



# Dave Yost • Auditor of State

Bulletin 2014-004

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## Auditor of State Bulletin

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**DATE ISSUED:** July 21, 2014

**TO:** All Public Offices and Independent Public Accountants

**FROM:** Dave Yost, Auditor of State

**SUBJECT:** Telephone (“Tele”) Town Hall Meetings

Multiple fiscal officers have recently asked the Office of the Auditor of State for guidance regarding the expenditure of public money to conduct telephone town hall meetings. The Attorney General recently opined in 2014 Op. Att’y Gen. No. 2014-005 that state and local governments may contract with private companies to organize and conduct telephone town hall meetings. A copy of the opinion may be found at <http://www.ohioattorneygeneral.gov/getattachment/568886cc-f96e-456e-8ac7-8dfd09ad9f5d/2014-005.aspx>. As the Attorney General cautions, however, the Treasurer of State may use public money to conduct telephone town hall meetings, “provided the moneys are not required to be used for another purpose and the expenditure is not prohibited by law.” Although the Attorney General addressed the opinion to the Treasurer of State, the opinion applies to all public officials and public offices.

This office, pursuant to its authority under Chapter 117 of the Revised Code, is responsible for ensuring public money is expended for a legal, proper public purpose. This office has audited traditional town hall meetings for compliance with the proper public purpose doctrine for quite some time and will apply the same program to telephone town hall meetings. As explained in *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320 (1951), an expenditure of public money constitutes a proper public purpose if: (1) the expenditure is required for the general good of all inhabitants; and (2) the primary objective of the expenditure is to further a public purpose, even if private ends are incidentally advanced.

Public officials should be aware that promoting partisan politics is not a proper public purpose. Indeed, expending public money in support of partisan politics could violate section 9.03(D) of the Revised Code. This section prohibits any “person” from knowingly conducting a direct or indirect transaction of public funds to the benefit of any of the following:

- (1) A campaign committee;
- (2) A political action committee;
- (3) A legislative campaign fund;
- (4) A political party;
- (5) A campaign fund;
- (6) A political committee;

- (7) A separate segregated fund;
- (8) A candidate.

Violating section 9.03(D) constitutes a misdemeanor of the first degree. Per section 117.28 of the Revised Code, the Office of Auditor of State will issue findings for recovery for illegal expenditures of public money for violations of section 9.03 of the Revised Code.

Public officials also should be aware they could be personally liable for illegal expenditures of public money. 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.* (1929), 120 Ohio St. 47; 1980 Op. Att’y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten* (1985), 18 Ohio St.3d 228. 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. Att’y Gen. No. 80-074.

In order to provide guidance to fiscal officers around Ohio, this office is providing the following list of documents which will constitute a “safe harbor” for auditing purposes. This list is not required by law and auditees may choose their own controls and procedures. If auditees keep these documents, however, they will constitute prima facie evidence that the auditee legally expended public money and this office will not issue findings for recovery against the auditee or the fiscal officer. The documents include:

- Entities should have policies and procedures governing the expenditure of public funds for telephone town hall meetings and the hiring of private companies to organize and conduct telephone town hall meetings;
- As with traditional town hall meetings, public offices should keep:
  - An agenda which formally documents the proposed topics and invitees at each telephone town hall meeting;
  - Evidence of the topics covered, such as minutes;
  - A document retention schedule for public records used during telephone town hall meetings.
- If your public office uses restricted dollars to organize a telephone town hall meeting, the proposed subject of the meeting must relate to the restricted fund’s purpose.<sup>1</sup> For example, a meeting to discuss water utility rates should not be billed to the road and bridge fund.
- Reasonable notice must be given to the general public that a public meeting is taking place. The Attorney General correctly notes the strong tradition of citizens exercising their free speech rights to elected officials. Without reasonable notice, Ohioans will lack that opportunity. Notice should include when the meeting is taking place, the proposed topic, and how the public may join. For the purposes of meeting “safe harbor” under this bulletin, the official or officials calling the meeting shall give at least twenty-four hours’ advance notice to the news media that have requested notification of the time, place, and purpose of the meeting.

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<sup>1</sup> See Ohio Const. art. XII, § 5 (“every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied”) and Ohio Const. art. XII, § 5a (restricting expenditures of “moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways...”). See also Ohio Rev. Code 5705.10(C) (all revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made).

- In order to demonstrate public dollars are being spent for a proper public purpose, public offices should have policies addressing how they will manage discussion without selectively prohibiting individuals from speaking based on the content of their speech. By necessity, public offices will have to limit the opportunity and time for speech to prevent multiple people from speaking at once during a telephone town hall meeting. Proper safeguards will demonstrate compliance with Section 9.03 of the Revised Code.
- A description of how the public body will select topics for telephone town hall meetings and evaluate them for relevance to the public office and its constituents.

Given the recent recognition by the Attorney General that public dollars can be used by public officials to conduct telephone town hall meetings, which have been used by public officials for over a decade, the Auditor of State anticipates reviewing documentation maintained by entities conducting telephone town hall conference call during the course of the next regular audit to confirm compliance with the Attorney General's Opinion and this Bulletin.

If you have any questions regarding this Bulletin please contact the AOS Center for Audit Excellence at (800)-282-0370.

A handwritten signature in black ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D".

Dave Yost  
Auditor of State