

Mary Taylor, CPA Auditor of State

Bulletin 2010-001

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TO: County Auditors
County Commissioners
County Boards, Offices and Commissions

FROM: Mary Taylor, CPA
Ohio Auditor of State

SUBJECT: County Auditor Liability

This Bulletin addresses county auditor liability in the context of an audit in light of Ohio Attorney General Opinion 2009-033. Specifically, this Bulletin replaces Auditor of State Technical Bulletin 2008-006, and only addresses county auditor liability in the context of a finding for recovery issued under Ohio Revised Code § 117.28.ⁱ

The Ohio Attorney General, in Opinion 2009-033, explains that a county auditor may incur liability where he acts in bad faith or with a corrupt motive, such as where he converts public funds to his own or another's personal use or commits fraud. Additionally, a county auditor may incur liability when issuing a warrant in payment of an expenditure if the expenditure violates an existing constitutional, statutory, or administrative position.

Additionally, Ohio Revised Code § 9.39 provides that "all public officials are liable for all public money received or collected by them or by their subordinates under color of office." A county auditor could, therefore, be liable under this provision if funds physically kept in his/her office, such as petty cash, cannot be accounted for.ⁱⁱ

The duties of a county auditor and limited exceptions to county auditor liability, as recognized in the course of an audit, are outlined below.

Duties of a County Auditor

Ohio Revised Code § 319.02 requires the county auditor to obtain a bond conditioned on the auditor's faithful performance of his/her duty:

Before entering upon the discharge of the duties of his office, the county auditor shall give a bond signed by a bonding or surety company authorized to do

business in this state and to be approved by the board of county commissioners... in a sum of not less than five thousand nor more than twenty thousand dollars, as the board requires, conditioned for the faithful discharge of the duties of his office. The expense or premium for such bond shall be paid by the board and charged to the general fund of the county. Such bond, with the oath of office required by sections 3.22 and 3.23 of the General Code, and Section 7 of Article XV, Ohio Constitution, and the approval of the board indorsed upon it shall be deposited by such board with the county treasurer, who shall record and carefully preserve it.

If an auditor-elect fails to give bond and take the oath of office, as required by this section, on or before the day on which he is required to take possession of his office, such office shall become vacant.

We recommend county auditors and commissioners periodically review the bond amount, to guarantee that it is sufficient for the needs and operation of the county.

The county auditor is responsible for the issuance of warrants under Ohio Revised Code § 319.16. This section provides that:

The county auditor shall issue warrants . . . on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of mental retardation and developmental disabilities, so authorized by law.

Ohio Revised Code § 319.16 describes how a county auditor should handle a request for payment which the auditor believes to be improper:

If the auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the board, officer, or tribunal who presented the voucher. If the board, officer, or tribunal determines that the expenditure is valid and the auditor continues to refuse to issue the appropriate warrant on the county treasury, a writ of mandamus may be sought.

Accordingly, a county auditor is statutorily required to verify an expenditure prior to issuing a warrant. This may necessitate further questions or requests for documentation by the county auditor.

Exceptions to a County Auditor Being Named in a Finding for Recovery

The following examples outline instances where a county auditor will not be named in a finding for recovery:

- Documented objection in writing by a county auditor to the official who requested payment. For example, if an official requests payment and the county auditor questions the validity of such expenditure, the county auditor should document the objection in writing. If, despite the concerns of the county auditor, the official believes that the amount should be paid, the official should send the order to pay in writing. If the county auditor issues payment upon receipt of the order to pay, he/she will not incur audit liability. However, the official requesting the payment will be named in a finding for recovery for any illegal expenditure which results from his/her approval.
- Findings For Recovery Repaid Under Audit - any amount repaid prior to the release of an audit will name only the individual who improperly received public money and not the county auditor.
- Where a county auditor proceeds to issue a warrant in reliance on a well-reasoned legal opinion.

Audit Implication and Example

The example below demonstrates a common scenario where a county auditor is named in a finding for recovery:

Example

Bob Smith, Deputy Sheriff, is compensated at a rate of \$10/hour. There was a miscalculation in his payroll for the pay period ending January 15, 2008. As a result of this miscalculation, Deputy Smith was overpaid in the amount of \$300. Deputy Smith's payroll is approved by Harold Brown, Sheriff, and the warrants are signed by Jim Green, County Auditor.

In accordance with the forgoing facts, and pursuant to Ohio Revised Code §117.28, a Finding for Recovery for public money illegally expended is hereby issued against Bob Smith, Deputy Sheriff, in the amount of \$300, and in favor of the County General Fund.

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 liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y 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.

Accordingly, Harold Brown, Sheriff, Jim Green, County Auditor, and XYZ Bonding Company, Auditor Green's surety, are jointly and severally liable in the amount of \$300, and in favor of the County General Fund.

In the above example, the county auditor was held liable because he issued a warrant that was in payment of an expenditure that violated an existing constitutional, statutory or administrative provision.

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

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

Mary Taylor, CPA
Auditor of State

Please Note – The legal authorities included in or referenced by this AOS technical bulletin may have been changed, and thus may be outdated. Prior to taking any action pursuant to this bulletin, we recommend that you consult with legal counsel in order to ensure compliance with Ohio law.

ⁱ This bulletin does not purport to be a comprehensive discussion of all potential liability faced by a county auditor in the performance of his/her duties. Please consult with legal counsel to determine any further liability, outside the context of an audit. *See* OAG 2009-033

ⁱⁱ *See* OAG 2009-033.