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11th Annual Local Government Officials' Conference
Legal Update For Townships
Presented by:
Matthew K. Walker

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**TRUSTEE
COMPENSATION**

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation

- Review
- Follow R.C. 505.24, Ohio Att'y Gen. Op. No. 2004-036, and Ohio Compliance Supplement § 6-9.
- Unlike trustees paid per diem, R.C. 505.24 does not require a "documentation of time spent requirement" for salaried trustees, as long as they are being paid solely from the general fund.

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation (cont)

- However, for salaries not paid from the general fund, OAG No. 2004-036 requires trustees to establish administrative procedures to document the proportionate amount chargeable to other township funds based on the kinds of services rendered.
- The "administrative procedures" can be timesheets or a similar method of record keeping, as long as the trustees document all time spent on township business and the type of service performed, in a manner similar to trustees paid per diem compensation.

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation (cont)

- If trustees do not document their time, then no part of their salaries may be paid from these other funds.
- Thus, regardless of whether a trustee is paid by salary or per diem, unless their entire salary is paid out of the general fund, trustees must keep records of the time spent on various tasks and the fund to which the township will charge their costs.

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation (cont)

- For example, it is not acceptable for a township to resolve that they will "charge 50% of trustee salaries and benefits to the general fund and 50% of this compensation to the road & bridge fund."
- There must also be documentation that reasonably supports the time actually spent for the restricted purposes of the road and bridge fund pursuant to R.C. 5705.06(F).

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation (cont)

- OAG No. 2004-036 was clarified in a recent letter to our office from the Ohio Attorney General, stating that:

2004 Op. Att’y Gen. No. 2004-036 should in no way be read as approving the payment of township trustees’ compensation – whether paid on a per diem or annual salary basis – from the EMS fund or any other special fund whose purpose is restricted by the constitution or statute, unless the trustees document their time spent on township matters, and the portion of their compensation that is paid from the special fund equates to the portion of their time spent on matters that qualify for payment from the special fund.

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation (cont)

- Although the emergency medical services fund under R.C. 505.84 was the focus of OAG Opinion 2004-036, the ruling also applies to all other restricted funds, such as:
 - the motor vehicle license tax pursuant to R.C. 4504.18 and 4504.19;
 - road and bridge fund pursuant to R.C. 5705.06(F);
 - motor vehicle tax pursuant to R.C. 4503.02;
 - gasoline tax pursuant to R.C. 5735.27(A)(5)(d);
 - the cemetery fund pursuant to R.C. 517.03;
 - and any other restricted fund.

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TRUSTEE COMPENSATION

R.C. 505.24 – Township Trustee Compensation (cont)

- The Auditor of State will *not* issue findings for adjustment or consider scope impairments related to undocumented trustee salaries until the biennial audit *after* the biennial audit for which we directly informed the township of this documentation requirement.

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**RECENT AUDITOR
OF STATE
BULLETINS**

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RECENT AOS BULLETINS
No. 2009-003 – Township Health Insurance

Discusses Last Years Legislative Changes to R.C. 505.60 & 505.601

- Extends health insurance reimbursement to premiums covering immediate dependents.
- R.C. 505.60(D) now states, in part, that “the township may reimburse the officer or employee for each out-of-pocket premium *attributable to the coverage provided for the officer or employee for insurance benefits* described in division (A)”.
- Similar changes were made to R.C. 505.601.

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RECENT AOS BULLETINS
No. 2009-003 – Township Health Insurance (cont)

- Relieves a board of trustees from any obligation to repay a FFR for the reimbursement of premiums attributable to dependent coverage prior to H.B. 458.
- Prohibits the Attorney General and County Prosecuting Attorneys from acting on an FFR issued by the Auditor of State.

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RECENT AOS BULLETINS

No. 2009-003 – Township Health Insurance (cont)

- Prior FFR's are considered resolved for purposes of the Auditor of State's FFR database.
- Any amount repaid as a result of such FFR shall be paid to that person from the treasury of the public office who received the FFR repayment.

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RECENT AOS BULLETINS

No. 2009-003 – Township Health Insurance (cont)

Bulletin highlights the following points

- There may be prior Findings for Recovery that have been issued under R.C. 505.60 or 505.601 that do not fall within the changes made by the Bill, whose status is unaffected. For example:
 - Findings for Recovery that were issued as a result of an official's/employee's health insurance reimbursement exceeding the maximum monthly amount set by the board of township trustees;
 - Findings for Recovery issued as a result of reimbursements made by the township that were not supported out-of-pocket health care premiums.

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RECENT AOS BULLETINS

No. 2009-003 – Township Health Insurance (cont)

Bulletin highlights the following points

- Preconditions for township reimbursement of health care costs were not significantly altered by the Bill.
- In order for a township to reimburse an officer or employee for certain out-of-pocket premiums under R.C. 505.60, the officer or employee must first be denied coverage under a health care plan procured by the township or elect not to participate in the township plan.
- Similarly, a township officer or employee can only seek reimbursement under R.C. 505.601 if the township does not procure and offer a health insurance policy.

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RECENT AOS BULLETINS

No. 2009-011 – Allocating Audit Costs

Discusses ability of local governments to charge funds other than the general fund for the cost of an audit

- R.C. 117.13 permits a fiscal officer to distribute the total cost of an audit to each fund audited in accordance with its percentage of the total cost.
- The fiscal officer should determine which funds should be charged a percentage of the audit costs.
- The AOS is of the opinion that most operating funds of a local government, including utility funds (i.e., water, sewer, electric, refuse), special levy funds, funds that receive gas taxes, and motor vehicle registration fees can be charged a portion of the audit costs.

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RECENT AOS BULLETINS

No. 2009-011 – Allocating Audit Costs (cont)

- In determining a percentage of total cost that may be charged to a fund, any reasonable and rational method such as a percentage of the fund's revenue or expenditures compared to the total revenue or expenditures for all funds, excluding agency funds, would be acceptable.
- A local government's indirect cost allocation plan may also be an acceptable method for allocating audit costs.

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LEGISLATIVE UPDATE

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PENDING LEGISLATION

H.B. 220 – 128th General Assembly

H.B. 220 – Township Notice Req'ts

- Newspapers must establish a government rate for township notices, advertisements, etc.
- Amends definition of "newspaper of general circulation".
- If township is required to publish two or more notices, HB 220 allows for abbreviated second notice on the newspaper's website, if the township has a website and certain other requirements are met.

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PENDING LEGISLATION

H.B. 220 – 128th General Assembly

H.B. 220 – Township Notice Req'ts (cont)

- *Examples*
- When a board of park commissioners establishes rules or bylaws. R.C. 511.13
- Disposition of unclaimed property. R.C. 505.108
- Regulations and orders adopted pursuant to a township's authority to regulate noise and parking. R.C. 505.17
- Adoption of a township fire code. R.C. 505.373
- Adoption of a township building code. R.C. 505.73

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PENDING LEGISLATION

H.B. 143 – 128th General Assembly

H.B. 143 – Traffic Law Photo-Monitoring Devices (a.k.a. red light cameras)

- Prohibits township law enforcement agencies from using red light cameras or similar devices to enforce traffic laws.
- Exception: An officer is present at the camera, when the traffic violation occurs, and issues a ticket/citation.

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PENDING LEGISLATION

H.B. 393 – 128th General Assembly

H.B. 393 – Notice Req'rs For Twp. Nuisance Abatement

- Revises the notice required to be provided by a board of township trustees to a landowner for the abatement, control, or removal of vegetation, garbage, refuse, or other debris from the owner's land. R.C. 505.87

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PENDING LEGISLATION

S.B. 184 – 128th General Assembly

S.B. 184 – Authority to Plow Private Roads and Driveways

- Authorizes townships to use road equipment and labor resources available to a township to plow certain private roads and driveways either at the expense of the township or for a fee charged to specified persons. R.C. 505.708
- Township must be able to support allocation of receipts, if a fee is charge under this section.

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RECENTLY ENACTED LEGISLATION

H.B. 1 – 128th General Assembly

H.B. 1 – Reverse Internet Auctions

- Effective 10/16/2009
- Prohibits a township from purchasing 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. R.C. 9.314

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**OHIO COMPLIANCE
SUPPLEMENT
UPDATE**

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OCS UPDATE
§ 2-7 – Professional Design Services Contracts

- “Professional design services” means services within the scope of practice of an architect or landscape architect registered under Chapter 4703. of the Revised Code or a professional engineer or surveyor registered under Chapter 4733. of the Revised Code.
- Townships procuring professional design services, over \$25,000, do not need to follow the competitive bidding process.
- However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require townships to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm.

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OCS UPDATE
§ 1-21 – Transfer of Funds

- Money may be transferred from the general fund to any other fund of the subdivision, as long as trustees approve by a simple majority. See R.C. 5705.14 & OAG No. 89-075.
- AOS interprets this requirement to mean that a governing board may approve interfund transfers from the general fund to other funds of the subdivision within its annual appropriation measure provided that the measure was passed by a simple majority of the board members.

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ETHICS UPDATE

OEC Advisory Op. No. 2009-002:

- Ethics law prohibits a public official from participating in a contract before his or her public agency *if* his or her family member has an interest in the contract or will receive a definite and direct benefit from the matter.

ETHICS UPDATE

OEC Advisory Op. No. 2009-002 (cont):

- However, if the public official's family member does not have an interest and will not receive a benefit from the matter (e.g. is an "ordinary employee"), the official is not prohibited from participating in matters affecting a relative's employer.

ETHICS UPDATE

OEC Advisory Op. No. 2009-002 (cont):

- Employee has an "interest" in employer's contract if any of the following factors are present:
 - has an ownership interest in the company;
 - is a director, trustee, or officer of the company or agency;
 - takes part in the negotiation of the contract;
 - is paid a salary that is based on the proceeds of the contract;
 - receives a share of the contract's proceeds in a commission or fee;
 - has employment responsibilities that include participation in or oversight of the administration or execution of the contract;
 - is employed by an employer that receives all or most of its funding from a contract and is dependent on the receipt of the contract; or
 - is employed in a position that is dependent on the contract.

RECENT OHIO ATTORNEY GENERAL OPINIONS

RECENT OHIO AG OPINIONS

OAG Op. No. 2009-054:

- R.C. 5705.05 permits a township to fund permanent improvements, including roads and bridges, with proceeds of a general levy for current expenses that is enacted under R.C. 5705.19(A) and is in excess of the ten-mill limitation.

RECENT OHIO AG OPINIONS

OAG Op. No. 2009-054 (cont):

- Overrules, in part, OAG No. 2008-009 because of legislative changes to R.C. 5705.05 & 5705.06 (under former law, the general levy for current expenses could not be expended for the construction, reconstruction, resurfacing, and repair of roads and bridges in counties and townships).

RECENT OHIO AG OPINIONS

OAG Op. No. 2009-034:

- Per R.C. 121.22(C):
 - Meetings of a public body of a township are public meetings that must be open to the public at all times and conducted in a location that is open to the public.
 - In order to be considered present at a meeting of a public body of a township, and for the purpose of determining a quorum, a member of a public body must be present in person at a public meeting.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2009-034 (cont):

- These requirements preclude the possibility of a public body of a township conducting a meeting by teleconference or by any other means that would limit the ability of the public or a majority of the members of a public body to attend the meeting in person.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2009-034 (cont):

- A township may pay its employees by direct deposit of funds by electronic transfer provided the board of township trustees authorizes such automatic payments by resolution.
- However, pursuant to R.C. 5705.41(B), (C), and (D)(1), a township may not make any expenditure of money unless a warrant has been issued against a proper fund, moneys have been appropriated properly to fund such expenditure, and the township fiscal officer has certified the amount.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2009-034 (cont):

- Furthermore, pursuant to R.C. 507.11(B), a board of township trustees is required to approve each payroll and township financial obligation with an order signed by at least two of the township trustees and the township fiscal officer.
- The provisions of law pertaining to (1) the authority of a township to limit public attendance at meetings of a public body and (2) the authority of a township to meet financial obligations without prior approval by the board of township trustees are not repealed or otherwise affected as a result of whether a federal, state, or local governmental official declares a state of emergency in a township or as a result of the type of emergency a township is confronting.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2010-005:

- A county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2010-006:

- Under R.C. Chapter 519, a township is permitted to have only one zoning commission. The township zoning commission has authority over all the unincorporated territory of the township and may serve multiple separately-zoned areas within the township.
- Under R.C. 519.04, members of the township zoning commission must reside in the unincorporated territory of the township and may reside in either a zoned area or an area that has not been zoned.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2010-006 (cont):

- R.C. Chapter 519 permits an individual who resides in a zoned area within the unincorporated territory of a township to serve as a member of the township zoning commission and, in that capacity, to participate in the exercise of authority over all the unincorporated territory of the township, including zoned areas other than the zoned area in which the individual member resides.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2009-041:

- Per R.C. 519.21(A), officials of a township that has not adopted a limited home rule government under ORC Chapter 504 may not regulate the location, height, bulk, or size of a free-standing outdoor sign that is located on a lot greater than five acres and deemed to be a structure when the use of the sign relates directly and immediately to the use for agricultural purposes of the lot on which the sign is located.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2010-009:

- R.C. 519.21(B) does not prohibit the board of trustees of a non-home rule township from using its zoning powers under R.C. Chapter 519 to regulate the construction and use of buildings and structures on lots greater than five acres when the buildings and structures are not incident to the use for agricultural purposes of the land on which the buildings and structures are located.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2009-032:

- The building department of a township that has adopted township residential building regulations under R.C. 505.75(A)(1) need not be certified by the Board of Building Standards in order to enforce only township residential building regulations and not the state residential and nonresidential building codes.
- R.C. 505.78(B)(1) prohibits a township from adopting residential building regulations if the township is located in a county that has adopted residential building regulations under R.C. 307.37(B)(1)(a), whether or not the county's regulations are enforceable within that township.

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RECENT OHIO AG OPINIONS

OAG Op. No. 2010-008:

- A board of trustees of a non-home rule township has no authority under R.C. 4511.07, R.C. 4511.11, R.C. 5571.02 or other statute to prohibit "thru trucks" from operating on all roads that the township is responsible for maintaining in order to prevent excessive traffic and damage to the road surface.
- Township trustees lack the general authority to regulate the flow of traffic on township roads.

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