

OHIO ATTORNEY GENERAL
MIKE DeWINE
2018 Local Government Officials
Conference Collections Enforcement
Findings for Recovery



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Responsibilities of the Auditor

- Ohio Revised Code (ORC) Chapter 117 governs powers and duties of the auditor of state (AOS)
 - The Auditor “shall audit all public offices.” (ORC117.10)
 - Under certain conditions, the Auditor may also audit the accounts of private institutions, associations, boards, and corporations receiving public money.
 - Regular audits occur at least once every two fiscal years (ORC 117.11)
 - Special audits may also occur if requested by the public office or upon the auditor of state’s initiative under certain circumstances



Statutory Framework

A “Finding for Recovery” (FFR) is a written report issued by the Auditor of State detailing an illegal expenditure of public monies for purposes of ORC 117.28.

- An unresolved finding prevents a person from receiving public contracts. (ORC 9.24(A))
- A finding for recovery is listed on the Auditor of State database available to the public
 - Includes all persons against whom a finding is issued and the amount of money identified as owed

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Statutory Framework, continued

- A state agency or political subdivision is required to verify that no unresolved findings for recovery are issued against the person before awarding a contract. (ORC 9.24(E))
- ORC 9.24(B) sets forth the circumstances under which a finding is “resolved.”
- Attorney General is required to report to Auditor the status of whether resolved

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When there is a finding...

- Audit staff sends a “notice of proposed finding” to the debtor.
- The debtor has an opportunity to contest the finding during the audit.
- Audit staff sends a “notice of finding” when a final decision is made to issue the finding.

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When there is a finding, continued

- A certified copy of the audit report is the final report filed with the public officer (ORC 117.27) and the Attorney General is notified. (ORC 117.28)
- The officer receiving the audit report may, within 120 days after receipt, institute legal action. ORC 117.28. This is a pre-collection or “monitor phase” for the Attorney General’s Office (AGO).

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AGO “Monitor Phase”

- During this 120 day period, AGO monitors the status of all findings
- AGO sends letters to the political subdivision, statutory legal counsel for the political subdivision, and debtors requesting information pursuant to ORC 117.28
 - Follow up communications occur when necessary
- AGO waits to see what action, if any, is taken at the local level

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Monitor Phase, continued

- When a debtor agrees to pay, payments need to be promptly reported to AGO along with proof of payment.
 - Note: payments may include payroll deductions, but salary reduction is not an appropriate form of payment.
- AGO will review any disputes when documentation to support the dispute is provided
- AGO must approve any abatement, compromise, or settlement (ORC 117.33)
- AGO determines a finding to be resolved when paid

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Monitor Phase, continued

FindingsForRecovery@OhioAttorneyGeneral.Gov

We encourage the use of this email address for reporting any of the following:

- Status updates and general questions;
- Reporting of payments;
- Reporting of defaulted payment arrangements;
- Notification of whether any legal action has occurred;
- Notification of when the AGO should proceed with collection activity; and
- Dispute of the finding for recovery, with supporting documentation.



Collections Phase

- The officer receiving the audit shall notify the AGO in writing of the reason why no legal action was taken.
- If legal counsel does not initiate a civil action or the political subdivision does not otherwise secure repayment within 120 days, the AGO begins collections.
- Collection costs and interest are added (ORC 109.081)



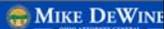
Collections Phase, continued

- AGO may offset Ohio income tax refunds, lottery winnings, and unclaimed funds.
- AGO skip traces to verify debtor address and telephone number.
- Collection notices mailed at intervals (30 days; 60 days; 90 days).
- Collection calls are made.
- Disputes with supporting documentation are reviewed.



Collections Phase, continued

- Generally, AGO does not approve payment plans.
 - If debtor cannot pay in full, AGO will accept partial payments.
- Payments must be made directly to AGO.
 - If political subdivision receives payment, payment must be forwarded to the AGO.
 - Debtors are encouraged to pay by cashier's check or money order.
 - Other methods of payment



Collections Phase, continued

- AGO reports payments to local entity.
 - Entity will be made whole once collection costs are recouped.
- If voluntary payment is not made, the debt is assigned to an attorney.
- AGO may appoint special counsel (ORC 109.08)
 - Counsel may file suit against debtors with AGO approval
 - Surety may be sued in same action (ORC 117.32)
 - May utilize a judgment, liens, wage garnishment, bank attachment



Joint and Several Liability

- The AOS frequently issues findings jointly and severally against
 - Person who received the money (primary)
 - Surety
 - Public official(s) who approved payment (secondary)
- During the monitor phase, repayment focuses on debtors who are primarily liable.
- During the collection phase, repayment focuses equally on primarily and secondarily liable debtors



- Strict liability for public officials concerning money “received or collected” (ORC 9.24)
 - Who is a public official?
 - “any officer, employee, or duly authorized representative of a public office” (ORC 9.38)
 - What is a public office?
 - “Any state agency, public institution, political subdivision, other organized body, ... or entity established by the laws of this state for the exercise of any function of government.” (ORC 9.38)

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Case Development

- Work Papers
- “Permanent File” – content varies among audits and field offices. E.g. policies, ordinances, employee personnel handbooks
- Witnesses –
 - AOS staff
 - Public officials
 - Debtors

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Case Development, continued

- Coordination with
 - Prosecutors
 - What action have they already taken?
 - What is their position on the subject?
 - Public entity
 - What action has the solicitor taken?
 - What is their position?
 - Do they have more information?

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Resolving Findings

- A resolved finding occurs upon:
 - Payment in full
 - Repayment plan approved by the AGO and political subdivision (recoupment and setoff may be appropriate)
 - Abatement (waiver of repayment)
 - Repayment plan approved by political subdivision as part of a binding settlement agreement (subject to ORC 117.33)
 - Essential contractor (AGO and political subdivision consent)

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Resolving Findings, continued

- Debtor has sued to dispute the finding

Abatement (ORC 117.33)

- Abatement or compromise requires AGO written approval.

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Resolving Findings, continued

- Reporting resolutions – AGO is required to report on resolved findings to the Auditor, per ORC 9.24
 - January 1st, April 1st, July 1st, October 1st
 - AOS database updated by the following 15th of the month
- Note: Resolved findings are not “removed” from the AOS database. Their status is reflected as “resolved” vs. “unresolved”

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Common FFR Issues

- What does NOT resolve a finding?
 - A letter “disputing” the finding
 - Any kind of local action that does not reflect an abatement or settlement approved in writing by the AGO, such as:
 - Resolution to “forgive” the finding
 - Retroactive legislation
 - Retroactive amendments to minutes (to reflect approval)
 - The political subdivision should not pay a FFR for the debtor (or reimburse the debtor). This could result in a new finding.



Common FFR Issues, continued

- Unauthorized settlements
 - Outside of a Judgment: if the political subdivision claims that a finding was settled out of court, and the AGO did not approve the settlement, the settlement can be treated as void under ORC 117.33.
 - As part of a Judgment or Dismissal with Prejudice: if a finding is “settled” after court action, and the court enters the settlement as part of a judgment, or dismisses the case with prejudice following settlement, then we have a bootstrap problem.



Common FFR Issues, continued

- Public funds must be expended for public purposes
 - Purpose depends on entity
 - Amount must be reasonable
 - Some purposes not proper as a matter of law, e.g. purchase of alcohol
- Debtor not limited to records in audit (“new” evidence to support the payment may appear)



Statute of Limitations

- A cause of action accrues when “the report is filed with the officer or legal counsel whose duty it is to institute civil actions for enforcement.” ORC 117.34.
- A certified copy of the report must be filed with legal counsel. ORC 117.27.
- The statute of limitations for statutory liability is six years. ORC 2305.07; *see State ex rel Holcomb v. Walton*, (12th Dist. 1990), 66 Ohio App. 3d 751.
- Expiration of the statute of limitations does not resolve debt.



Statutory framework, continued

- Interest
 - Accrues for claims of state creditors from date payment is “due.” ORC 131.02
 - For bonds or instruments in writing, interest accrues when money is payable on the bond or instrument. ORC 1343.03



Statutory framework, continued

- Criminal restitution orders
 - Criminal financial sanction operates as a civil judgment in favor of the state or political subdivision in which the court is located. ORC 2929.18(D) (felonies); ORC 2929.28(D) (misdemeanors).
 - If judgment is “dormant,” may have to revive it. *See generally* ORC 2329.07, ORC 2325.15



Statutory framework, continued

- Forfeiture
 - Retirement funds can be forfeited to pay restitution for theft in office or other offenses. *See* ORC 145.57, 2907.15, 2921.41
 - Same with deferred compensation. ORC 148.10

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The AOS database

- <https://ohioauditor.gov/findings.html>

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How to contact us

FindingsForRecovery@OhioAttorneyGeneral.gov
Call - (614) 779-0105
Fax - Attn: FFR Unit - (614) 752-9070
Mail -
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