



**Dave Yost**  
Auditor of State



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**2011 Annual Local  
Government Officials'  
Conference**

**VILLAGE OFFICERS'  
LEGAL UPDATE**

Presented by:  
J. Desiree Forbes  
Deputy Chief Legal Counsel

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**What's on the Agenda?**

- AOS Legal Division Overview
- Recent AOS Bulletins
- Legislative Update
- Ethics Update
- Common Issues



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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 AUDITOR OF STATE BULLETINS



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## RECENT AOS BULLETINS

*No. 2010-003 Tax Increment Financing*

### What is Tax Increment Financing (TIF)?

- Tax Increment financing is an economic development mechanism available to local governments in Ohio to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. A TIF works by locking in the taxable worth of real property at the value it holds at the time the authorizing legislation was approved. Payments derived from the increased assessed value of any improvement to real property beyond that amount are directed towards a separate fund to finance the construction of public infrastructure defined within the TIF legislation.



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## RECENT AOS BULLETINS

*No. 2010-003 Tax Increment Financing*

### May a village use TIFs to finance public infrastructure or certain other assets or services benefitting the village?

- Yes. A village may use TIFs to finance public infrastructure or certain other assets or services benefitting the township. See AOS Bulletin 2010-003 and ORC §§ 5709.40 - .43 and 5709.91.



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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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## Recently Enacted Legislation

*H.B. 48 – 128<sup>th</sup> General Assembly*

### ***H.B. 48 – Leave for Spouses & Parents of a Member of the Uniformed Services***

- This law provides, with certain requirements, up to two weeks of leave for any employee who is the spouse, parent or a person who has or had legal custody of a member of the uniformed services who is called to active duty or is injured, wounded, or hospitalized while serving on active duty.
- Employer includes the State and its political subdivisions, including townships
- Effective July 2, 2010
- Ohio Rev. Code §§ 5906.01 and .02



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## Recently Enacted Legislation

*H.B. 48 – 128<sup>th</sup> General Assembly*

### ***H.B. 48 – Changes to Election Calendar***

- This law amends the election calendar. Most changes are as follows:
  - “forty days before the election” to “fifty-six days before the election”
  - “seventy-five days before the election” to “ninety days before the election”
  - “one hundred twenty days before the election” to “one hundred thirty five days before the election”
- Affected statutes → 705.01, 707.21, 709.29, 709.39, 709.45, 709.462, 709.48, 715.69, 715.691, 715.70, 715.71, 715.77, 718.01, 718.09, 718.10, 731.03, 731.28, 731.29, 733.09, 733.261, 733.262, 733.31, 733.48, 749.021, 755.01, 757.02, and 759.25.
- Effective July 2, 2010



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## Recently Enacted Legislation

*H.B. 449*

### ***H.B. 449 – Paid Military Leave***

- This legislation provides publicly employed firefighters and emergency medical technicians with a minimum paid military leave of 17 24-hour days.
- Ohio Rev. Code § 5923.05
- Effective June 18, 2010



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## Recently Enacted Legislation

S.B. 85

- This legislation authorizes non-chartered municipalities, among others, to award multi-year, asset-management professional service contracts through direct negotiation or requests for proposals or qualifications in lieu of competitive bidding, for the engineering, repair, sustainability, water quality management, and maintenance of a water storage tank or appurtenant facilities
- Contract must include certain terms and conditions found in Ohio Rev. Code § 9.29



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## Ethics Update



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## ETHICS UPDATE

### ***OEC Advisory Op. No. 2010-03 – Family Member Employment***

- Public Officials cannot:
  - (a) hire or use their positions to secure employment for their family members;
  - (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies;
  - (c) give to their family members, or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.



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## ETHICS UPDATE

### ***OEC Advisory Op. No. 2010-03 – Family Member Employment cont'd ...***

- Two family members can work for the same public agency, provided that both are able to comply with these restrictions.
- For these purposes, the term “public official” includes elected and appointed officials, as well as public employees.



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## ETHICS UPDATE

### ***OEC Advisory Op. No. 2011-01 – Financial Disclosure Clarification***

- Q. How are financial disclosure filers required to disclose investments of various kinds, including stocks, bonds, mutual funds, brokerage accounts, trusts, investment clubs, and investments for education?
- (1) Section 102.02 requires public officials and employees who file annual financial disclosure statements to disclose specific personal financial information for the complete calendar year preceding the filing to assure notice to the public of potential conflicts of interest.



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## ETHICS UPDATE

### ***OEC Advisory Op. No. 2011-01 – Financial Disclosure Clarification cont'd ...***

- (2) One of the disclosure requirements is that the public official or employee disclose the name of every corporation, trust, business trust, partnership, or association, authorized to do business in Ohio, in which, during the preceding calendar year, the filer or any other person for the filer's use and benefit, had an investment of over one thousand dollars;
- (3) For example, the financial disclosure filer is required to disclose the name of every company, corporate bond, and mutual fund in which the filer has invested more than \$1000, regardless of whether those individual investments are held within brokerage or investment accounts.



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## ETHICS UPDATE

### OEC Bulletin – Reminder about Summer Jobs and Restrictions on Nepotism –

April 2010

- During summer vacation, many high school and college students seek summer jobs. Many of these are seasonal full-time or part-time jobs (such as lifeguards and camp counselors) with cities, villages, school districts, and other public agencies that offer summer programs.
- Ohio Ethics law prohibits **all** public officials and employees from:
  - Hiring their family members for public jobs;
  - Using their public positions to get public jobs (or other contracts) for family members
  - Using their public positions to get promotions, selective raises, or other job-related benefits family members



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## ETHICS UPDATE

### OEC Bulletin – Reminder about Summer Jobs Cont'd ...

- A "public official" is any person, paid or unpaid, and regardless of how much money earned who is (1) **elected or appointed** to a full-time or part-time public position, or (2) who is **employed** by a public agency in a full-time or part-time public job.
- Who is a "family member"? A public official's family members include, but are not limited to, the official's:
  - Husband or wife;
  - Child or grandchild of any age;
  - Parent or grandparent;
  - Brother or sister; and
  - Step-child or step-parent
  - Any other person who is related by blood or marriage and who lives in the same household with the official



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## ETHICS UPDATE

### OEC Bulletin – Reminder about Summer Jobs Cont'd ...

- Q. Can a public official hire a family member who doesn't live in the same household?
  - No. The official can't hire the family members in the list no matter where they live.
- Q. Can a public official hire a family member for a seasonal or part-time job?
  - No. A public official is prohibited from hiring a family member for any job – full time, part time, temporary, permanent, intermittent, or seasonal.
- Q. If a public official's family member is an applicant for a job, can the official interview the other applicants?
  - No. By doing so, a public official could be eliminating other applicants, which would be using the public position to secure the job for a family member.



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## ETHICS UPDATE

### OEC Bulletin – Reminder about Summer Jobs Cont'd ...

- Q. Can a public official's family member work for the same agency as the official?
  - Yes, provided that (1) the official has not hired, recommended the hire, or otherwise been involved in any way and (2) the family member is not the official's minor child.
- Q. What if a job applicant is the official's child?
  - An official's minor child cannot work for the same agency unless the official can show: (1) agency's hiring process will be fair and open and won't favor the children of officials/employees
  - (2) agency will provide a broad opportunity to qualified and interested applicants to submit applications.
  - (3) all qualified and interested applicants who are not related to agency officials or employees have already been hired, and
  - (4) vacancies still exist



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## ETHICS UPDATE

### OEC Bulletin – Reminder about Summer Jobs Cont'd ...

- Additionally, the official must also show that:
  - The public had full knowledge of the family relationship and
  - The official did not participate in the agency's deliberation or decision involving the employment of family members.
- Q. Does this apply to all children under 18?
  - Yes, if they are unemancipated.
- Q. What about a step-child?
  - The same restrictions apply to a public official if the official's step-child is seeking a public job.
- Q. Why is the result different for minor children?
  - Because a parent has a legal right to control the earnings of an unemancipated minor child, a public official would have a financial interest in the minor child's job.



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## ETHICS UPDATE

### OEC Bulletin – Reminder about Summer Jobs Cont'd ...

- Q. Can a public agency have a policy or rule that allows officials to hire their family members?
  - No. The Ethics Law is part of the general criminal code of the state. Local charter provisions, ordinances, policies, rules, and other guidelines cannot conflict with general state law.
- Q. If a public agency has always hired the minor children of officials and employees in the past, can it continue that practice?
  - No. An agency cannot rely on past practice to justify not adhering to the Ethics Law.
- Q. What are the penalties for violations?
  - Hiring a family member can be a felony offense.
  - Having an interest in a family member's employment can be a misdemeanor offense.
  - If a person is hired in violation of the Ethics Law, the employment contract is void and unenforceable, and the person can be removed from employment at any time.



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## Common Questions & Areas of Concern



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## Common Questions & Areas of Concern

### • Charging Administrative Costs to Restricted Funds

- Ohio Revised Code 5705.10
- Other Ohio Rev. Code sections that specify what certain monies can be spent on
  - Example: sewer/water funds
- Charging a proportionate amount of administrative costs to those funds
- Cost allocation plans
- Key is proportionality
- What is not "proportional"
  - Resolution that charges a blanket x% to a certain restricted fund



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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

### Public Records

- When I use my personal electronic device (cell phone/computer) to send/receive messages/documents relating to my public position does that constitute a public record?
  - Yes. It can. The Supreme Court considered this question in *Glasgow v. Jones*, 119 Ohio St.3d 391.
  - The Court held that messages/documents that are created or received in official capacity and that document work-related activity are subject to disclosure under Ohio Rev. Code § 149.43 regardless of whether it was sent on a public or private email account.



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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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