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Auditor of State



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**2012 Annual Local  
Government Officials'  
Conference  
VILLAGE OFFICERS'  
LEGAL UPDATE**

Presented by:  
Joseph Jones  
Assistant Legal Counsel

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### What's on the Agenda?

- AOS Legal Division Overview
- Recent AOS Bulletins
- Legislative Update
- Recent AG Opinion
- Ethics Update



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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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# RECENT AUDITOR OF STATE BULLETINS



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## Recent AOS Bulletin

No. 2011-003

### AOS Stimulus Tracker Reporting Requirements For Federal Stimulus Funds

Effective September 30, 2011, AOS office is rescinding the AOS Stimulus Tracker reporting requirements for American Recovery and Reinvestment Act of 2009 (ARRA) – Federal Stimulus Funds.



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## Recent AOS Bulletin

No. 2011-002

### Leverage for Efficiency and Accountability and Performance (LEAP) Fund

- This \$1.5 million fund will advance the costs of a performance audit to local governments.
- Costs will be repaid from savings reaped.



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**RECENT AOS BULLETIN**  
 No. 2010-003  
**Tax Increment Financing**

**What is Tax Increment Financing (TIF)?**

- Tax Increment financing is an economic development mechanism available to local governments in Ohio to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. A TIF works by locking in the taxable worth of real property at the value it holds at the time the authorizing legislation was approved. Payments derived from the increased assessed value of any improvement to real property beyond that amount are directed towards a separate fund to finance the construction of public infrastructure defined within the TIF legislation.


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**RECENT AOS BULLETIN**  
 No. 2010-003  
**Tax Increment Financing**

**May a village use TIFs to finance public infrastructure or certain other assets or services benefitting the village?**

- Yes. A village may use TIFs to finance public infrastructure or certain other assets or services benefitting the township. See AOS Bulletin 2010-003 and ORC §§ 5709.40 - .43 and 5709.91.


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**RECENT AOS BULLETINS**  
 No. 2009-011  
**Allocating Audit Costs**

- Discusses ability of local governments to charge funds other than the general fund for the cost of an audit
- R.C. 117.13 permits a fiscal officer to distribute the total cost of an audit to each fund audited in accordance with its percentage of the total cost.
- The fiscal officer should determine which funds should be charged a percentage of the audit costs.
- The AOS is of the opinion that most operating funds of a local government, including utility funds (i.e., water, sewer, electric, refuse), special levy funds, funds that receive gas taxes, and motor vehicle registration fees can be charged a portion of the audit costs.


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## RECENT AOS BULLETINS

No. 2009-011

### Allocating Audit Costs (cont)

- In determining a percentage of total cost that may be charged to a fund, any reasonable and rational method such as a percentage of the fund's revenue or expenditures compared to the total revenue or expenditures for all funds, excluding agency funds, would be acceptable.
- A local government's indirect cost allocation plan may also be an acceptable method for allocating audit costs.



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## Recent AOS Bulletins

No. 2011-008

### Self Insurance Programs

- Ohio Revised Code § 9.833 provides statutory authority to political subdivisions to engage a variety of methods to secure health care benefits for their officer or employees.
- Specifically, political subdivisions may do any or a combination of the following:
  - Establish and maintain individual self-insurance health care benefits programs,
  - Establish and maintain a health savings account program
  - Enter into agreements with other political subdivisions to jointly administer the individual self-insurance health care benefits programs of each
  - Enter into agreements with other political subdivisions to establish and maintain joint self-insurance health care benefits programs, and
  - Enter into agreements with other political subdivisions to jointly procure or contract for policies, contracts, or plans of insurance to provide health care benefits



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## Recent AOS Bulletins

No. 2011-008

### Self Insurance Programs (cont.)

- All self-insurance programs must:
  - Must provide a yearly report from a member of the American Academy of Actuaries
  - In addition to this report, all individual or joint self-insurance programs must also provide a certified audited financial statement
  - The certified audited financial statement and report from the member of the American Academy of Actuaries must be provided to the Auditor of State
  - Every individual or joint self-insurance program must include a contract with a certified public accountant for preparation of the certified audited financial statement
  - Self Insurance programs created solely by municipal corporations are exempt from complying with (C)(1), (2), and (4) of the statute



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# LEGISLATIVE UPDATE



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## Notice Requirements

- Many different laws require subdivisions to publish notices or advertisements more than twice.
- New legislation creates ORC 7.16 – an alternative publication procedure that political subdivisions may choose to follow for publication of notices and advertisements.
  - 1<sup>st</sup> notice must be in its entirety in a newspaper of general circulation
  - The 2<sup>nd</sup> publication can be printed in an abbreviated form in a newspaper of general circulation and can be on the newspaper's website
  - If the newspaper does not have a website, the township shall comply with the publication requirements of the section of the RC that referred to this section
  - Mentioned in 501.07, 503.05, 503.41, 504.02, 504.03, 504.12, 504.21, 505.109, 505.264, 505.28, 505.373, 505.55, 506.73, 511.23, 511.25, 511.28, 511.34, 513.14, 515.04, 517.22, 521.03, 5543.10, 5552.06, 5573.02, 5575.01, 5575.02. (note: not a complete list)



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## Shared Services

- Shared Service Agreements – ORC 9.482
- Effective September 29, 2011
- 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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## 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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## Competitive Bidding

Ohio Revised Code Section 731.14 Generally increases the competitive bidding threshold – from \$25,000 up to \$50,000.00

- All contracts over **\$50,000** shall be:
  - (a) In writing; and
  - (b) Awarded to the lowest and best bidder
- Keep in mind – charter villages can set up their own bidding requirements
- If your village has established a village administrator, consult [ORC 731.14](#)
- A village may reject any or all bids it receives
- All village contracts must be between the village and the bidder



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## Recently Enacted Legislation

*H.B. 48 – 128<sup>th</sup> General Assembly*

### H.B. 48 – Leave for Spouses & Parents of a Member of the Uniformed Services

- This law provides, with certain requirements, up to two weeks of leave for any employee who is the spouse, parent or a person who has or had legal custody of a member of the uniformed services who is called to active duty or is injured, wounded, or hospitalized while serving on active duty.
- Employer includes the State and its political subdivisions, including townships
- Effective July 2, 2010
- Ohio Rev. Code §§ 5906.01 and .02



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## Recently Enacted Legislation

*H.B. 48 – 128<sup>th</sup> General Assembly*

### H.B. 48 – Changes to Election Calendar

- This law amends the election calendar. Most changes are as follows:
  - “forty days before the election” to “fifty-six days before the election”
  - “seventy-five days before the election” to “ninety days before the election”
  - “one hundred twenty days before the election” to “one hundred thirty five days before the election”
- Affected statutes → 705.01, 707.21, 709.29, 709.39, 709.45, 709.462, 709.48, 715.69, 715.691, 715.70, 715.71, 715.77, 718.01, 718.09, 718.10, 731.03, 731.28, 731.29, 733.09, 733.261, 733.262, 733.31, 733.48, 749.021, 755.01, 757.02, and 759.25.
- Effective July 2, 2010



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## Recently Enacted Legislation

*H.B. 449*

### H.B. 449 – Paid Military Leave

- This legislation provides publicly employed firefighters and emergency medical technicians with a minimum paid military leave of 17 24-hour days.
- Ohio Rev. Code § 5923.05
- Effective June 18, 2010



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## Recently Enacted Legislation

*S.B. 85*

- This legislation authorizes non-chartered municipalities, among others, to award multi-year, asset-management professional service contracts through direct negotiation or requests for proposals or qualifications in lieu of competitive bidding, for the engineering, repair, sustainability, water quality management, and maintenance of a water storage tank or appurtenant facilities
- Contract must include certain terms and conditions found in Ohio Rev. Code § 9.29



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## Public Records

- ORC 149.351 Destruction of records, relief, damages
  - Under current law, any individual that is “aggrieved” by the improper removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record can bring an action to recover in the amount of \$1,000 per violation.
  - 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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## Dissolution of a Village Under Fiscal Emergency

### Ohio Revised Code Section 118.31 (A)

Upon petition of the financial supervisor (auditor of state) and approval of the financial planning and supervision commission, the attorney general shall file a court action to dissolve a municipal corporation if all of the following conditions apply:

- (1) The village has a population of less than five thousand as of the most recent federal decennial census.



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## Dissolution of a Village Under Fiscal Emergency cont'd...

- (2) The village has been under a fiscal emergency for at least four consecutive years.
- (3) Village financial plan cannot reasonably be expected to correct and eliminate all fiscal emergency conditions within five years.



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## Merger of a Village

### Ohio Revised Code Section 709.44:

New legislation allows for one or more villages, not necessarily adjacent to one another, to be merged with an adjacent unincorporated area of a township.

Can be accomplished by:

- Legislators adopting merger agreement (709.451)
- Submission of merger to voters of the villages to be merged (ORC 709.452)



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## Health Insurance Update

### Self Insurance

Ohio Revised Code 9.833

Additional requirements include:

1. A certified audited financial statement and report of amounts reserved and disbursements made.
2. Written actuary report. The report must be prepared and maintained in the office of the program administrator, who must also provide the report to the auditor of state



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## Joint Police Districts

- 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 board
  - Members shall be representatives from each board of township trustees and from the legislative authority of each municipal corporation
- Joint police district board elects president, secretary and treasurer.

ORC Sections: 505.481 and 505.482



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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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## RECENT OHIO ATTORNEY GENERAL OPINION



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## AG Opinion

- OAG 2011-002 Annexation
  - Absent formal action consistent with statute to change the boundaries of a township, territory of the township annexed to an adjacent municipal corporation pursuant to ORC § 709.023 remains subject to any special levy under ORC § 5705.19(J) that was submitted to the township electors by the board of township trustees as the taxing authority for the township and approved by a majority of the township electors voting thereon.
  - If the board of trustees of a township, acting as taxing authority of the township, hereinafter submits a special levy under ORC § 5705.19(J), and if such proposal is approved by a majority of the electors voting thereon, such special levy will apply to township territories that have been annexed to adjacent municipal corporations pursuant to the expedited procedures of ORC § 709.023, absent formal action consistent with statute to change the boundaries of the township as a result of the annexation.



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## AG Opinion

- OAG 2011-002 (cont)

- If the board of trustees of a township, acting as taxing authority of the township, hereinafter submits to the electors of the township the question of approving a special levy under ORC § 5705.19, and if such proposal is approved by a majority of the electors voting thereon, persons residing in those township territories annexed to adjacent municipal corporations pursuant to the expedited procedures of ORC § 709.023 are entitled to vote upon such special levy, absent formal action consistent with statute to change the boundaries of the township as a result of those annexations.

See also OAG Opinion 2011-009 concerning annexation and taxation of the unincorporated portion of a township



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## AG Opinion

- OAG 2011-016 Police & Fire Protection

- Properties that are not within the territorial boundaries of and not owned by a municipal corporation are not within the municipal corporation's jurisdiction for purposes of law enforcement, firefighting, or fire protection services
- A county Sheriff is required to provide law enforcement to properties located within the unincorporated territory of a county
- A joint fire district created pursuant to ORC § 505.371 is required to provide firefighting and fire protection services to properties within the fire district.



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## AG Opinions

- OAG 2011-021 Incompatible positions

- ORC § 731.12 prohibits a member of a village legislative authority from serving simultaneously as a member of a board of county hospital trustees appointed pursuant to ORC § 339.02



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## AG Opinion

- OAG 2011-007 JEDD Tax
  - Only actual seasonal cropping business activities that physically occur in Joint Economic Developmental Districts are subject to the JEDD tax. Villages may opt out of the tax by doing so in the contract that creates the district.
  - Implicated statutes: ORC 715.74



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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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## Common Questions & Areas of Concern



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## Common Questions & Areas of Concern

- **Charging Administrative Costs to Restricted Funds**
  - Ohio Revised Code 5705.10
  - Other Ohio Rev. Code sections that specify what certain monies can be spent on
    - Example: sewer/water funds
  - Charging a proportionate amount of administrative costs to those funds
  - Cost allocation plans
  - Key is proportionality
  - What is not "proportional"
    - Resolution that charges a blanket x% to a certain restricted fund



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## Common Questions & Areas of Concern

### Exceptions to Competitive Bidding (not an exhaustive list):

- Emergency
  - Must be approved by 2/3rds vote of legislative authority
- Used Items at Auction
  - Have resolution stating the maximum
- Used Items from other subdivisions
- Joint Purchasing Contracts
  - Entered into pursuant to ORC 9.48



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## Common Questions & Areas of Concern

### Public Records

- When I use my personal electronic device (cell phone/computer) to send/receive messages/documents relating to my public position does that constitute a public record?
  - Yes. It can. The Supreme Court considered this question in *Glasgow v. Jones*, 119 Ohio St.3d 391.
  - The Court held that messages/documents that are created or received in official capacity and that document work-related activity are subject to disclosure under Ohio Rev. Code § 149.43 regardless of whether it was sent on a public or private email account.



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## Common Questions/Areas of Concern

### Proper Public Purpose

- Expenditures by a governmental unit should always serve a valid public purpose; this is found in AG Opinion No. 82-006.
- Your village council determines what constitutes a proper public purpose; as such, any decision must be memorialized by a duly enacted ordinance or resolution and may have *prospective* effect only.
- The Auditor of State's Office will only question expenditures where the legislative determination of a public purpose is arbitrary and incorrect.
- **Note:** Alcohol is never a proper public purpose, and we will issue findings for recovery accordingly.
- Remember, *prior*, prospective authorization of an expenditure by the appropriate legislative authority (e.g. village council) is the important concept to remember, as to avoid negative audit treatment.
- Please see Auditor of State Bulletins 2003-05 & 2004-002 for more information regarding proper public purpose issues.





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