OHIO AUDITOR OF STATE

CLOSE ENCOUNTERS OF THE LEGAL KIND: COMMON MISTAKES THAT CAN RESULT IN AUDIT FINDINGS AND COMMENTS

PRESENTED BY: AOS CHIEF LEGAL COUNSEL MARY DEGENARO

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Topic Overview

- 1. When is governing body approval needed and in what form?
- 2. Recording and maintaining minutes during open meetings
- 3. StaRS testing
- 4. AOS Bulletin 2022-010: Multiple FO liability under SB 15
- 5. Documentation requirements under the OAC
- 6. Payroll issues
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1. When is governing body approval needed and in what form?

Statutory Authority

 ORC 715.03: Powers by ordinance or resolution
 All municipal corporations have the general powers mentioned in sections <u>715.01</u> to <u>715.67</u>, inclusive, of the Revised Code, and the legislative authority of such municipal corporations may provide by ordinance or resolution for the exercise and enforcement of such powers.

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Resolutions, Ordinances, or Simple Vote?

• The specific formality and requirement of legislative action is often spelled out in statute

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- ORC Title 3: Counties
- ORC Title 5: Townships
- •ORC Title 7: Municipal Corporations
- ORC Title 33: Education-Libraries

Statutory References Township Resolutions

<u>Not exhaustive</u>

- 505.10 Acceptance or disposal of property
- \bullet 505.1010 . . Purchase of property at auction
- 505.48 Creation of police district
- 505.871 . . . Removal of junk motor vehicles
- 505.89 \dots Imposition of curfew
- 505.94 Control of transient vendors

Statutory References Township Resolutions

<u>Not exhaustive</u>

- 505.95 . . . Regulation of resale of tickets
- 511.18 . . . Action on petition for township park
- 511.28 . . . Submission of township park levy
- 515.08 . . . Payment of interest on lighting assessment

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- 515.16 . . . Assessment for removal of overhead lines
- 519.02 . . . Zoning resolution

Statutory References Municipal Resolutions

<u>Not exhaustive</u>

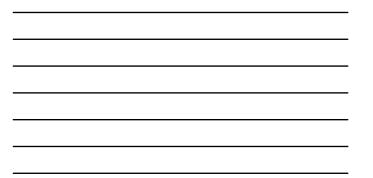
- 703.10 . . . Resolution to take census
- 703.16 . . . Surrendering of city to village
- 709.50 . . . Removing territory from township
- 719.04 . . . Intent to appropriate property
- 727.171 . . Off-street parking assessments
- 729.02 . . . Resolution of necessity for sidewalks

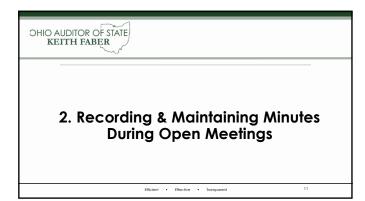
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Example Minutes, Resolution, and Ordinance

There was presented and read to the Commission for a second reading Resolution No. R2022-14 entitled A RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE FOR BIDS FOR THE PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT, AND SERVICES FOR USE BY THE CITY IN THE CALENDAR YEAR 2023 AS HEREIN DESCRIBED. Mr. Brown made a motion to adopt this resolution on the second reading, seconded by Mr. Jenkins. Upon roll call to adopt the resolution on the second reading, all votes were yes.







Why are minutes necessary?

- The public has a right to know and understand the actions of their elected representatives.
- Accurate minutes can reflect the difficult decisionmaking process a public body goes through

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Medium of Minutes

• There is not one specific required method of preparing minutes

• The minutes must state sufficient facts and information to permit the public to understand and appreciate the rationale behind the decision

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Statutory Sources

- Villages Rev. Code 733.27
- •Townships Rev. Code 507.04
- Counties Rev. Code 305.10
- School Boards Rev. Code 3313.26

• Open Meetings Act – Rev. Code 121.22

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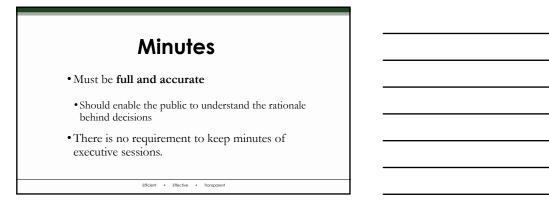
Open Meetings Act: Rev. Code 121.22

"The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to the public."

O.R.C. 121.22(C)

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Executive Sessions

Procedure

- Motion
 - •Must identify the particular purpose and matter

- •Second
- Roll call vote

Executive Session: Acceptable Topics

- 1. Certain personnel matters (must be specific)
- 2. Purchase or sale of property
- 3. Pending or imminent court action
- 4. Collective bargaining matters
- 5. Matters required to be kept confidential
- 6. Security matters
- 7. Hospital trade secrets
- 8. Confidential business information of an applicant for economic development assistance
- 9. Veterans Service Commission applications

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Specific Personnel Matters

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- 1. Appointment
- 2. Employment
- 3. Dismissal
- 4. Discipline
- 5. Promotion
- 6. Demotion
- 7. Compensation

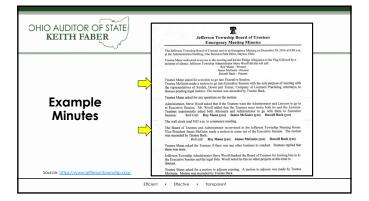
What NOT to Do

•Vote

- •Make any decisions
- •Even a decision to take no action

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•Discuss any other matters



Public Records Act Redactions and Withholding Records

• Notify where you've redacted and withheld

• Provide explanation and legal authority

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Designate common exemptions for your office

Items from Personnel Files that May or Must Be Withheld

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- Social security numbers (R.C. 149.43(A)(1)(dd), 149.45(A)(1)(a)) Public employee home addresses, phone numbers, and personal (as non-record)
- cancer compares nonre approvant porter numeres, and personal email addresses, generally la conter-cooling in an enterodimental information of a passe efficier, panel description produces of the passe efficiency personal enterodiment of a market and manifest personal enterodiment of a market and the produces of the
- - - rmation (as non-record) Efficient • Effective • Transparent

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 Dear Requester, I am writing in response to the public records request you submitted to this Public Office on DATE. Specifically, you requested "a copy of the job application for Public Employee Candidate." Please find attached the records responsive to your request. Note that we have redacted information that is subject to following: Information that is not a record of this office, pursuant to State ex rel. Dispatch Printing Co. v. Johnson, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274; and Driver's license numbers, pursuant to R.C. 149.45(A)(1)(c). If you have any questions or concerns regarding this response, 	Providing Legal Authority
149.45(A)(1)(c).	
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4. AOS Bulletin 2022-010: Multiple FO liability under SB 15

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Bulletin 2022-010: Impact of Senate Bill No. 15, 134th General Assembly, on Findings for Recovery Issued: September 30, 2022

The purpose of this Bulletin is to clarify the impact of Senate Bill No. 15, 134th General Assembly (SB 15) on Findings for Recovery issued by the Auditor of State. The act modified the standard for when certain fiscal officers are liable for the loss of public funds. This statute will be effective for <u>conduct</u> or <u>expenditures</u> that occur after Sept. 13, 2022.

Officers impacted by this Act

- County auditor or treasurer (ORC 301.221; 319.41; 321.50)
- Township fiscal officer or deputy fiscal officer (ORC 507.14)
- Municipal corporation treasurer (ORC 733.82)
- City auditor or other officer of a municipal corporation with the duties of a treasurer or city auditor (ORC 733.82)

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Officers impacted by this Act

- Treasurer/FO of a community college, technical college, or state community college district
- (ORC 3354.101; 3357.101; 3358.061) • FO or deputy FO of a board of library trustees (ORC 3375.361)
- Treasurer, auditor, or other FO of a chartered county (ORC 301.221)
- FO, treasurer, or compliance officer of a regional water and sewer district (ORC 6119.61)

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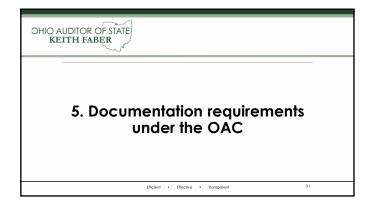
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Standard for liability

- Not liable for the loss of public funds if the officer performed all official duties with reasonable care.
- Liable for negligent or other wrongful act or failure to act

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• Applies to conduct after September 13, 2022



Ohio Admin. Code 117-2-02

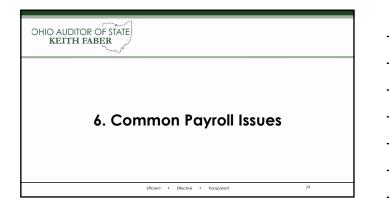
• (A) All local public offices shall maintain an accounting system and accounting records sufficient to enable the public office to identify, assemble, analyze, classify, record and report its transactions, maintain accountability for the related assets. . .

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• Also, OCS 2A-13

Audit documentation

- Cash journal
- Receipts ledger
- Appropriation ledger
- Payroll records
- Utilities billing records
- Capital asset records



Constitutional prohibition against "interm" pay changes

- OH Const. Art. II, § 20
- Township Trustees and Fiscal Officers, for example, are "officers" and subject to the prohibitions found in OH Const. Art. II, § 20.

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Prohibited "in-term" pay change

- OH Const. Art. II §20, prohibits any change in compensation to an officer that results from legislative action taken during such officer's existing term in office.
- Change includes both increases and decreases in compensation.
- An existing term is the definite period of time one holds an office.

Township Budget	examples 2018 Annual Compensation*
\$250,000 or less	\$10,918
\$250,000.01 - 500,000	\$14,039
\$500,000.01 - 750,000	\$15,597
\$750,000.01 - 1,500,000	\$18,717
\$1,500,000.01 - 3,500,000	\$21,836
\$3,500,000.01 - 6,000,000	\$23,396
\$6,000,000.01 - 10,000,000	\$26,852
Greater than \$10,000,000	\$31,064

Withholding and remitting to pension systems

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ORC Chapter 145: OPERS
ORC Chapter 3307: STRS
ORC Chapter 3309: SERS
ORC Chapter 742: OP&F

OPERS

•ORC Chapter 145

- •Current contribution rates
- •Late fees/penalties
- End of the month following the last day of the reporting period

- Interest
- Employee Manual published by OPERS:

 https://www.opers.org/pubs-archive/employers/employermanual/Employer-Manual.pdf



SERS

- •ORC Chapter 3309
- Current contribution rates
- Employers: 14%
- Employees: 10%
- •Late fees/penalties
- Five business days after each pay date
- Interest
- •<u>https://www.ohsers.org/wp-</u>
- content/uploads/2019/03/Employer-Handbook.pdf

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OP&F

- ORC Chapter 742
- Current contribution rates
- Employers: 19.5% (police officers); 24% (firefighters)
- Employees: 12.25%
- Late fees/penalties
- Due the last day of each month · Pre-employment physical for members
- Interest
- https://www.op-f.org/; https://www.op-f.org/Files/employer%20manual%20for%20web.pdf



Severance payments

• Breaks in service

• Sick leave payouts • Local policy caps, percentages, or rates

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Fringe benefits and severance payments

• Bonuses • Motivate to stay vs. authorized after employer knew employer was leaving

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