



Auditor of State



Bulletin 2003-001

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TO: County Auditors
City Auditors
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School District Treasurers
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Educational Service Centers
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Village Clerk/ Treasurers
Joint Ambulance Districts
Joint Ambulance and Fire Districts
Township Fire Districts
Metropolitan Park Districts
Independent Public Accountants

FROM: Betty Montgomery
Ohio Auditor of State

SUBJECT: Legislative Changes Regarding Budget Stabilization (5705.13, R.C.) and Certification prior to Issuing Orders or Entering Contracts (5705.41, R.C.)

The purpose of this Bulletin is to inform you of recent legislative changes to two Revised Code sections in Chapter 5705. Please pay special attention to the effective dates of the changes. Questions concerning this Bulletin should be directed to the Local Government Services Office of the State Auditor's Office at (800) 282-0370.

Reserve Balance Accounts for Budget Stabilization (5705.13, R.C.)

Am. Sub H.B. No. 513, **effective March 31, 2003**, amended the portion of Section 5705.13, R.C. which allows subdivisions to establish a reserve balance account for budget stabilization. Prior to the new legislation, a reserve balance account for budget stabilization could only be established in the general fund. H.B. No. 513 expanded this authority to permit subdivisions to establish a reserve balance account for budget stabilization in the general fund and in any special fund used for operating purposes. For example, a reserve balance account could be established in a fund created to account for a fire operating levy. The amount of the reserve in each fund is still limited to five percent of the revenue received in the prior year by the fund in which the reserve is created. Each reserve balance account for budget stabilization is still created, reduced or eliminated by ordinance or resolution of the taxing authority of the subdivision.

The section of the statute that allows a subdivision to create one or more capital projects funds in which to accumulate money for the acquisition, construction or improvement of fixed assets was also amended. Prior to the new legislation, a subdivision could accumulate money in the capital projects fund for five years from the date of the resolution or ordinance creating the fund. At the end of the five year period, if the subdivision has not entered into a contract for the acquisition, construction or improvement, the money must be transferred back to the fund or funds from which the money was originally transferred or to the fund that was originally intended to receive the money. The new legislation extends this period to ten years.

Certification Prior to Issuing Orders or Entering Contracts (5705.41, R.C.)

Section 5705.41, R.C. requires that a certification be obtained from the fiscal officer prior to the time an order is issued or a contract is made. This prior certification must state that the amount of the order or contract has been lawfully appropriated for the purpose of the order or contract, that the appropriation remains unencumbered and that resources to pay the obligation when it comes due are on hand or in the process of collection to the credit of an appropriate fund. The statute states that a contract not properly certified is void and may not be paid. The statute, however, does provide an alternative certification process that may be utilized to correct the failure to prior certify an obligation.

In order to pay an obligation for which prior certification was not obtained, the fiscal officer may provide to the taxing authority of the subdivision or taxing unit what is called a “then and now” certificate. This certificate states that **both** at the time the contract was made or the purchase order issued (then) and at the time the certificate is executed (now), the amount of the order or contract has been lawfully appropriated for the purpose of the order or contract, that the appropriation remains unencumbered and that resources to pay the obligation when it comes due are on hand or in the process of collection to the credit of an appropriate fund.

Prior to the passage of House Bill No. 454, if the amount of the obligation was equal to or greater than \$100 for counties or \$1,000 for other subdivisions or taxing units, the taxing authority must approve the payment of the obligation by resolution or ordinance within 30 days of receipt of the “then and now” certification. Under the new provisions, the threshold above which approval is required has been increased from \$1000 to \$3000 for political subdivisions and taxing units other than counties. The threshold for counties remains \$100. **The new legislation was signed January 6, 2003, and is effective April 7, 2003.** (Until April 7, the threshold for subdivisions and taxing units other than counties remains \$1,000.)

It is important to make clear that the use of a then and now certificate is **not** a general grant of authority to the fiscal officer to approve expenditures of under \$100 for counties and under \$1,000 (\$3,000 after April 6, 2003) for other subdivisions or taxing units without the additional approval of the official(s) ordinarily required to approve expenditures. For example, Section 507.11, R.C. requires the signature of two trustees on any order for the payment of money by a township. Although trustee approval of the payment based on a then and now certification may not be required under Section 5705.41, R.C. if the order is below the threshold,

compliance with Section 507.11, R.C. would still require the signature of two trustees before payment can be made.

The Auditor of State's Office recommends that prior certification of obligations be a part of the routine purchasing procedures established by all local governments. Reliance on then and now certificates should be limited to situations where prior certification was not obtained due only to extreme circumstances that justify the failure to follow the routine purchasing process. The use of then and now certificates bypasses the encumbrance portion of the budgetary control process and can result in the inability to pay obligations when due.

Questions concerning this Bulletin should be addressed to the Local Government Services of the State Auditor's Office at (800) 282-0370.

A handwritten signature in black ink that reads "Betty Montgomery". The signature is written in a cursive, flowing style.

Betty Montgomery
Ohio Auditor of State