

OHIO AUDITOR OF STATE
KEITH FABER

**CLOSE ENCOUNTERS OF THE LEGAL KIND:
COMMON MISTAKES THAT CAN RESULT IN AUDIT
FINDINGS AND COMMENTS**

PRESENTED BY: AOS CHIEF LEGAL COUNSEL MARY DeGENARO

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Topic Overview

1. When is governing body approval needed and in what form?
2. Recording and maintaining minutes during open meetings
3. StaRS testing
4. AOS Bulletin 2022-010: Multiple FO liability under SB 15
5. Documentation requirements under the OAC
6. Payroll issues

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1. When is governing body approval needed and in what form?

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Statutory Authority

- ORC 715.03: Powers by ordinance or resolution
- All municipal corporations have the general powers mentioned in sections [715.01](#) to [715.67](#), inclusive, of the Revised Code, and the legislative authority of such municipal corporations may provide by ordinance or resolution for the exercise and enforcement of such powers.

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Resolutions, Ordinances, or Simple Vote?

- The specific formality and requirement of legislative action is often spelled out in statute
- ORC Title 3: Counties
- ORC Title 5: Townships
- ORC Title 7: Municipal Corporations
- ORC Title 33: Education-Libraries

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**Statutory References
Township Resolutions**

Not exhaustive

- 505.10 Acceptance or disposal of property
- 505.1010 . . . Purchase of property at auction
- 505.48 Creation of police district
- 505.871 Removal of junk motor vehicles
- 505.89 Imposition of curfew
- 505.94 Control of transient vendors

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**Statutory References
Township Resolutions**

Not exhaustive

- 505.95 . . . Regulation of resale of tickets
- 511.18 . . . Action on petition for township park
- 511.28 . . . Submission of township park levy
- 515.08 . . . Payment of interest on lighting assessment
- 515.16 . . . Assessment for removal of overhead lines
- 519.02 . . . Zoning resolution

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**Statutory References
Municipal Resolutions**

Not exhaustive

- 703.10 . . . Resolution to take census
- 703.16 . . . Surrendering of city to village
- 709.50 . . . Removing territory from township
- 719.04 . . . Intent to appropriate property
- 727.171 . . . Off-street parking assessments
- 729.02 . . . Resolution of necessity for sidewalks

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Example Minutes, Resolution, and Ordinance

There was presented and read to the Commission for a second reading Resolution No. R2022-14 entitled **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE FOR BIDS FOR THE PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT, AND SERVICES FOR USE BY THE CITY IN THE CALENDAR YEAR 2023 AS HEREIN DESCRIBED.** Mr. Brown made a motion to adopt this resolution on the second reading, seconded by Mr. Jenkins. Upon roll call to adopt the resolution on the second reading, all votes were yes.

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Medium of Minutes

- There is not one specific required method of preparing minutes
- The minutes must state sufficient facts and information to permit the public to understand and appreciate the rationale behind the decision

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Statutory Sources

- Villages – Rev. Code 733.27
- Townships – Rev. Code 507.04
- Counties – Rev. Code 305.10
- School Boards – Rev. Code 3313.26

- Open Meetings Act – Rev. Code 121.22

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Open Meetings Act: Rev. Code 121.22

“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.”

O.R.C. 121.22(C)

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Minutes

- Must be **full and accurate**
 - Should enable the public to understand the rationale behind decisions
- There is no requirement to keep minutes of executive sessions.

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3. StaRS Testing Areas

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Executive Sessions

Procedure

- Motion
 - Must identify the particular purpose and matter
- Second
- Roll call vote

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Executive Session: Acceptable Topics

- 1. Certain personnel matters (must be specific)
- 2. Purchase or sale of property
- 3. Pending or imminent court action
- 4. Collective bargaining matters
- 5. Matters required to be kept confidential
- 6. Security matters
- 7. Hospital trade secrets
- 8. Confidential business information of an applicant for economic development assistance
- 9. Veterans Service Commission applications

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Specific Personnel Matters

- 1. Appointment
- 2. Employment
- 3. Dismissal
- 4. Discipline
- 5. Promotion
- 6. Demotion
- 7. Compensation

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What NOT to Do

- Vote
- Make any decisions
 - Even a decision to take no action
- Discuss any other matters

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Dear Requester,

I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of the job application for Public Employee Candidate."

Please find attached the records responsive to your request. Note that we have redacted information that is subject to following:

- Information that is not a record of this office, pursuant to *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274; and
- Driver's license numbers, pursuant to R.C. 149.45(A)(1)(c).

If you have any questions or concerns regarding this response, please feel free to contact me at 555-555-5555.

Very respectfully yours,
Public Office Employee

Providing Legal Authority

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**4. AOS Bulletin 2022-010:
 Multiple FO liability under SB 15**

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Bulletin 2022-010: Impact of Senate Bill No. 15, 134th General Assembly, on Findings for Recovery Issued: September 30, 2022

The purpose of this Bulletin is to clarify the impact of Senate Bill No. 15, 134th General Assembly (SB 15) on Findings for Recovery issued by the Auditor of State. The act modified the standard for when certain fiscal officers are liable for the loss of public funds. This statute will be effective for conduct or expenditures that occur after Sept. 13, 2022.

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Officers impacted by this Act

- County auditor or treasurer (ORC 301.221; 319.41; 321.50)
- Township fiscal officer or deputy fiscal officer (ORC 507.14)
- Municipal corporation treasurer (ORC 733.82)
- City auditor or other officer of a municipal corporation with the duties of a treasurer or city auditor (ORC 733.82)

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Officers impacted by this Act

- Treasurer/FO of a community college, technical college, or state community college district (ORC 3354.101; 3357.101; 3358.061)
- FO or deputy FO of a board of library trustees (ORC 3375.361)
- Treasurer, auditor, or other FO of a chartered county (ORC 301.221)
- FO, treasurer, or compliance officer of a regional water and sewer district (ORC 6119.61)

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Standard for liability

- Not liable for the loss of public funds if the officer performed all official duties with reasonable care.
- Liable for negligent or other wrongful act or failure to act
- Applies to conduct *after* September 13, 2022

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5. Documentation requirements under the OAC

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Ohio Admin. Code 117-2-02

- (A) All local public offices shall maintain an accounting system and accounting records sufficient to enable the public office to identify, assemble, analyze, classify, record and report its transactions, maintain accountability for the related assets. . .
- Also, OCS 2A-13

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Audit documentation

- Cash journal
- Receipts ledger
- Appropriation ledger
- Payroll records
- Utilities billing records
- Capital asset records

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6. Common Payroll Issues

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Constitutional prohibition against “in-term” pay changes

- OH Const. Art. II, § 20
- Township Trustees and Fiscal Officers, for example, are “officers” and subject to the prohibitions found in OH Const. Art. II, § 20.

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Prohibited “in-term” pay change

- OH Const. Art. II §20, prohibits **any change in compensation** to an officer **that results from legislative action taken during such officer's existing term in office.**
- Change includes both increases and decreases in compensation.
- An existing term is the definite period of time one holds an office.

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Township Fiscal Officer "in-term" pay change examples

Township Budget	2018 Annual Compensation*
\$250,000 or less	\$10,918
\$250,000.01 – 500,000	\$14,039
\$500,000.01 – 750,000	\$15,597
\$750,000.01 – 1,500,000	\$18,717
\$1,500,000.01 – 3,500,000	\$21,836
\$3,500,000.01 – 6,000,000	\$23,396
\$6,000,000.01 – 10,000,000	\$26,852
Greater than \$10,000,000	\$31,064

* In calendar year 2019 and in each calendar year thereafter through calendar year 2028, the amounts paid as specified above are increased by one and three-quarters (1.75) per cent.

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Withholding and remitting to pension systems

- ORC Chapter 145: OPERS
- ORC Chapter 3307: STRS
- ORC Chapter 3309: SERS
- ORC Chapter 742: OP&F

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OPERS

- ORC Chapter 145
 - Current contribution rates
 - Late fees/penalties
 - End of the month following the last day of the reporting period
- Interest
 - Employee Manual published by OPERS:
 - <https://www.opers.org/pubs-archive/employers/employer-manual/Employer-Manual.pdf>

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STRS

- ORC Chapter 3307
 - Current contribution rates
 - Employers: 14%
 - Employees: 14%
 - Late fees/penalties
 - Interest
 - <https://www.strsoh.org/employer/publications/>

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SERS

- ORC Chapter 3309
 - Current contribution rates
 - Employers: 14%
 - Employees: 10%
 - Late fees/penalties
 - Five business days after each pay date
 - Interest
 - <https://www.ohsers.org/wp-content/uploads/2019/03/Employer-Handbook.pdf>

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OP&F

- ORC Chapter 742
 - Current contribution rates
 - Employers: 19.5% (police officers); 24% (firefighters)
 - Employees: 12.25%
 - Late fees/penalties
 - Due the last day of each month
 - Pre-employment physical for members
 - Interest
 - <https://www.op-f.org/>; <https://www.op-f.org/Files/employer%20manual%20for%20web.pdf>

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Fringe benefits

- Paid sick leave
- Paid vacation leave
 - Set clear policies and apply consistently

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Severance payments

- Breaks in service
- Sick leave payouts
 - Local policy caps, percentages, or rates

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Fringe benefits and severance payments

- Bonuses
 - Motivate to stay vs. authorized after employer knew employer was leaving

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