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**Village Officers' Legal Update**
Presented to:
Local Government Officials' Conference

Presented by: Frank Strigari & Kim Kutschbach
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What Are the Responsibilities of the Auditor's Legal Staff?

- Provide the Auditor of State and field auditors with legal advice
- Prospectively help public offices comply with legal and audit requirements
- Provide continuing education to elected officials and government employees



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Recent Changes Impacting Villages:

- There have only been a few changes in the past year
- Please feel free to ask questions as we go
- Additionally, we have inquiry forms available



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Recent Legislative Changes Impacting Villages:

R.C. 9.314 – Reverse Auction

- Any political subdivision purchasing services or supplies subject to competitive bidding requirements may purchase the services or supplies by reverse auction in lieu of written proposals
- A political subdivision shall not purchase supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.
- HB 1 effective 10/17/2009

Recent Legislative Changes Impacting Villages:

R.C. 135.03 – Eligible Depository Institutions

- A village may use as a public depository any savings association or savings bank located in Ohio, which is doing business under the authority of another state, but it cannot use any bank doing business under authority granted by the regulatory authority of **another country**
- HB 1 effective 10/17/2009

Developments In The Home Rule Doctrine And Effect On Village Charters And Ordinances

HOME RULE DEVELOPMENTS:

Framework

The genesis of municipal Ohio is found at Article XVIII, Section 3 of the Ohio Constitution, which states:

"Municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

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HOME RULE DEVELOPMENTS:

Framework

There are two clauses in this section.

1. The first grants power to exercise all powers of local self government.
2. The second grants power to exercise police powers concurrently with the state

It is important to note that the language "not in conflict with general laws" modifies only the police power, not those powers of local self government which do not constitute "police powers."

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HOME RULE DEVELOPMENTS:

Framework

Note that only general laws create a conflict (**see below**)

The doctrine provides that a state statute takes precedence over a local ordinance when:

- 1) the ordinance is in conflict with the statute;
- 2) the ordinance is an exercise of the police power, rather than of local self-government, and
- 3) the statute is a general law.

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HOME RULE DEVELOPMENTS:

Framework

The last prong of the preemption test requires that the state statute is a "general law." Whether the state statute is a general law is, itself, determined by a separate four-prong test:

- 1) be part of a statewide and comprehensive legislative enactment;
- 2) apply to all parts of the state alike and operate uniformly throughout the state;
- 3) set forth police, sanitary, or similar regulations; and
- 4) prescribe a rule of conduct upon citizens generally.

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HOME RULE DEVELOPMENTS:

Concealed Carry

Ohioans for Concealed Carry, Inc. v. Clyde
(Slip Opinion No. 2008-Ohio-4605)

- Ohio's concealed carry law took effect in April 2004, and soon after the City of Clyde, Sandusky County, enacted its ordinance prohibiting firearms in its park.
- Ohioans for Concealed Carry filed suit to strike down the ordinance. The trial judge ruled in favor of the city that firearms were prohibited, and the case then went to the 6th District Court of Appeals.
- A divided Ohio Supreme Court ruled 4-3 that state law gives holders of concealed weapon permits the ability to carry handguns in any municipal park, notwithstanding city ordinances against the practice.

The opinion can be found at: www.sconet.state.oh.us

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HOME RULE DEVELOPMENTS:

Concealed Carry

Ohioans for Concealed Carry, Inc. v. Clyde
(Slip Opinion No. 2008-Ohio-4605)

- Justice O'Donnell, writing the majority opinion, said state law provides that licensed gun owners may carry a concealed weapon anywhere in the state, with certain exceptions.
- At the same time, it allows private employers and landowners to prohibit gun possession as they deem fit.
- The Justice said that the statute creates a right subject to specific exceptions that do not include public parks. There were many exemptions in the statute, but they didn't include parks (or villages, cities, etc.)
- Thus, the statute permits a licensed gun owner to carry a concealed handgun in a Clyde city park - indeed, in any municipal park across the state - the very conduct prohibited by the Clyde city ordinance.
- This is an example of where justices held that the ordinance conflicted with a general state law and was unconstitutional, so governments and political subdivisions basically weren't given the power to police public property

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HOME RULE DEVELOPMENTS:

Concealed Carry

City of Cleveland v. State of Ohio
Ohio Supreme Court case no. 2009-2280
2009 WL 3772461 (Ohio App. 8 Dist.), 2009-Ohio-5968

- The Ohio Supreme Court has agreed to hear a case challenging a state statute that reserves the right to regulate an individual's right to bear arms to the state and federal government.
- The City of Cleveland had already enacted ordinances governing an individual's right to carry firearms within city boundaries.
- In 2007, the General Assembly enacted legislation limiting an individual's right to bear arms to the state and federal government.

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HOME RULE DEVELOPMENTS:

Red Light Cameras

Mendenhall et al v. City of Akron et al.
2008-Ohio-270

Ohio Supreme Court Upholds Use Of Red Light Cameras

- The Ohio Supreme Court ruled that an Ohio municipality does not exceed its home-rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations.
- The court found that the red light cameras are an extension of local police powers and do not overstep local home-rule authority by civilly targeting vehicle owners rather than pursuing drivers criminally as state traffic laws do. So this is an example of police power and local self-governance, since there's no statewide law on red light cameras.
- R.C. 149.43 now requires that public offices comply with additional requirements regarding public records policies concerning red light cameras and responding to public records requests.

The opinion can be found at: www.sconet.state.oh.us.

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HOME RULE DEVELOPMENTS:

Residency Requirements

City of Lima v. State of Ohio
122 Ohio St. 3d 155, 2009-Ohio-2597, 909 N.E. 2d 616

- This case involves the scope of a municipality's home rule authority to enact laws that conflict with state statutes enacted for the general welfare of employees.
- The City of Lima passed an ordinance that required all of its employees appointed by the mayor to reside within the city limits.
- The City of Akron's charter required classified and unclassified civil servants of Akron to reside within Akron for the duration of their employment.

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HOME RULE DEVELOPMENTS:

Residency Requirements

City of Lima v. State of Ohio

122 Ohio St. 3d 155, 2009-Ohio-2597, 909 N.E. 2d 616

- The General Assembly subsequently enacted R.C. 9.481(B)(1), which states that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state."
- The Ohio Supreme Court concluded that R.C. 9.481 was enacted pursuant to Section 34, Article II of the Ohio Constitution.
- R.C. 9.481 provides for the comfort and general welfare of city employees because it allows them more freedom of choice of residency.
- Home-rule analysis did not apply because R.C. 9.481 was enacted by the General Assembly pursuant to its authority under Section 34, Article II of the Ohio Constitution.

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Attorney General Opinions

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Attorney General Opinion 2009-008

- The county sheriff's office and a municipal corporation police department are required to respond to calls for law enforcement assistance on county property that is located within the municipal corporation.

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Attorney General Opinion 2009-018

- A person may serve simultaneously as the chief probation officer of a juvenile court and president pro tempore of a village legislative authority, provided the person, as president pro tempore, does not exercise the law enforcement powers conferred upon a village mayor or participate in deliberations, discussions, negotiations, or votes concerning conveyances or contributions of property or money to the county for use by the juvenile court or contracts with the juvenile court to provide services for children on probation. (1911 Op. Att'y Gen. No. 241, vol. II, p. 1180, overruled.)

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Common Questions & Areas of Concern

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Common Questions & Areas of Concern

- **Competitive Bidding**
 - All contracts over \$25,000 shall be:
 - (a) In writing; and
 - (b) Awarded to the lowest and best bidder
 - Keep in mind – charter villages can set up their own bidding requirements
 - If your village has established a village administrator, consult ORC 731.14
 - A village may reject any or all bids it receives
 - All village contracts must be between the village and the bidder

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Common Questions & Areas of Concern

Exceptions to Competitive Bidding

(not an exhaustive list):

- **Emergency**
 - Must be approved by 2/3rds vote of legislative authority
- **Used Items at Auction**
 - Have resolution stating the maximum
- **Used Items from other subdivisions**
- **Joint Purchasing Contracts**
 - Entered into pursuant to ORC 9.48

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Common Questions & Areas of Concern

Ethics/Conflicts of Interest

- **ORC 731.12** provides that no member of the legislative authority shall hold any other public office, be interested in any contract with the village, or hold employment with said village, with certain limited exceptions.
- **ORC 102.03(D)** provides that no public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official with respect to that person's duties.
- **ORC 2921.42(A)(1)** states that no public official shall knowingly authorize, or employ the authority or influence of the public official's office to secure the authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associations has an interest.
- **ORC 2921.42(A)(4)** states that no public official shall knowingly have an interest in the profits or benefits of a public contract entered into by the subdivision.

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Ethics/Conflicts of Interest

OEC Advisory Op. No. 2008-002:

- Ethics Law prohibits a public official or employee from authorizing an employment contract for a member of his or her family. A public official's step-child is a member of his or her family, regardless of the step-child's age. The Commission also concluded that a public official's step-parent is a member of his or her family.

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Ethics/Conflicts of Interest

OEC Advisory Op. No. 2008-002 (cont):

- A public official or employee is prohibited from hiring his or her step-child. The official or employee is also prohibited from using his or her public position to get a job for a step-child. For example, a public official or employee cannot recommend his or her step-child or formally or informally lobby other officials or employees about a job for his or her step-child.

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Common Questions/Areas of Concern

Proper Public Purpose

- Expenditures by a governmental unit should always serve a valid public purpose; this is found in AG Opinion No. 82-006.
- Your village council determines what constitutes a proper public purpose; as such, any decision must be memorialized by a duly enacted ordinance or resolution and may have *prospective* effect only.
- The Auditor of State's Office will only question expenditures where the legislative determination of a public purpose is arbitrary and incorrect.
- Note: Alcohol is never a proper public purpose, and we will issue findings for recovery accordingly.
- Remember, *prior, prospective* authorization of an expenditure by the appropriate legislative authority (e.g. village council) is the important concept to remember, as to avoid negative audit treatment.
- Please see Auditor of State Bulletins 2003-05 & 2004-002 for more information regarding proper public purpose issues.



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