

Finding for Recovery Procedures for Independent Public Accountants (IPA)

Ohio Rev. Code 117.12 prohibits IPAs from issuing Findings for Recovery. IPAs should report these matters exceeding \$500 (and any alcohol purchase and other findings for recovery determined by the Auditor of State, regardless of amount) as noncompliance findings, but they should not label them as *finding for recovery* and the finding should not state: “In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money collected but not accounted for (or illegally expended, etc.) is hereby issued against . . .”¹⁶

The following procedures apply to IPAs in instances where they determine a finding for recovery may be necessary.

- An IPA should NOT inform anyone other than the Auditor of State of possible Findings for Recovery either orally or in writing.
- As soon as the IPA has an indication there could be any Findings for Recovery, regardless of the amount, the IPA should contact the regional chief auditor.
- The IPA should provide the regional chief auditor with all relevant supporting audit documentation for the Finding.
- Once the regional chief becomes aware of the potential Finding for Recovery, the regional chief should follow Advisory Memo 2012-01 which requires all potential Findings for Recovery, regardless of amount, to be reviewed by Legal and the Center for Audit Excellence. When submitting potential Findings for Recovery related to an IPA Report to the Center, please submit the information to your assigned regional Center consultant. When the Center consultant responds to the Region on a potential Finding that is related to an IPA audit, the assigned Center consultant will carbon copy the IPAREport mailbox (ipareport@ohioauditor.gov) with the resulting action. This will allow the matter to be identified for follow up during the review of the IPA audit report.
- The Legal Division and the Center will review the potential Finding and if it is determined that a Finding will be issued, the regional chief will submit all needed supporting documentation and the Notice of Proposed Findings letters to the Legal Division.
- The Legal Division will review the proposed Finding and may ask the regional chief auditor or the IPA for additional information.
- After the Legal Division has approved the Finding, the regional chief auditor or his/her designee will obtain the limited waiver from the IPA¹⁷ and send the *Notice of Proposed Finding* to all

¹⁶ This is to comply with RC Section 117.12 which states, “IPAs have no authority to make formal findings of illegality, malfeasance, or gross neglect under this division or section 117.23 of the Revised Code.”

¹⁷ NOTE: ORC 4701.19 provides that an IPA’s audit documentation remains the property of the IPA, even in the possession of the Auditor of State’s office, and states that these materials are not public records available for public disclosure. However, we will request a limited waiver of this statutory provision after the AOS Legal Department has approved the proposed finding for recovery. This limited waiver will request the IPA to make audit documentation supporting the proposed finding for recovery available for inspection by the person named in the finding and legal

applicable parties. The applicable parties are normally given five days to respond. If they respond, the chief auditor evaluates the response along with the Legal Division and decides whether to withdraw or modify the Finding.

- The regional chief auditor will send a copy of the approved finding to the Chief Auditor, Center for Audit Excellence or his designee for inclusion with the Acceptance Letter and send the *Notice of Finding* to the applicable parties upon releasing the report.

IPAs should refer any matters involving possible criminal activities to the regional chief auditor and to the Chief of the Auditor of State's Special Investigations Unit, who is a law enforcement officer.

In addition, independent public accountants are to make an immediate, written report of all illegal acts or indication of illegal acts which may result in findings for recovery of which they become aware to the regional chief auditor.

Example Findings for Recovery

An example *finding for recovery* is included below:

Receipts issued for impounding fees by the County Dog Pound and Dog Warden totaled \$1,234 more than deposits made to the County Auditor. Ohio Rev Code Section 9.39 states all "public officials are liable for all public money received or collected by them or by their subordinates under color of office."

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money collected but not accounted for is hereby issued against John Doe, County Dog Warden, and the Ace Insurance Company, his bonding company, jointly and severally, for \$1,234 and in favor of the County Dog and Kennel Fund.

(Note: Per the preceding discussion, IPAs would modify this finding by deleting the second paragraph and instead stating, for example, "We have referred this matter to the Auditor of State for resolution.")

Responsibility for Paying Findings for Recovery: Strict Liability Laws

Public officials are strictly liable to account for public funds entrusted to their care. "Strict liability" means a person may be found liable for the loss even though he or she may not have been personally at fault. Also, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of such expenditure. Mere unidentified shortages of public moneys, or such an illegal expenditure, are sufficient reasons for a Finding for Recovery against such a public official.

Thus, public officials (including fiscal officers) must be aware of their role in approving expenditures and safeguarding amounts collected, and take steps to prevent mistakes, errors or omissions resulting in the loss of public funds. In the context of an AOS audit, both the supervising/approving officer or employee and the fiscal officer may be liable for such losses, and may therefore be included as a party

counsel. This waiver will include only documentation directly related to the finding for recovery. Documents subject to the waiver will also become subject to public records disclosure.

liable for repaying a *finding for recovery*, even if they did not personally account for the transaction. The Auditor of State issued Bulletin 2010-01 clarifying this policy for county officials. However, general concepts included in the Bulletin apply to all public offices.

When a public official (including fiscal officers) is named in a finding for recovery based on the strict liability laws, auditors should modify the wording of the Finding accordingly. An example follows:

Joe's Service Business, Inc. improperly submitted invoices for, and had expenditures paid on its behalf, of \$125,000 in excess of the amounts City's Council authorized.

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money illegally expended is hereby issued against Joe's Service Business, Inc. and in favor of the City of Anyplace, in the amount of \$125,000.

Fifteen thousand dollars of the net expenditures of \$125,000 illegally paid to, or on behalf of, Joe's Service Business occurred when Jim Smith was the City Finance Director, and \$110,000 of these net illegal expenditures occurred when Bill Wilson was the City Finance Director.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. Seward v. National Surety Corp., 120 Ohio St. 47 (1929); 1980 Op. Atty Gen. No. 80-074; Ohio Rev. Code Section 9.39; State, ex.rel. Village of Linndale v. Masten, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property, 1980 Op. Atty Gen. No. 80-074.

Jim Smith and Bill Wilson and their bonding company Ace Insurance Corp. will be jointly and severally liable in the amount of \$15,000 and \$110,000, respectively, and in favor of the City of Anyplace.