

Auditor of State Bulletin

Date Issued: February 25, 2004

TO: All County Auditors, Commissioners & Prosecutors
All Independent Public Accountants

FROM: Betty Montgomery
Ohio Auditor of State

SUBJECT: Expenditure of Public Funds for a Proper Public Purpose

This Bulletin is issued as a clarification to Auditor of State Bulletin 2003-005. Specifically, our Office has received numerous inquiries from county officials regarding the intended meaning of the term “legislative authority” as used in Bulletin 2003-005. The Bulletin stated in pertinent part, “Thus, to avoid an audit finding, the Auditor of State will require that expenditures of public funds for coffee, meals, refreshments, or other amenities have prior authorization by the appropriate legislative authority.” There appears to be a great deal of confusion surrounding the meaning of “appropriate legislative authority.” It is our hope that this Bulletin will serve to address this concern.

Auditor of State Bulletin 2003-005 referred to 1982 Ohio Attorney General Opinion No. 82-006, which was intended to address the expenditure of funds by local political subdivisions for the purchase of meals, refreshments and other amenities (flowers, token retirement gifts, or meritorious service awards). Specifically, a prior Auditor of State sought clarification whether such expenditures are supported by a “public purpose.” The Ohio Attorney General indicated in Opinion 82-006 that because the determination of what constitutes a proper public purpose is primarily a legislative function, such decisions “... must be made in accordance with the procedural formalities governing the exercise of legislative power. Specifically, the decision must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only.”

In addition, Attorney General Op. No. 82-006 addressed how several terms are to be viewed, including the terms “legislative bodies” and “legislative power.” The Attorney General opined that:

In its strictest sense the term "legislative bodies" refers to the traditional bodies empowered to make laws, such as Congress, state legislatures and municipal councils. Courts have recognized ... that the governing bodies of other political subdivisions are at times called upon to exercise legislative powers or functions... legislative power can mean something broader than the usual

power to enact laws. A governmental body may be deemed to exercise a legislative function when it promulgates policies, standards, regulations or rules of general application and prospective operation and when the body's decision is appropriately based on considerations similar to those a legislature could have invoked....

More recently, Ohio Attorney General Opinion No. 2003-029 addressed the issue of whether particular county departments may approve their own travel policies. This opinion was issued in response to a request by the Athens County prosecutor on behalf of the county auditor. The Attorney General concluded that that county auditor does not have the authority to establish a travel policy for offices other than his or her own. The Attorney General stated, "Rather, each county officer, board, or department may establish a travel policy for the agency's officers and employees. A board or appropriate office or department head has the discretion, subject to R.C. 325.20, to set the specific terms of the policy, including the amount of expenses that may be incurred, and the nature of the items that may be reimbursed." And furthermore, "Any travel policy must, of course, comply with the limitation that public funds may be spent only for a public purpose." Atty. Gen. Op. No. 2003-029.

In accordance with the above Attorney General Opinions, an independently elected official has the power to establish his or her own travel policy. Expenditures made pursuant to that policy, and made otherwise in accordance with law, are at the discretion of the independently elected official.

We find it proper to extend this reasoning in general to the types of expenditures (meals, refreshments and other amenities) contemplated by AOS Bulletin 2003-005. However, these officials (county prosecutors, judges, auditors, sheriffs, engineers, coroners, clerks of county courts, treasurer, recorder) should have written policies that are in place **prior** to making expenditures to justify that the expenditures are for a proper public purpose. The effective date of the policy and any amendments to the policy should be clearly indicated.

With regard to departments and agencies, for which the Board of County Commissioners is the proper authority to establish policies and approve expenditures, these entities should obtain the prior approval of the county commissioners through a resolution demonstrating a proper public purpose before making the types of expenditures contemplated by AOS Bulletin 2003-005. We also consider that each county should determine the manner in which approval for entities under the control of the county commissioners is to be made. For example, a county may decide that a general resolution for all such entities is appropriate, or that the policy of each county entity, department or agency under its control must be approved individually. This may also include the adoption of a resolution which permits an entire category or categories of future expenditures for amenities.

We will audit in accordance with the written policies that are established by each of the independently elected county officials and by the board of county commissioners for itself and the entities under its control. However, policies should be writing and in effect **prior** to the making of an expenditure. The effective date of the original policy and the date of any amendment of the policy should be clearly indicated.

As always, we encourage you to consult with your county prosecutor for guidance on any specific concerns that you may have involving the matter of expenditures for a proper public purpose.

Questions concerning this bulletin should be addressed to the Legal Division of the State Auditor's Office at (800) 282-0370.

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