

OHIO AUDITOR OF STATE  
**KEITH FABER**

2019 Local Government Officials Conference

**Village Legal Update**

Presented by:  
**Zachary S. O'Driscoll**  
Assistant Legal Counsel



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**Agenda**

- Legislative Updates
  - Public Records Act
    - ✓ Definitional Exclusions
    - ✓ Body Cameras
    - ✓ Training for Future Officials
    - ✓ Statutory Damages
  - Credit Cards Legislation
- Indigent Burials Refresher



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**Legislative Updates**



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**Public Records Act Updates**



**REQUEST PUBLIC RECORDS**

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**Public Records Update**  
Public Records Act Refresher

- Public Records Act = R.C. 149.43
- General Obligations:
  - Adopt a public records policy.
  - Promptly prepare records and make available for inspection.
  - Make copies within a reasonable period of time.
  - Follow an approved records retention schedule.



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**Public Records Update**  
Public Records Act Refresher

A "record" is:

- Any document, device, or item, regardless of physical form or characteristic, including electronic records;
- Created or received by or coming under the jurisdiction of any public office;
- Which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.



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 **Public Records Update**  
Public Records Act Refresher

- A “public record” is:
  - A record kept by any public office.
- However, Ohio Rev. Code Section 149.43(A)(1)(a) – (1)(hh) specifically **EXCLUDES** over 30 different types of records from the definition of a public record.
  - **Examples:** Intellectual property records, medical records, and mediation communications.

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Public Records Update

## Definition of “Public Record”

Ohio Rev. Code Section 109.43

► Effective **September 28, 2018**: The following is **NOT** a public record:

- **(A)(1)(gg)**: The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;
- **(A)(1)(hh)**: Protected health information ... that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to reveal that individual's identity.

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**Police Body Cameras**



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**House Bill 425**  
**132<sup>nd</sup> General Assembly**

▶ Effective **March 8, 2019:**

- ▶ Provides that a recording from a law enforcement body-worn or dashboard camera is a public record, subject to certain **exceptions**.
- ▶ Exempts certain recordings from a law enforcement body-worn or dashboard camera from disclosure under the Public Records Law based on the content of the recording.
- ▶ Allows certain restricted recordings from a law enforcement body-worn or dashboard camera to be released by consent of the subject of the recording or that person's representative.
- ▶ Allows any person whose public records request for a law enforcement body-worn or dashboard camera recording has been denied to file a mandamus action requesting the court to order the release of all or portions of the recording.

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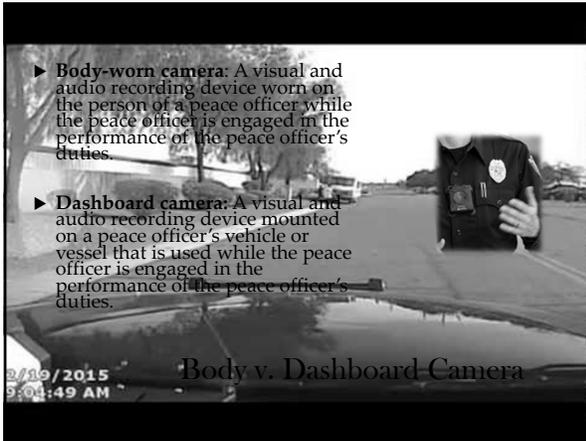
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- ▶ **Body-worn camera:** A visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer's duties.
- ▶ **Dashboard camera:** A visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

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▶ Section 149.43(A)(1):

- "Public record" does not mean any of the following:  
...
- (gg) Restricted portions of a body-worn camera or dashboard camera recording.

What is a restricted portion?

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“Restricted portion” means any visual or audio portion ... that shows, communicates or discloses any of the following:

1. Image or identity of a child who is a subject of the recording;
2. Death of a person or deceased person’s body unless death caused by peace officer;
3. Death of a peace officer, firefighter, or first responder who dies in the line of duty;
4. Grievous bodily harm unless injury by peace officer;
5. Act of severe violence that results in serious physical harm, unless caused by officer;
6. Grievous bodily harm to peace officer, firefighter, etc., while in the line of duty;

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7. Act of severe violence resulting in serious physical harm against a peace officer, firefighter, etc., while engaged in the line of duty;
8. Person’s nude body;
9. Protected health information, identity of a person in a health care facility not subject to law enforcement encounter or any other information in a health care facility that could identify a person not subject to encounter;
10. Information that could identify an alleged victim of a sex offense, stalking, or domestic violence;
11. Information that doesn’t qualify as CLEIRS but could identify a person who provides similar information;
12. Personal information of a person who was not arrested, cited, charged, or issued a written warning;

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13. Proprietary police contingency plans intended to prevent crime and maintain public order and safety;
14. Personal conversations unrelated to work between peace officers and other law enforcement employees;
15. Conversations between a peace officer and public person that does not concern law enforcement activities;
16. Interior of a residence unless it concerns an adversarial encounter with a peace officer; and
17. Interior of a private business, unless it concerns an adversarial encounter with a peace officer.

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## Exception to the Exceptions CONSENT

- ▶ (H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(15)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:
  - ▶ (a) The recording will not be used in connection with any probable or pending criminal proceedings;
  - ▶ (b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

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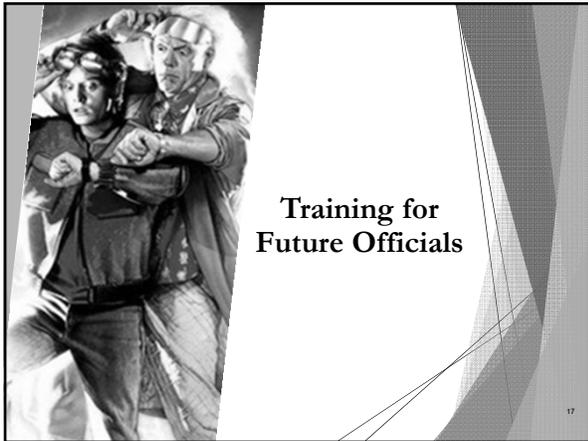
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Public Records Update

### Future Officials

Ohio Rev. Code Sections 109.43 & 149.43



- ▶ An elected official, or appropriate designee, is required to attend a three-hour training on public records and open meetings laws during each term.
- ▶ Effective **November 2, 2018**:
  - ▶ A future official may satisfy this requirement by attending the training before taking office.
    - ▶ “Future official” means a person who has received a certificate of election to a local or statewide office but has not yet taken office.
- ▶ **NOTE:**
  - ▶ Future official may **NOT** send a designee in his or her place.

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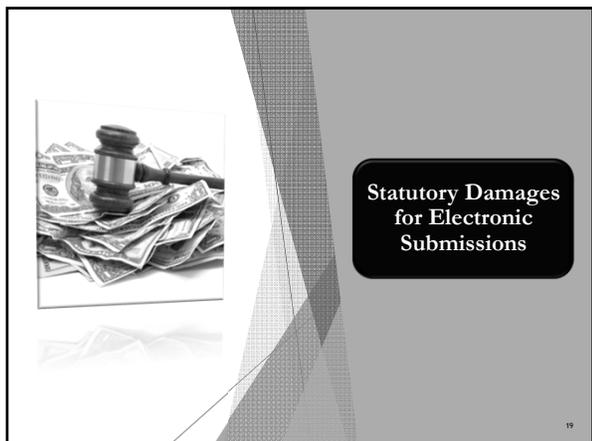
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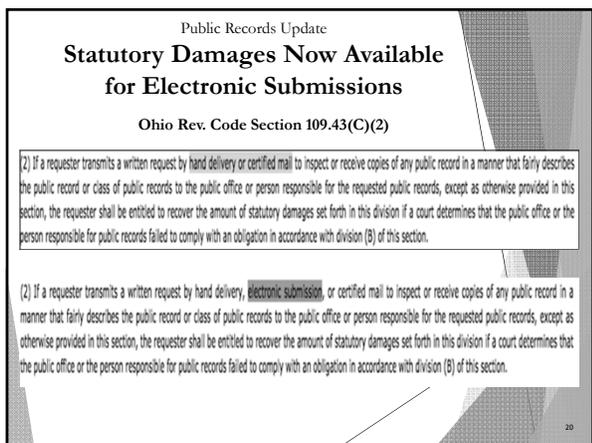
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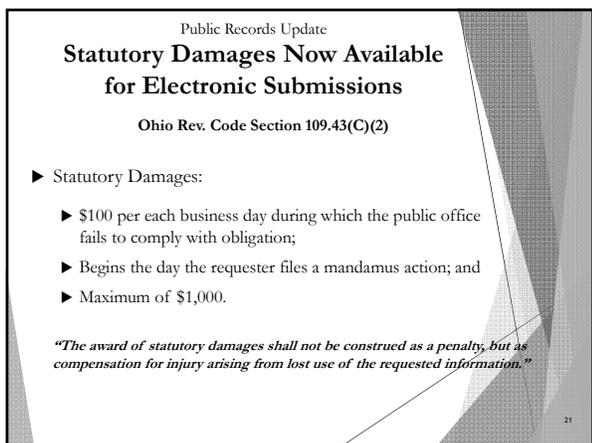
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Public Records Update  
**Case Law Update**  
*Parks v. Webb, 2018-Ohio-1578*

**Timeline (continued):**

- ▶ Dec. 29 » Matter referred to mediation.
- ▶ Jan. 8 » Webb filed a motion to dismiss.
- ▶ March 5 » Court advised case was not resolved in mediation.
- ▶ March 14 » Webb filed a supplemental motion to dismiss.



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Public Records Update  
**Case Law Update**  
*Parks v. Webb, 2018-Ohio-1578*

**Ohio Rev. Code Section 149.46(B)(6)**

• **(B)(6):** The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.

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*After Parks v. Webb, now what?*

1. Does a public office have an additional duty to convert files?
2. Will maintaining all "final" versions in a non-editable format such as pdf help prevent the release of Word docs?
3. What about concerns of data manipulation or the security of metadata?

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**BEST PRACTICES** Dave Yost  
 Auditor of State  
 December 2017

**How to minimize the risk of credit-card abuse**

Fraud is a crime of opportunity, more likely to occur when financial controls and oversight are lax. Local governments can protect themselves by adopting practices that reduce the opportunities for dishonest employees to abuse government credit and debit cards. There are a number of steps which can, and should, be taken to ensure that credit cards are not abused. Some of those steps are described below.

1. Credit cards should only be issued in the name of the government responsible for the account.  
 2. Every local government should have a formal credit card policy that, at a minimum, includes:  
 3. Designation of the person(s) empowered to authorize and approve credit card transactions.  
 4. The names and job titles

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**Dave Yost · Auditor of State**

**Reforming Credit and Debit Card Usage in Local Government**

The use of credit cards by local governments has become more prevalent in recent years; however, so too has the incidence of credit card fraud by local government officials. Credit card fraud can have a negative financial impact as demonstrated in our investigations of Perrysburg Exempted Village School District and the Village of Mount Sterling.

**Perrysburg Village Exempted School District**

- District had 53 total cards, 26 of them were unknown to the Treasurer.
- A fiscal clerk in the department made 39 of those fraudulent transactions spending \$84,331.
  - Used the card for personal travel expenses, sporting event tickets, fitness equipment, and booster expenses for a University.

**Village of Mount Sterling**

- Village Administrator made fraudulent credit card transactions totaling \$724,239 over a 4 year period.
- Made purchases of vehicles, auto parts, televisions, and other items for personal use.
- Sentenced to 10 years in prison in addition to restitution in the amount stolen from the Village.

As shown above, an individual can make hundreds of thousands of dollars of transactions and accumulate a considerable amount of debt while potentially paying a minimum balance on the card, and with no recourse to the local government entity after the fact. Based on the foregoing, the Auditor of State ("AOS") is proposing legislation to tighten controls over credit card use by local governments.

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## H.B. 312

### Credit Card Legislation

Key Points:

- Amended nine statutes and enacted eight to regulate the use of credit and debit cards.
- The credit card requirements apply to all political subdivisions, except colleges/universities and counties.
- The debit card requirements apply to all political subdivisions, except law enforcement.
- The Act establishes general procedures that political subdivisions must follow when using credit card accounts.

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## H.B. 312

### Credit Card Legislation

Key Points (continued):

- Requires the implementation of a written credit card policy by **February 2, 2019**.
  - Otherwise, a written policy must be adopted **before** beginning the use of a credit card.
- Establishes two separate internal control models for credit card usage by political subdivisions:
  - (1) the custody and control model; or
  - (2) the compliance officer model.

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Policies for Village Credit Card Accounts

- ▶ General Provisions: Ohio Rev. Code § 9.21
- ▶ Specific Provisions: **Ohio Rev. Code § 717.31:**

Not later than three months after the effective date of this section (February 2, 2019), a legislative authority of a municipal corporation that holds a credit card account on the effective date of this section shall adopt a written policy for the use of credit card accounts.

Otherwise, a legislative authority shall adopt a written policy before first holding a credit card account.

The policy shall include provisions addressing all of the following:

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**Policy Requirements for Villages**

- (1) The officers or positions authorized to use a credit card account;
- (2) The types of expenses for which a credit card account may be used;
- (3) The procedure for acquisition, use, and management of a credit card account and presentation instruments related to the account including cards and checks;
- (4) The procedure for submitting itemized receipts to the village clerk or city auditor or the clerk's or auditor's designee;
- (5) The procedure for credit card issuance, credit card reissuance, credit card cancellation, and the process for reporting lost or stolen credit cards;
- (6) The municipal corporation's credit card account's maximum credit limit or limits;
- (7) The actions or omissions by an officer or employee that qualify as misuse of a credit card account.

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**Definition of "Credit Card Account"**

- ▶ "Credit Card Account" means:
  - ▶ Any bank-issued credit card account, store-issued credit card account, financial institution-issued credit card account, financial depository-issued credit card account, affinity credit card account, or any other card account allowing the holder to purchase goods or services on credit or to transact with the account, and any debit or gift card account related to the receipt of grant moneys.
  - ▶ This definition does **NOT** include the following:
    - ▶ Procurement Card (P-Card) Accounts;
    - ▶ Gasoline and Telephone Cards;
    - ▶ Any other card account similar to gasoline/telephone card
  - ▶ Auditor of State Bulletin 2018-003 provides additional details.

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**Internal Control Models**

- ▶ House Bill 312 establishes two separate internal control models for credit card usage by political subdivisions:
  - ▶ Custody and Control Model
  - ▶ Compliance Officer Model



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### Custody and Control Model

- Model in which the treasurer or fiscal officer maintains **physical control** over all credit cards of the entity.
- Allows the cards to be “signed out.”
- **Auditor of State Bulletin 2018-003** elaborates on specific items that should be included in an entity’s written policy when using the control model:
  - ▶ Who the authorized, designated users are;
  - ▶ A reasonable length of time the card can be “signed out”; and
  - ▶ Procedures regarding the submission of itemized receipts.

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### Compliance Officer Model

- Model in which the treasurer or fiscal officer does **NOT** maintain physical control over all credit cards of the entity.
- **Two types:** [Requirements differ!]
  - Authority to operate a mayor’s court.
    - R.C. 717.31(C)(1), (D)
  - No authority to operate a mayor’s court.
    - R.C. 7.17.31(C)(2)

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### Authority to Operate a Mayor’s Court

- ▶ The chief executive officer shall appoint a compliance officer to perform the following duties:
  - ▶ 717.31(D) With the legislative authority, shall:
    - ▶ Quarterly review the number of cards and accounts issued;
    - ▶ Review the number of active cards and accounts issued;
    - ▶ Review the expiration dates of the cards and accounts;
    - ▶ Review the credit limits of the cards and accounts.

Note: The appointed compliance officer may not:

- Be the village clerk or city auditor;
- Use the credit card account;
- Authorize an officer or employee to use the credit card account.

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### No Authority to Operate a Mayor's Court

- ▶ 717.31(C)(2) The village clerk or city auditor **shall**:
  - ▶ Present monthly to the legislative authority credit card transaction detail from the previous month.
- ▶ The legislative authority shall then review the credit card account transaction detail and the presiding officer of the legislative authority shall sign an attestation stating the legislative authority reviewed the credit card account transaction detail.
- ▶ *Talk to your legal counsel if you have questions as to which type of compliance officer model your entity is subject to!*




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### Additional Requirements




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### Debit Cards Prohibited

- ▶ House Bill 312 now prohibits a political subdivision from obtaining/using a debit card account.
- ▶ Ohio Rev. Code Section 9.22:
  - ▶ "No political subdivision may hold or utilize a debit card account, except for law enforcement purposes ..."
- ▶ Possession and use of a debit card for purposes other than law enforcement is now a violation of Section 2913.21 of the Ohio Revised Code
  - ▶ Misuse of Credit Cards Statute

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## Indigent Burials

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## Indigent Burials

- Townships and Municipalities often are unaware:
  - Of the **requirements** of Ohio Rev. Code Section 9.15.
  - **Refuse to pay** because they do not believe they must.
  - Do not have funds **budgeted** for this legal requirement.

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### Ohio Rev. Code § 9.15

- Statute provides for the **public payment** when:
  1. The body of a dead person is found within a township or municipal corporation;
  2. The deceased person was not an inmate of a correctional, benevolent, or charitable institution of Ohio;
  3. The body is not claimed by any person for private interment or cremation;
  4. The body is not delivered for the purpose of medical study, surgical study or dissection.

When all of these requirements are met, the body of the dead person must be disposed of by the appropriate governmental entity as follows...

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- ▶ (A) If the person was a **legal resident of the county**, the proper officers of the township or municipal corporation in which the person's body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.
- ▶ (B) If the person had a **legal residence in any other county** of the state at the time of death, the superintendent of the county home of the county in which such body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.
- ▶ (C) If the person was an **inmate** of a correctional institution of the county or a **patient or resident** of a benevolent institution of the county, the person had **no legal residence in the state**, or the person's legal **residence is unknown**, the superintendent shall cause the person to be buried or cremated at the expense of the county.

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## What is a legal residence?



▶ Legal residence:

▶ A permanent place of abode used or occupied as living quarters at the time of a person's death.

Includes:

- ▶ A nursing home.
- ▶ Hospital.
- ▶ Other care facility.

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If The Statute Applies, What Must The Officials Do?

“... [A]t the grave of the person or, if the person's cremated remains are buried, at the grave of the person's cremated remains, a metal, stone, or concrete marker on which the person's name and age, if known, and date of death shall be inscribed.”




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**Who pays if a municipality is located within a township?**

- ▶ Ohio Rev. Code Section 9.15 does not specify which political subdivision should bear the cost when a municipal corporation is located within a township's borders.
- ▶ "...at the expense of the township or municipal corporation in which the person had a legal residence at the time of death."
- ▶ However, the statutory provision has long been construed to mean the municipal corporation within a township shall bear the cost.
  - ▶ See Ohio Attorney General Opinion No. 1996-026

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**TURNER**   
**FUNERAL HOMES**

**Case Example**

Turner & Son Funeral Home v. Hillsboro  
Court of Appeals of Ohio, Fourth District, Highland County  
28 N.E.3d (2015) | 12792015-Ohio-1138

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**QUESTIONS?**



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OHIO AUDITOR OF STATE  
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