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**2012 Local Government
Officials' Conference**

***Legal Update For
Townships***

Presented by
Stephanie Mingo Miles
Assistant Legal Counsel

What's on the Agenda?

- **Trustee and Fiscal Officer Compensation**
- **Recent AOS Bulletins**
- **Legislative Update**
- **Ethics Update**
- **Recent Attorney General Opinions**
- **Common Issues**



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**TRUSTEE
COMPENSATION**



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TRUSTEE COMPENSATION

R.C. 505.24 (C) – Township Trustee Compensation

ORC 505.24 requires that a township trustee paid on a salary basis ***shall certify*** the percentage of time spent working on matters to be paid from the township general fund and from other funds in such proportions as the kinds of services performed.



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TRUSTEE COMPENSATION CONT'D

- What does “certify” mean?
 - Certification must be done prior to receiving each pay (each pay period)
 - Certification must be individual (not done as group)
 - Certification does not have to be a time log, but can be a statement indicating percentage of time spent on different fund activities
 - AOS releasing technical bulletin
 - Bulletin will include a sample certification



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Application of the Certification Requirement

- The certification requirement only applies to trustees and fiscal officers. Documentation is ***still*** required where a township compensates other township employees from funds other than the general fund.



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- **Certification must be for completed work**

- **Sample Certification Form**

- Trustees can use the sample form provided in AOS Bulletin 2011, or develop their own form, as long as the information certified illustrates the percentage of time spent that relates to the time worked.



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TRUSTEE COMPENSATION CONT'D

- Resources for review:
 - R.C. 505.24(C)
 - AOS Bulletin 2011-007
 - Ohio Compliance Supplement § 6-9.



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TRUSTEE COMPENSATION

Question & Answer

- **Q. Can trustees be paid from funds other than the general fund?**
- A. Yes, under both the per diem and the salary method of compensation the trustees may be paid from funds other than the general fund. Remember however, if paid by the salary method, trustees must certify the percentage of time spent working on matters to be paid from the general fund or other township funds. If paid by the per diem method however, ORC 504.24 still requires the trustee to provide the fiscal officer with documentation of the number of days spent in the service of the township and the kinds of services rendered on those days.



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Question and Answer Cont.

- **Q. What should the pay resolution include each year regarding trustee pay?**
 - **Per Diem Method:** When members of the board of township trustees are compensated per diem, a *majority* of the board must pass a resolution establishing the periodic notification method to be used for reporting the number of days spent in the service of the township and the kinds of services rendered on those days. Per diem compensation may be paid from the general fund or from other township funds in such proportions as the kinds of services performed may require (ORC 505.24(C)).
- **Q. Under the per diem method, what kind of records must a trustee keep in order to document time?**
 - Pursuant to Ohio Attorney General Opinion 2004-036, the Auditor of State requires the township to maintain *daily* records of tasks performed for each individual trustee that, when reviewed cumulatively for the fiscal year, will provide reasonable justification for the apportionment of salary between funds as specified in the resolution. The Auditor of State will not accept monthly summaries in lieu of daily records.



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Question & Answer cont'd

- **Q. What should the pay resolution include each year regarding trustee pay?**
- **Salary Method:** To be paid on a salary basis in equal monthly installments, the board of trustees must unanimously pass a resolution to allow it. To be paid from any fund(s) other than the general fund, the resolution must also specify the proportions of the salary that are to be paid from each fund (ORC 505.24(C)). These proportions are a guide for use throughout the year; however, total payment for the fiscal year must be based on the cumulative actual service efforts during the fiscal year on restricted fund activity. Additionally, resolutions to pay trustees by salary should now specify that a township will allocate salaries based on the **certification the trustees** submit, not based on percentages a **resolution specifies**.



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Question & Answer cont'd

- **Q. Under the salary method, what should the certification include?**
- Per AOS Bulletin 2011-007, certification requires a statement detailing the percentage of time that the trustee/fiscal officer spent during that pay period providing services related to each fund to be charged.



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FISCAL OFFICER COMPENSATION

- ORC 507.09(C) provides that a township can pay its fiscal officer from the township general fund or from other funds of the township based on the proportion of time spent in the service of such funds.
- The fiscal officer must document the amount of time spent in the service of each fund by certification, specifying the percentage of time spent working on matters to be paid from the general fund or other township funds.



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RECENT AUDITOR OF STATE BULLETINS



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Best Practices for Responding To Public Records Requests

AOS Bulletin 2011-006

Ohio law requires that a public office make public records available for inspection or copying, depending on the request. The time required for a response depends on the type of request.

- If a request is to *inspect* public records- response must be prompt.
- If *copies are requested*-those copies must be provided within a reasonable period of time.



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AOS Bulletin 2011-006 (cont'd)

- When redacting information not subject to disclosure the public office is required to notify the requester of any redaction or make the redaction plainly visible.
- Where a public record request is denied, the public office must provide the requester with a reason, including the legal authority for the denial/redaction.



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Trustee and Fiscal Officer Compensation

AOS Bulletin 2011-007

Changes to Ohio Revised Code Sections 505.24 and 507.09 governing the way township fiscal officers and trustees report for salary compensation

- Certification



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Individual and Joint Self Insurance Programs

AOS Bulletin 2011-008

- Recent legislative changes to ORC 9.833 have increased the reporting requirements for individual and joint self-insurance programs.



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LEGISLATIVE UPDATE



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Shared Services

- Shared Service Agreements – ORC 9.482
- Authorizes political subdivisions to enter into agreements to perform services for one another
 - Can be any power/function/service that the political subdivision is otherwise authorized to exercise/perform/render
 - The legislative authorities of the contracting entities have to approve the contractual involvement
- Agreement cannot:
 - Levy a tax
 - Exercise any investment powers or perform any investment functions or render investment advice



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Township Merger

- Ohio Rev. Code Sections 523.01 to 523.07 provide a method where one or more townships may merge with a contiguous township to create a new township.
- Can be accomplished by:
 - Initiative petition of the voters of the townships to be merged, or
 - Submission of merger to voters of the townships to be merged



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Shared Services Cont'd ...

- No power/function/service can be exercised within a political subdivision that is not a party to the agreement without first obtaining the written consent of the political subdivision that is not a party to the agreement.
- Political subdivision tort liability law applies to political subdivisions that are parties to an agreement and to their employees when they are rendering a service outside the boundaries of their employing political subdivisions under an agreement.
- Employees acting outside of the subdivision boundaries, while providing an agreement service, can still participate in any pension/indemnity fund established by political subdivision.
- Such employees are also entitled to all rights and benefits of Workers' Compensation Law.



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Joint Police Districts

- ORC Section 505.481
- Replaces "joint township police districts" with "joint police district."
- Authorizes boards of township trustees of one or more contiguous townships and the legislative authorities of one or more contiguous municipal corporations to create a joint police district.
- There is no requirement that the participating entities be within the same county.
- Joint police district has the same powers as are currently provided a joint township police district.



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Joint Police Districts Cont'd

- Treasurer of the board required to obtain a bond, maintained by the president, and with a copy provided to the county auditor.
- Joint police district must appoint a chief of police who will determine staffing and salary requirements.
- Members of a joint police district must take peace officer training, are to be considered the law enforcement officers of the joint police district, and have the same arrest authority and powers as municipal or township police officers.
- Joint police district has the same powers as are currently provided a joint township police district.



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Questions and Answers

- **Q: Can another township or a municipality located within the joint police district join the district?**
- A: Yes, a township may join an existing joint police district by the adoption of a resolution by the board of trustees requesting participation in the district and upon approval of the existing district board. (ORC 505.483)



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Questions and Answers

- **Q: How are the rules of operation determined for a joint police district?**
- A: ORC 505.49 through 505.495 discuss the authority of the board of a joint police district as it pertains to the operation, appointment, qualifications and discipline of personnel employed by the district.



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Township Competitive Bidding

- Effective September 2011, there were increases in the competitive bidding threshold – generally from \$25,000 up to \$50,000.00
 - Sections affected in the threshold increase include, but may not be limited to, the following:
 - **ORC 511.12** Township Memorial Building, Monument, Statue, or Memorial (from \$25,000 to \$50,000)
 - **ORC 515.01** Lighting for Roads, Highways, Public Places, or Buildings (from \$25,000 to \$50,000)
 - **ORC 515.07** Lighting Improvements (from \$25,000 to \$50,000)
 - **ORC 521.05** Repair of private sewage collection tiles (from \$25,000 to \$50,000)
 - **ORC 5549.21** Purchase or lease of machinery and tools used on roads and culverts



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Health Insurance Updates

- Changes to 9.833
- Effective September 29, 2011 changes to Ohio Rev. Code Section 9.833 apply to those entities who self-insure"
- Now, all self-insurance programs must:
 - Prepare and maintain a certified audited financial statement and a report of amounts reserved for the program and disbursements made from such funds
 - Must provide such report to the AOS
 - Must include a contract with a CPA and member of the American Academy of Actuaries
- **AOS Bulletin 2011-008**
 - Individual and joint self-insurance programs are expected to comply with the above referenced requirements for the 2012 audit year. There will be no retroactive application for the 2011 audit year.



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Health and Wellness Benefits

- Health and Wellness Benefit Program
- HB 225, Effective 3/22/12
- In addition to providing the benefits to township officers and employees under section 505.60, 505.601, or 505.602 of the Revised Code, new legislation allows a board of township trustees to offer a health and wellness benefit program through which the township provides a benefit or incentive to township officers, employees, and their immediate dependents to maintain a healthy lifestyle. *(ORC 505.603 (B))
- The township fiscal officer may deduct from a township employee's salary or wages the amount authorized to be paid by the employee for benefits available if:
 - The employee authorizes in writing that the township fiscal officer may deduct that amount from the employee's salary or wages;
 - The benefit is offered to the employee on a group basis and;
 - At least ten per cent of the township employees voluntarily elect to participate in the receipt of that benefit.
- The township fiscal officer may issue warrants for amounts deducted to pay program administrators or other insurers for benefits. *(ORC 505.603 (C))



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Deferred Compensation Plan

- **Deferred compensation plans or programs for township officers and employees**
- H.B. 225, Effective 3/22/12
- New legislation explicitly authorizes boards of township trustees to offer deferred compensation plans or programs to all township officers and employees.
- The new law requires that a deferred compensation plan or program present a reasonable number of options to the township's officers and employees for the investment of the deferred funds that will assure their desired tax treatment.
- Any income deferred under a plan or program must continue to be included as regular compensation for the purpose of computing the contributions to and benefits from each officer's or employee's retirement system, but is not to be included in the computation of any federal and state income taxes withheld on behalf of the officer or employee.
- *(ORC 148.061)



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Improving Township Hall

- ORC 511.01 Town Hall
 - Changes to this statute increase the threshold for submitting a question to the electors of the township regarding building, improving, enlarging or removing a town hall from \$10,000 to \$50,000.



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Public Records

- ORC 149.351 Destruction of records, relief, damages
 - Changes in ORC 149.351 now require a person filing a civil suit regarding the destruction of public records must show by clear and convincing evidence that he is aggrieved by the non production of records.
 - Limits the damages that can be collected to \$10,000.00.
 - Limits attorney's fees that can be recovered to not exceed \$10,000.00.



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ETHICS UPDATE



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ETHICS UPDATE

OEC Advisory Op. No. 2010-03

Family Member Employment

- Public Officials cannot:
 - (a) hire or use their positions to secure employment for their family members;
 - (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies;
 - (c) give to their 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, provided that 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.



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ETHICS UPDATE

OEC Bulletin – Restrictions on Nepotism – April 2010

- Ohio Ethics law prohibits **all** public officials and employees from:
 - Hiring their family members for public jobs;
 - Using their public positions to get public jobs (or other contracts) for family members
 - Using their public positions to get promotions, selective raises, or other job-related benefits family members



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RECENT OHIO ATTORNEY GENERAL OPINIONS



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RECENT OHIO AG OPINIONS

OAG Op. No. 2011-002

- If a township territory subject to a preexisting and ongoing police levy is annexed to a municipal corp. pursuant to Ohio Rev. Code § 709.023, is the territory still subject to the levy?
 - Absent a formal action consistent with that statute that changes the boundaries of the township, the territory of township annexed remains subject to the special levy that was approved by a majority of the electors.
- Is the territory annexed subject to future police levies that may be approved by voters?
 - Again, absent formal procedures to change the boundaries of a township, the levy would still apply to the portion of the township that has been annexed. Any residents of this annexed portion are entitled to vote on any such levy.



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RECENT OHIO AG OPINIONS

• OAG 2011-011 Credit Union Services

- A township may contract with a credit union to help prepare their payroll records and make payments to their employees pursuant to both ORC 9.35 and 9.37 respectively.
- Implicated statutes: ORC 9.35, ORC 9.37



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RECENT OHIO AG OPINIONS

- **OAG Op. No 2011-027**

- A township fiscal officer may assume the duties associated with the position of secretary to the board of township trustees but may not receive additional compensation for doing so.
- Generally, township FO cannot receive additional compensation for additional duties, unless specifically allowed in statute.



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COMMON ISSUES



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When Can a Township Donate?

- As a creature of statute, a township may donate public money only if the township has statutory authority, either express or necessarily implied, to make such a donation. See OAG 2007-043 & 2002-031.



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When Can a Township Donate (cont)?

For example:

- R.C. 505.70 – Township may give financial assistance to a public or private entity that operates a federal program.
- R.C. 505.10 – Township may donate unneeded or obsolete property under certain circumstances.



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When Can a Township Donate (cont)?

Other examples:

- R.C. 505.108 – Township may donate unclaimed property seized by township police.
- R.C. 505.58 – Township may donate to a convention and visitors' bureau.



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When Can a Township Donate (cont)?

Other examples:

- R.C. 505.707 – Township may donate from the general fund to an organization that the board determines serves a community purpose and that is exempt from taxation as a 501(c)(3).
- *However*, governmental bodies are not considered 501(c)(3)'s.



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