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Ohio Auditor of State



2017 Local Government Officials
Conference

**VILLAGE LEGAL
UPDATE**

Presented by:
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AGENDA

- Legislative Update
- Case Law Update
- Common Legal Issues
- Recent AOS Bulletin
- Ethics Opinions



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LEGISLATIVE UPDATE




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PUBLIC RECORDS ACT

ORC 2743.75



- "The court of claims shall be the sole and exclusive authority in this state that adjudicates or resolves complaints based on alleged violations" of the Public Records Act.
- The statute outlines a procedure for filing.
- Aggrieved persons may still file a mandamus action.

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STEP 1:


- Aggrieved person files a complaint on a form prescribed by the clerk of the court of claims.
- The form can be filed in the court of claims or the court of common pleas of the county in which the public office from which the records are requested is located.





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STEP 1, *cont'd*:



- The complainant must attach copies of the original records request and any written responses or other communications relating to the request.
- Filing fee is \$25.



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STEP 2:

- The special master must immediately refer the case to mediation services.



- The case may not be referred if, in the interest of justice, the special master determines that the case should not be referred.



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STEP 2, *cont'd*:

- Mediation may be conducted by teleconference, telephone, or other electronic means.
- If an agreement is reached during mediation, the court will dismiss the complaint.



- If an agreement is not reached, the special master will notify the court that the case was not resolved and that the mediation has been terminated.



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STEP 3:

- Within 10 business days after the termination of the mediation or the notification to the court that the case was not referred to mediation, the public office shall file a response.
- A motion to dismiss the complaint can also be filed.
- No other motions or pleadings will be accepted unless the special master directs in writing that a further motion or pleading should be filed.

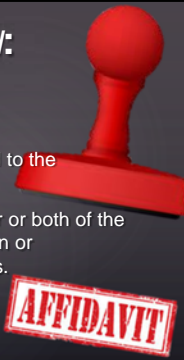


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STEP 3, *cont'd*:

- Discovery is not permitted.
- Supporting affidavits may be attached to the pleadings.
- The special master may require either or both of the parties to submit additional information or documentation supported by affidavits.



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STEP 4:

- Within 7 business days of receiving the response, the special master shall submit to the court of claims a report and recommendation.
 - It is based on statute and case law, as they existed at the time of the filing of the complaint.
- For good cause, the special master may extend the 7-day time limit by an additional 7 business days.



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STEP 5:

- Within 3 days of the submission of the report and recommendation, the clerk will send copies to each party.
 - Within 7 business days, either party may object to the report and recommendation by filing a written objection with the clerk.
 - Any objection must be specific and state with particularity all grounds for the object.
- If neither party timely objects, the court will adopt the report and recommendation.



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STEP 5, *cont'd*:



- If either party timely objects, the other party may file a response within 7 business days after receiving the objection.
- Within 7 business days after the response is filed, the court shall issue a final order that adopts, modifies, or rejects the report and recommendation.



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STEP 6:



- If the court of claims determines that the public office improperly denied the complainant access to the public records and no appeal has been filed, the following apply.
 - The public office shall permit the complainant to inspect or receive copies of the public records that the court requires to be disclosed.
 - The complainant shall be entitled to recover from the public office the filing fee and any other costs associated with the action that are incurred by the complainant, except attorney's fees.



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APPEALS

- Any appeal from the final order will be taken to the court of appeals of the appellate district where the public entity is located.
- Appeal may be taken from a final order when the court of claims adopts the special master's report and recommendation if a timely objection had been filed.



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ATTORNEY'S FEES

ORC 149.43(C)(3)(b)(iii)



- If a public office produces records only after a mandamus action is filed, and the court finds bad faith, the court may award attorney's fees to the complainant.



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ATTORNEY'S FEES (cont'd)

ORC 149.43(C)(4)

- Reduction – If the court determines that an alternative means should have been pursued to more effectively and efficiently resolve the dispute, the court may reduce the attorney's fees awarded.



- Determination is based on the factual circumstances of each request.



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PUBLIC RECORDS MAINTAINED ON A WEBSITE

- If a public office has some or all of its public records on a website, fully accessible to and free to the public at all times, then the public office may limit the number or records requested in digital format by a single person to ten per month.
- Limitation on number of requests does not apply if:
 - Requested records are not available on the website, or
 - Requester certifies, in writing, that he does not intend to use the information requested for commercial purposes.

ORC 149.43(B)(7)(c)(ii)



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CASE UPDATE

SLIP OPINION No. 2016-Ohio-2770
WHITE, APPELLANT, v. KING ET AL., APPELLEES.
[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *White v. King*, Slip Opinion No. 2016-Ohio-2770.]
Open Meetings Act, R.C. 121.22
proceedings, business by majority, discussion occurs, video conference, or electronically by e-mail, text, tweet, or other form of communication.
(No. 2014-1796—Submitted November 17, 2015—Decided May 3, 2016.)
APPEAL from the Court of Appeals for Delaware County,
No. 14 CAE 02 0010, 2014-Ohio-3896.

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OPEN MEETINGS ACT

White v. King, 2016-Ohio-2770

- The Open Meetings Act “prohibits any private prearranged discussion of public business by a majority of the members of a public body regardless of whether the discussion occurs face to face, telephonically, by video conference, or electronically by e-mail, text, tweet, or other form of communication.”

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COMMON LEGAL QUESTIONS

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TRANSFERS AND ADVANCES: THE DIFFERENCE

Transfer

A *permanent* allocation of money from one fund to another

Advance

A *temporary* allocation of money from one fund to another involving an expectation of repayment



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TRANSFERS

Relevant ORC provisions:

- Sections 5705.05, 5705.06, 5705.14, 5705.15, and 5705.16



****No transfer can be made from one fund of a subdivision to any other fund, except as provided by statute****



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ADVANCES

Requirements:



- Must be clearly labeled an advancement
- Must be statutory authority to use the money in advancing fund for the same purpose for which the fund receiving the cash was established
- Must be approved by a formal resolution



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CONVERTING AN ADVANCE TO A TRANSFER



Procedure:

- Follow formal procedures for approval of transfer
 - May include approval of tax commissioner and/or a court of common pleas
- Formally record the transfer
- Reverse the entries recording advance



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ADVANCES: *WHAT AOS WILL LOOK FOR*

- Determine if advance transactions occurred
 - If so, review the authorizing legislation
- Determine if the advancing fund's purpose was reasonably consistent with the advanced fund's purpose
- Look at whether any prior period advances are outstanding
- If village no longer intends to repay an advance, we may consider a finding for adjustment



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FUNDS

Required Funds:

- General Fund
- Sinking Fund
- Bond Retirement Fund
- Special Fund for each special levy
- Special Bond Fund each bond issue
- Special Fund for each class of revenue derived a source which the law requires be used for a particular purpose
- Special Fund for each public utility
- Trust Fund



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DISTRIBUTION OF REVENUE INTO FUND



Certain village revenue must be paid
into specific funds.


General Fund


Sinking Fund


Trust Fund


Special Fund


Bond Fund




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EXPENDITURES

ORC 5705.39- Appropriations from each fund:

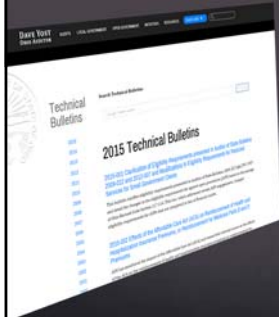


- May be used only for the purpose for which such fund is established and
- Shall not exceed the total of the estimated resources available.




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AUDITOR OF STATE BULLETIN



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CREDIT CARD CASH WITHDRAWALS

Bulletin 2016-004

- Public transactions in cash are strongly disfavored
- Few reasons exist for a public entity to use cash
- Rebuttable presumption that cash withdrawals are not for a public purpose
- Public entities should develop, maintain, and strictly apply appropriate authorization and tracking controls incident to credit card usage, particular emphasis on cash withdrawals





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OHIO ETHICS COMMISSION

OPINIONS






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OHIO ETHICS COMMISSION

OPINION #2016-001



Restrictions on Public Officials Employed by Entities that Receive Public Financial Assistance

- Can a council member of a municipality that provides financial support to a nonprofit corporation be employed as the corporation's director?
 - R.C. 2921.42(A)(3) prohibits a public official from also being employed by a nonprofit or for profit corporation, company, or other entity, where:
 - the establishment or operations of the entity is dependent upon receipt of the public agency's financial assistance, OR
 - the public official would otherwise profit from the award of the contract.



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OHIO ETHICS COMMISSION

Opinion 2010-03

Can a public official or employee:

- Hire a family member
- Use influence to secure a job for family member
- Participate in matters affecting family member's employment
- Can two family members work for same public employer





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Ohio Ethics Commission

Opinion 2010-03 (cont'd)

Public officials or employees:

- ✗ Cannot hire a family member
- ✗ Cannot use influence to secure job for a family member
- ✗ Cannot give or use influence to secure for a family member

Raises

Promotions

Job
advancements

Overtime pay or
assignments

Favorable performance
evaluations

Any other thing of
value

👍 Two family members can work for same public employer



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Ohio Ethics Commission

Opinion 2010-03 (cont'd)

Family Member:

Parents or step-parents
 Grandparents
 Spouse
 Children or step-children
 (Dependent or not)



Grandchildren
 Siblings
 Any other blood or marriage relative
 Living in same household




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