recklessly fails to perform a fiscal duty or any other act prohibited by law



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Removal from Office



Step One (A sworn and executed Affidavit must be provided to Auditor of State dependant upon position):

- Township:** Four residents
- County:** Treasurer: Auditor or Commissioner
Auditor: Treasurer or Commissioner
- Municipality:** Member of legislative body



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Removal from Office

Step Three

- If the Attorney General determines there is no convincing evidence, the Attorney General will notify the Auditor of State, village fiscal officer, and the ***** persons who submitted the allegations via certified mail

OR

- If the Attorney General determines there is convincing evidence, the report will be submitted to all individuals mentioned above and an action for removal of the fiscal officer from office will be taken



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Removal from Office

Step Four

- The Attorney General shall take action within 45 days to take the case to court to remove the village fiscal officer from office
 - » The court may issue an order prohibiting the village fiscal officer from making any official duties prior to or during the court proceedings



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Removal from Office Verdicts

• Guilty Verdict

- Removal from Office
- The fiscal officer is responsible for reimbursing the board of township trustees for the attorney's fees and costs up to a reasonable amount

• Not Guilty Verdict

- The public entity is responsible for paying the attorney's fees for the township fiscal officer



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ShareOhio

- ShareOhio.gov is an innovative equipment sharing portal amongst government entities
- Allows local governments to track sharing of equipment
- Optional enrollment program



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