



**Dave Yost**  
Auditor of State



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

**Local Government Official's  
Conference  
2013**

***Legal Update For  
Townships***

Presented by:  
Auditor of State  
Legal Division

---

---

---

---

---

---

---

---

---

---

**What's on the Agenda?**

- Trustee and Fiscal Officer Compensation
- Recent AOS Bulletins
- Legislative Update
- Ethics Reminders
- Recent Attorney General Opinions
- Common Issues



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

**TRUSTEE COMPENSATION**



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### Trustee Compensation RC 505.24 (C)

ORC § 505.24 requires that a township trustee paid on a salary basis **shall certify** the percentage of time spent working on matters to be paid from the township general fund and from other funds in such proportions as the kinds of services performed.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

### Trustee Compensation

• **What does “certify” mean?**

- Certification must be done prior to receiving each pay (each pay period)
- Certification must be individual (not done as group)
- Certification does not have to be a time log, but can be a statement indicating percentage of time spent on different fund activities
- See AOS Bulletin 2011-007



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

### Application Of The Certification Requirement

The certification requirement only applies to trustees and fiscal officers. Documentation is still required where a township compensates other township employees from funds other than the general fund.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

### Trustee Compensation

- **Certification must be for completed work**
- **Sample Certification Form**
  - Trustees can use the sample form provided in AOS Bulletin 2011, or develop their own form, as long as the information certified illustrates the percentage of time spent that relates to the time worked.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### Trustee Compensation

- **Resources for review:**
  - ORC § 505.24(C);
  - AOS Bulletin 2011-007 and;
  - Ohio Compliance Supplement § 6-9



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### Trustee Compensation Question & Answer

**Q. Can trustees be paid from funds other than the general fund?**

A. *Yes, under both the per diem and the salary method of compensation the trustees may be paid from funds other than the general fund. Remember however, if paid by the salary method, trustees must certify the percentage of time spent working on matters to be paid from the general fund or other township funds. If paid by the per diem method however, ORC § 504.24 still requires the trustee to provide the fiscal officer with documentation of the number of days spent in the service of the township and the kinds of services rendered on those days.*



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### Fiscal Officer Compensation

- ORC 507.09(C) provide that a township can pay its fiscal officer from the township general fund or from other funds of the township based on the proportion of time spent in the service of such funds.
- The fiscal officer must document the amount of time spent in the service of each fund by certification, specifying the percentage of time spent working on matters to be paid from the general fund or other township funds.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### RECENT AUDITOR OF STATE BULLETINS



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### AOS Bulletin No. 2012-003 *HB 66 / ORC 117.103*

House Bill 66 made changes to the AOS fraud hotline and requires public employers to notify their employees of the hotline. This Bulletin explains those changes and also provides a model form that public employers can use to satisfy the requirements of House Bill 66.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

## Best Practices For Responding To Public Records Requests

### AOS Bulletin 2011-006

- Ohio law requires that a public office make public records available for inspection or copying, depending on the request. The time required for a response depends on the type of request.
  - If a request is to inspect public records-response must be prompt.
  - If copies are requested-those copies must be provided within a reasonable period of time.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

## AOS Bulletin 2011-006 (cont'd)

- When redacting information not subject to disclosure the public office is required to notify the requester of any redaction or make the redaction plainly visible.
- Where a public record request is denied, the public office must provide the requester with a reason, including the legal authority for the denial/redaction.
- Penalties
- Best Practices
  - Public Records Log
  - Copies of public records requests



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

## LEGISLATIVE UPDATE



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### Health Insurance Reimbursements For Immediate Dependents

- On September 7, 2012, the Ohio Attorney General issued Opinion No. 2012-027 regarding the issue of township health insurance reimbursements.
- *The AG opined that ORC 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.*
- On December 20, 2012 HB 347 was adopted into law, amending ORC 505.60 (D) to include "and their immediate dependents."



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### AOS Fraud-Reporting System

*HB 66 / ORC 117.103 / AOS Bulletin 2012-003*

- Effective May 4, 2012
- Requires the AOS to maintain a system for the reporting of fraud, including misuse of public money by any official or office.
- Any citizen can make anonymous complaint through our toll-free number, the AOS website, or through US Mail addressed to SIU.
- Reporting employee is protected against certain retaliatory or disciplinary action.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### AOS Fraud Reporting System

#### Requirements

- ✓ AOS must keep a log of all complaints
- ✓ all public employers must make all employees aware of fraud reporting system
- ✓ new hires must confirm in writing that they have received this information within 30 days after beginning employment



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

**Deposit Of Public Monies**  
*HB 209; ORC Sections 135.13; 135.144; 135.145*

- **Effective March 22, 2012**
- **Includes:**
  - a provision allowing state and political subdivisions to authorize a public depository to arrange for the *redeposit* of public money with other federally insured financial institutions. (ORC 135.145)
- **Changes affecting interim deposits:**
  - Elimination of the one year maturity limitation on certificates of deposits. (ORC 135.13)
  - Federally insured savings banks are now eligible issuers of certificates of deposit for interim moneys. (ORC 135.144(A)(2))



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

**Prohibited Use Of Public Funds**  
*HB 326 / ORC 9.03*

- Effective September 5, 2012
- Prohibits any person from knowingly conducting any transaction of public funds to the benefit of any: campaign committee, political action committee, legislative campaign fund, political party, campaign fund, political committee, separate segregated fund or candidate.
- Adds a misdemeanor penalty for using public funds on campaign expenditures



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

**Direct Deposit**  
*HB 225 / ORC 9.37/eff. 3/22/12*

- **Allows a township to adopt direct deposit payroll policy for all township employees**
- **Requirements**
  - Written authorization designating an financial institution and a account number



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

**Fiscal Distress Financial Plan Requirements**  
*HB 509 / ORC 118.023*

- Effective September 28, 2012
- Requires a county, township, municipal corporation or school district under a fiscal watch or emergency to evaluate the feasibility of entering into shared service agreements with other political subdivisions if so authorized by statute



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

**Township Law Applies After Dissolution Of Village**  
*HB 509 / ORC 703.21 / Eff. 9/28/12*

- After dissolution of a village, all resolutions of the township or townships into which the village's territory is dissolved apply throughout the townships newly included territory.



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

**Township Merger**  
**HB. 153 Eff. 9/29/11**

- ORC 523.01 to 523.07 provide a method where one or more townships may merge with a contiguous township to create a new township.
- Can be accomplished by:
  - Initiative petition of the voters of the townships to be merged, or
  - Submission of merger to voters of the townships to be merged



Ohio Auditor of State  
**Dave Yost**

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---



## Deferred Compensation Plan

### Deferred compensation plans or programs for township officers and employees

- HB 225; Eff. 3/22/12; ORC 148.061
- New legislation explicitly authorizes boards of township trustees to offer deferred compensation plans or programs to all township officers and employees.
- The new law requires that a deferred compensation plan or program present a reasonable number of options to the township's officers and employees for the investment of the deferred funds that will assure their desired tax treatment.
- Any income deferred under a plan or program must continue to be included as regular compensation for the purpose of computing the contributions to and benefits from each officer's or employee's retirement system, but is not to be included in the computation of any federal and state income taxes withheld on behalf of the officer or employee.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

---

---

## ETHICS REMINDERS



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

---

---

## 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.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

---

---

### 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.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

### Ethics Update

**OEC Bulletin – Restrictions on Nepotism – April 2010**

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



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

## RECENT OHIO ATTORNEY GENERAL OPINIONS



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

### AG Opinion No. 2012-024

- A mid-term change in the amount of money expended by a township on a township officer's health insurance coverage is not prohibited by Ohio Const. Art. II § 20, so long as such change is not due to a mid-term legislative change to the formula for calculating the officer's compensation.
- Article II Section 20 of the Ohio Constitution does not prohibit a township officer who receives health insurance benefits at the commencement of his term of office from electing to discontinue receipt of those benefits mid-term.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### AG Opinion No. 2011-002

- If a township territory subject to a preexisting and ongoing police levy is annexed to a municipal corp. pursuant to Ohio Rev. Code § 709.023, is the territory still subject to the levy?
  - Absent a formal action consistent with that statute that changes the boundaries of the township, the territory of township annexed remains subject to the special levy that was approved by a majority of the electors.
- Is the territory annexed subject to future police levies that may be approved by voters?
  - Again, absent formal procedures to change the boundaries of a township, the levy would still apply to the portion of the township that has been annexed. Any residents of this annexed portion are entitled to vote on any such levy.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### AG Opinion No. 2011-011

#### Credit Union Services

- A township may contract with a credit union to help prepare their payroll records and make payments to their employees pursuant to both ORC 9.35 and 9.37 respectively.
- Implicated statutes: ORC 9.35, ORC 9.37



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

---

---

### AG Opinion No. 2011-027

- A township fiscal officer may assume the duties associated with the position of secretary to the board of township trustees but may not receive additional compensation for doing so.
- Generally, township FO cannot receive additional compensation for additional duties, unless specifically allowed in statute.



Ohio Auditor of State  
Dave Yost

www.auditor.state.oh.us

---

---

---

---

---

---

---

---

---

---

### COMMON ISSUES



Ohio Auditor of State  
Dave Yost

www.auditor.state.oh.us

---

---

---

---

---

---

---

---

---

---

### Selling Goods/Services to Township

RC 2921.42(A)(4); Ohio Ethics Commission Information Sheet #2

Ohio ethics law prohibits a township employee from selling goods or services to the township unless he/she is able to show that the transaction meets all four of the following requirements:

- > **Requirement 1:** The goods or services are necessary goods or services. In other words, the agency can demonstrate that it needs the goods or services the official will provide.
- > **Requirement 2:** Either the goods or services are part of a continuing course of dealing or they are unobtainable elsewhere for the same or lower cost. In other words, if the official had a contract to sell goods or services to the agency before she was hired, she can continue to perform that contract. <sup>[10]</sup> However, if there was simply a practice of purchases, or if there are any significant changes to the contract (including cost), the official cannot meet this exception.



Ohio Auditor of State  
Dave Yost

www.auditor.state.oh.us

---

---

---

---

---

---

---

---

---

---

### Selling Goods/Services to Township

RC 2921.42(A)(4); Ohio Ethics Commission Information Sheet #2 (cont'd)

- **Requirement 3:** The treatment that the official provides to the agency is the same as, or better than, the treatment that she provides to other customers or clients in similar transactions. In other words, the official must treat the agency the same as, or better than, she treats the other customers or clients of her business.
- **Requirement 4:** The transaction is conducted at arm's length, the agency has full knowledge of the official's interest in the sale of goods or services, and the official has taken no part in the deliberations or decision with respect to the transaction. The official must first show that she did not use her unique access as an agency employee to secure the contract. Then the official must show that she has fully informed the agency that she is interested in the transaction. Finally, the official must show that she was not involved in any votes, discussions, or decisions about the contract.



Ohio Auditor of State  
Dave Yost

www.auditor.state.oh.us

---

---

---

---

---

---

---

---

---

---

### When Can a Township Donate?

- As a creature of statute, a township may donate public money only if the township has statutory authority, either express or necessarily implied, to make such a donation. **See AG Opinion No. 2007-043 & 2002-031.**



Ohio Auditor of State  
Dave Yost

www.auditor.state.oh.us

---

---

---

---

---

---

---

---

---

---

### When Can a Township Donate? (cont'd)

**For example:**

- RC 505.70 – Township may give financial assistance to a public or private entity that operates a federal program.
- RC 505.10 – Township may donate unneeded or obsolete property under certain circumstances.



Ohio Auditor of State  
Dave Yost

www.auditor.state.oh.us

---

---

---

---

---

---

---

---

---

---

**When Can a Township Donate?**  
(cont'd)

**Other examples:**

- RC 505.108 – Township may donate unclaimed property seized by township police.
- RC 505.58 – Township may donate to a convention and visitors' bureau.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

**When Can a Township Donate?**  
(cont'd)

**Other examples:**

- RC 505.707 – Township may donate from the general fund to an organization that the board determines serves a community purpose and that is exempt from taxation as a 501(c)(3).
- *However*, governmental bodies are not considered 501(c)(3)'s.



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---

**LEGAL DIVISION**  
88 East Broad Street  
Columbus, Ohio 43215

Presenter Phone: (800) 282-0370  
Presenter Fax: (614) 466-4490  
E-mail: [contactus@auditor.state.oh.us](mailto:contactus@auditor.state.oh.us)



Ohio Auditor of State  
Dave Yost

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---



**Dave Yost**  
Auditor of State

88 East Broad Street  
Columbus, Ohio 43215

Phone: (800) 282-0370 Fax: (614) 466-4490

E-mail: [contactus@auditor.state.oh.us](mailto:contactus@auditor.state.oh.us)

[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

---

---

---

---

---

---

---

---