

2013 DELAWARE COUNTY TOWNSHIP OFFICIALS TRAINING



November 16, 2013

**Delaware County Developmental Disabilities Building
151 East Orange Road
Lewis Center, Ohio 43035**

Presented by:

**Carol Hamilton O'Brien, Esq.
Delaware County Prosecuting Attorney**

**Kyle E. Rohrer, Esq.
First Assistant Delaware County Prosecuting Attorney**

**Christopher D. Betts, Esq.
Aric I. Hochstettler, Esq.
Mark W. Fowler, Esq.
David C. Moser, Esq.
Assistant Delaware County Prosecuting Attorneys**

Special Guests:

**Shari Baker
Director, Tax Administration and Consumer Services
Delaware County Auditor's Office**

**Chris E. Bauserman, P.E., P.S.
Delaware County Engineer**

**Donald F. Brosius, Esq.
Peter N. Griggs, Esq.
Loveland & Brosius, LLC**

**Heidi M. Fought
Director of Governmental Affairs
Ohio Township Association**

**Karla Herron
Director
Delaware County Board of Elections**

**George Kaita
Delaware County Auditor**

**William J. Owen, Esq.
Former, First Assistant Delaware County Prosecuting Attorney
Currently, Senior Policy Advisor to
Dave Yost, Auditor of the State of Ohio**

**Josh Pedaline
Deputy Director
Delaware County Board of Elections**

**Robert M. Riley, P.E.
Chief Deputy Delaware County Engineer**

**Chris Shaw
Director, Delaware County Records Center**

Sponsored by:

**Loveland & Brosius, LLC
Attorneys at Law
LeVeque Tower
50 West Broad Street, Suite 3300
Columbus, Ohio 43215**

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DISCLAIMER

Please note that this manual is a best effort by the Delaware County Prosecutor's Office to provide you, as township officials, with easy-to-understand information on the positions, duties, and responsibilities of various township officials and relevant township law. *It is intended to be informational only and is not a legal authority. This manual is not intended to be and should not be construed as a substitute for the Ohio Revised Code, Ohio case law, or any other legal authority.* The Ohio Revised Code and Ohio case law **ALWAYS** take precedence over this manual. Every effort has been made to provide the most current information as of November 2013, the publication date of this manual. Should you have questions about any of the information contained in this manual, or any other matter concerning township law, please contact the Delaware County Prosecutor's Office before acting.

FIRST ASSISTANT
CYLE E. ROHRER

CRIMINAL DIVISION
STEVEN BALLARD
LISA K. BROWNING
DOUGLAS N. DUMOLT
ERIC C. PENKAL
PETER B. RUFFING
MARK C. SLEEPER
GREGORY A. TAPOCSI
BRIAN J. WALTER

JUVENILE DIVISION
KATHERYN L. MUNGER
ROBERT J. RICE

CIVIL DIVISION
CHRISTOPHER D. BETTS
MARK W. FOWLER
ARIC I. HOCHSTETTLER
DAVID C. MOSER

VICTIM SERVICES DIRECTOR
TRISH S. WRIGHT

DIRECTOR OF DIVERSION
ELICIA M. DUMOLT

INVESTIGATOR
BARRY C. WALTON



Carol Hamilton O'Brien
DELAWARE COUNTY PROSECUTING ATTORNEY

November 16, 2013

To All Township Officials:

As the Delaware County Prosecuting Attorney, it is my honor to serve as legal advisor to the townships of Delaware County. In the public's eye, this role is often lesser known and less visible than the prosecutor's criminal duties. However, advising the townships remains an important and vital responsibility of my office.

As you know, Delaware County continues to experience tremendous growth each year. This has resulted in increased demands and needs among the several townships. To serve the increased demands and needs of the townships, the Civil Division of my office continues to expand and grow. Throughout this expansion and growth, the Civil Division remains singly dedicated to civil matters and to providing legal counsel to all townships and county offices.

Township officials frequently face great and, often, unconventional demands. As budgets continue to shrink, I recognize that the ordinary demands placed on townships have grown. Yet, no township ever faces such challenges alone. The legal issues and concerns confronted are often common to multiple townships. Therefore, the Delaware County Township Officials Training presents an opportunity to discuss issues pertinent to your respective townships with the Civil Division attorneys in my office, guest presenters who are knowledgeable in their respective fields, and other township officials facing the same challenges and concerns.

Designed as both a path to learning and a review of knowledge, it is my hope that you find this training relevant and engaging. The training is designed to be helpful to all township officials. I encourage each of you to participate, ask questions, and interact. In addition, I hope this manual continues to be a useful tool in fulfilling your everyday township functions and in facing future challenges.

If you have a question or concern that is not addressed at this training, or in this manual, please feel free to contact my office for assistance.

Sincerely,



Carol Hamilton O'Brien
Delaware County Prosecuting Attorney



General Overview

Each county in Ohio is divided into townships. Townships are the most basic of political subdivisions of the state.¹ They are creations of the state and are intended generally to “serve as an agency or instrumentality of the state for purposes of political organization and local administration.”²

As political subdivisions, the Ohio Constitution requires the general assembly to provide, by law, for the election of “such township officials as may be necessary.”³ Township trustees are the individuals vested with this leadership role. Essentially, they are the ultimate decision making body of local township government.

The Ohio Revised Code

Because townships are created by the state and, essentially, are an extension of state government, township officials and employees are limited in their authority and actions. They are empowered only by the provisions of the Ohio Revised Code or that which can necessarily be implied from the law.⁴ In short, the Ohio Revised Code contains both the inner and outer limits of township authority. As a township trustee or official, this is a basic rule of thumb to keep in mind when contemplating any act on behalf of the township.

Thus, all actions of township trustees, as well as other township officials, must be both derived from and permitted by the Ohio Revised Code. In other words, the Ohio Revised Code must contain a positive statement conferring authority to take action. Where the Ohio Revised Code is silent and does not state that a township or township official has a particular power or ability to act, the township, trustee and/or township official does not possess the power or ability to perform that act. Only where the Revised Code contains positive language conferring the power or ability to take action or perform a particular act may the township or township official take action.

The majority of sections of the Ohio Revised Code that address townships, township issues, and township officials are concentrated in Title 5 of the Ohio Revised Code. As a result, many of the sections related to townships have a statute number that is in the 500’s. When consulting the Ohio Revised Code for guidance, a township trustee or official should consider looking in Title 5. However, keep in mind that the Ohio Revised Code contains titles numbered “1” through “63.” Therefore, issues concerning or relevant to townships or township officials may be discussed elsewhere in the Revised Code.⁵ For help with legal questions concerning the Ohio Revised Code or other matters, call the Delaware County Prosecutor’s Office.

¹ See BALDWIN’S OHIO PRACTICE, LOCAL GOVERNMENT LAW—TOWNSHIP, § 2:1 (2013 ed.)(defining political subdivision as “a limited geographical area wherein a public agency is authorized to exercise some governmental function...”) [hereinafter LOCAL GOVERNMENT LAW], citing 1972 Ohio Op. Att’y Gen. No. 72-035.

² 20 O JUR. 3D § 310. See also *Dunn v. Brown County Agr. Soc.*, 46 Ohio St. 93, 18 N.E. 496 (Ohio 1888).

³ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:1.

⁴ 20 O JUR. 3D § 310; *Dunn v. Brown County Agr. Soc.*, 46 Ohio St. 93, 18 N.E. 496 (Ohio 1888).

⁵ Titles or topical volumes of the Ohio Revised Code are numbered with odd numbers only, with one exception; thus, there are thirty-three actual titles that comprise the Ohio Revised Code.

Term of Office

In Ohio, each township has three elected township trustees.⁶ To hold the position of township trustee, a person must be an elector (a qualified voter).⁷ Thus, one must be of the age of eighteen years or over, have been a resident of the state thirty days immediately preceding the election at which the citizen offers to vote, a resident of the county and precinct in which the citizen offers to vote, and have been registered to vote for thirty days.⁸ Additionally, one may not hold concurrently an office incompatible with the office of township trustee.⁹

Each of the three elected trustees holds a four-year term of office. Terms of office for the three trustees are staggered so that, generally, all three trustees' positions are not up for election in the same year. Pursuant to O.R.C. § 505.01, two trustee positions were to be elected in 1949 and every four years thereafter.¹⁰ The third trustee position was to be elected in 1951 and every four years thereafter.¹¹ After their election, all three trustees begin their terms on the first day of January immediately following their election.¹² These staggered terms provide that at least two experienced township officials, including the township fiscal officer, remain in office.¹³

Before taking office, a newly elected trustee must take an oath of office and post a bond to the state "for the use of the township."¹⁴ The oath administered need not be of a particular form and an affirmation may be made in place of an oath if a person has "conscientious scruples" against taking one.¹⁵ The bond must be in the sum of \$1,000.00 and is conditioned on "the faithful performance of his [or her] duty as a trustee."¹⁶ At least two sureties must back the bond.¹⁷ Both sureties must be either residents of the same township as the newly elected trustee or a corporate surety authorized to do business in Ohio.¹⁸ To be acceptable, the bond must be approved by a judge of the county court or a municipal court having jurisdiction in the township (i.e., Delaware Municipal Court).¹⁹

⁶ OHIO REV. CODE ANN. § 505.01.

⁷ OH. CONST. ART. XV § 4; 20 O JUR. 3D § 334.

⁸ OHIO REV. CODE ANN. § 3503.01.

⁹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3.

¹⁰ OHIO REV. CODE ANN. § 505.01.

¹¹ OHIO REV. CODE ANN. § 505.01.

¹² OHIO REV. CODE ANN. § 505.01.

¹³ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3. Formerly, the office was known as that of the "township clerk." Effective December 20, 2005, the officer's title was changed to "township fiscal officer." See S. Substitute B. 107, 126th Gen. Assem. Reg. Sess. (Ohio 2005); OHIO REV. CODE ANN. § 507.01.

¹⁴ OHIO REV. CODE ANN. §§ 3.22, 505.02.

¹⁵ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:7.

¹⁶ OHIO REV. CODE ANN. § 505.02.

¹⁷ OHIO REV. CODE ANN. § 505.02.

¹⁸ OHIO REV. CODE ANN. § 505.02.

¹⁹ OHIO REV. CODE ANN. § 505.02.

Powers and Duties

Remember that the powers of a township board of trustees are limited. A board of township trustees is empowered only with that authority either expressly provided by law or necessarily implied therefrom. Accordingly, a board of township trustees has only as much authority and power as is conferred upon it by the Ohio Revised Code.²⁰ By law, a board of township trustees has many various powers and duties.²¹ Examples of such powers include the ability to appoint and remove certain employees,²² pass zoning resolutions,²³ acquire, maintain, and/or construct buildings for the benefit of the township,²⁴ construct and maintain township roads,²⁵ and provide for fire protection for the township's citizens.²⁶ There are many other powers and duties that a board of township trustees enjoys, but all of those powers and duties are given and limited by the language of the Ohio Revised Code.²⁷

Beyond the Ohio Revised Code, there are further limits on the powers and duties of township trustees. Though courts will not interfere in the performance of a board of township trustee's discretionary duties (unless fraud, collusion, or other similar illegal conduct is involved), any quasi-judicial (court-like) proceeding undertaken by a board of township trustees or other township board is subject to appeal and review in court.²⁸ Thus, "every final order, [adjudicative decision], or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located."²⁹

On a more personal level, an individual trustee's power and authority may be limited by a conflict of interest.³⁰ Under such circumstances, a trustee should excuse himself or herself from deliberations and voting.

Compensation of Trustees

Township trustees are entitled to compensation for their services as fixed by law. Compensation may be either per diem or by annual salary.³¹ Unless the board of trustees unanimously resolves to compensate the trustees with an annual salary, a trustee will be

²⁰ See *Henn v. Universal Atlas Cement Co.*, 76 Ohio Law Abs. 439, 144 N.E.2d 917 (C.P. 1957).

²¹ 20 O JUR. 3D § 341.

²² OHIO REV. CODE ANN. § 511.10; 20 O JUR. 3D § 343.

²³ OHIO REV. CODE ANN. § 519.02.

²⁴ OHIO REV. CODE ANN. § 505.262.

²⁵ OHIO REV. CODE ANN. § 5575.01.

²⁶ OHIO REV. CODE ANN. § 505.37; 20 O JUR. 3d § 344.

²⁷ See LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:11 (citing examples of other powers conferred to township trustees by the Ohio Revised Code).

²⁸ 20 O JUR. 3D § 365.

²⁹ 20 O JUR. 3D § 365.

³⁰ 20 O JUR. 3D § 366.

³¹ OHIO REV. CODE ANN. § 505.24.

compensated per diem.³² The per diem rate of compensation is generally based on the amount of the township budget. Per diem rates are listed in O.R.C. §§ 505.24(A) and (B). If the per diem method of compensation is used, the board of trustees must establish, by resolution, a method by which each board member regularly accounts for and reports his or her trustee activities and the time spent doing those activities.³³ Such reports are to be submitted to the township fiscal officer and are to be made available to the public.³⁴ Under the per diem method, a trustee's compensation is to be paid from the township's general fund and/or from other township funds in relation to and in proportion to the kinds of activities performed.³⁵

As an alternative to the per diem method, the board of trustees may, by unanimous vote, resolve to compensate the trustees through an annual salary.³⁶ The amount of the annual salary approved by the board is to be no more than the maximum amount that could be received annually by a trustee if he or she were to be paid on a per diem basis pursuant to O.R.C. §§ 505.24(A) and (B).³⁷ The trustees' annual salary "shall be paid from the township general fund or from other township funds in such proportions as the board may specify by resolution."³⁸ Furthermore, "Each trustee shall certify the percentage of time spent working on matters to be paid from the township general fund and from other township funds in such proportions as the kinds of services performed."³⁹ As under the per diem method, a trustee's compensation is to be paid from the township's general fund and/or from other township funds in relation to and in proportion to the kinds of activities performed.⁴⁰

A board of trustees that has adopted a salary method of compensation may return to the per diem method.⁴¹ In order to do so, a resolution must be passed by a majority vote of the board.⁴² The per diem method would take effect on the first day of January following the vote.⁴³

Note that, regardless of the method of compensation used, if a board of township trustees passes a resolution increasing the compensation for township trustees, the trustees currently holding office are constitutionally prohibited from receiving the higher salary during their current term in office.⁴⁴ Only upon the commencement of a new term of office following the approval of an increase in compensation may a trustee actually receive the increased compensation.

³² OHIO REV. CODE ANN. § 505.24(C).

³³ OHIO REV. CODE ANN. § 505.24(C).

³⁴ OHIO REV. CODE ANN. § 505.24(C).

³⁵ OHIO REV. CODE ANN. § 505.24(C).

³⁶ OHIO REV. CODE ANN. § 505.24(C).

³⁷ OHIO REV. CODE ANN. § 505.24(C).

³⁸ OHIO REV. CODE ANN. § 505.24(C).

³⁹ OHIO REV. CODE ANN. § 505.24(C).

⁴⁰ OHIO REV. CODE ANN. § 505.24(C).

⁴¹ OHIO REV. CODE ANN. § 505.24(C).

⁴² OHIO REV. CODE ANN. § 505.24(C).

⁴³ OHIO REV. CODE ANN. § 505.24(C).

⁴⁴ OHIO CONST., ART. II § 20; LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:12.

The Board of Trustees Meeting

Regular trustees meetings serve various functions. Broadly, they are public gatherings of the township trustees where township business is conducted. However, this generalization does not begin to scratch the surface of what actually comprises and occurs during a township trustees meeting.

Generally, township trustees hold regular meetings at least once a month at a regularly scheduled time and place. Due to the volume of public business, some townships have more than one regularly scheduled meeting per month. Though there is no limit on the number of regular trustee meetings that can be held per month, the meeting must conform to the requirements set forth in the Ohio Revised Code.

The most important of these requirements is that the meeting must be open to attendance by the public.⁴⁵ The Ohio Revised Code contains specific criteria that must be met in order for a meeting to be considered an “open meeting”⁴⁶ and monetary and other penalties for failing to observe these requirements.⁴⁷ For example, a trustee meeting must be properly advertised so that the public knows in advance the time and place of the meeting.⁴⁸

Because holding open meetings is such an immensely important requirement, it is discussed separately in the “Open Meetings and Ohio’s Sunshine Law” in the Trustee’s section of this manual.⁴⁹

As a part of and in addition to conducting an open meeting, the trustees meeting must be held in a public location⁵⁰ as determined by the board of trustees in its fair and impartial discretion.⁵¹ For most townships, this is likely the township hall. If the township does not have a township hall or is unable to meet at the township hall, another location may be used for the meeting, as long as it is open to the public and the location is properly advertised.

Another prerequisite for conducting a trustees meeting is attendance by the trustees.⁵² In order to vote on and pass any resolutions, a quorum of trustees must be present.⁵³ Generally, a quorum consists of all three trustees,⁵⁴ though there are circumstances when less than three trustees constitutes a quorum.⁵⁵

⁴⁵ OHIO REV. CODE ANN. § 121.22; 20 O JUR. 3D § 339.

⁴⁶ OHIO REV. CODE ANN. § 121.22.

⁴⁷ OHIO REV. CODE ANN. §§ 121.22(H)-(I).

⁴⁸ OHIO REV. CODE ANN. § 121.22(F).

⁴⁹ See “Open Meetings” *infra* pp. 19-23.

⁵⁰ 20 O JUR. 3D § 339.

⁵¹ See LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:3.

⁵² OHIO REV. CODE ANN. § 121.22(C).

⁵³ 20 O JUR. 3D § 340.

⁵⁴ 20 O JUR. 3D § 340.

⁵⁵ 20 O JUR. 3D § 340.

The township fiscal officer's⁵⁶ presence is also required to take proper minutes of the meeting. Minutes of the meeting must be recorded and promptly prepared, filed, and maintained.⁵⁷ This includes having the minutes signed by the board of trustees after they have been read and approved.⁵⁸ Additionally, the township fiscal officer must make the minutes of each meeting available to the public for inspection.⁵⁹

The fiscal officer also should assist the trustees in efficiently proceeding through township business transacted at the meeting, including recording resolutions, taking roll call votes, and maintaining township financial accounts. The specific duties of a township fiscal officer, as relating to township trustees meetings as well as other duties and responsibilities, will be discussed in detail in the "Township Fiscal Officer" section of this manual.

1. General Meeting Procedures

The Ohio Revised Code sets forth no exact format or formula for how a township trustees meeting must proceed. Though strict compliance with the traditional rules of parliamentary procedure is not required by law, the meeting should be run in an orderly and controlled fashion.⁶⁰

Generally, there are certain events that should occur at each meeting as detailed below. These include the prior creation of a written agenda detailing old and new business items.⁶¹ Copies of this written agenda should be made available to the attending public in advance. When called to order, the Pledge of Allegiance often begins the trustees meeting, followed by a roll call and the fiscal officer's acknowledgment of the proper advertisement of the meeting. Afterwards, the previous meeting's minutes are read and approved. Then, each member of the board is called upon to give reports, including the fiscal officer's report concerning the township books and finances. Usually, checks to be issued are approved and signed by the trustees at this time. Old business issues are raised and addressed afterwards. This is most often followed by new business and the conclusion and adjournment of the meeting.

⁵⁶ See "Township Fiscal Officer" *infra* pp. 53-62; OHIO REV. CODE ANN. §§ 507.01, 507.04.

⁵⁷ OHIO REV. CODE ANN. § 121.22(C); 20 O JUR. 3D § 339.

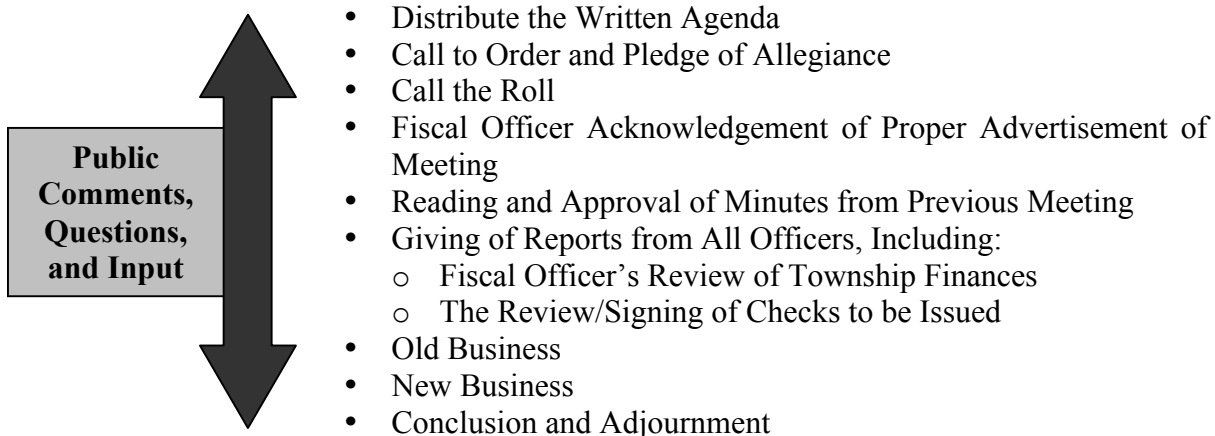
⁵⁸ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:11.

⁵⁹ 20 O JUR. 3D § 377.

⁶⁰ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:9. Please note that it remains helpful to refer to standard works on parliamentary procedure such as "Roberts' Rules of Order."

⁶¹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:17.

Meeting Checklist:



In the spirit of keeping the meeting open, comments from the public should be entertained throughout the meeting. Members of the public should not be discouraged from speaking or denied the ability to raise issues or concerns at the appropriate time. Individuals raising issues or concerns at inappropriate times should be informed politely of when it is appropriate to do so and encouraged to re-raise their issue or comment at that time.

2. January Organizational Meeting

The first trustees' meeting of the year held in January is organizational in nature. This meeting allows for the election of officers and, if in a year following election, for new trustees to take office and conduct business for the first time.⁶²

If in a year following election, certificates of election of the newly elected officers are called for and presented at the organizational meeting.⁶³ These certificates are to be received and expressly made part of the minutes.⁶⁴

If there is a newly elected fiscal officer, he or she presents his or her bond at the organizational meeting.⁶⁵ The bond must be in the appropriate amount specified in Ohio Revised Code section 507.03.⁶⁶ The board of trustees must then approve the sureties securing the township fiscal officer's bond and receive the bond, followed by the bond being recorded by the fiscal officer and filed with the county treasurer.⁶⁷

⁶² LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:13.

⁶³ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁶⁴ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁶⁵ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁶⁶ OHIO REV. CODE ANN. § 507.03.

⁶⁷ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

Newly elected trustees must also present their bond(s) at the organizational meeting.⁶⁸ The bonds must have been approved by a county or municipal court judge.⁶⁹ Such bonds are to be received by the board and recorded by the fiscal officer.⁷⁰

If the organizational meeting is in a year following the election of a new fiscal officer, the newly elected fiscal officer will present a certificate stating that the oath of office has been administered to him or her, and having been qualified for the position, assume the duties of the township fiscal officer and administer the oaths to the newly elected trustee(s).⁷¹ The board then sets the township fiscal officer's salary consistent with the appropriate amount specified in Ohio Revised Code section 507.09.⁷²

At the organizational meeting, the outgoing fiscal officer is responsible for surrendering, in good order, all township books and records to the newly elected fiscal officer.⁷³ However, actual possession of the books and records will not be exchanged until April 1 of the year following the election (the date on which the fiscal officer's election takes effect).⁷⁴ By the same token, the new fiscal officer should not accept the township books until that date.⁷⁵

The election of officers should also take place at the organizational meeting.⁷⁶ This is accomplished by the prior chairperson or president or trustee conducting the meeting to this point relinquishing his position and turning the conduct of the meeting over to the fiscal officer.⁷⁷ The fiscal officer should then call for nominations for chairperson or president.⁷⁸ Nominations need not be seconded.⁷⁹ Following all nominations, the fiscal officer closes the nominations.⁸⁰ A roll call is then taken and each trustee states his or her choice for chairperson or president.⁸¹ There is no secret ballot.⁸² The person receiving the most votes becomes the new chairperson or president.⁸³

The same procedure for electing a chairperson or president is then followed for electing a vice chairperson or vice president.⁸⁴

After elections, the meeting proceeds on to other organizational and/or other business.

⁶⁸ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁶⁹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁷⁰ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁷¹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁷² LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14; OHIO REV. CODE ANN. § 507.09

⁷³ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁷⁴ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁷⁵ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.

⁷⁶ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁷⁷ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁷⁸ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁷⁹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁸⁰ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁸¹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁸² LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁸³ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

⁸⁴ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

Open Meetings and Public Records (“Sunshine Laws”)

1. Open Meetings

Ohio law demands that all meetings and deliberations by public officials conducting public business, unless specifically excepted by law, be open to public attendance.⁸⁵ More specifically, O.R.C. § 121.22(C) states that “[a]ll meetings of any public body are declared to be public meetings open to the public at all times...[t]he minutes of the regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection.”⁸⁶ This section is commonly known as or referred to as “the open meetings law” or “Sunshine Law”⁸⁷ and includes meetings by all township officials and boards.

O.R.C. § 121.22 provides specific criteria that must be met in order for a meeting to be considered “open” and includes limited exceptions to open meetings relevant to townships.⁸⁸ Also, that section contains provisions to force compliance with the “open meeting” requirements, including financial and personal penalties.⁸⁹ Additionally, any action taken by a public body is invalid if not conducted in compliance with O.R.C. § 121.22.⁹⁰

Pursuant to O.R.C. § 121.22(B)(1)(a), a township board of trustees is a “public body.” When a “public body,” such as a board of trustees, holds a meeting, it must do so in strict compliance with the open meetings provisions of O.R.C. § 121.22. Under O.R.C. § 121.22(B)(2), a “meeting” is defined as “any prearranged discussion of the public business of the public body by a majority of its members.”⁹¹ In the case of a board of trustees, generally, an arranged gathering of two or more trustees to discuss trustee and/or township business of any type would constitute a “meeting” under this definition.⁹²

In accordance with O.R.C. §§ 121.22(A) and (C), public officials, including township trustees and officials, are required “to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.”⁹³ This requirement and all other provisions of O.R.C. § 121.22 are to be “liberally construed,”⁹⁴ meaning that all interpretations of the meaning of provisions of O.R.C. § 121.22, especially those made by a court of law, are to be made in favor of open meetings.⁹⁵

⁸⁵ OHIO REV. CODE ANN. § 121.22(C)

⁸⁶ OHIO REV. CODE ANN. § 121.22(C)

⁸⁷ OHIO REV. CODE ANN. § 121.22

⁸⁸ OHIO REV. CODE ANN. § 121.22

⁸⁹ OHIO REV. CODE ANN. §§ 121.22(H)-(I).

⁹⁰ LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:3.

⁹¹ OHIO REV. CODE ANN. § 121.22(B)(2).

⁹² OHIO REV. CODE ANN. § 121.22(B)(2).

⁹³ OHIO REV. CODE ANN. § 121.22(A).

⁹⁴ OHIO REV. CODE ANN. § 121.22(A).

⁹⁵ OHIO REV. CODE ANN. § 121.22(A).

Aside from “executive sessions,” discussed in both this section and in a separate section of this manual,⁹⁶ there remains one exception to open meetings that applies to townships. Pursuant to O.R.C. § 121.22(D)(2), the Open Meetings Law or Sunshine Law does not apply to “[a]n audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit.”⁹⁷ In other words, such conferences need not be held in an open meeting.

To conduct open meetings, “[e]very public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings.”⁹⁸ In other words, all meetings must be advertised to the public. The board may determine, by resolution, how to advertise their meetings.⁹⁹ Normally, this is done in a newspaper of general circulation in the township, such as the *Delaware Gazette*. The advertisement must state that a trustees meeting is to be held, where it is to be held, and the time it is to be held.¹⁰⁰ If it is a special meeting, the purpose of the meeting must be disclosed in the advertisement.¹⁰¹

Additionally, O.R.C. § 121.22 provides that any person, upon request, may “obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.”¹⁰² Persons wishing to receive either an agenda or advanced notice of a meeting may be placed on a mailing list and mailed such information. They may be made to pay “a reasonable fee” for this service.¹⁰³

Executive sessions are permissible only under very specific circumstances. Executive sessions may be held “only after a majority of a quorum of the public body determines, by roll call vote, to hold an executive session and only at a regular or special meeting.”¹⁰⁴ Executive sessions may be held only for the purpose of considering the matters specifically listed in O.R.C. §§ 121.22(G)(1)-(8).¹⁰⁵ Please refer to the “Executive Session” section of this manual for the purposes for which an executive session may be held and the procedure enabling executive sessions.

If a public body does not comply with the open meeting provisions of O.R.C. § 121.22, it may be subject to various penalties. Pursuant to O.R.C. § 121.22(H), “[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.”¹⁰⁶ Moreover, “[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations...[took place

⁹⁶ See Executive Session *infra* pp. 21-23.

⁹⁷ OHIO REV. CODE ANN. § 121.22(D)(2).

⁹⁸ OHIO REV. CODE ANN. § 121.22(F).

⁹⁹ OHIO REV. CODE ANN. § 121.22(F).

¹⁰⁰ OHIO REV. CODE ANN. § 121.22(F).

¹⁰¹ OHIO REV. CODE ANN. § 121.22(F).

¹⁰² OHIO REV. CODE ANN. § 121.22(F).

¹⁰³ OHIO REV. CODE ANN. § 121.22(F).

¹⁰⁴ OHIO REV. CODE ANN. § 121.22(G).

¹⁰⁵ OHIO REV. CODE ANN. § 121.22(G).

¹⁰⁶ OHIO REV. CODE ANN. § 121.22(H).

in a properly declared executive session that was held for a proper purpose].”¹⁰⁷ Also, a resolution, rule, or formal action taken at a meeting not properly advertised is invalid.¹⁰⁸

A civil action may be brought against the township for not complying with the open meeting provisions of O.R.C. § 121.22.¹⁰⁹ Such an action could result in the issuance of an injunction, or court order, against the township ordering it to comply with O.R.C. § 121.22(I). If the court issues such an order, the township could be subject to fines, court costs, and payment of the attorney’s fees of the party bringing the action.¹¹⁰ Additionally, a public official or a trustee that fails to comply with such a court order may be removed from office by the court.¹¹¹

2. Executive Session (Generally)

From time to time, a board of trustees will experience the need to hold a portion of its meeting away from the public. Such a closed meeting is permissible under very limited circumstances. These closed meetings are called executive sessions, and attendance is generally limited to the members of the governmental body and such other persons specifically invited.¹¹² Executive sessions are a limited exception to the Open Meetings Law/Ohio’s Sunshine Law under O.R.C. § 121.22.¹¹³ An executive session must be entered according to a statutorily defined procedure and must be held for a statutorily approved purpose.¹¹⁴

Pursuant to O.R.C. § 121.22(G), both a motion and a vote are required for a board of trustees to adjourn into executive session. The motion must state one or more of the purposes listed in O.R.C. §§ 121.22(G)(1)-(8) as the reason for holding executive session.¹¹⁵ Also, it must contain the topic to be considered in that executive session.¹¹⁶ The minutes of the executive session “need only reflect the general subject matter of discussion in executive sessions.”¹¹⁷

No motions or resolutions may be voted upon in executive session.¹¹⁸ All resolutions and motions must be voted upon in open session in order to be valid.¹¹⁹

3. Purposes for Which Executive Session May Occur (R.C. § 121.22(G)(1)-(8))

The purposes for which a board of trustees can adjourn to executive session are very limited. The Ohio Revised Code approves of seven purposes pursuant to which a public body, such as a board of township trustees, may hold an executive session.¹²⁰ Not all of the purposes

¹⁰⁷ OHIO REV. CODE ANN. § 121.22(H).

¹⁰⁸ OHIO REV. CODE ANN. § 121.22(H).

¹⁰⁹ OHIO REV. CODE ANN. § 121.22(I).

¹¹⁰ OHIO REV. CODE ANN. § 121.22(I)(2)(a).

¹¹¹ OHIO REV. CODE ANN. § 121.22(I)(4).

¹¹² See *Thomas v. Bd. of Trustees*, 5 Ohio App. 2d 265, 268, 215 N.E.2d 434, 436 (7th Dist. 1966).

¹¹³ See Open Meetings and Ohio’s Sunshine Law *supra* pp. 19-21.

¹¹⁴ OHIO REV. CODE ANN. § 121.22(G).

¹¹⁵ OHIO REV. CODE ANN. § 121.22(G).

¹¹⁶ OHIO REV. CODE ANN. § 121.22(G).

¹¹⁷ OHIO REV. CODE ANN. § 121.22(C).

¹¹⁸ OHIO REV. CODE ANN. § 121.22(H).

¹¹⁹ OHIO REV. CODE ANN. § 121.22(H).

¹²⁰ OHIO REV. CODE ANN. §§ 121.22(G)(1)-(8).

listed in O.R.C. §§ 121.22(G)(1)-(8) are applicable to townships.¹²¹ Those purposes that may be applicable to townships and which require strict compliance are as follows:

- 1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) [this subsection] . . . the motion and vote to hold that executive session shall state which one of the approved purposes listed in division (G)(1) [this subsection] . . . are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.
- 2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) [this subsection] . . . as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers or sellers to prepare and submit offers.
- 3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.
- 4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment.
- 5) Matters required to be kept confidential by federal law or regulations or state statutes.
- 6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office[rs].

¹²¹ The additional purpose listed under OHIO REV. CODE ANN. § 121.22(G)(7), to consider the trade secrets of either a county hospital operated under Ohio Revised Code Chapter 339 or a municipal hospital operated under revised code Chapter 749, is not applicable to townships and has not been included above.

7) [NOT APPLICABLE]

- 8) To consider confidential information related to the marketing plans, specific business strategies, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.¹²²

Ohio law strongly favors open meetings, encourages interpretation of the law against closed meetings, and provides penalties to ensure compliance.¹²³ Therefore, entering executive session carelessly for a reason other than those listed may result in penalties to the township or individual township office holders. According to O.R.C. § 121.22(H), “[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.”¹²⁴ Additionally, “[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations” took place in a properly declared executive session that was held for a proper purpose.¹²⁵

4. Public Records

All “records,” as that term is defined in the Ohio Revised Code,¹²⁶ kept by any public office, including a township, constitute a “public record.”¹²⁷ Upon request, a township must provide prompt inspection of public records and must provide copies of public records within a reasonable period of time.¹²⁸ The Ohio Public Records Act, as amended by 2006 House Bill 9, now also requires each public office to adopt a public records policy and requires all elected officials, or a designee, to attend an approved public records training session.¹²⁹

¹²² OHIO REV. CODE ANN. §§ 121.22(G)(1)-(8).

¹²³ OHIO REV. CODE ANN. §§ 121.22(A), 121.22(C).

¹²⁴ OHIO REV. CODE ANN. § 121.22(H).

¹²⁵ OHIO REV. CODE ANN. § 121.22(H).

¹²⁶ OHIO REV. CODE ANN. § 149.011(G).

¹²⁷ OHIO REV. CODE ANN. § 149.43(A)(1).

¹²⁸ OHIO REV. CODE ANN. § 149.43(B).

¹²⁹ OHIO REV. CODE ANN. § 149.43(E)(1).

Resolutions (Generally)

The resolution is the means by which a board of trustees takes action. The action taken may be either large or small and may be related to any legitimate subject that the board of trustees considers. A resolution is properly raised, considered, debated, made, and adopted only at an open trustees meeting.¹³⁰

Resolutions raised, considered, debated, made, and adopted outside of an open meeting are invalid.¹³¹ Penalties to the board, township, or individual trustee, monetary and otherwise, may be levied for resolutions raised, considered, debated, made, and adopted outside of open session.¹³²

The specific wording of a resolution should be recorded as a part of the minutes of the trustees meeting. After being proposed, a resolution should be seconded by another trustee. A roll call vote of the trustees should then be taken. Depending on the subject of the resolution, either a simple majority or unanimous vote will be required for its passage. The section of the Ohio Revised Code relevant to the particular subject of the resolution generally dictates when a unanimous vote is required.

Remember that the power of a board of township trustees remains rooted in the authority granted to it either expressly by statute or necessarily implied therefrom.¹³³ “If a board of township trustees attempts to do something [by resolution] which is not specifically authorized by statute, nor reasonably implied as necessary to accomplish something which is authorized, it is acting illegally and beyond its powers.”¹³⁴ Simply, a board may not, by resolution, go beyond the bounds of its powers and authority under the law.

Township Property

Townships possess various types of both real and personal property. Due to the wide variety of property possessed by townships, township trustees hold various roles and responsibilities in relation to that property. In many instances, the trustees and their successors hold title to the property for the township and are responsible for its maintenance, care, and management. In relation to other property, trustees merely hold the property in trust.

Because there are many different types of property that a township may possess and be responsible for, it is not possible to address every type of property in this manual. However, the next few subsections address some of the common types of property that may be possessed by a township.

¹³⁰ OHIO REV. CODE ANN. § 121.22(H). *See also* Open Meetings *supra* pp. 19-21.

¹³¹ OHIO REV. CODE ANN. § 121.22(H). *See also* Open Meetings *supra* pp.19-21.

¹³² OHIO REV. CODE ANN. §§ 121.22(H)-(I). *See also* Open Meetings *supra* pp. 19-21.

¹³³ LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:11.

¹³⁴ LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:11.

1. Cemeteries

Chapter 517 of the Ohio Revised Code addresses township cemeteries. Specifically, it addresses the purchase or acquisition of a cemetery, the sale of plots, the care of the cemetery, and other issues affecting the operation of a cemetery.

According to O.R.C. § 517.01, a “board of township trustees may accept a conveyance of, or purchase, and enclose, improve, and protect lands in one or more places within the township as it deems necessary and proper for cemetery purposes.”¹³⁵ If the trustees are unable to secure land for a cemetery through a contractual purchase on reasonable terms, they may appropriate land pursuant to eminent domain procedures specified in O.R.C. §§ 163.01-163.22.¹³⁶ Unless funds are set aside and available under O.R.C. § 517.08 for the purchase or acquisition of a cemetery, the question of the establishment of a cemetery may be put to a vote at a regular annual election “on the order of the board of township trustees or the written application of any six electors of the township.”¹³⁷ To help defray the costs of such an acquisition or to help in the enclosing, care, supervision, repair, or improving of lands for a cemetery, the trustees may also levy a tax sufficient for that purpose.¹³⁸

A. Lots

When acquired, the board of trustees shall have the land purchased for the cemetery “laid out in lots, avenues, and paths, and shall number the lots...”¹³⁹ A plat map of the cemetery should be “carefully kept” by the township fiscal officer.¹⁴⁰

Once the land for the cemetery has been acquired and laid out, the board of trustees will be responsible for the sale of lots within the cemetery. O.R.C. § 517.07 addresses the sale of cemetery lots. According to that section, the trustees “shall sell at a reasonable price the number of lots” to meet public demands.¹⁴¹ After the terms of the sale have been met, a deed for these lots should be executed and issued by the trustees to the purchasers.¹⁴² The township fiscal officer should record the deed in a book dedicated exclusively to that purpose.¹⁴³ The cost of recording the deed shall be paid by the person who receives it.¹⁴⁴

Under special circumstances, payment for a cemetery lot can be waived. Specifically, “[u]pon the application of a head of a family living in the township, the board shall, without charge, make and deliver to the applicant a deed for a suitable lot for the burial of the applicant’s

¹³⁵ OHIO REV. CODE ANN. § 517.01.

¹³⁶ OHIO REV. CODE ANN. § 517.01.

¹³⁷ OHIO REV. CODE ANN. § 517.04.

¹³⁸ OHIO REV. CODE ANN. § 517.03.

¹³⁹ OHIO REV. CODE ANN. § 517.06.

¹⁴⁰ OHIO REV. CODE ANN. § 517.06.

¹⁴¹ OHIO REV. CODE ANN. § 517.07.

¹⁴² OHIO REV. CODE ANN. § 517.07.

¹⁴³ OHIO REV. CODE ANN. § 517.07.

¹⁴⁴ OHIO REV. CODE ANN. § 517.07.

family, if, in the opinion of the board and by reason of the circumstances of the family, the payment would be oppressive.”¹⁴⁵

To better maintain cemetery records, O.R.C. § 517.07 allows a township the option of including three conditions within the terms of sale and in any deed issued for a cemetery lots. These conditions include:

- 1) The buyer providing to the board of township trustees, in writing, a list of names and addresses of the persons to whom the buyer’s property would pass by if the buyer dies and the property passes without a will.
- 2) The buyer notifying the board of township trustees, in writing, of any subsequent changes in the name and address of any person to whom the property would be passed if the buyer dies and the property passes without a will.
- 3) Any person who receives a township cemetery lot by gift, inheritance, or any other means other than the original conveyance shall, within one year after receiving such interest, give written notice of his or her name and address to the township board of trustees having control of the cemetery, and shall notify the board of trustees of any subsequent changes in the person’s name or address.¹⁴⁶

Where these conditions are imposed and not met, O.R.C. § 517.07 allows the township certain remedies and provides certain steps to follow to either discover addresses or gain a right of re-entry to the lot.¹⁴⁷ Specifically, notice must be sent by the board of trustees to the last known owner at the last known owner’s address by certified mail, stating that the owner’s interest in the lot will cease unless the above conditions are met.¹⁴⁸ If the last known owner’s address cannot be ascertained, notice may be published in a newspaper of general circulation in the county.¹⁴⁹ The board of trustees must then pass a resolution stating that the conditions of the sale have not been fulfilled in order for the board to reclaim its interest in the lot.¹⁵⁰

Aside from or in addition to these conditions, the board of trustees also may limit the terms of sale to allow re-entry to the lot where the lot is not used by the owner, a member of the owner’s family, or an owner’s descendant within a specified period of time.¹⁵¹ The specified period of time must be at least twenty years, but no more than fifty years, with a right of renewal at no cost.¹⁵² At least ninety days prior to the expiration of the specified period of time, the board must inform the lot owner, either by certified mail (if his or her address is known) or by one publication (if his or her address is not known) that his or her rights are about to expire.¹⁵³ If the lot is unused or the owner decides not to exercise his or her rights of renewal, the board of

¹⁴⁵ OHIO REV. CODE ANN. § 517.07.

¹⁴⁶ OHIO REV. CODE ANN. § 517.07.

¹⁴⁷ OHIO REV. CODE ANN. § 517.07.

¹⁴⁸ OHIO REV. CODE ANN. § 517.07.

¹⁴⁹ OHIO REV. CODE ANN. § 517.07.

¹⁵⁰ OHIO REV. CODE ANN. § 517.07.

¹⁵¹ OHIO REV. CODE ANN. § 517.07.

¹⁵² OHIO REV. CODE ANN. § 517.07.

¹⁵³ OHIO REV. CODE ANN. § 517.07.

trustees may pass a resolution indicating this fact and establishing right of re-entry.¹⁵⁴ The board must then compensate the owner with eighty-percent of the purchase price of the lot.¹⁵⁵ The board also may repurchase a lot at any time at a price that is mutually agreeable to the board and the owner of the lot.¹⁵⁶

B. Maintenance and Care

A board of township trustees is charged with the care and maintenance of cemeteries under its control.¹⁵⁷ Care and maintenance includes making of rules and regulations concerning the cemetery, setting cemetery hours, cutting the grass, killing weeds, maintaining the fences, and righting fallen tombstones or headstones.¹⁵⁸ For such expenses, “[t]he board may levy a tax...not to exceed one-half mill in any one year, upon all taxable property of the township.”¹⁵⁹

In addition, O.R.C. 517.06 specifically permits the board of township trustees to “make all needful rules and regulations for burial, interment, reinterment, or disinterment.”¹⁶⁰

2. Township Hall

Most townships have a township hall which serves the primary function of being a place for conducting township business, such as trustee meetings and meetings of other township boards and committees. Township halls often have secondary functions as well, such as serving as a center of various community activities, including voting. Because the township hall serves many important functions in both township government and life in general in the township, the Ohio Revised Code specifically addresses its construction and use.

A. Construction and Finance:

Sections 511.01-511.07 of the Ohio Revised Code specifically address the township hall or “town hall,” as it is often referred to in the Revised Code.¹⁶¹ These sections primarily focus on the construction and financing of a township hall. The construction and financing of a township hall is also addressed by O.R.C. §§ 505.26 and 505.262.

When considering the specifics of township hall construction and financing, it is important to remember that all contracts for supplies, materials, equipment, and/or contractors are subject to a competitive bidding process if the total estimated cost of the contract exceeds \$50,000.00.¹⁶² If the total cost of the contract is less than or equal to \$50,000.00, competitive bidding may be undertaken at the board’s discretion.¹⁶³

¹⁵⁴ OHIO REV. CODE ANN. § 517.07.

¹⁵⁵ OHIO REV. CODE ANN. § 517.07.

¹⁵⁶ OHIO REV. CODE ANN. § 517.07.

¹⁵⁷ OHIO REV. CODE ANN. §§ 517.11, 517.06.

¹⁵⁸ OHIO REV. CODE ANN. §§ 517.06, 517.11, 517.12, 517.32.

¹⁵⁹ OHIO REV. CODE ANN. § 517.11.

¹⁶⁰ OHIO REV. CODE ANN. § 517.06.

¹⁶¹ OHIO REV. CODE ANN. §§ 511.01-511.07.

¹⁶² OHIO REV. CODE ANN. §§ 307.86, 511.12.

¹⁶³ OHIO REV. CODE ANN. § 511.12.

The competitive bidding process to be followed is described in O.R.C. § 307.86 *et seq.* These sections of the Ohio Revised Code prescribe specific procedures for notification, advertising, and reception of bids.¹⁶⁴ Due to the involved nature of the competitive bidding process, it is discussed separately in a later section of this manual.¹⁶⁵

The services of an architect are an exception to the requirement of competitive bidding.¹⁶⁶ Specifically, if the architect is engaged for the purpose of rendering architectural services, the services of the architect are generally exempt from the competitive bidding requirements.¹⁶⁷ Contracts for “professional design services,” which include the services of an architect, landscape architect, professional engineer, or surveyor are, however, subject to a separate qualification process.¹⁶⁸

With this in mind, O.R.C. § 505.26 empowers a board of trustees to “purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall.”¹⁶⁹ The construction, improvement, enlargement, removal and financing of a township hall may be achieved by one of two methods described in the Ohio Revised Code. Though these methods vary, the most significant difference concerns the submission of the issue of construction of the township hall to the voters.¹⁷⁰

The first method, subject to the conditions delineated by O.R.C. § 505.262, allows the trustees, by resolution and unanimous vote, to purchase or construct any building for a lawful purpose, including a township hall, and to finance that purchase or construction through the issuance of securities of the township without submitting the issue to the voters for approval.¹⁷¹ Under the first method, the conditions that must be met for the purchase or construction of the building are as follows:

- 1) A unanimous resolution by the trustees for the purchase or construction of a township hall,¹⁷² and;
- 2) If securities of the township to finance purchases and construction are to be issued, the following requirements must be observed:
 - A unanimous resolution by the township trustees to issue securities of the township;
 - The securities must be signed by the board and attested to by the township fiscal officer;

¹⁶⁴ OHIO REV. CODE ANN. § 307.86.

¹⁶⁵ See Competitive Bidding *infra* pp.36-41.

¹⁶⁶ OHIO REV. CODE ANN. § 307.86.

¹⁶⁷ OHIO REV. CODE ANN. § 307.86.

¹⁶⁸ OHIO REV. CODE ANN. §§ 153.65, *et seq.*

¹⁶⁹ OHIO REV. CODE ANN. § 505.26; 1993 Ohio Op. Att’y Gen. No. 93-039.

¹⁷⁰ 1993 Ohio Op. Att’y Gen. 93-019.

¹⁷¹ OHIO REV. CODE ANN. § 505.262; 1993 Ohio Op. Att’y Gen. No. 93-019.

¹⁷² OHIO REV. CODE ANN. § 505.262; 1993 Ohio Op. Att’y Gen. No. 93-019

- The maximum maturity of the securities is subject to the limitations in section 133.20 of the Revised Code;
- The securities shall bear interest not to exceed the rate determined under section 9.95 of the Ohio Revised Code;¹⁷³
- The resolution authorizing the issuance of the securities must provide for annual taxation in the amount sufficient to pay the interest on and the principal of the securities;
- The securities shall be offered for sale on the open market or given to the vendor or contractor if no sale is made, and
- Certification by the county auditor that the debt service charge in the first year of the purchase, together with the debt service charge for that same year for any other purchase or construction already undertaken pursuant to O.R.C. 505.262(A) does not exceed one-tenth of the township's total revenue from all sources.¹⁷⁴

“When all the conditions set forth in O.R.C. [§] 505.262 are satisfied, neither the question of the purchase nor the question of the issuance of the securities need be submitted to the electorate.”¹⁷⁵ Additionally, “[t]he notes [securities] may contain a clause permitting prepayment at the option of the board.”¹⁷⁶

If the conditions in O.R.C. § 505.262 are unable to be met or the township wishes to finance the purchase by a means other than the issuance of securities, O.R.C. §§ 511.01-511.02 apply. These sections require both the issue of construction and of the financing of the construction to be submitted to the electorate if the cost of the township hall exceeds \$50,000.00.¹⁷⁷ Note that the resolution authorizing such a vote must be submitted to the board of elections “not later than four p.m. of the ninetieth day before the day of the election.”¹⁷⁸ After approval by the majority of voters, the trustees “may make all contracts necessary for the purchase of a site, and the erection, improvement, or enlargement of such [a] building.”¹⁷⁹

Under any circumstances where the board of trustees is considering the issuance of securities, notes, and/or bonds to finance the purchase or construction of a township hall, the board should consult bond counsel. The issuance of securities, notes, and/or bonds is a highly specialized area of law that requires the specific expertise of bond counsel to effectively guide the township through the process of issuing securities, notes, and/or bonds.

¹⁷³ See OHIO REV. CODE ANN. § 9.95 (stating that “[s]ecurities...shall bear interest...not to exceed the maximum or maximum average annual interest rate per annum determined in or pursuant to the proceedings for the securities by the legislative authority, taxing authority, subdivision, governing body, officer, or other issuer, board, authority, commission, district, agency, body, or entity that is the issuer, or governing body or officer of the issuer, of those securities”).

¹⁷⁴ Ohio Rev. Code Ann. § 505.262; 1993 Ohio Op. Att’y Gen. No. 93-039.

¹⁷⁵ 1993 Ohio Op. Att’y Gen. No. 93-039.

¹⁷⁶ OHIO REV. CODE ANN. § 505.262.

¹⁷⁷ OHIO REV. CODE ANN. §§ 511.01-511.02.

¹⁷⁸ OHIO REV. CODE ANN. § 511.01.

¹⁷⁹ OHIO REV. CODE ANN. § 511.03.

When a board of township trustees, pursuant to an affirmative vote, is authorized to purchase land for a township hall and build a township hall on that purchased land, but cannot procure the appropriate land through a contractual purchase, it may appropriate up to one acre of land for this purpose.¹⁸⁰ In other words, under such circumstances, eminent domain may be used to obtain the property pursuant to O.R.C. §§ 163.01-163.22.¹⁸¹

B. Control and Rental

After the township hall is built, the board of township trustees will have control of the township hall.¹⁸² The trustees may rent or lease all or any part of the township hall to any person or organization.¹⁸³ All rent must be paid in advance or fully secured.¹⁸⁴ Rent monies received may be used for the improvement or repair of the township hall and the balance of funds remaining must be used for general township purposes.¹⁸⁵

Terms of the rental or lease may be a decision by the trustees and may be anything that the trustees consider proper.¹⁸⁶ The terms of rental or lease agreement “may give preference to persons who are residents of or organizations that are headquartered in the township or that are charitable or fraternal in nature.”¹⁸⁷ Nevertheless, all persons and organizations “shall be treated on a like or similar basis, and no differentiation shall be made on the basis of race, color, religion, national origin, sex, or political affiliation.”¹⁸⁸

3. Equipment and Personal Property

From trucks and shovels to chairs and computers, townships possess many types of equipment and personal property. Because townships are limited in their authority and actions by the provisions of the Ohio Revised Code or that which can necessarily be implied therefrom, the types of equipment and personal property that can be possessed, acquired, or disposed of by the township are limited.

A. Acquisition

Generally, “the board of township trustees of any township, by unanimous vote, may adopt a resolution allowing the township to contract for the purchase of equipment . . . for any lawful township purpose.”¹⁸⁹ Although this is a very broad statement, it is not a *carte blanche*. When the township contemplates the purchase of equipment, it must be established that there is a

¹⁸⁰ OHIO REV. CODE ANN. § 511.04.

¹⁸¹ OHIO REV. CODE ANN. § 511.04.

¹⁸² OHIO REV. CODE ANN. § 511.03.

¹⁸³ OHIO REV. CODE ANN. § 511.03.

¹⁸⁴ OHIO REV. CODE ANN. § 511.03.

¹⁸⁵ OHIO REV. CODE ANN. § 511.03.

¹⁸⁶ OHIO REV. CODE ANN. § 511.03.

¹⁸⁷ OHIO REV. CODE ANN. § 511.03.

¹⁸⁸ OHIO REV. CODE ANN. § 511.03.

¹⁸⁹ OHIO REV. CODE ANN. § 505.262(A).

legitimate lawful purpose for the purchase of the equipment and approval must be by a unanimous vote of the board.¹⁹⁰

Aside from the general purchasing provisions of O.R.C. § 505.262, the Ohio Revised Code contains many sections that allow a township to purchase *specific* types of equipment or personal property. According to O.R.C. § 505.261, a township can purchase materials and recreation equipment to establish a township park under O.R.C. § 505.26. If the township has a police or fire department, subject to certain limitations, it can purchase equipment for police and fire protection.¹⁹¹ A township may acquire equipment for the disposal of tree leaves.¹⁹² It may purchase equipment for the construction, repair and maintenance of township roads as well as equipment for the removal of snow and ice from them.¹⁹³ It may purchase furnishings and equipment for a township hall.¹⁹⁴ Additional sections of the Ohio Revised Code allow for the purchase of various other types of equipment and personal property.

With limited exceptions, the township must acquire property costing \$50,000.00 or more through a competitive bidding process.¹⁹⁵ The competitive bidding process to be followed is found in O.R.C. § 307.86, which prescribes specific procedures for notification, advertising, and reception of bids.¹⁹⁶ Due to the involved nature of the competitive bidding process, it is discussed separately in a later section of this manual.¹⁹⁷

There are, however, certain exceptions to competitive bidding that are appropriate for discussion here. As an example, O.R.C. § 505.08 allows a township to make purchases without advertising or bidding when an emergency situation arises. The purchase must consist of “services, materials, equipment, or supplies needed to meet the emergency” and must cost less than \$50,000.00.¹⁹⁸ In order to make such a purchase, the board of trustees must first pass by “a unanimous vote a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township...”¹⁹⁹ Only then can the trustees resolve to enter into a contract for such a purchase.²⁰⁰

Another exception to competitive bidding is when the purchase or sale of materials, equipment, or supplies is to be made from or to “any department, agency, or political subdivision of the state.”²⁰¹ Such exception also applies to both the “purchase of services with a soil and water conservation district” and the “purchase of supplies, services, materials, and equipment with a regional planning commission pursuant to division (D) of section 713.23 of the Ohio

¹⁹⁰ OHIO REV. CODE ANN. § 505.262(A).

¹⁹¹ OHIO REV. CODE ANN. §§ 505.50, 505.37(C).

¹⁹² OHIO REV. CODE ANN. § 505.79.

¹⁹³ OHIO REV. CODE ANN. §§ 5501.41, 5549.021.

¹⁹⁴ OHIO REV. CODE ANN. § 505.26.

¹⁹⁵ OHIO REV. CODE ANN. § 307.86.

¹⁹⁶ OHIO REV. CODE ANN. § 307.86.

¹⁹⁷ See Competitive Bidding *infra* pp. 36-41.

¹⁹⁸ OHIO REV. CODE ANN. § 505.08.

¹⁹⁹ OHIO REV. CODE ANN. § 505.08.

²⁰⁰ OHIO REV. CODE ANN. § 505.08.

²⁰¹ OHIO REV. CODE ANN. § 505.101.

Revised Code.”²⁰² A resolution for making such a purchase shall meet the requirements of O.R.C. §§ 505.101(A)-(C), which requires the inclusion of a statement of the maximum amount to be paid, a description of the items to be purchased, and making the appropriation of funds.²⁰³

Concerning any contract for the purchase of equipment, materials, supplies, insurance, services, or a public improvement, the township board of trustees by resolution, may establish “a model system of preferences for products mined or produced in Ohio and the United States and for Ohio-based contractors promulgated pursuant to division (E) of section 125.11 of the Revised Code.”²⁰⁴ The resolution establishing such a system must meet certain requirements before it can be considered and passed.²⁰⁵ Where such a preference system is approved and effective, no contract may be awarded by the township or trustees that is contrary to the preferential system.²⁰⁶

B. Financing

If the township is not able to afford the full purchase price of a piece of equipment, the Ohio Revised Code provides townships with certain financing options. When specific requirements are met, the township may issue securities for the purchase and/or place a tax levy before voters.²⁰⁷ In other instances, the township may enter into a lease or lease-purchase agreement to acquire certain property.²⁰⁸ Townships may also reduce the initial purchase costs of some items of property by disposing of other property, such as trading-in old vehicles or equipment for value credited against the purchase price.²⁰⁹

A township may divide the purchase price of equipment or materials with another jurisdiction.²¹⁰ It may jointly enter into purchase contracts with one or more counties or townships or participate in a joint purchasing program for the purchase of equipment or materials.²¹¹

C. Receipt of Donations

When a township receives an offer of donated property, the trustees “may accept, on behalf of the township, the donation by bequest, devise, deed of gift, or otherwise, of any real or personal property for any township use.”²¹²

²⁰² OHIO REV. CODE ANN. § 505.101.

²⁰³ OHIO REV. CODE ANN. §§ 505.101(A)-(C).

²⁰⁴ OHIO REV. CODE ANN. § 505.103.

²⁰⁵ OHIO REV. CODE ANN. § 505.103.

²⁰⁶ OHIO REV. CODE ANN. § 505.103.

²⁰⁷ OHIO REV. CODE ANN. § 505.262.

²⁰⁸ OHIO REV. CODE ANN. § 505.267. *See also* OHIO REV. CODE ANN. §§ 505.37 (describing the “lease...[or] lease with an option to purchase, [the] maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.42 of the Revised Code), 505.50 (describing the “lease...[or] lease with an option to purchase...any police apparatus, equipment, including a public communications system, or materials that the township or township police district requires), 5549.021(B) (describing the “lease...[of] machinery, tools, trucks, and other equipment for use in constructing, maintaining, and repairing roads...”).

²⁰⁹ OHIO REV. CODE ANN. § 505.10(A)(3).

²¹⁰ OHIO REV. CODE ANN. § 9.48.

²¹¹ OHIO REV. CODE ANN. § 9.48.

²¹² OHIO REV. CODE ANN. § 505.10.

D. Tracking

Once a purchase of property has been made, it is the duty of the township to keep track of that property. Pursuant to O.R.C. § 505.04, the “board of township trustees shall make an inventory on the second Monday of January, each year, of all the materials, machinery, tools, and other township supplies in its possession.”²¹³ The inventory shall be filed with both the township fiscal officer and the county engineer.²¹⁴ Also, the inventory is public record and must be available for public inspection.²¹⁵

E. Disposal

When township property, including motor vehicles, road machinery, equipment, and tools are no longer needed by the township or are worn-out or obsolete, the township may sell or otherwise dispose of the property in accordance with O.R.C. § 505.10.²¹⁶ The board of trustees, by resolution, must determine the lack of need or obsolescence of the property and authorize its sale.²¹⁷ If, in the opinion of the board of trustees, the property is valued at more than \$2,500.00, the property shall be sold by either public auction or sealed bid following the procedures specified in O.R.C. § 505.10(A)(1).²¹⁸ On the other hand, if it is the opinion of the trustees that the property is worth less than or equal to \$2,500.00, the trustees may resolve to either sell the property at private sale without advertising or notification or donate it to an eligible nonprofit organization (one both located in Ohio and exempted from federal income taxation).²¹⁹ (Note that there are certain requirements under Ohio Revised Code section 505.10(A)(2)(6) that must be met before property may be donated.) Additionally, if the board believes that the property is unfit for its acquired purpose, unneeded for public use, or is obsolete and has no value, the trustees may resolve to either discard or salvage the property.²²⁰

When selling or discarding worn-out or obsolete equipment, ethics are an important consideration. According to O.R.C. § 102.03(D), “[n]o public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.”²²¹ Trustees or township officials, therefore, should be careful to avoid using their office or position to, in any way, improperly influence the sale or disposition of equipment or property. For example, when deciding to sell or dispose of property, a dollar value,

²¹³ OHIO REV. CODE ANN. § 505.04.

²¹⁴ OHIO REV. CODE ANN. § 505.04.

²¹⁵ OHIO REV. CODE ANN. § 505.04.

²¹⁶ Other procedures may take precedence over the procedures in OHIO REV. CODE ANN. § 505.10. *See also* OHIO REV. CODE ANN. §§ 505.08 (contracting for emergency services costing less than \$50,000), 505.101 (describing the purchase or sale with agencies, subdivisions, or regional planning commissions), 505.102 (describing leases to senior citizen organizations).

²¹⁷ OHIO REV. CODE ANN. § 505.10(A).

²¹⁸ OHIO REV. CODE ANN. § 505.10(A)(1).

²¹⁹ OHIO REV. CODE ANN. §§ 505.10(A)(2)(a)-(b).

²²⁰ OHIO REV. CODE ANN. § 505.10(A)(7).

²²¹ OHIO REV. CODE ANN. § 102.03(D).

reasonably supported by current market demands for such property, should be assigned to the piece of property. Additionally, trustees and township officials should remain on one side of the transaction and avoid all appearances of impropriety. These examples are not exhaustive; they are meant to illustrate some situations that raise ethical concerns. Trustees and township officials should be cautious and ever vigilant to avoid placing themselves in situations that raise ethical concerns.

If, after following the auction and notification procedures described in O.R.C. § 505.10, no acceptable bid is received for the property, the board may resolve to enter into a contract to sell the property without bidding or advertising.²²²

Regardless of the property's value, O.R.C. § 505.10(D) allows the board of trustees to sell property via Internet auction.²²³ Certain requirements must be met before an item of property may be sold through an Internet auction.²²⁴

4. Acquisition of Land/Real Property

As with all powers of a township, the authority to acquire and hold land is derived from the Ohio Revised Code, which provides townships with statutory authority to acquire or possess land for specific purposes.²²⁵ As discussed in other sections of this manual, such purposes often include land on which to place a township hall or a cemetery.²²⁶ However, there are various other purposes for which the Ohio Revised Code allows a township to acquire or hold land.

Purposes for which a township may acquire and hold land generally include the following:

- 1) Township hall²²⁷
- 2) Township park²²⁸
- 3) Public library²²⁹
- 4) Bridges²³⁰
- 5) Viaducts²³¹
- 6) Space for township offices²³²
- 7) Site for firefighting purposes²³³
- 8) Site for township police district²³⁴

²²² OHIO REV. CODE ANN. § 505.10(B).

²²³ OHIO REV. CODE ANN. § 505.10(D).

²²⁴ OHIO REV. CODE ANN. § 505.10(D).

²²⁵ OHIO REV. CODE ANN. § 505.26.

²²⁶ See Cemeteries and/or Township Hall *supra* pp. 24-30.

²²⁷ OHIO REV. CODE ANN. § 505.26.

²²⁸ OHIO REV. CODE ANN. § 505.26.

²²⁹ OHIO REV. CODE ANN. § 505.26.

²³⁰ OHIO REV. CODE ANN. § 505.26.

²³¹ OHIO REV. CODE ANN. § 505.26.

²³² OHIO REV. CODE ANN. § 505.26.

²³³ OHIO REV. CODE ANN. § 505.37.

9) Cemetery²³⁵

Additionally, if a board of township trustees seeks land to construct a building, it may, subject to limitation, resolve unanimously to contract for sites to construct a building for any “lawful township purpose.”²³⁶ Moreover, pursuant to O.R.C. § 511.11, “[t]he board of township trustees may acquire by purchase, appropriation, or otherwise, any private or public lands which it might deem necessary for its use.”²³⁷ Property taken pursuant to O.R.C. § 511.11 is taken in the name of the trustees and their successors.²³⁸

It is important to keep in mind that the authority to acquire land granted under O.R.C. § 511.11 is not unlimited. The property acquired pursuant to O.R.C. § 511.11 must be “for [the township’s] use.”²³⁹ As an example, the township may not acquire property for the purpose of promoting current or future industrial use, as land acquired for this purpose would presumably not be for the use of the township.²⁴⁰

A. Park

Pursuant to O.R.C. § 505.261, the trustees “may acquire suitable lands . . . to establish a township park.”²⁴¹ Various financing options are available to township trustees when considering the purchase of a park.²⁴² Additionally, if the trustees purchase a park, they may purchase items to improve the land acquired for the park including landscaping, playground equipment, athletic equipment, and recreational equipment.²⁴³

B. Preserve

As opposed to recreational use, trustees may acquire land, other than by appropriation, to protect and preserve it.²⁴⁴ Specifically, O.R.C. § 505.26 allows a board of township trustees to acquire land “for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use.”²⁴⁵ Once the township acquires land for such a purpose, the township may “restore and maintain” those lands.²⁴⁶

²³⁴ OHIO REV. CODE ANN. § 505.50.

²³⁵ OHIO REV. CODE ANN. § 517.01.

²³⁶ OHIO REV. CODE ANN. § 505.262.

²³⁷ OHIO REV. CODE ANN. § 511.11.

²³⁸ OHIO REV. CODE ANN. § 511.11.

²³⁹ OHIO REV. CODE ANN. § 511.11; 1985 Ohio Op. Att’y Gen. No. 85-024.

²⁴⁰ 1985 Ohio Op. Att’y Gen.No. 85-024.

²⁴¹ OHIO REV. CODE ANN. §§ 505.26-505.261

²⁴² OHIO REV. CODE ANN. § 505.261.

²⁴³ OHIO REV. CODE ANN. § 505.261.

²⁴⁴ OHIO REV. CODE ANN. § 505.26.

²⁴⁵ OHIO REV. CODE ANN. § 505.26.

²⁴⁶ OHIO REV. CODE ANN. § 505.26.

Sale of Land/Real Property

Occasionally, a township may wish to sell real property to which it holds title. If the real property is to be sold to another political subdivision in Ohio, the trustees may, by resolution, authorize the transfer and conveyance of the property “upon such terms as are agreed to between the board and the legislative authority of that political subdivision.”²⁴⁷

If the real property is to be sold to a person or entity other than another political subdivision in Ohio, “the board, upon a unanimous vote of its members and by resolution, may authorize the transfer and conveyance of that real property to any person upon whatever terms are agreed to between the board and that person.”²⁴⁸

When the purchaser is not another political subdivision in Ohio and a unanimous vote of the trustees to sell to another person or entity cannot be achieved, the real property, if, based on a majority vote of the board, is still to be sold, it should be sold at public auction pursuant to the procedure in O.R.C. § 505.10(A)(1). A minimum reserve price should be set in the resolution to sell the real property at public auction. If the real property fails to sell at auction, the trustees, “by resolution, may enter into a contract, without advertising or bidding, for the sale of that property.”²⁴⁹ Such a resolution must contain the “minimum acceptable price [which shall not be lower than the minimum reserve price set for the public auction] and the minimum acceptable terms for the contract.”²⁵⁰

Note that many steps are involved in the sale or purchase of real property. Legal counsel should be consulted throughout the purchase and/or sale process, beginning at the time when the board of trustees is first contemplating the purchase or sale and before the board approves any resolution to purchase or sell real property.

Competitive Bidding

Competitive bidding is the process by which government entities and/or agencies, including townships, purchase goods and services. In terms of government, when it comes to purchasing, it is the general rule rather than the exception. Competitive bidding ensures that all interested sellers have an opportunity of being awarded a government contract and that the purchasing government entity or agency receives the lowest and best price for the product or service.

²⁴⁷ OHIO REV. CODE ANN. § 505.10(A)(5).

²⁴⁸ OHIO REV. CODE ANN. § 505.10(A)(6).

²⁴⁹ OHIO REV. CODE ANN. § 505.10(B).

²⁵⁰ OHIO REV. CODE ANN. § 505.10(B).

General Rule:

If a particular service is not expressly excepted from the competitive bidding requirements of O.R.C. § 307.86, it is subject to competitive bidding if the cost of the service exceeds \$50,000.00.²⁵¹

According to O.R.C. § 307.86, “[a]nything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service...by or on behalf of the...contracting authority [including township trustees]²⁵²...at a cost in excess of fifty thousand dollars...shall be obtained through competitive bidding.”²⁵³ Unless there is a specific statutory exception, this rule must be followed when a township seeks to acquire any property or service at a cost equal to or greater than \$50,000.00.²⁵⁴ Because the exceptions to competitive bidding are limited and the cost of acquiring products or services often exceeds \$50,000.00, the concept of competitive bidding and the procedure to be followed in seeking and awarding competitive bids should become very familiar to township trustees and fiscal officers.

Generally, the Revised Code makes competitive bidding mandatory in the following areas:

- 1) The sale of school lands,
- 2) The sale or trade-in of property and equipment,
- 3) The purchase of either firefighting equipment or buildings at a cost of more than \$50,000.00,²⁵⁵
- 4) The building of memorials, monuments, or statues at a cost of 50,000.00 or more,²⁵⁶
- 5) The lighting of an unincorporated district and the equipment necessary to do so at a cost of \$50,000.00 or more,²⁵⁷
- 6) The purchase of road machinery, materials, and supplies and buildings at a cost of \$50,000.00 or more,²⁵⁸
- 7) Contracts for work on, and materials necessary for, the erection, repair, alteration, or rebuilding of a public building,²⁵⁹

²⁵¹ OHIO REV. CODE ANN. § 307.86(A)(2); *See also* 2001 Op. Att’y Gen. No. 2001-021.

²⁵² *See* OHIO REV. CODE ANN. § 307.92 (defining “contracting authority” for purposes of OHIO REV. CODE ANN. §§ 307.86–307.91 as “...any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof.”) (emphasis added).

²⁵³ OHIO REV. CODE ANN. § 307.86.

²⁵⁴ Note that the original version of the statute required a competitive bidding process for those costs and services exceeding \$15,000.00. Subsequent amendment has raised this amount to \$25,000.00, *See Benefit Services of Ohio, Inc. v. Trumbull City Comm’rs.*, No. 2003-T-0045, 2004 WL 2376479, (Ohio Ct. App. Oct. 22, 2004). The most recent amendment has again raised this amount to \$50,000.00, *See* 2013 Ohio Laws File 25 (Am. Sub. H.B. 59).

²⁵⁵ OHIO REV. CODE ANN. § 505.37(A).

²⁵⁶ OHIO REV. CODE ANN. § 511.12.

²⁵⁷ OHIO REV. CODE ANN. §§ 515.01; 515.07.

²⁵⁸ OHIO REV. CODE ANN. § 5549.21.

²⁵⁹ OHIO REV. CODE ANN. §§ 153.50; 153.52.

- 8) The maintenance and repair of township roads at a cost of \$15,000.00 or more per mile.²⁶⁰

This list is not intended to be exhaustive, but rather to provide some examples of items for which competitive bidding is required. If in doubt whether competitive bidding is required, please contact the Delaware County Prosecuting Attorney's Office.

1. Exceptions

The exceptions to competitive bidding are very limited. Though most exceptions are contained within O.R.C. § 307.86, there are exceptions that exist elsewhere in the Revised Code.

When considering whether a purchase is an exception to competitive bidding, always remember the general rule - if a particular service is not expressly excepted from the competitive bidding requirements of O.R.C. § 307.86, it is subject to competitive bidding if the cost of the service exceeds \$50,000.00.²⁶¹

Acquiring the services of certain professionals may be an exception to competitive bidding.²⁶² Specifically, the services of “an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser” are statutorily listed professional services excepted from the requirement of competitive bidding.²⁶³ However, it is important to understand that when a professional is hired to perform one of these excepted services, he or she must be actually engaged for and perform the exempted service.²⁶⁴ In other words, when a professional engineer is hired, only those services performed by a professional engineer that fall within the practice of engineering (as defined in O.R.C. 4733.01(D)) are excepted from the competitive bidding requirements.²⁶⁵ Again, contracts for the services of an architect, landscape architect, professional engineer, or surveyor are still subject to a separate qualification process.²⁶⁶

Other exceptions to the competitive bidding requirements of O.R.C. § 307.86 are listed in O.R.C. §§ 307.86(A)-(M). Not all of the listed exceptions are applicable to townships. In fact, some exceptions expressly state that they concern agencies or entities not associated with townships. Some of the relevant and more commonly used exceptions are as follows:

- 1) Sole-source or single-source suppliers of supplies or replacement or supplemental parts for products or equipment owned or leased by the township.²⁶⁷

²⁶⁰ OHIO REV. CODE ANN. § 5575.01.

²⁶¹ 2001 Ohio Op. Att’y Gen. No. 2001-021.

²⁶² OHIO REV. CODE ANN. § 307.86.

²⁶³ OHIO REV. CODE ANN. § 307.86.

²⁶⁴ 2001 Ohio Op. Att’y Gen. No. 2001-021.

²⁶⁵ 2001 Ohio Op. Att’y Gen. No. 2001-021.

²⁶⁶ OHIO REV. CODE ANN. §§ 153.65, *et seq.*

²⁶⁷ OHIO REV. CODE ANN. § 307.86(B)(1).

- 2) “[S]ervices [(as opposed to products)] related to information technology, such as programming services, that are proprietary or limited to a single source.”²⁶⁸
- 3) “The purchase is from the federal government, the state, another county or contracting authority of another county, or board of education, township, or municipal corporation.”²⁶⁹
- 4) With certain listed conditions being strictly met,²⁷⁰ the purchase of “...any form of [an] insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751...of the Revised Code, or any combination of such policies, contracts, plans, or services that the contracting authority is authorized to purchase.”²⁷¹

As previously stated, other exceptions to competitive bidding requirements listed in O.R.C. § 307.86 are inapplicable to townships or are very specialized and used rarely.

2. Emergency Purchases

Another important exception to the competitive bidding requirements that is not included in O.R.C. § 307.86 is the exception for emergency purchases.²⁷² Pursuant to O.R.C. § 505.08, the board of trustees, “by a unanimous vote [on] a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township” may resolve to enter into a contract without competitive bidding or advertising for “services, materials, equipment, or supplies needed to meet the emergency” if the estimated cost of such a contract is less than \$50,000.00.²⁷³

3. Procedures

Where no exception applies and competitive bidding is required by O.R.C. § 307.86, O.R.C. § 307.87 *et seq.* prescribes the procedure to be followed in soliciting for bids. Generally, the procedures are as follows:

A. Notice:

➤ Notices for competitive bidding must include:

- 1) A general description of the subject of the proposed contract,

²⁶⁸ OHIO REV. CODE ANN. § 307.86(B)(2).

²⁶⁹ OHIO REV. CODE ANN. § 307.86(C).

²⁷⁰ See OHIO REV. CODE ANN. § 307.86(F)(1)-(3) (mandating that the contracting authority, here the board of trustees, do all of the following: determine that compliance with the requirements of section 307.86 would increase, rather than decrease, the cost of the purchase, request the issuers of the policies, contracts, plans, or services to submit proposals setting forth the coverage and cost of the policies, contracts, plans, or services that the board of trustees desires to purchase, and negotiate with the issuers to receive the best and lowest prices possible).

²⁷¹ OHIO REV. CODE ANN. § 307.86(F).

²⁷² See also Township Property: Equipment and Personal Property *supra* pp. 19-22.

²⁷³ OHIO REV. CODE ANN. § 505.08.

- 2) The time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined,
 - 3) The time and place where bids will be opened,
 - 4) The time and place for filing bids,
 - 5) The terms of the proposed purchase,
 - 6) The conditions under which bids will be received,
 - 7) The existence of a system of performance, if any, for products mined and produced in Ohio and the United States adopted pursuant to section 307.90 of the Ohio Revised Code.²⁷⁴
- Notice must be published once a week for at least two consecutive weeks before the day of the opening of bids in a newspaper of general circulation in the county (i.e., the *Delaware Gazette*). Additional notice may also be placed in trade papers or other designated publications.
- Additionally, notices/advertisements should be posted on a bulletin board in a suitable public place in the township offices for at least two weeks before the day bids are opened.²⁷⁵
- Note that advertisements may be placed on the township's official Internet web site on the World Wide Web. If the township does post the notice/advertisement on its internet web site, it can eliminate the second week of notice to be published in the newspaper, provided that the first notice published in the newspaper meets all of the above listed requirements, plus includes the following additional four requirements:
- 1) It is published at least two weeks before the opening of bids,
 - 2) It includes a statement that the notice/advertisement is posted on the township's official internet web site,
 - 3) It includes the internet web site address for the township's official web page, and
 - 4) It includes instructions describing how the notice/advertisement can be accessed on the township's official Internet web page.²⁷⁶

B. Let:

- A contract that has been competitively bid should be let as follows:
- 1) The lowest and best bidder is awarded the contract,²⁷⁷ or,

²⁷⁴ OHIO REV. CODE ANN. § 307.87.

²⁷⁵ OHIO REV. CODE ANN. § 307.87(C).

²⁷⁶ OHIO REV. CODE ANN. § 307.87(A).

²⁷⁷ OHIO REV. CODE ANN. § 307.90(A).

- 2) Reject all bids and re-advertise using the original or an amended estimate.²⁷⁸

Bids submitted by potential contractors shall be submitted at the time and places advertised, and be in the form prescribed by the trustees.²⁷⁹ All bids shall contain the full name of the person submitting the bid.²⁸⁰ The trustees should open the bids at the time and place advertised.²⁸¹ Bids in excess of \$50,000.00 for the construction, demolition, alteration, repair, or reconstruction of an improvement must file a bid guarantee in accordance with O.R.C. § 153.54.²⁸² Bids for any other contract in excess of \$50,000 must be accompanied by “a bond or certified check, cashier’s check, or money order on a solvent bank or savings and loan association in a reasonable amount stated in the notice but not to exceed five per cent of the bid, conditioned that the bidder, if the bidder’s bid is accepted, shall execute a contract in conformity to the invitation and the bid.”²⁸³

Note that all bids may be rejected.²⁸⁴ The bond or bid guarantee of any unsuccessful bidder shall be returned to the bidder if rejected.²⁸⁵

Upon acceptance of a bid for a contract other than for the construction, demolition, alteration, repair, or reconstruction of an improvement, the township shall require, as a condition of entering into a contract with the successful bidder, “faithful performance of all things to be done under the contract.”²⁸⁶ As an additional requirement to entering a contract, the township may require “the [performance] bond provided for by section 153.57 of the Revised Code, with good and sufficient surety in an amount not to exceed the amount of the bid.”²⁸⁷

²⁷⁸ OHIO REV. CODE ANN. §§ 307.90(A), 307.91.

²⁷⁹ OHIO REV. CODE ANN. § 307.88(A).

²⁸⁰ OHIO REV. CODE ANN. § 307.88(A).

²⁸¹ OHIO REV. CODE ANN. § 307.88(A).

²⁸² OHIO REV. CODE ANN. § 307.88(A). Note that the original version of this statute applied to construction bids in excess of \$10,000.00. Recent amendments have raised this amount to \$50,000.00. *See* 2012 Ohio Laws File 141 (Am. Sub. H.B. 509). *See also* OHIO REV. CODE ANN. § 153.54 (describing bid guaranties, alternative forms, conditions, liabilities, and withdrawal of a bid if bonding capacity would be exceeded).

²⁸³ OHIO REV. CODE ANN. § 307.88(A).

²⁸⁴ OHIO REV. CODE ANN. § 307.90(A).

²⁸⁵ OHIO REV. CODE ANN. § 307.90(A).

²⁸⁶ OHIO REV. CODE ANN. § 307.89.

²⁸⁷ OHIO REV. CODE ANN. § 307.89.

Roads

Townships are responsible for constructing, repairing, and maintaining township roads within their jurisdictional boundaries. Township roads include “all public highways other than state or county roads.”²⁸⁸ It is the duty of the board of township trustees to maintain all township roads within the jurisdictional boundaries of the township.²⁸⁹ The county commissioners, by agreement, may assist the township in this duty.²⁹⁰ Also, as a part of its duties related to road maintenance, the township may clear and remove snow and ice from township roads.²⁹¹

Work on township roads is addressed in O.R.C. § 5575.01. This section divides the issue into two categories: 1) “maintenance and repair” and 2) “construction or reconstruction.”²⁹² Under either category, the township may proceed either by means of a contract or by means of a force account.²⁹³ As discussed later, there are certain requirements that must be met before proceeding by force account for the “construction or reconstruction” of a road.

Generally, proceeding by force account means “[i]nstead of entering into a contract for the performance of the road work, the trustees may themselves employ the [workers], buy the materials, and proceed to do the road work without a contract, if they deem this method is in the best interest of the public.”²⁹⁴ All roadwork done by force account must be completed under the direction of the board of trustees or the road supervisor.²⁹⁵

The competitive bidding process is to be followed in securing contractors and/or materials for the construction, repair, and maintenance of roads. Ohio Revised Code Sections 5575.01-5575.02 prescribe the specific procedures for notification, advertising, and reception of bids for contracts regarding township roadwork.²⁹⁶

According to O.R.C. § 5575.02, the competitive bidding procedure to be followed for contracts involving roadwork is as follows:

A. Advertise:

- Once in a newspaper published in the county and of general circulation in the township,
- Advertisement should appear not less than two weeks prior to the date for letting contracts.

²⁸⁸ OHIO REV. CODE ANN. § 5535.01.

²⁸⁹ OHIO REV. CODE ANN. §§ 5535.01, 5535.08.

²⁹⁰ OHIO REV. CODE ANN. §§ 5535.01, 5535.08.

²⁹¹ OHIO REV. CODE ANN. § 5501.41.

²⁹² OHIO REV. CODE ANN. § 5575.01.

²⁹³ OHIO REV. CODE ANN. § 5575.01.

²⁹⁴ LOCAL GOVERNMENT LAW, *supra* note 1, at § 26:10 (citing OHIO REV. CODE ANN. § 5543.06). *See also* OHIO REV. CODE ANN. § 5575.01(B).

²⁹⁵ LOCAL GOVERNMENT LAW, *supra* note 1, at § 26:10 (citing OHIO REV. CODE ANN. § 5575.01).

²⁹⁶ OHIO REV. CODE ANN. §§ 5575.01-5575.02.

B. Notice:

➤ Notices must include:²⁹⁷

- 1) A general description of the subject of the proposed contract,
- 2) The time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined,
- 3) The time and place where bids will be opened,
- 4) The time and place for filing bids (the time within which bids will be received),
- 5) The terms of the proposed purchase,
- 6) The conditions under which bids will be received.

C. Let:

- The board may let the work as a whole or in convenient sections as it determines,
- Award to lowest and best bidder who meets requirements of O.R.C. § 153.54 (bid guarantee),²⁹⁸
- Bids shall be let on the basis of lump sum bids, unless the board orders it to be let upon the basis of unit price.²⁹⁹

There are two primary exceptions to the competitive bidding requirement based on the amount of the estimated cost of the project. If the estimated amount is below a set threshold amount, then the contract does not have to be competitively bid. The threshold amounts differ depending on whether the project is considered “maintenance and repair” or “construction or reconstruction.”

Concerning the “maintenance and repair” of roads, the township trustees should first have the county engineer estimate the cost of the project and “complete the force account assessment form developed by the auditor of state.”³⁰⁰ If the estimated cost of the project is greater than \$45,000.00, the board should use competitive bidding and the contract should be let to the lowest responsible bidder.³⁰¹ On the other hand, if the estimated cost is less than or equal to \$45,000.00, the contract may be let without competitive bidding or the work may be done on force account.³⁰²

²⁹⁷ OHIO REV. CODE ANN. § 307.87(B).

²⁹⁸ OHIO REV. CODE ANN. § 153.54 (describing bid guaranties, alternative forms, conditions, liabilities, and withdrawal of a bid if bonding capacity would be exceeded).

²⁹⁹ OHIO REV. CODE ANN. § 5575.02.

³⁰⁰ OHIO REV. CODE ANN. § 5575.01(A).

³⁰¹ OHIO REV. CODE ANN. § 5575.01(A).

³⁰² OHIO REV. CODE ANN. § 5575.01(A).

When considering undertaking the “construction or reconstruction” of a road, the trustees shall have the county engineer estimate the cost of the project, including “labor, material, freight, fuel, handling, use of machinery, and equipment, and all other items of cost.”³⁰³ In lieu of proceeding by contract, the board may proceed by force account if the trustees find that to be in the best interest of the public.³⁰⁴ Except as provided by O.R.C. §§ 505.08 and 505.101, where the total estimated cost of the project exceeds \$15,000.00 per mile, the project should be competitively bid.³⁰⁵ Under such circumstances, and before proceeding by force account, the trustees must invite and receive competitive bids and must consider and reject those bids pursuant to competitive bidding procedures.³⁰⁶ Only then can the township proceed by force account.³⁰⁷ Under such circumstances, all work must conform to plans and specifications.³⁰⁸

The final applicable exception to competitive bidding concerning roadwork is where an emergency exists. Pursuant to O.R.C. § 505.08, the trustees, “by a unanimous vote [on] a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township,” may resolve to enter into a contract without either competitive bidding or advertising for “...services, materials, equipment, or supplies needed to meet the emergency” if the estimated cost of such a contract is less than \$50,000.00.³⁰⁹

Zoning

Township zoning is addressed in Chapter 519 of the Ohio Revised Code.

A township, “in the interest of the public health and safety,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location,
- height,
- bulk,
- number of stories, and
- size of buildings and other structures.

Lots or Parcels:

- percentages of lot areas which may be occupied,
- set back building lines,
- sizes of yards, courts, and other open spaces,
- the density of population.

³⁰³ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁴ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁵ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁶ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁷ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁸ OHIO REV. CODE ANN. § 5575.01.

³⁰⁹ OHIO REV. CODE ANN. § 505.08.

Uses:

- the uses of buildings and other structures including tents, cabins, and trailer coaches, and
- the uses of land for trade, industry, residence, recreation, or other purposes.³¹⁰

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Location of set back lines.

Uses:

- Uses of buildings and other structures including tents, cabins, and trailer coaches.
- Uses of land for trade, industry, residence, recreation, or other purposes.

Landscaping and Architectural Standards:

- Reasonable landscaping standards and architectural standards excluding exterior building materials.³¹¹

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution and in accordance with a comprehensive plan, *for non-residential property only*, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Height
- Bulk
- Number of stories
- Size buildings and other structures.

Lots or Parcels:

- Percentages of lot areas that may be occupied
- Sizes of yards, courts, and other open spaces
- Density of population³¹²

Note that the Ohio Revised Code differentiates among the various interests of the public in allowing for the regulation of residential and non-residential property through zoning. The interests listed above must correlate with the type of property sought to be regulated by zoning.

For purpose of regulating the above listed criteria, the trustees “may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines.”³¹³

³¹⁰ OHIO REV. CODE ANN. § 519.02(A).

³¹¹ OHIO REV. CODE ANN. § 519.02(A).

³¹² OHIO REV. CODE ANN. § 519.02(A).

³¹³ OHIO REV. CODE ANN. § 519.02(A).

However, zoning districts “[must] be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.”³¹⁴ This means that regulations adopted by the trustees and applicable to a specific zoning category (FR-1) must be applied equally to all land in the township that is classified or designated under that particular zoning category. Yet, nothing prohibits the board of trustees from creating additional zoning categories if the board of trustees determines there is a need.

In order to proceed with and act under the zoning powers granted to townships pursuant to O.R.C. §§ 519.02-519.25, the board must pass a resolution expressing an intent to adopt zoning.³¹⁵ This resolution may be brought and adopted either upon the board of trustee’s own volition or by petition.³¹⁶ The petition must be signed by at least eight percent of the voting populace of the unincorporated territory of the township who cast a vote for any candidate in the last gubernatorial election.³¹⁷ The board of trustees must adopt any such petitions.³¹⁸

1. Zoning Resolutions

Zoning resolutions are the embodiment of township zoning. They are created pursuant to authority granted under O.R.C. § 519.02 and act as a comprehensive guide to zoning regulations within the township. Typically, zoning resolutions are divided into various articles, each of which address regulations concerning, but not limited to, individual zoning categories (FR-1), zoned items (signs), standards (general development standards), or enforcement of the zoning resolution.

Generally, the board of zoning commission acts to create and draft zoning resolutions. However, the board of trustees has the ultimate authority to approve and adopt the resolution.³¹⁹ If adopted by the board, “the question of whether or not the proposed plan of zoning shall be put into effect [must be] submitted to the [voters] residing in the unincorporated area of the township included in the proposed plan of zoning...at the next primary or general election, or a special election...called for [that] purpose.”³²⁰ If the majority of voters favor zoning, the resolution shall be put into effect.³²¹

The township zoning commission, the board of trustees (by passage of a resolution), or a property owner (by application) may initiate amendments to the zoning resolution.³²² The procedure for approving amendments is addressed in O.R.C. § 519.12. As the process for

³¹⁴ OHIO REV. CODE ANN. § 519.02(A).

³¹⁵ OHIO REV. CODE ANN. § 519.03.

³¹⁶ OHIO REV. CODE ANN. § 519.03.

³¹⁷ OHIO REV. CODE ANN. § 519.03.

³¹⁸ OHIO REV. CODE ANN. § 519.03.

³¹⁹ See e.g., OHIO REV. CODE ANN. §§ 519.02, 519.05.

³²⁰ OHIO REV. CODE ANN. § 519.11.

³²¹ OHIO REV. CODE ANN. § 519.11.

³²² OHIO REV. CODE ANN. § 519.12(A)(1).

amending a zoning resolution involves many steps, it is addressed later in this manual in the Board of Zoning Commission section.

2. Board of Zoning Commission (BZC), Board of Zoning Appeals (BZA), and Township Zoning Inspector.

To aid in the development and enforcement of township zoning, the board of trustees must hire employees, individuals, and appoint boards to assist them in this task. These boards and employees generally consist of a township zoning inspector,³²³ a board of zoning commission (BZC),³²⁴ and a board of zoning appeals (BZA).³²⁵

When a township board of trustees seeks to proceed with zoning pursuant to Chapter 519 of the Ohio Revised Code, it must create and establish a township zoning commission, often referred to as the board of zoning commission or “BZC.”³²⁶ A BZC must consist of five members all residents of the unincorporated territory of the township, who serve terms “of such length and so arranged that the term of one member will expire each year.”³²⁷ Each BZC member serves until his successor is appointed and qualified.³²⁸

BZC members may be expelled from the board for nonperformance of duty, misconduct in office, or for other cause by the board of trustees.³²⁹ Under such circumstances, written charges must be filed with the board of trustees and served on the BZC member in accordance with O.R.C. § 519.04.³³⁰ The BZC member must be given a public hearing on the charges.³³¹ To fill a vacancy on the BZC, the trustees must appoint a new BZC member to fill the unexpired term of the BZC member being replaced.³³²

The powers and duties of the BZC generally consist of, among other things, the development of the initial zoning resolution and maps, recommendations of changes to the zoning resolution and maps, and recommendations concerning changes in existing zoning designations.³³³ Because these duties and powers are extensive and detailed, they will be more fully addressed in a later section of this manual.³³⁴ (See the section entitled “Board of Zoning Commission”). Also, the role of the township board of trustees in the zoning process is better addressed in conjunction with the BZC and will be addressed in this later section as well. (See the section entitled “Board of Zoning Commission”).

³²³ See OHIO REV. CODE ANN. §§ 519.16-519.171.

³²⁴ See OHIO REV. CODE ANN. §§ 519.04-519.122.

³²⁵ See OHIO REV. CODE ANN. §§ 519.13-519.15.

³²⁶ OHIO REV. CODE ANN. § 519.04.

³²⁷ OHIO REV. CODE ANN. § 519.04.

³²⁸ OHIO REV. CODE ANN. § 519.04.

³²⁹ OHIO REV. CODE ANN. § 519.04.

³³⁰ OHIO REV. CODE ANN. § 519.04.

³³¹ OHIO REV. CODE ANN. § 519.04.

³³² OHIO REV. CODE ANN. § 519.04.

³³³ See OHIO REV. CODE ANN. §§ 519.04-519.122.

³³⁴ See Board of Zoning Commission *infra* pp. 69-81.

Aside from the BZC, the board of township trustees of “any township which adopts zoning regulations . . . shall appoint a township board of zoning appeals,” or “BZA.”³³⁵ Like the BZC, the BZA consists of five members, all of which must live in the unincorporated territory of the township.³³⁶ Each of the members serve terms “of such length and so arranged that the term of one member will expire each year” and serve until their successor is appointed and qualified.³³⁷ BZA members are generally removable for similar reasons and in a manner similar to that of members of the BZC.³³⁸

Generally, the powers and duties of the BZA consist of hearing and deciding appeals. Appeals heard by the BZA include those “where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto...,”³³⁹ the granting of a variance,³⁴⁰ the granting of a conditional use,³⁴¹ and to revoke an authorized variance or conditional use.³⁴² Again, as these powers and duties are extensive, they are addressed in a later section of this manual.³⁴³ (See the section entitled “Board of Zoning Appeals”).

In addition to the BZC and BZA, the board of township trustees may hire, as an unclassified, at-will employee, a township zoning inspector.³⁴⁴ It is the duty of the zoning inspector to issue zoning permits and to enforce the zoning resolution.³⁴⁵ Despite these powers of enforcement, the zoning inspector is not a law enforcement officer and “may not enter and inspect private property without consent unless there is an emergency, the property is open to the public, or the activity conducted on the property has a history of government oversight so that no expectation of privacy exists.”³⁴⁶ Because the powers and duties of the township zoning inspector are extensive, they are more fully addressed in a later section of this manual.³⁴⁷ (See the section entitled “Zoning Inspector”). The authority that township trustees can exercise over township employees, such as the township zoning inspector, also is addressed in a latter section of this manual.³⁴⁸

³³⁵ OHIO REV. CODE ANN. § 519.13.

³³⁶ OHIO REV. CODE ANN. § 519.13.

³³⁷ OHIO REV. CODE ANN. § 519.13.

³³⁸ OHIO REV. CODE ANN. § 519.13. *See also* OHIO REV. CODE ANN. § 519.04.

³³⁹ OHIO REV. CODE ANN. § 519.14(A).

³⁴⁰ OHIO REV. CODE ANN. § 519.14(B).

³⁴¹ OHIO REV. CODE ANN. § 519.14(C).

³⁴² OHIO REV. CODE ANN. § 519.14(D).

³⁴³ *See* Board of Zoning Appeals *infra* pp. 82-88.

³⁴⁴ OHIO REV. CODE ANN. § 519.16; *Merritt v. Canton Township Bd. of Trs.*, 125 Ohio App.3d 533, 708 N.E.2d 1082 (Ohio Ct. App. 1998). *See also* *Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (Ohio Ct. App. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (Ohio Ct. App. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (Ohio Ct. App. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority”).

³⁴⁵ OHIO REV. CODE ANN. §§ 519.16-519.17.

³⁴⁶ BALDWIN’S OHIO PLANNING & ZONING LAW, § 8:47 (2013 ed.) [hereinafter PLANNING & ZONING LAW]. *See also* 1998 Ohio Op. Att’y Gen. No. 98-018.

³⁴⁷ *See* Zoning Inspector *infra* pp. 63-68.

³⁴⁸ *See* Township Employees *infra* p. 49.

Township Employees

A township board of trustees may hire employees to perform tasks and assist in the efficient operation of the township. Such employees may include road supervisors, secretaries, laborers, township zoning inspectors,³⁴⁹ and, with certain exceptions (i.e., unionized or civil service), firefighters.³⁵⁰ Typically, these are unclassified, at-will employees that, generally, may be hired or fired at the discretion of the board of trustees.³⁵¹ Also, police officers may be township employees and are employed and removed pursuant to O.R.C. § 509.01 and §§ 505.49-505.495.³⁵² Fire chiefs and chiefs of police are employed by the board of trustees pursuant to O.R.C. § 505.38 and O.R.C. § 505.49, respectively.

According to O.R.C. § 511.10, “[t]he board of township trustees may appoint . . . employees as are necessary and fix their compensation.”³⁵³ The board of trustees is not limited in terms of fixing the compensation of its employees and may fix the compensation of its employees as it sees fit, within reason.

Just as the board of trustees may hire an employee, they may also fire any appointed at-will employee. A single trustee, acting unilaterally, may not fire a township employee. A majority vote of the board of trustees is required to remove an employee.³⁵⁴

³⁴⁹ *Merritt v. Canton Township Bd. of Trs.*, 125 Ohio App.3d 533, 708 N.E.2d 1082 (Ohio Ct. App. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio Ct. App.3d 72, 81, 587 N.E.2d 425, 430-431 (Ohio Ct. App. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (Ohio Ct. App. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (Ohio Ct. App. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority”).

³⁵⁰ *See* OHIO REV. CODE ANN. § 505.38. *See also* OHIO REV. CODE ANN. § 124.11(B) (specifying that where a civil service township has been adopted by the board of trustees, a firefighter, when certain conditions are met, is a classified, or civil service, employee).

³⁵¹ *See* OHIO REV. CODE ANN. § 124.11(A)-(B); *Merritt v. Canton Township Bd. of Trs.*, 125 Ohio App.3d 533, 708 N.E.2d 1082 (Ohio Ct. App. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (Ohio Ct. App. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (Ohio Ct. App. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (Ohio Ct. App. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority”).

³⁵² OHIO REV. CODE ANN. § 124.11(B).

³⁵³ OHIO REV. CODE ANN. § 511.10. *See also* OHIO REV. CODE ANN. §§ 505.38 (granting authority to employ firefighters), 509.01, 505.49-505.495 (granting authority to employ police).

³⁵⁴ *Merritt v. Canton Township Bd. of Trs.*, 125 Ohio App.3d 533, 708 N.E.2d 1082 (Ohio Ct. App. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (Ohio Ct. App. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (Ohio Ct. App. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (Ohio Ct. App. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority”).

Note that different hiring and firing procedures may apply to unionized and civil service employees. Please contact the prosecutor's office with specific questions concerning the employment or removal of unionized and civil service employees.

Employee Health Insurance Coverage

Townships may provide health insurance coverage for their employees and officers, subject to some restrictions. O.R.C. § 505.60(A) allows:

“...the board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accidental insurance, or a combination of any of the foregoing types of insurance for township officers and employees.”³⁵⁵

The Ohio Attorney General has noted this subsection and recognized the ability of townships to provide such insurance benefits.³⁵⁶

Pursuant to O.R.C. § 505.60(E), the board of trustees may provide health insurance benefits “through an individual self-insurance program or a joint self-insurance program as provided in section 9.833 of the Revised Code.”³⁵⁷ O.R.C. § 9.833 states how political subdivisions, including townships, establish individual or joint self-insurance programs. Specifically, O.R.C. §§ 9.833(B)(1)-(5), states how a political subdivision may establish and maintain such insurance programs and how joint agreements between political subdivisions can be made to procure, establish, and maintain health insurance benefits. Ohio Revised Code Section 9.833(C), depending on the type of insurance program selected, provides requirements for the township for managing a health insurance program. Note that O.R.C. § 9.833(E) excludes townships from some of the requirements listed in O.R.C. § 9.833 if an individual self-insurance program is selected, and created solely by municipal corporations as defined in § 5705.01 of the Revised Code.

Competitive bidding is not required to purchase health insurance benefits from a private company for township officers and employees.³⁵⁸ However, the company providing the insurance must be licensed to do business in Ohio.³⁵⁹

³⁵⁵ OHIO REV. CODE ANN. § 505.60(A).

³⁵⁶ 2003 Ohio Op. Att’y Gen. No. 2003-026; 1992 Ohio Op. Att’y Gen. No. 92-069; 1990 Ohio Op. Att’y Gen. No. 90-064; 1998 Ohio Op. Att’y Gen. No. 98-019; 1984 Ohio Op. Att’y Gen. No. 84-086.

³⁵⁷ OHIO REV. CODE ANN. § 505.60(E).

³⁵⁸ OHIO REV. CODE ANN. § 505.60(E).

³⁵⁹ OHIO REV. CODE ANN. § 505.60(A).

If the township procures health insurance benefits for its employees, the policies must provide “uniform coverage” for all township officers and full-time employees and their immediate dependents.³⁶⁰ In other words, if insurance is procured, it must offer “the same benefits to its officers and full-time employees and their immediate dependents.”³⁶¹ Additionally, the township “may provide coverage” for part-time township employees and their immediate dependents.³⁶² If the benefits are offered to part-time employees, they too must be offered the same coverage.³⁶³ According to the Ohio Attorney General, “in providing hospital and medical insurance under O.R.C. § 505.60, a board of township trustees may not distinguish between part-time and full-time employees.”³⁶⁴ Although coverage must be the same for all officers and employees, “there is no requirement that the premium charged or amount paid must be the same for each township trustee.”³⁶⁵

In addition, O.R.C. § 3901.56 permits health and life insurers, including public employee benefit plans, to offer a “wellness or health improvement program that provides rewards or incentives” in order to encourage or reward participation.³⁶⁶ Rewards and incentives may include, but are not limited to: “merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program.”³⁶⁷

Where health insurance benefits are provided, “[a]ny township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees.”³⁶⁸ When an employee declines to accept coverage or is denied coverage under a health care plan procured under O.R.C. § 505.60(B), the township “may reimburse the officer or employee for each out-of-pocket premium that the officer or employee incurs for insurance policies described in [O.R.C. § 505.60(A)]...that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under policies it procures under [O.R.C. § 505.60(B)].”³⁶⁹ This means that the township officer or employee may receive reimbursement of the “out-of-pocket” premium of health insurance otherwise obtained. It does not allow for compensation in the amount the township pays for insurance coverage to be added to an employee’s salary. Proof that the employee has actually obtained other insurance and proof that the employee paid the premium may be required before reimbursement. See O.R.C. § 505.60(C) for more explanation and limits on the amount of reimbursement allowed.

³⁶⁰ OHIO REV. CODE ANN. § 505.60; 1998 Op. Att’y Gen. No. 98-019.

³⁶¹ 1998 Ohio Op. Att’y Gen. No. 98-019.

³⁶² 1998 Ohio Op. Att’y Gen. No. 98-019.

³⁶³ 1984 Ohio Op. Att’y Gen. No. 84-086.

³⁶⁴ 1984 Ohio Op. Ohio Att’y Gen. No. 84-086.

³⁶⁵ 1992 Ohio Op. Att’y Gen. No. 92-068.

³⁶⁶ OHIO REV. CODE ANN. § 3901.56.

³⁶⁷ OHIO REV. CODE ANN. § 3901.56.

³⁶⁸ OHIO REV. CODE ANN. § 505.60(C).

³⁶⁹ OHIO REV. CODE ANN. § 505.60(D).

In order for a trustee to receive health or hospitalization insurance, the purchase of the insurance must have been authorized prior to the trustee's existing term in office.³⁷⁰ The reason for this is because the Ohio Constitution, Article II, Section 20 states that the salary or compensation of an officer is fixed and cannot be changed during the officer's existing term.³⁷¹ A trustee is considered an officer.³⁷² The provision of health insurance is a fringe benefit to employment and, therefore, constitutes part of the trustee's compensation.³⁷³ Thus, "the township is not permitted, during an existing term of a township trustee, to authorize the purchase of health or hospitalization insurance for the trustee during that term."³⁷⁴ Accordingly, "the purchase of health or hospitalization insurance must be authorized by resolution before a particular term begins."³⁷⁵

For further discussion, see "Township Employee Health Benefits" under the Common Issues section of this manual.

³⁷⁰ 1992 Ohio Op. Att'y Gen. No. 92-068.

³⁷¹ 1992 Ohio Op. Att'y Gen. No. 92-068.

³⁷² 1992 Ohio Op. Att'y Gen. No. 92-068, citing 1981 Ohio Op. Att'y Gen. No. 81-099.

³⁷³ 1992 Ohio Op. Att'y Gen. No. 92-068, citing *State ex rel. Artmayer v. Bd. of Trustees*, 43 Ohio St.2d 62 (1975).

³⁷⁴ 1992 Ohio Op. Att'y Gen. No. 92-068.

³⁷⁵ 1992 Ohio Op. Att'y Gen. No. 92-068.



General Overview

The township fiscal officer generally functions as the township fiscal manager and record keeper.³⁷⁶ In this capacity, the township fiscal officer, among other responsibilities, generally has the following primary responsibilities:

- Keeping the minutes of township trustees meetings,
- Keeping and maintaining the township financial records,
- Keeping and maintaining all other official township records,
- Keeping the records of any and all township cemeteries,
- Administration of oaths,
- Official communications between the township and the board of elections.

In addition to the above listed general responsibilities, the township fiscal officer may have additional responsibilities.

Qualifications

In order to hold the office of township fiscal officer, a person must first have and maintain the following qualifications:

- The person must be an elector; and,
- The person must be a resident of the township.³⁷⁷

Before taking any action as the township fiscal officer, a township fiscal officer must do the following:

- Take the oath of office; and,
- Give bond.³⁷⁸

It is important to note that despite having the above qualifications, a person may be disqualified from holding the office of township fiscal officer as a result of holding an office or position that is incompatible with simultaneously holding the position of township fiscal officer.³⁷⁹

Term of Office

A township fiscal officer is elected every four (4) years at the general election for a four (4) year term of office.³⁸⁰ The general election is “the election held on the first Tuesday after the first Monday in each November.”³⁸¹ Given the four (4) year term of office, beginning with the general election held in November 2007, an election for township fiscal officer will occur in

³⁷⁶ OHIO REV. CODE ANN. § 507.01, *et seq.*

³⁷⁷ LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:1.

³⁷⁸ LOCAL GOVERNMENT LAW, *supra* note 1, at §§ 8.1 and 8.5.

³⁷⁹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:1.

³⁸⁰ OHIO REV. CODE ANN. § 507.01.

³⁸¹ OHIO REV. CODE ANN. § 3501.01(A).

every other odd numbered year.³⁸² Following election, the term of the office for the township fiscal officer begins “on the first day of April . . . after election.”³⁸³

Compensation

The compensation of the township fiscal officer is set annually by resolution of the board of township trustees.³⁸⁴ The amount of compensation as set by such resolution shall be consistent with the amounts set in the schedule set forth in O.R.C. § 507.09(A)(1) through (9).³⁸⁵ Such schedule sets the amount of the township fiscal officer’s compensation based upon the size of the township’s budget.³⁸⁶

The township fiscal officer may elect to take less than the amount of the statutorily set compensation by notifying the board of township trustees in writing.³⁸⁷ The board of trustees shall include this notice in the minutes of its next board meeting.³⁸⁸

In accordance with O.R.C. § 507.09(C), the township fiscal officer’s compensation is to be paid in equal monthly installments.³⁸⁹ The township fiscal officer may be paid from the township’s general fund as well as from other funds, depending upon “the proportion of time the township fiscal officer spends providing services related to each fund.”³⁹⁰ O.R.C. 507.09(C) requires that the fiscal officer document the amount of time he or she spends “providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from the township general fund or from other township funds in such proportions as the kinds of services performed.”³⁹¹

The compensation of the township fiscal officer shall increase annually in accordance with O.R.C. § 507.09(D).³⁹² Such increases shall be provided for and included in a resolution of the board of trustees.

Bond

When the township fiscal officer takes office, he or she must give bond payable to the board of township trustees with sureties approved by the board.³⁹³ The amount of the bond is determined by the board of trustees, but shall not be less than the amounts provided in the

³⁸² OHIO REV. CODE ANN. § 507.01.

³⁸³ OHIO REV. CODE ANN. § 507.01.

³⁸⁴ OHIO REV. CODE ANN. § 507.09.

³⁸⁵ OHIO REV. CODE ANN. § 507.09(A)(1)-(9).

³⁸⁶ OHIO REV. CODE ANN. § 507.09(A)(1)-(9).

³⁸⁷ OHIO REV. CODE ANN. § 507.09(B).

³⁸⁸ OHIO REV. CODE ANN. § 507.09(B).

³⁸⁹ OHIO REV. CODE ANN. § 507.09(C).

³⁹⁰ OHIO REV. CODE ANN. § 507.09(C).

³⁹¹ OHIO REV. CODE ANN. § 507.09(C).

³⁹² OHIO REV. CODE ANN. § 507.09(D).

³⁹³ OHIO REV. CODE ANN. § 507.03.

schedule in O.R.C. §§ 507.03(A)-(J).³⁹⁴ The bond amounts included in the schedule are based upon the overall township budget.³⁹⁵

The bond is given by the township fiscal officer for the purpose of ensuring the faithful performance of his or her duties.³⁹⁶ Thus the bond shall be conditioned on “the faithful performance of the duties of the office of township fiscal officer.”³⁹⁷

The township fiscal officer may obtain this bond from licensed sureties approved by the board of trustees.³⁹⁸ If the bond is purchased from an authorized company, the bond may be purchased with township funds.³⁹⁹

Once the bond is purchased and given, it shall be recorded by the township fiscal officer and filed with the Delaware County Treasurer and carefully preserved.⁴⁰⁰

Hours

The township fiscal officer is able to set his or her own hours.⁴⁰¹ The board of township trustees may not require the fiscal officer to hold specific hours.⁴⁰² However, the township fiscal officer is required by statute to “personally attend at least one meeting of the board [of trustees] during each quarter of every year, unless prevented by the occurrence of an emergency from attending.”⁴⁰³

Fiscal Officer’s Relationship to the Trustees

The township fiscal officer is elected by the people of the township and is “...like the trustees, responsible only to the people.”⁴⁰⁴ It has been noted that the township fiscal officer is an officer *to the board of trustees*.⁴⁰⁵ Thus, a trustee lacks authority to direct the actions of the fiscal officer, who is considered to be a co-equal elected official responsible to the people.

General Duties

The powers and duties of a township fiscal officer are limited. Specifically, a township fiscal officer is empowered only with that authority as provided by law, or necessarily implied therefrom. In other words, a statute (Ohio Revised Code) or the law must affirmatively impose a duty or permit an action before a township fiscal officer may engage in such duty or action.

³⁹⁴ OHIO REV. CODE ANN. § 507.03.

³⁹⁵ OHIO REV. CODE ANN. § 507.03(A)-(J).

³⁹⁶ OHIO REV. CODE ANN. § 507.03.

³⁹⁷ OHIO REV. CODE ANN. § 507.03.

³⁹⁸ OHIO REV. CODE ANN. § 507.03.

³⁹⁹ OHIO REV. CODE ANN. §§ 3.06, 3929.17.

⁴⁰⁰ OHIO REV. CODE ANN. § 507.03.

⁴⁰¹ 1986 Ohio Op. Att’y Gen. No. 86-057.

⁴⁰² 1986 Ohio Op. Att’y Gen. No. 86-057.

⁴⁰³ OHIO REV. CODE ANN. § 507.04(A).

⁴⁰⁴ 1960 Ohio Op. Att’y Gen. No. 1151.

⁴⁰⁵ See *State ex rel. Olsborn v. Mitchell*, 22 Ohio C.C. 208, 210 (1901) (emphasis added).

The township fiscal officer's main duties include keeping "an accurate record of the proceedings of the board of township trustees at all of its meetings, and of all its accounts and transactions, including the acceptance of the bonds of township officers."⁴⁰⁶ Included within these duties is the keeping of accurate township records, minutes of trustees meetings, and township financial records.⁴⁰⁷

In addition, the township fiscal officer is required to keep communication with the board of elections. The fiscal officer is required to notify the board of elections when there is a vacancy in an elected township office.⁴⁰⁸ This notice needs to be given in writing, no later than ten (10) days after the vacancy occurs.⁴⁰⁹ The fiscal officer should also notify the Ohio Secretary of State of the vacancy within the same window of time.

Also, the township fiscal officer is required to notify the board of elections of any changes in boundaries of the township (i.e., if part of the township land is annexed into a village or city). This must be done in writing within ten (10) days after the effective date of the change in boundaries and the notification must contain a plat showing the boundary changes.⁴¹⁰

Aside from the above specified duties, the township fiscal officer also has other varied and numerous ministerial duties. Such duties may include, but are not limited to, keeping cemetery records, writing checks, ordering supplies, and the like.

Fiscal Responsibilities

The fiscal officer is responsible for and must maintain the accounts and financial records of the township.⁴¹¹ Accordingly, no money belonging to the township may be paid-out, except pursuant to an order signed by at least two (2) township trustees and countersigned by the township fiscal officer.⁴¹²

Given the vast number of relatively small expenditures made by a township, the board of trustees, by resolution, may authorize township officers and employees to incur obligations of \$2,500.00 or less on behalf of the township.⁴¹³ Alternatively, the board of trustees, by resolution, may authorize the township administrator, if such a position exists, to authorize township officers and employees to incur obligations of \$2,500.00 or less on behalf of the township.⁴¹⁴ Any and all such transactions incurred on behalf of the township by a township officer or employee pursuant to any such resolution must subsequently be approved by the adoption of a formal resolution of the board of trustees.⁴¹⁵

⁴⁰⁶ OHIO REV. CODE ANN. § 507.04(A).

⁴⁰⁷ OHIO REV. CODE ANN. § 507.04(A).

⁴⁰⁸ OHIO REV. CODE ANN. § 507.051.

⁴⁰⁹ OHIO REV. CODE ANN. § 507.051.

⁴¹⁰ OHIO REV. CODE ANN. § 507.051.

⁴¹¹ OHIO REV. CODE ANN. § 507.04.

⁴¹² OHIO REV. CODE ANN. § 507.11.

⁴¹³ OHIO REV. CODE ANN. § 507.11.

⁴¹⁴ OHIO REV. CODE ANN. § 507.11.

⁴¹⁵ OHIO REV. CODE ANN. § 507.11.

Contractual Requirements

1. Certificate of Availability of Funds

Whenever the township makes a contract to expend money, the township fiscal officer must attach a certificate stating that money is available for such a purpose.⁴¹⁶ Specifically, the certificate shall be attached to the contract and state that:

the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.⁴¹⁷

If a contract is made without this certificate from the fiscal officer, the contract will be declared void, and no warrant shall be issued in payment of any amount due thereon.⁴¹⁸ Remedies may be available to correct situations where a contract is inadvertently entered without such a certificate being attached.⁴¹⁹

2. Findings for Recovery (Certificates)

Pursuant to O.R.C. § 9.24, townships are required to perform what are called “findings for recovery” check/verifications before awarding certain contracts paid for in whole or in part with state funds. A “finding for recovery” is defined as:

a determination issued by the auditor of state . . . that public money has been illegally expended, public money has been collected but not been accounted for, public money is due but has not been collected, or public money has been converted or misappropriated.⁴²⁰

The types of contracts, as listed in O.R.C. § 9.24(G)(1), to which this verification/check applies are those for goods, services, or construction that meet the following criteria:⁴²¹

- A. The cost for the goods, services, or construction provided under the contract is estimated to exceed \$25,000.00; or,
- B. The aggregate cost for the goods, services, or construction provided under multiple contracts entered into by the . . . political subdivision and a single person within the fiscal year preceding the fiscal year within which a contract

⁴¹⁶ OHIO REV. CODE ANN. § 5705.41(D); 20 O. JUR. 3D § 406; LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:15.

⁴¹⁷ OHIO REV. CODE ANN. § 5705.41(D); 20 O. JUR. 3D § 406.

⁴¹⁸ OHIO REV. CODE ANN. § 5705.41(D); 20 O. JUR. 3D § 406; LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:15.

⁴¹⁹ See OHIO REV. CODE ANN. § 5705.41(D)(1); See also 21 O. JUR. 3D § 786.

⁴²⁰ OHIO REV. CODE ANN. § 9.24(H)(3).

⁴²¹ OHIO REV. CODE ANN. § 9.24(G)(1).

- is being entered into by that same . . . political subdivision and the same single person, exceeded \$50,000.00; or,
- C. The contract is a renewal of a contract previously entered into and renewed pursuant to that preceding contract.⁴²²

Subsection C above only applies provided that the contract meets either subsection A or B above.⁴²³

According to R.C. § 9.24(A):

no political subdivision shall award a contract described in division (G)(1) of . . . [O.R.C. § 9.24 (see above)] for goods, services, or construction, paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the auditor of state on or after January 1, 2001, if the finding for recovery is unresolved.⁴²⁴

Moreover, according to R.C. § 9.24(E):

Before awarding a contract described in division (G)(1) of . . . [O.R.C. § 9.24(see above)] for goods, services, or construction, paid for in whole or in part with state funds, a . . . political subdivision shall verify that the person to whom the . . . political subdivision plans to award the contract has no unresolved finding for recovery issued against the person. A . . . political subdivision shall verify that the person does not appear in the database described in division (D) . . . [O.R.C. § 9.24] or shall obtain other proof that the person has no unresolved finding for recovery issued against the person.⁴²⁵

Thus, in preparation for entering a contract for which a check for a “finding for recovery” check/verification is required, a “finding for recovery” check must be performed. The township fiscal officer will likely be the person responsible for performing the task of verifying that there is no unresolved finding for recovery against the person with whom the township proposes to contact. The apparent purpose of creating and requiring that the database be checked before awarding a contract is to avoid awarding new contracts to those who have unresolved obligations involving state money or property and in doing so encourage complete fulfillment of those prior unfulfilled obligations to the state.

The database described in O.R.C. § 9.24(D) is the “Findings for Recovery” Database, which can be found on the auditor of state’s web page at:

<http://www.auditor.state.oh.us/>

⁴²² OHIO REV. CODE ANN. § 9.24(G).

⁴²³ OHIO REV. CODE ANN. § 9.24(G)(1)(C).

⁴²⁴ OHIO REV. CODE ANN. § 9.24(A)

⁴²⁵ OHIO REV. CODE ANN. § 9.24(E)

Failure of a township to actually check the “Findings for Recovery” Database before awarding a contract or the award of a contract to a person who has an unresolved “finding for recovery” in the “Findings for Recovery” Database could result in the contract being void. It is, therefore, very important to check all contracts meeting the above listed criteria (see O.R.C. § 9.24(G)(1)) involving state funds against the “Findings for Recovery” Database. A verification form that indicates a check has been performed can be printed from the “Findings for Recovery” Database after an actual check/verification has been performed. This form should be printed and kept with the contract.

3. Campaign Finance Certification (O.R.C. § 3517.13)

In accordance with Ohio Revised Code Sections 3517.13, most purchase contracts must be accompanied by a certification from the contractor concerning political campaign contributions.⁴²⁶ Specifically, Ohio Revised Code Sections 3517.13 (I)(3) and (J)(3), provide that no political subdivision, including townships, shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars (\$10,000.00) in a calendar year or services with a cost aggregating more than ten thousand dollars (\$10,000.00) in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Ohio Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the above listed individuals or entities (those named in Revised Code Sections 3517.13(I)(1) and (J)(1)) are in compliance with Ohio Revised Code Sections 3517.13 (I)(3) and (J)(3) concerning political campaign contributions.⁴²⁷ Such certification is made by the contractor completing the “Certification/Affidavit in Compliance With O.R.C. Section 3517.13.” (See “Certification/Affidavit in Compliance With O.R.C. Section 3517.13” form in the Sample Forms Section.) Failure to of the contractor to complete and submit the certification will prohibit the township from entering, proceeding, and/or performing the contract.

4. OPERS Independent Contractor Acknowledgement Form

The law now requires that a contractor classified as an independent contractor acknowledge the contractor's status as an independent contractor and the fact that no contributions will be made to the Ohio Public Employees Retirement System (“OPERS”). This acknowledgement is made by completion of the OPERS Independent Contractor Acknowledgement form (“OPERS Form”). (See “OPERS Independent Contractor Acknowledgement” form in the Sample Forms Section.) The OPERS Form only needs to be completed if the contractor is an individual or has less than five (5) employees. The original completed OPERS Form(s) should be attached to the back of the Contract. A copy(ies) of the completed OPERS Form should be sent to OPERS.

⁴²⁶ OHIO REV. CODE ANN. § 3517.13 (I)(3) and (J)(3)

⁴²⁷ OHIO REV. CODE ANN. § 3517.13 (I)(3) and (J)(3)

Records to be Maintained

The township fiscal officer is responsible for accurately recording the minutes of all meetings held by the board of township trustees. In addition to the meeting minutes, the township fiscal officer is responsible for keeping three (3) books. These books are as follows:

- a book for the record of township roads;
- a book for the record of marks and brands; and,
- a book for the record of official oaths and bonds of township officers.⁴²⁸

The township shall provide the fiscal officer with these books.⁴²⁹ In addition to keeping minutes and the above referenced books, the township fiscal officer is responsible for keeping an exact record of all township accounts and transactions.

Oath

It is the township fiscal officer who often administers the oath to township officers. Additionally, the township fiscal officer certifies affidavits that pertain to the business of the township or the board of education of the local school district.⁴³⁰ Although the township fiscal officer generally administers the oath of office to all of the other township officials, the township fiscal officer is unable to administer the oath to him or herself. Therefore, the oath must be administered to the fiscal officer by some other authorized person. This person may be one of the township trustees, a notary public, or a judge or elected official.⁴³¹ The certificate of this oath must be filed and recorded.⁴³²

Deputy Fiscal Officer

When a township fiscal officer is unable to carry out the duties of the office of township fiscal officer due to illness, entering the military service of the United States, or because the fiscal officer is otherwise incapacitated or disqualified, the board of township trustees shall appoint a deputy fiscal officer.⁴³³ Once appointed, a deputy fiscal officer has the full power to discharge the duties of the office of township fiscal officer.⁴³⁴ In accordance with O.R.C. § 507.02, a deputy fiscal officer shall serve during the actual fiscal officer's absence until his or her return or a successor fiscal officer is elected and qualified.⁴³⁵

Like the actual fiscal officer, before entering on the discharge of official duties, the deputy fiscal officer shall give bond for the faithful discharge of official duties, as required under O.R.C. § 507.03.⁴³⁶ The bond shall be payable to the board of trustees and be in the same amount as that

⁴²⁸ OHIO REV. CODE ANN. § 507.05.

⁴²⁹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:12.

⁴³⁰ OHIO REV. CODE ANN. § 507.06.

⁴³¹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:6.

⁴³² LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:6.

⁴³³ OHIO REV. CODE ANN. § 507.02

⁴³⁴ OHIO REV. CODE ANN. § 507.02

⁴³⁵ OHIO REV. CODE ANN. § 507.02

⁴³⁶ OHIO REV. CODE ANN. § 507.02

of the actual fiscal officer.⁴³⁷ Such bond amount is provided in 507.03(A) through (J) and is based, as with the actual fiscal officer, upon the total amount of the township budget.⁴³⁸ The bond shall be recorded and filed with the county treasurer.

By resolution, the board of trustees shall adjust and determine the compensation of the actual fiscal officer and deputy fiscal officer.⁴³⁹ The total of such compensation for both the actual fiscal officer and any deputy fiscal officer shall not exceed the total annual compensation of the actual fiscal officer as fixed by resolution of the board of trustees pursuant to the schedule in O.R.C. § 507.09.⁴⁴⁰

Assistants to Aid the Fiscal Officer in the Performance of Duties

If the fiscal officer needs assistance performing his or her duties, he or she has the power to employ such persons as he or she deems necessary as assistants.⁴⁴¹ The assistants serve at the pleasure of the fiscal officer or, in the absence of the fiscal officer, the deputy fiscal officer.⁴⁴² The township fiscal officer may delegate to an assistant and an assistant may perform any of the duties the fiscal officer is otherwise required to perform.⁴⁴³ The fiscal officer may set the compensation of assistants subject to the prior approval of the board of trustees.⁴⁴⁴ However, through the hiring of assistants, the fiscal officer is in no way relieved of the responsibilities of office and must discharge the duties of office in accordance with the law.⁴⁴⁵

Compensation of an assistant to the fiscal officer must be included in the estimate of contemplated expenditures for the fiscal officer's office that is submitted to the board of trustees for approval pursuant to Ohio Revised Code Section 5705.28.⁴⁴⁶

Before serving as an assistant to the fiscal officer, all assistants to the fiscal officer must give bond for the faithful discharge of the duties of the office as may be delegated by the fiscal officer.⁴⁴⁷ The bond shall be payable to the board of township trustees and must be for the same sum as required by Ohio Revised Code section 507.03 for the fiscal officer.⁴⁴⁸ The bond shall be from licensed sureties approved by the board of trustees.⁴⁴⁹ The bond shall be recorded by the township fiscal officer and filed with the county treasurer.⁴⁵⁰

⁴³⁷ OHIO REV. CODE ANN. § 507.02.

⁴³⁸ OHIO REV. CODE ANN. §§ 507.02-507.03

⁴³⁹ OHIO REV. CODE ANN. § 507.02

⁴⁴⁰ OHIO REV. CODE ANN. § 507.02

⁴⁴¹ OHIO REV. CODE ANN. § 507.021(A).

⁴⁴² OHIO REV. CODE ANN. § 507.021(A).

⁴⁴³ OHIO REV. CODE ANN. § 507.021(A).

⁴⁴⁴ OHIO REV. CODE ANN. § 507.021(A).

⁴⁴⁵ OHIO REV. CODE ANN. § 507.021(A).

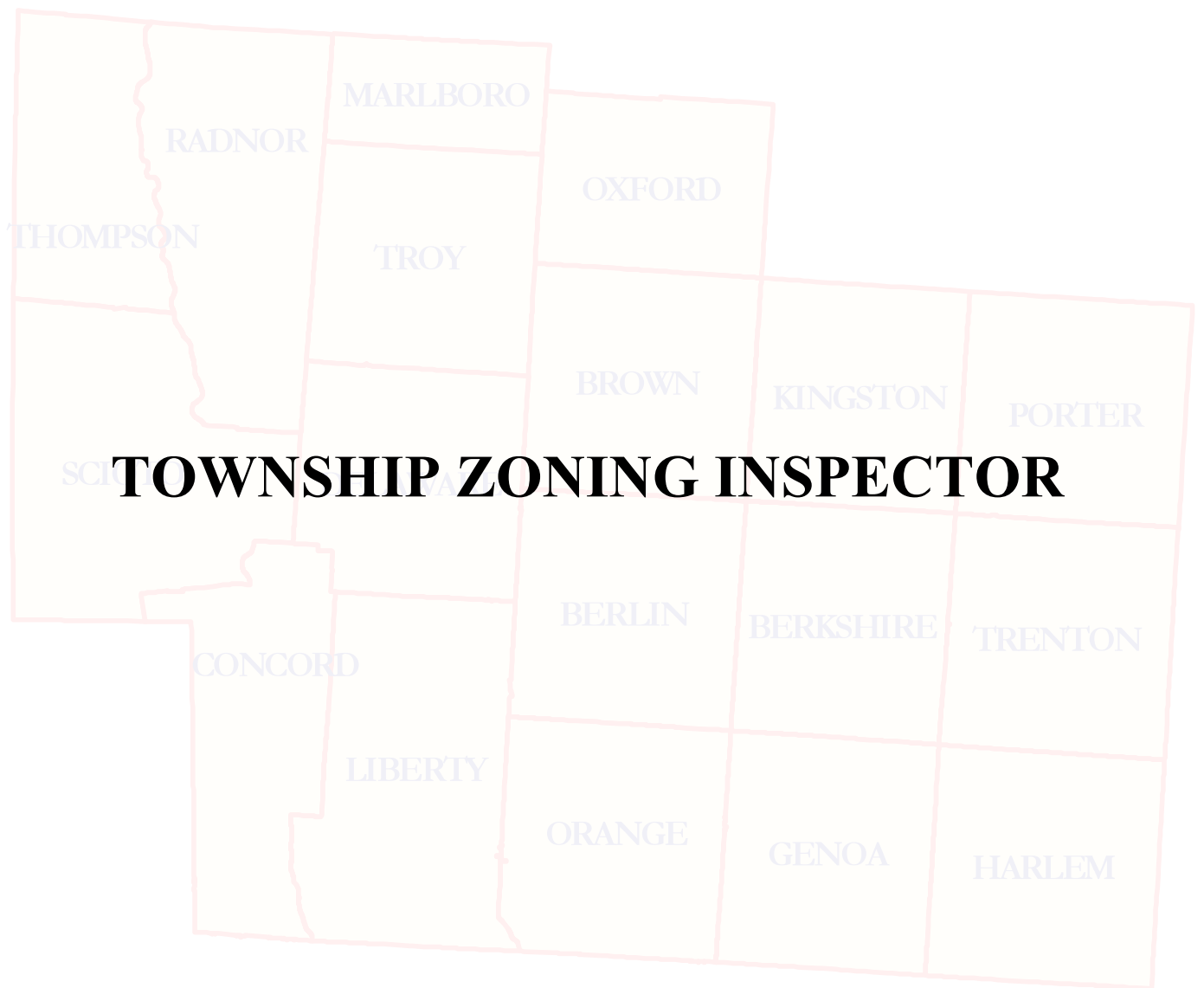
⁴⁴⁶ OHIO REV. CODE ANN. § 507.021(B).

⁴⁴⁷ OHIO REV. CODE ANN. § 507.021(C).

⁴⁴⁸ OHIO REV. CODE ANN. § 507.021(C).

⁴⁴⁹ OHIO REV. CODE ANN. § 507.021(C).

⁴⁵⁰ OHIO REV. CODE ANN. § 507.021(C).



General Overview and Compensation

Enforcing the township zoning resolution can be a monumental task. The Ohio Legislature has given boards of township trustees the ability to delegate portions of this task. According to O.R.C. § 519.16, a township “may establish and fill the position of township zoning inspector, together with assistants as the board deems necessary....”⁴⁵¹ As a township employee, the board of trustees “...may fix the compensation for those positions, and may make disbursements for them.”⁴⁵² Accordingly, the township zoning inspector, pursuant to O.R.C. § 124.11(B), is an unclassified employee that may be dismissed from his or her position at-will, without cause, absent discrimination or malfeasance.⁴⁵³

Before assuming the position, the township zoning inspector must give a bond “conditioned upon the faithful performance of the zoning inspector’s official duties.”⁴⁵⁴ The bond must be “signed by a bonding or surety company authorized to do business in this state, or, at the inspector’s option, signed by two or more freeholders having real estate in the value of double the amount of the bond, over and above all encumbrances to the state....”⁴⁵⁵ In order to be acceptable, the surety company or real estate bond must be approved by the trustees.⁴⁵⁶ The amount of the bond must be at least \$1,000.00 and not more than \$5,000.00, as fixed or determined by the township board of trustees.⁴⁵⁷ The township fiscal officer is charged with accepting deposit of the bond.⁴⁵⁸

As with the township board of trustees, all actions of the township zoning inspector must be both derived from and permitted by the Ohio Revised Code. Most sections of the Ohio Revised Code that address township zoning are concentrated in Chapter 519. As a result, many of the sections related to township zoning have a statute number that begins with “519.” When consulting the Ohio Revised Code for guidance, a township zoning inspector should consider looking in Chapter 519. However, keep in mind that the Ohio Revised Code contains titles numbered 1 through 63,⁴⁵⁹ therefore issues concerning or relevant to township zoning may be discussed elsewhere in the Ohio Revised Code. For help with legal questions concerning the Ohio Revised Code or other matters, call the Delaware County Prosecuting Attorney’s Office.

⁴⁵¹ OHIO REV. CODE ANN. § 519.16.

⁴⁵² OHIO REV. CODE ANN. § 519.16.

⁴⁵³ *Merritt v. Canton Township Bd. of Trs.*, 125 Ohio App.3d 533, 708 N.E.2d 1082 (Ohio Ct. App. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (Ohio Ct. App. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (Ohio Ct. App. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (Ohio Ct. App. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority”).

⁴⁵⁴ OHIO REV. CODE ANN. § 519.161.

⁴⁵⁵ OHIO REV. CODE ANN. § 519.161.

⁴⁵⁶ OHIO REV. CODE ANN. § 519.161.

⁴⁵⁷ OHIO REV. CODE ANN. § 519.161.

⁴⁵⁸ OHIO REV. CODE ANN. § 519.161.

⁴⁵⁹ Titles or topical volumes of the Ohio Revised Code are numbered with odd numbers only, thus there are thirty-two actual titles that comprise the Ohio Revised Code.

Powers and Duties

Generally, the township zoning inspector enforces the township zoning resolution.⁴⁶⁰ Although some degree of discretion obviously is necessary in terms of enforcement, it is largely the job of the township zoning inspector to simply implement the township zoning resolution.⁴⁶¹ In fact, the responsibilities of the zoning inspector have been described as “ministerial in nature.”⁴⁶² In short, if a project meets all the requirements of the zoning resolution, it should be approved; if it does not, it should not be.⁴⁶³

A township zoning inspector has no responsibility or authority to create the township zoning resolution that he or she is charged with enforcing.⁴⁶⁴ That responsibility is shared by the board of zoning commission (BZC) and the board of township trustees. Additionally, the township zoning inspector may not grant variances or conditional uses. Although the township zoning inspector may *distribute* applications for variances and conditional uses, the board of zoning appeals (BZA) hears and decides requests for both variances and conditional uses.⁴⁶⁵

Enforcement of the township zoning resolution includes, among other things, issuing permits and inspecting properties for compliance with the zoning resolution.⁴⁶⁶ In performing these duties, it is important for a township zoning inspector to remember that they “[are] not a ‘[l]aw enforcement officer’ under O.R.C. § 2901.01(A)(11) or Ohio Rules of Criminal Procedure 2(J).”⁴⁶⁷ As a result:

[p]ursuant to the fourth amendment to the United States Constitution, a township zoning inspector may not enter and inspect private property without a search warrant where the owner or occupant of the property does not give consent, unless there is an emergency, the property is open to the public, or the industry conducted on the property has a history of government oversight such that no reasonable expectation of privacy exists.⁴⁶⁸

Compliance inspections must be conducted with this premise in mind.

⁴⁶⁰ PLANNING AND ZONING LAW, *supra* note 348, at § 8:47.

⁴⁶¹ PLANNING AND ZONING LAW, *supra* note 348, at § 8:47; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁶² PLANNING AND ZONING LAW, *supra* note 348, at § 8:47; 1998 Ohio Op. Att’y Gen. No. 98-018 (citing *State ex rel. Ross v. Guion*, 82 Ohio Law Abs. 1, 161 N.E.2d 800 (Ohio Ct. App.1959)).

⁴⁶³ PLANNING AND ZONING LAW, *supra* note 348, at § 8:47; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁶⁴ PLANNING AND ZONING LAW, *supra* note 348, at § 8:47; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁶⁵ OHIO REV. CODE ANN. §§ 519.14(B)-(C).

⁴⁶⁶ PLANNING AND ZONING LAW, *supra* note 348, at § 8:47; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁶⁷ 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁶⁸ 1998 Ohio Op. Att’y Gen. No. 98-018, *modifying* 1973 Ohio Op. Att’y Gen. No. 73-116.

Zoning Resolutions

Zoning resolutions are the embodiment of township zoning. They are created pursuant to authority granted under O.R.C. § 519.02 and act as a comprehensive guide to zoning regulations within the township. Generally, zoning resolutions are divided into various articles, each of which address regulations concerning, but not limited to, individual zoning categories (i.e., FR-1), zoned items (i.e., signs), standards (i.e., general development standards), or enforcement of the zoning resolution.

Though the board of zoning commission (BZC) generally acts to create and draft the zoning resolution, the board of trustees has the ultimate authority to approve and adopt the resolution.⁴⁶⁹ If adopted by the board of trustees, “the question of whether or not the proposed plan of zoning shall be put into effect” is submitted to the voters.⁴⁷⁰ If the majority of voters favor zoning, the resolution shall be put into effect.⁴⁷¹

As the township zoning inspector is only charged with enforcing the township zoning resolution, he or she generally has no responsibility for creating or changing the resolution.⁴⁷²

Amendments to the zoning resolution are initiated by either the board of zoning commission (BZC), the trustees by passage of a resolution, or an application by a property owner.⁴⁷³ The procedure for approving amendments is addressed in O.R.C. § 519.12. As the procedure for amending the zoning resolution involves many steps, it is addressed in another section of this manual. For further discussion, see the section entitled “Board of Zoning Commission.”

Zoning Certificates (Permits)

For purposes of enforcing the township zoning resolution, the township board of trustees “may provide for a system of zoning certificates...”⁴⁷⁴ Zoning certificates, commonly referred to as permits or zoning permits, are required by anyone who wants to use land pursuant to a zoning resolution.⁴⁷⁵

As with all aspects of its power and authority, “[t]ownships...are constrained to live within the strictures of the Revised Code” in providing for a system of zoning certificates.⁴⁷⁶ O.R.C. § 519.17 generally provides when a zoning certificate is required. According to that section, “[n]o person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a

⁴⁶⁹ See OHIO REV. CODE ANN. §§ 519.02, 519-510.05.

⁴⁷⁰ OHIO REV. CODE ANN. § 519.11.

⁴⁷¹ OHIO REV. CODE ANN. § 519.11.

⁴⁷² PLANNING AND ZONING LAW, *supra* note 348, at § 8:47.

⁴⁷³ OHIO REV. CODE ANN. § 519.12.

⁴⁷⁴ OHIO REV. CODE ANN. § 519.16.

⁴⁷⁵ PLANNING AND ZONING LAW, *supra* note 348, at § 8:48; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁷⁶ PLANNING AND ZONING LAW, *supra* note 348, at § 8:48; See 1998 Ohio Op. Att’y Gen. No. 98-018.

zoning certificate...”⁴⁷⁷ Before a zoning certificate is issued, “the plans for the proposed building or structure [must] fully comply with the zoning regulations then in effect.”⁴⁷⁸ Generally, this means that the current, not the past or proposed, zoning regulations govern the structure or building for which the applicant seeks a certificate. However, there may be rare, fact-specific, instances where this is not the case.

Generally, to obtain a zoning certificate, an application form must be obtained and completed.⁴⁷⁹ Often, the zoning resolution will specify the process to be followed. Normally, the zoning inspector is the individual charged with distributing these application forms. Fees may be charged for zoning certificate applications as long as those fees are reasonable.⁴⁸⁰ The Ohio Revised Code, in certain instances, may dictate the amount of the fee to be charged.

Review of Development Plans (Planned Unit Developments)

The township zoning inspector may review or assist in the review of development plans submitted for approval in connection with a planned unit development (PUD) pursuant to O.R.C. § 519.021. The nature and extent of this review may be provided by the terms for approval of a PUD in the township zoning resolution.

For more information on planned unit developments and the process for approving such developments, see the “Common Issues” section of this manual.

Enforcement

It is the duty of the zoning inspector to implement and enforce the township zoning resolution *as written*.⁴⁸¹ This means that the zoning inspector may only enforce the terms of the zoning resolution presently in effect. He or she may not add, delete, or substitute any terms, phrases, or provisions into the zoning resolution. Therefore, the enforcement authority of the township zoning inspector is limited solely to the language appearing in the current effective zoning resolution.

In the same respect, the zoning inspector may only refuse to issue or hold a zoning certificate (or permit) when the subject property does not meet the requirements in the zoning resolution for issuing the requested certificate. In other words, a zoning certificate must be issued where a proposed project complies with the terms of the township zoning resolution for issuing the certificate. Note that “courts have been clear that a denial of a permit will not be allowed where there is no regulation prohibiting the sought-after activity.”⁴⁸²

⁴⁷⁷ OHIO REV. CODE ANN. § 519.17.

⁴⁷⁸ OHIO REV. CODE ANN. § 519.17.

⁴⁷⁹ See Sample Forms.

⁴⁸⁰ PLANNING AND ZONING LAW, *supra* note 348, at § 8:48; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁴⁸¹ PLANNING AND ZONING LAW, *supra* note 348, at § 8:47.

⁴⁸² PLANNING AND ZONING LAW, *supra* note 348, at § 8:48 (citing *Dingeman Advertising, Inc. v. Bd. of Zoning Appeals of Troy Township*, 1993 WL 135698 (Ohio Ct. App. 1993)).

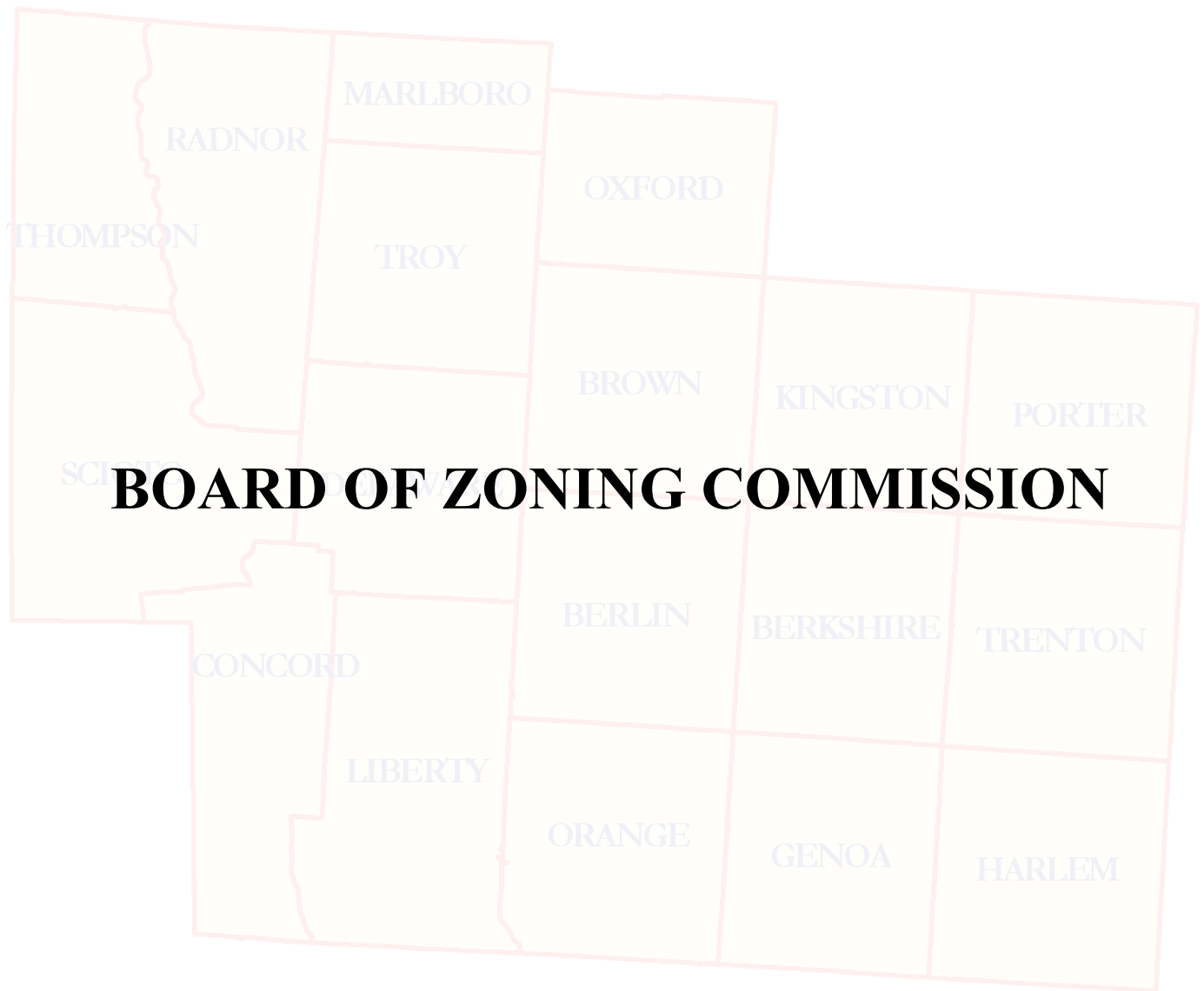
Violations

Violations of the township zoning resolution should be dealt with on a case-by-case basis. A zoning inspector may issue a written notice of a zoning violation to the property owner. Such notice shall state the nature of the violation, the specific section of the zoning resolution that is being violated (preferably both a section number(s) and the actual language from the zoning resolution should be cited), and provide a specific date by which the violation must be remedied.

Aside from and in addition to issuing a written notice of zoning violation, various other remedies and a penalty for violations are available in O.R.C. § 519.23 to O.R.C. § 519.24 and O.R.C. § 519.99. To avoid unnecessary court action, the township zoning inspector can attempt to resolve the violation on his or her own (i.e., working directly with the property owner to explain the violation and possible remedies and/or issuing a written notice of zoning violation).

In certain instances where the township zoning inspector is unsure how to act, has acted, and been unsuccessful in achieving satisfactory results, or feels immediate action is needed, he or she should consult with the Delaware County Prosecuting Attorney's Office.⁴⁸³

⁴⁸³ See OHIO REV. CODE ANN. § 519.24 (stating that "the township zoning inspector...may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use").



General Overview and Term of Office

The township zoning commission (BZC) is the origin of most zoning in the township. In making decisions concerning zoning, the BZC must work closely with the township trustees and the county regional planning commission.

The township board of trustees “shall create and establish a township zoning commission (BZC)” when they enact zoning.⁴⁸⁴ The BZC must consist of five (5) members, each of whom are appointed by the board of township trustees.⁴⁸⁵ Each member of the BZC must be a resident of the unincorporated territory of the township.⁴⁸⁶ If there is a regional planning commission, the board of township trustees may appoint a member of the regional planning commission to the BZC as long as the member is a resident of the unincorporated territory of the township.⁴⁸⁷

The township trustees shall establish the terms of the regular BZC members to be of such length and so arranged that the term of one member will expire each year.⁴⁸⁸ If there is a vacancy on the BZC, the board of township trustees shall fill the vacancy for the unexpired term.⁴⁸⁹ Each member or alternate member shall serve until his or her successor is appointed and qualified.⁴⁹⁰

BZC members may be expelled from their positions in accordance with O.R.C. § 519.04 for nonperformance of duty, misconduct in office, or for cause by the board.⁴⁹¹ Under such circumstances, written charges must be filed with the board of trustees and served on the BZC member in accordance with O.R.C. § 519.04.⁴⁹² The BZC member must be given a public hearing on the charges.⁴⁹³ If the BZC member is expelled, the board of trustees must appoint a new BZC member to fill the unexpired term of the BZC member being replaced.⁴⁹⁴

Once created, the BZC “shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations.”⁴⁹⁵

Compensation

The board of township trustees may approve and provide for the expenses and compensation of the members of the zoning commission.⁴⁹⁶

⁴⁸⁴ OHIO REV. CODE ANN. § 519.04.

⁴⁸⁵ OHIO REV. CODE ANN. § 519.04.

⁴⁸⁶ OHIO REV. CODE ANN. § 519.04.

⁴⁸⁷ OHIO REV. CODE ANN. § 519.04.

⁴⁸⁸ OHIO REV. CODE ANN. § 519.04.

⁴⁸⁹ OHIO REV. CODE ANN. § 519.04.

⁴⁹⁰ OHIO REV. CODE ANN. § 519.04.

⁴⁹¹ OHIO REV. CODE ANN. § 519.04.

⁴⁹² OHIO REV. CODE ANN. § 519.04.

⁴⁹³ OHIO REV. CODE ANN. § 519.04.

⁴⁹⁴ OHIO REV. CODE ANN. § 519.04.

⁴⁹⁵ OHIO REV. CODE ANN. § 519.05.

⁴⁹⁶ OHIO REV. CODE ANN. § 519.05.

Powers and Duties

The powers of the BZC are limited. As with all aspects of a township's power and authority, the BZC is empowered only with that authority provided by the Ohio Revised Code or necessarily implied there from. It is firmly established that townships have no inherent or constitutionally-granted police power to enact zoning legislation and are limited to such zoning authority as they are granted by statute.⁴⁹⁷ By statute, the BZC's main duty is to prepare a zoning plan for the township.⁴⁹⁸ This zoning plan should include text and maps describing each zoned area of the township.⁴⁹⁹ The township zoning plan shall be written in accordance with a comprehensive plan.⁵⁰⁰

In preparing a zoning plan, the BZC should make use of all resources available.⁵⁰¹ These resources include the regional planning commission and various county personnel.⁵⁰² Additionally, if funds are available, the BZC may employ outside experts and planning consultants.⁵⁰³ The township zoning commission is responsible for keeping records of its actions and business.⁵⁰⁴

Alternate Members

The board of trustees may also appoint two alternate members to the BZC for terms to be decided by the board of trustees.⁵⁰⁵ As with regular members, the alternate members must meet the same qualifications as regular BZC members, including residing in the unincorporated territory of the township.⁵⁰⁶ An alternate BZC member will serve until his or her replacement is appointed and qualified.⁵⁰⁷

The purpose of alternate BZC members is to take the place of a regular BZC member at any BZC meeting when a regular member is unable to attend or a conflict of interest arises.⁵⁰⁸ The procedure for having an alternate member attend a meeting shall be established by resolution by the trustees.⁵⁰⁹ When attending a meeting in place of a regular member, an alternate BZC member has the power to vote on any matter upon which the absent member has the ability to vote.⁵¹⁰

⁴⁹⁷ *Bd. of Bainbridge Township Trs. v. Funtime, Inc.*, 55 Ohio St. 3d 106, 563 N.E.2d 717 (Ohio 1990).

⁴⁹⁸ OHIO REV. CODE ANN. § 519.05.

⁴⁹⁹ OHIO REV. CODE ANN. § 519.05.

⁵⁰⁰ OHIO REV. CODE ANN. § 519.02.

⁵⁰¹ OHIO REV. CODE ANN. § 519.05.

⁵⁰² OHIO REV. CODE ANN. § 519.05.

⁵⁰³ OHIO REV. CODE ANN. § 519.05.

⁵⁰⁴ OHIO REV. CODE ANN. § 519.05.

⁵⁰⁵ OHIO REV. CODE ANN. § 519.04.

⁵⁰⁶ OHIO REV. CODE ANN. § 519.04.

⁵⁰⁷ OHIO REV. CODE ANN. § 519.04.

⁵⁰⁸ OHIO REV. CODE ANN. § 519.04.

⁵⁰⁹ OHIO REV. CODE ANN. § 519.04.

⁵¹⁰ OHIO REV. CODE ANN. § 519.04.

Adoption of a Township Zoning Plan (Resolution and Maps)

After the board of township trustees pass a resolution pursuant to O.R.C. § 519.03 (establishing the intention to proceed with township zoning), the following procedure should be followed in creating a zoning resolution and maps:

- 1) The township trustees must create and establish a BZC pursuant to O.R.C. § 519.04.
- 2) The newly organized BZC should create and prepare a zoning plan, including both text and maps, for the unincorporated territory of the township.⁵¹¹ This zoning plan is to be written in accordance with a comprehensive plan.⁵¹² The plan should represent the BZC's recommendations for carrying out by the board of trustees the powers, purposes, and provisions set forth in O.R.C. §§ 519.01-519.99.⁵¹³ The BZC should work with county regional planning to develop a zoning plan and maps.⁵¹⁴ Services, expertise, and resources of other public offices should also be used and consulted in developing the zoning plan and maps. Also, within the limits of funds appropriated by the trustees, the BZC may employ or contract with outside experts and planning consultants to assist in creating the zoning plan.⁵¹⁵
- 3) After creating its recommended zoning plan and maps, the BZC must hold at least one public hearing. Notice of the hearing shall be given by one publication in one or more newspapers of general circulation⁵¹⁶ in the township at least thirty (30) days before the date of such hearing.⁵¹⁷ The notice must "state the place and time at which the text and maps of the proposed zoning resolution may be examined."⁵¹⁸ It should also include the date, time, place, and reason for the public hearing.
- 4) After holding a public hearing, the BZC must submit the proposed zoning resolution and maps to the county regional planning commission for their "approval, disapproval, or suggestions."⁵¹⁹ Approval of the county regional planning

⁵¹¹ OHIO REV. CODE ANN. § 519.05.

⁵¹² OHIO REV. CODE ANN. § 519.02.

⁵¹³ OHIO REV. CODE ANN. § 519.05.

⁵¹⁴ OHIO REV. CODE ANN. § 519.05.

⁵¹⁵ OHIO REV. CODE ANN. § 519.05.

⁵¹⁶ Pursuant to O.R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or sixteen pages in the tabloid format; (2) It contains at least twenty-five per cent editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service "Statement of Ownership, Management, and Circulation" (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication."

⁵¹⁷ OHIO REV. CODE ANN. § 519.06.

⁵¹⁸ OHIO REV. CODE ANN. § 519.06.

⁵¹⁹ OHIO REV. CODE ANN. § 519.07.

commission can be assumed, unless county regional planning states otherwise within twenty (20) days after it received the proposed zoning resolution.⁵²⁰

- *Note: If county regional planning disapproves of or suggests any material change to the proposed zoning resolution, the BZC must hold another public hearing on the resolution.⁵²¹ Notice of the hearing must be given by one publication in one or more newspapers of general circulation in the township. The publication must occur at least thirty (30) days before the hearing. The published notice must state the place and time at which the text and maps of the proposed zoning plan may be examined.⁵²² It should also include the date, time, place, and reason for the public hearing.*
- 5) When the BZC has completed its recommendations, it should certify its recommendation on the proposed zoning (plan) resolution and maps to the board of township trustees.⁵²³
- 6) Upon receiving certification of the proposed (plan) resolution and maps from the BZC, the board of township trustees shall hold a public hearing on the proposed resolution.⁵²⁴
 - *Notice of the hearing must be given by one publication in one or more newspapers of general circulation in the township. The publication must occur at least thirty (30) days before the hearing. It should also include the date, time, place, and reason for the public hearing.⁵²⁵*
- 7) The board of township trustees may approve of the proposed (plan) resolution and maps.⁵²⁶ If the board of township trustees seeks to make any changes to the proposed resolution and maps, the proposed resolution and maps along with the changes must be resubmitted to the BZC before the trustees may approve of the plan.⁵²⁷
- 8) The BZC may then approve, disapprove, or make suggestions concerning the changes.⁵²⁸ The BZC should then re-certify the proposed (plan) resolution and maps and their comments on the changes to the board of township trustees.
- 9) The board of township trustees, upon receipt of the re-certified proposed (plan) resolution and maps and BZC recommendations on the changes, shall hold a second public hearing.⁵²⁹

⁵²⁰ OHIO REV. CODE ANN. § 519.07.

⁵²¹ OHIO REV. CODE ANN. § 519.06.

⁵²² OHIO REV. CODE ANN. §§ 519.06-519.07.

⁵²³ OHIO REV. CODE ANN. § 519.07.

⁵²⁴ OHIO REV. CODE ANN. § 519.08.

⁵²⁵ OHIO REV. CODE ANN. § 519.08.

⁵²⁶ OHIO REV. CODE ANN. § 519.10.

⁵²⁷ OHIO REV. CODE ANN. § 519.09.

⁵²⁸ OHIO REV. CODE ANN. § 519.09.

⁵²⁹ OHIO REV. CODE ANN. § 519.09.

- *Notice of the hearing must be given by one publication in one or more newspapers of general circulation in the township. The publication must occur at least ten (10) days before the hearing. It should also include the date, time, place and reason for the public hearing.*⁵³⁰
- 10) If the BZC approved of the changes, the board of township trustees may approve of the proposed (plan) resolution and maps.⁵³¹ If the BZC disapproved of the changes, the board of township trustees may approve of the proposed (plan) resolution and maps, but only with a favorable *unanimous* vote of the entire membership of the board regarding the provision(s) disapproved by the BZC.⁵³²
 - 11) After approval by the board of township trustees, the “question of whether or not the proposed plan of zoning [resolution and maps] shall be put into effect” shall be placed on the ballot and submitted for approval or rejection at the next primary or general election by the voters of the unincorporated territory of the township included in the proposed plan of zoning.⁵³³ A special election may also be called for this purpose.⁵³⁴ The resolution must be filed with the board of elections no later than 4:00 p.m. of the ninetieth (90th) day before the election.⁵³⁵ The zoning resolution will be effective immediately if approved by a majority of the voters.⁵³⁶
 - 12) Within five (5) business days after the date the resolution becomes effective, the board of trustees shall file the resolution and maps in the office of the county recorder.⁵³⁷ Also, within five (5) business days after the date the resolution becomes effective, the board of trustees shall file the resolution and maps with county regional planning.⁵³⁸

Amendments to the Zoning Resolution

Amendments to a township zoning resolution should be proposed and added according to O.R.C. § 519.12. The flowchart on the next two pages is a diagram of the procedure delineated by O.R.C. § 519.12 for amending a zoning resolution.⁵³⁹

⁵³⁰ OHIO REV. CODE ANN. § 519.09.

⁵³¹ OHIO REV. CODE ANN. § 519.10.

⁵³² OHIO REV. CODE ANN. § 519.09.

⁵³³ OHIO REV. CODE ANN. § 519.11.

⁵³⁴ OHIO REV. CODE ANN. § 519.11.

⁵³⁵ OHIO REV. CODE ANN. § 519.11.

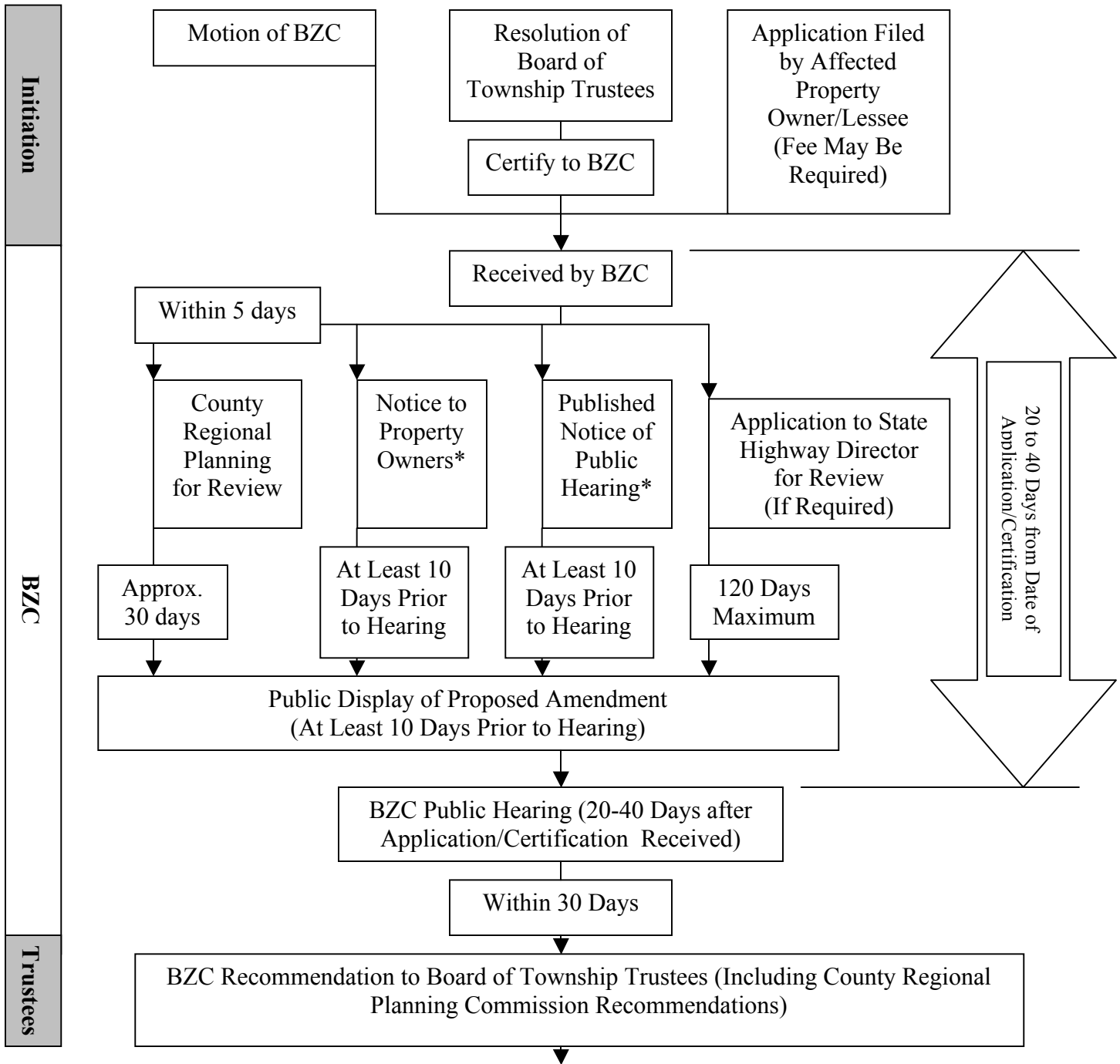
⁵³⁶ OHIO REV. CODE ANN. § 519.11.

⁵³⁷ OHIO REV. CODE ANN. § 519.11.

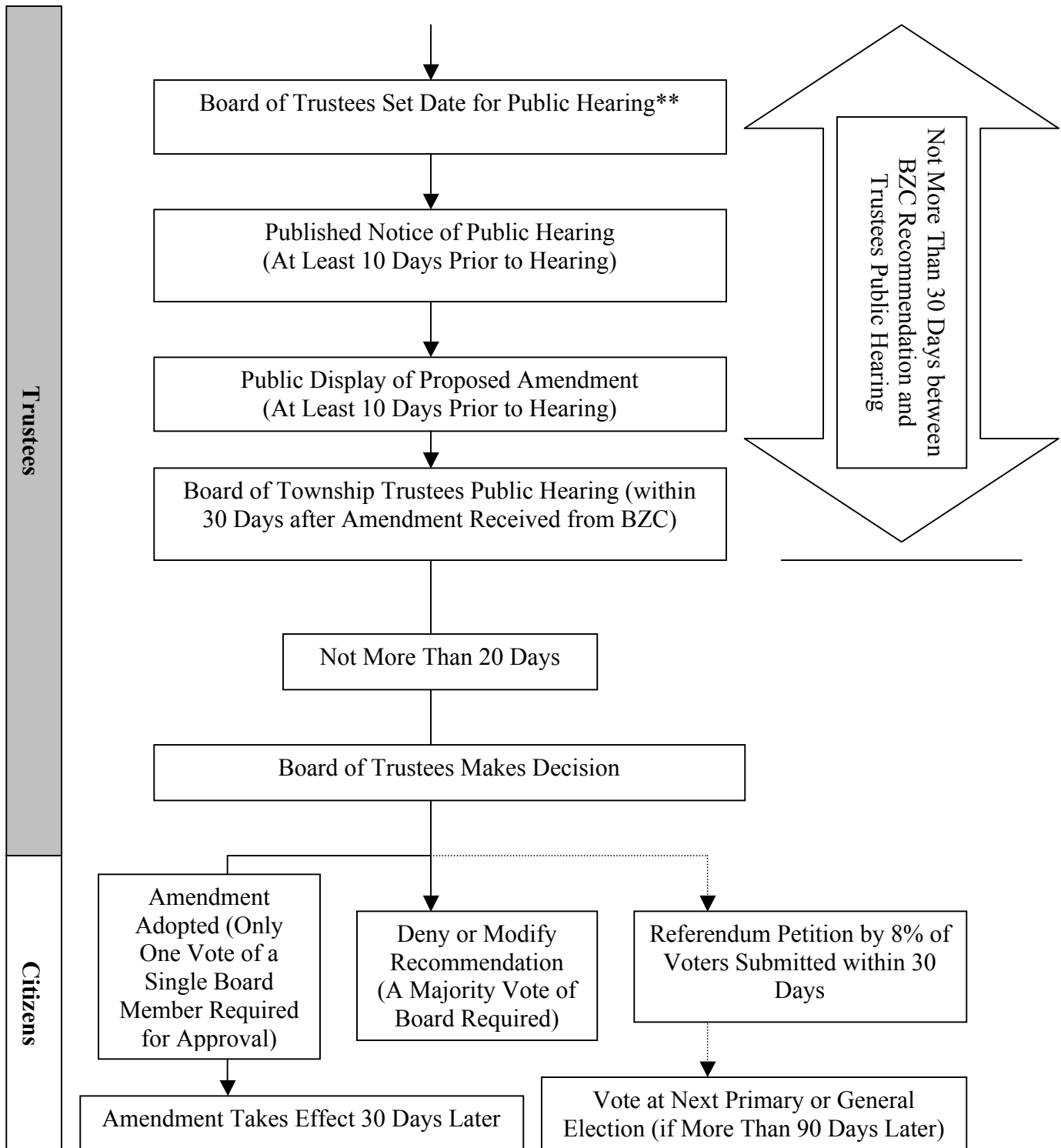
⁵³⁸ OHIO REV. CODE ANN. § 519.11.

⁵³⁹ OHIO REV. CODE ANN. § 519.12.

ZONING CHANGE/AMENDMENT FLOWCHART – O.R.C. § 519.12



- Note that notice must be published at least once in one or more newspapers of general circulation in the township at least ten days prior to the public hearing and include the time, date and place for the public hearing and all information required by Ohio Revised Code § 519.12(C). If ten or fewer parcels are included within a rezone or redistrict, notice, including the time date and place of the public hearing and all information in Ohio Revised Code § 519.12(C), must be sent to all neighbors of those parcels via first class mail at least ten days prior to the public hearing. If ten or more parcels are included within the rezone or redistrict, or if the amendment alters the text of the zoning resolution, the published notice must include the time date, and place of the public hearing and all of the information in Ohio Revised Code § 519.12(D).



** Note that notice must be published at least once in one or more newspapers of general circulation in the township at least ten days prior to the public hearing and include the time, date, and place for the public hearing and all information required by Ohio Revised Code § 519.12(F) or Ohio Revised Code § 519.12(G) depending on whether ten or fewer or more than ten parcels are the subject of the proposed amendment.

Additional Notice Requirements (BZC Hearing)

Besides specifying the time, date, and place of a BZC hearing during which a zoning amendment will be considered, O.R.C. §§ 519.12(C)-(D) mandate that notices must include additional information.

If the proposed amendment seeks to rezone *ten (10) or fewer* parcels of land, the published and mailed notices (notices are to be mailed by first class mail to owners and/or neighbors of the affected parcels (within and continuous to and directly across the street from such area proposed to be rezoned)) must contain the following (in addition to the time, date, and place of a BZC hearing during which the zoning amendment will be considered):

- 1) The name of the BZC that will conduct the meeting,
- 2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution,
- 3) A list of the addresses of all the properties to be rezoned by the proposed amendment and the names of the owners of the properties (as they appear on the county auditor's current tax list),
- 4) The current zoning classification of the property named in the amendment and the proposed zoning classification of that property,
- 5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for at least ten (10) days prior to the public hearing
- 6) The name of the person responsible for giving notice of the public hearing (by mail and by publication),
- 7) Any other information requested by the BZC concerning the proposed amendment,
- 8) A statement that the matter will be submitted to the board of township trustees after the conclusion of the hearing.⁵⁴⁰

However, if the proposed amendment alters the text of the zoning resolution or seeks to rezone *more than ten (10)* parcels of land, the notice need only be published and must contain the following (again, in addition to the time, date, and place of a BZC hearing during which the zoning amendment will be considered):

- 1) The name of the BZC that will conduct the meeting,
- 2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution,
- 3) The time and place where the text and maps of the proposed amendment will be available for examination for at least ten (10) days prior to the public hearing,
- 4) The name of the person responsible for giving notice of the public hearing by publication,
- 5) Any other information requested by the BZC concerning the proposed amendment,
- 6) A statement that the matter will be submitted to the board of township trustees after the conclusion of the hearing.⁵⁴¹

⁵⁴⁰ OHIO REV. CODE ANN. § 519.12(C).

⁵⁴¹ OHIO REV. CODE ANN. § 519.12(D).

Additional Notice Requirements (Board of Trustees Hearing)

Similarly, once a BZC makes its recommendation on a proposed amendment and submits it to the board of trustees for consideration, O.R.C. §§ 519.12(F) and 519.12(G) mandate that the board of trustees, besides specifying the time, date, and place of the hearing during which a zoning amendment will be considered, include additional information in its published notice. Again, the content of the notice depends upon the number of parcels affected by the proposed zoning amendment. Such notices need only be published.

If *ten (10) or fewer* parcels of land are affected by the proposed zoning amendment, the notice, in addition to specifying the time, date, and place of the hearing during which the amendment will be considered, must contain the following:

- 1) The name of the board of trustees that will conduct the meeting,
- 2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution,
- 3) A list of the addresses of all the properties to be rezoned by the proposed amendment and the names of the owners of the properties (as they appear on the county auditor's current tax list),
- 4) The current zoning classification of the property named in the amendment and the proposed zoning classification of that property,
- 5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for at least ten (10) days prior to the public hearing
- 6) The name of the person responsible for giving notice of the public hearing (by mail and by publication),
- 7) Any other information requested by the board concerning the proposed amendment.⁵⁴²

If the proposed amendment alters the text of the zoning resolution or *more than ten (10)* parcels of land are affected by the proposed zoning amendment, the notice, in addition to specifying the time, date, and place of the hearing during which the amendment will be considered, must contain the following:

- 1) The name of the board of trustees that will conduct the meeting,
- 2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution,
- 3) The time and place where the text and maps of the proposed amendment will be available for examination for at least ten (10) days prior to the public hearing,
- 4) The name of the person responsible for giving notice of the public hearing by publication,
- 5) Any other information requested by the board concerning the proposed amendment.⁵⁴³

⁵⁴² OHIO REV. CODE ANN. § 519.12(F).

⁵⁴³ OHIO REV. CODE ANN. § 519.12(G).

Appropriate Considerations for Reviewing Resolutions/Amendments

When considering language for a zoning resolution or an amendment to a zoning resolution, the BZC must keep in mind the purposes for which a township can zone. Specifically, such purposes include the following:

A township, “in the interest of the public health and safety,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location,
- height,
- bulk,
- number of stories, and
- size of buildings and other structures.

Lots or Parcels:

- percentages of lot areas which may be occupied,
- set back building lines,
- sizes of yards, courts, and other open spaces,
- the density of population.

Uses:

- the uses of buildings and other structures including tents, cabins, and trailer coaches, and
- the uses of land for trade, industry, residence, recreation, or other purposes.⁵⁴⁴

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Location of set back lines.

Uses:

- Uses of buildings and other structures (including tents, cabins, and trailer coaches).
- Uses of land for trade, industry, residence, recreation, or other purposes.

Landscaping and Architectural Standards:

- Reasonable landscaping standards and architectural standards excluding exterior building materials.⁵⁴⁵

⁵⁴⁴ OHIO REV. CODE ANN. § 519.02.

⁵⁴⁵ OHIO REV. CODE ANN. § 519.02.

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution and in accordance with a comprehensive plan, *for non-residential property only*, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Height
- Bulk
- Number of stories
- Size of buildings and other structures.

Lots or Parcels:

- Percentages of lot areas that may be occupied
- Sizes of yards, courts, and other open spaces
- Density of population⁵⁴⁶

Note that the Ohio Revised Code differentiates among the various interests of the public in allowing for the regulation of residential and non-residential property through zoning. The interests listed above must correlate with the type of property sought to be regulated by zoning.

Vote of the Board of Trustees on Recommendations of the BZC

According to Ohio Revised Code section 519.12, the township board of trustees shall, within twenty days after the public hearing, “either adopt or deny the recommendations of the zoning commission or adopt some modification of them.”⁵⁴⁷ In the event “the board denies or modifies the commission’s recommendations, a majority vote of the board shall be required.”⁵⁴⁸

Referendum

If, within thirty (30) days after the adoption of the amendment, the board of township trustees is presented a petition for a referendum, the zoning amendment shall be certified to the board of elections and put to a vote.⁵⁴⁹ This petition must be signed by eight-percent (8%) of the registered voters of the township who voted in the most recent general election at which a governor was elected.⁵⁵⁰ The special election for approval or rejection of the amendment must be held “on the day of the next primary or general election that occurs at least ninety (90) days after the petition is filed.”⁵⁵¹

Before certifying the petitions to the board of elections and in accordance with Ohio Revised Code section 519.12(H), the board of trustees must determine, by resolution adopted at

⁵⁴⁶ OHIO REV. CODE ANN. § 519.02.

⁵⁴⁷ OHIO REV. CODE ANN. § 519.12(H).

⁵⁴⁸ OHIO REV. CODE ANN. § 519.12(H).

⁵⁴⁹ OHIO REV. CODE ANN. § 519.12(H).

⁵⁵⁰ OHIO REV. CODE ANN. § 519.12(H).

⁵⁵¹ OHIO REV. CODE ANN. § 519.12(H).

an open meeting, that the petitions are valid on their face.⁵⁵² Pursuant to O.R.C. § 519.12(H) and consistent with the interpretations of this law by Ohio courts and the Ohio Attorney General, a board of trustees has the:

duty to determine whether petitions requesting a referendum on the zoning amendment filed with the board are valid on their face for presentation to the board of elections.⁵⁵³

Thus, the board of trustees has the responsibility to determine the sufficiency of the petitions on their face, such that they should or should not be presented to the board of elections.⁵⁵⁴

This duty of the board of trustees is limited. The board of trustees “does not have the power to inquire into other matters” other than what is apparent from the face of the petitions.⁵⁵⁵

The process for determining validity generally involves the board of trustees satisfying itself that a petition is in the proper form and that it contains the requisite number of signatures.⁵⁵⁶ In terms of the form of the petition, each part of the petition shall contain “the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents.”⁵⁵⁷ It should also include an appropriate map of the area affected by the zoning.⁵⁵⁸

In terms of the number of signatures, the board of trustees will determine if the petition contains at least a number of signatures equal to eight-percent (8%) of the total vote cast for all candidates for governor in the township at the last preceding general election at which a governor was elected.⁵⁵⁹ This number is available from the Delaware County Board of Elections. Note that it is the responsibility of the board of elections to determine if the signatures are valid.⁵⁶⁰

It will be necessary for the board of trustees to determine the validity of the petitions in an open public meeting. A resolution should be approved either finding the petitions valid on their face and certifying the petitions to the board of elections or finding the petitions invalid on their face and rejecting certification to the board of elections. A form resolution for this purpose is available from the Delaware County Prosecuting Attorney’s Office. Any certification to the Board of Elections shall occur within two (2) weeks of receipt of the referendum petition and not not less than ninety (90) days prior to the election at which the question is to be voted upon.⁵⁶¹

⁵⁵² OHIO REV. CODE ANN. § 519.12(H); 1971 Ohio Op. Att’y Gen. No. 71-052.

⁵⁵³ 1971 Ohio Op. Att’y Gen. No. 71-052.

⁵⁵⁴ 1971 Ohio Op. Att’y Gen. No. 71-052.

⁵⁵⁵ 1971 Ohio Op. Att’y Gen. No. 71-052.

⁵⁵⁶ 1971 Ohio Op. Att’y Gen. No. 71-052 (citing *State ex rel. v. Lauderbaugh*, 77 Ohio L. Abs. 93, 149 N.E.2d 33 (1957)).

⁵⁵⁷ OHIO REV. CODE ANN. § 519.12(H).

⁵⁵⁸ OHIO REV. CODE ANN. § 519.12(H).

⁵⁵⁹ OHIO REV. CODE ANN. § 519.12(H).

⁵⁶⁰ 1971 Ohio Op. Att’y Gen. 71-052 (citing *Fried v. Augspurger*, 83 Ohio L. Abs. 321, 164 N.E.2d 466 (1959)).

⁵⁶¹ OHIO REV. CODE ANN. § 519.12(H).



General Overview and Term of Office

In any township that has adopted zoning, the board of township trustees must appoint a township board of zoning appeals, or “BZA.”⁵⁶² The BZA must consist of five (5) members who are required to live in the unincorporated territory of the township.⁵⁶³ Each member of the BZA is appointed for a term “of such length and so arranged that the term of one member will expire each year.”⁵⁶⁴ He or she shall serve until a successor is appointed and qualified.⁵⁶⁵

Also, the board of trustees may appoint two alternate members to the BZA for terms to be determined by the board of trustees.⁵⁶⁶ To be appointed, alternate members must meet the same eligibility requirements as regular members.⁵⁶⁷ Alternate members may serve in place of a regular member at any BZA meeting/hearing.⁵⁶⁸ The board of trustees may prescribe, in a resolution appointing alternate BZA members, the procedure by which an alternate BZA member may serve at BZA meetings.⁵⁶⁹ When replacing a regular BZA member at a BZA meeting/hearing, an alternate BZA member may vote upon anything that the regular BZA member they replace would be eligible to vote upon.⁵⁷⁰ Like regular members, alternate BZA members shall serve until their successor is appointed and qualified.⁵⁷¹

BZA members may be expelled from their positions for the same reasons for which members of the board of zoning commission (BZC) can be removed from their positions. These reasons can be found in O.R.C. § 519.04. Pursuant to that section, members can be expelled from the BZA for nonperformance of duty, misconduct in office, or for cause by the board of trustees.⁵⁷² Under such circumstances, written charges must be filed with the board of trustees and served on the BZA member in accordance with O.R.C. § 519.04.⁵⁷³ The BZA member must be given a public hearing on the charges.⁵⁷⁴

In filling a vacancy on the BZA, the trustees appoint a new BZA member to serve out the remainder of the departed BZA member’s term.⁵⁷⁵

To assist in their duties and responsibilities, the BZA, “within the limits of the moneys appropriated by the board of township trustees for the purpose, [may] employ such executives, professional, technical, and other assistants as it considers necessary.”⁵⁷⁶

⁵⁶² OHIO REV. CODE ANN. § 519.13.

⁵⁶³ OHIO REV. CODE ANN. § 519.13.

⁵⁶⁴ OHIO REV. CODE ANN. § 519.13.

⁵⁶⁵ OHIO REV. CODE ANN. § 519.13.

⁵⁶⁶ OHIO REV. CODE ANN. § 514.13.

⁵⁶⁷ OHIO REV. CODE ANN. § 519.13.

⁵⁶⁸ OHIO REV. CODE ANN. § 519.13.

⁵⁶⁹ OHIO REV. CODE ANN. § 519.13.

⁵⁷⁰ OHIO REV. CODE ANN. § 519.13.

⁵⁷¹ OHIO REV. CODE ANN. § 519.13.

⁵⁷² OHIO REV. CODE ANN. § 519.04.

⁵⁷³ OHIO REV. CODE ANN. § 519.04.

⁵⁷⁴ OHIO REV. CODE ANN. § 519.04.

⁵⁷⁵ OHIO REV. CODE ANN. § 519.04.

⁵⁷⁶ OHIO REV. CODE ANN. § 519.13.

Compensation

BZA members “may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.”⁵⁷⁷

Powers and Duties

By statute, the BZA generally is given authority to do four things. According to O.R.C. §§ 519.14(A)-(D), they include the following:

- A. **Hear and decide appeals where it is alleged there is an error** in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto;
- B. **Authorize**, upon appeal, in specific cases, such **variance** from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;
- C. **Grant conditional zoning certificates** for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution.
- D. **Revoke** an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.⁵⁷⁸

Specific statutory procedures must be followed if the BZA intends to revoke a variance of a conditional zoning certificate pursuant to O.R.C. § 519.14(D) as set forth above.⁵⁷⁹ This includes notifying the holder of the variance or certificate by certified mail of both the BZA’s intent to revoke and the holder’s right to a hearing before the BZA within thirty (30) days of the notice’s mailing, if the holder so desires.⁵⁸⁰

Note that a gathering of BZA members to exercise their authority pursuant to O.R.C. § 519.14 is a quasi-judicial proceeding.⁵⁸¹ As such, a recording should be made of the BZA hearings so that a record exists in the event that the BZA’s decision is appealed to the court of common pleas. Often, such recording consists of having a court reporter present to take down a verbatim transcript of the hearing.

⁵⁷⁷ OHIO REV. CODE ANN. § 519.13.

⁵⁷⁸ OHIO REV. CODE ANN. §§ 514.19(A)-(D) (emphasis added).

⁵⁷⁹ See OHIO REV. CODE ANN. § 519.14.

⁵⁸⁰ OHIO REV. CODE ANN. § 519.14.

⁵⁸¹ 2000 Ohio Op. Att’y Gen. No. 2000-035.

In exercising its authority pursuant to O.R.C. § 519.14(A)-(D), the BZA “may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.”⁵⁸² Thus, the decision of the BZA may take the form of a reversal, affirmation, or modification of an administrative official’s decision concerning the enforcement of sections 519.02-519.25 of the Revised Code.⁵⁸³ In addition, the BZA is granted authority to make the “order, requirement, decision, or determination” that “ought to be made”.⁵⁸⁴ This provision allows the BZA to make a decision on alternative grounds, based on the evidence available. However, this decision-making authority does not extend to determining the constitutionality of the zoning resolution or a regulation contained therein.⁵⁸⁵

Variances

A variance is a “minor departure or exception from the strict rule or literal enforcement or interpretation of zoning provisions.”⁵⁸⁶ It is intended to allow slight deviations from the zoning resolution as applied on an individual or case-by-case basis.⁵⁸⁷ A variance is related to an individual hardship that is or will be suffered on particular property without a deviation from the strict provisions of the zoning resolution.⁵⁸⁸

Variances are not substitutes for rezoning; they “are to be granted for problems related to particular parcels.”⁵⁸⁹ In other words, if changing the zoning designation of the property can alleviate the hardship experienced on a particular piece of property, rezoning the property is the more appropriate avenue for the property owner to pursue.

There are two types of variances: “area or bulk variances” and “use variances.”

Generally, an area or bulk variance does not alter the character of the surrounding neighborhood and concerns the technical measurements required by zoning, such as “departures from yard and height requirements.”⁵⁹⁰ Usually, area or bulk variances include parking and sign code regulations.⁵⁹¹

⁵⁸² OHIO REV. CODE ANN. § 514.14.

⁵⁸³ PLANNING AND ZONING LAW, *supra* note 348, at § 9:16.

⁵⁸⁴ OHIO REV. CODE ANN. § 514.14.

⁵⁸⁵ *FRC of Kamms Corner, Inc. v. Cleveland Bd. of Zoning Appeals*, 14 Ohio App.3d 372, 471 N.E.2d 845 (Ohio Ct. App. 1984); *Northampton Bldg. Co. v. Sharon Twp. Bd. Of Zoning Appeals*, 109 Ohio App.3d 193, 671 N.E.2d 1309 (Ohio Ct. App.1996).

⁵⁸⁶ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1.

⁵⁸⁷ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1.

⁵⁸⁸ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1.

⁵⁸⁹ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1 (citing *Perrico Property Sys. v. Independence*, 96 Ohio App.3d 134, 644 N.E.2d 714 (Ohio Ct. App.1994)).

⁵⁹⁰ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1.

⁵⁹¹ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1.

The standard for granting an area variance is whether the owner has encountered “practical difficulties.”⁵⁹² According to the Supreme Court of Ohio in *Duncan v. Village of Middlefield*, the factors to be considered when considering an area variance under the practical difficulties standard include but are not limited to the following:

- 1) Whether the property in question will yield a reasonable return or whether there can be a beneficial use of the property without the variance;
- 2) Whether the variance is substantial;
- 3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- 4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- 5) Whether the property owner purchased the property with knowledge of the zoning restriction;
- 6) Whether the property owner’s predicament feasibly can be obviated through some method other than a variance;
- 7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.⁵⁹³

Use variances, on the other hand, typically concern the actual use of the property and “authorize uses not expressly or impliedly permitted by the zoning code.”⁵⁹⁴ Generally, the standard to be applied for granting a use variance is whether the owner would suffer “unnecessary hardship.”⁵⁹⁵

Though self-imposed hardship is often fatal to the granting of a use variance, it is not necessarily fatal to an area variance. With an area variance, the fact that the hardship was self-imposed should be considered, along with the above seven factors from the *Duncan* case.⁵⁹⁶

⁵⁹² *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (Ohio 1984), cited in *Flynn v. Boardman Township Bd. of Zoning Appeals*, 110 Ohio App. 3d 149, 673 N.E. 2d 928 (Ohio Ct. App. 1995) (finding that “the...standard of unnecessary hardship should...be used in regard to requests for use variances”); *Duncan v. Vill. of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (Ohio 1986) (finding that area zoning variances are subject to the practical difficulties standard).

⁵⁹³ *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (1986). See also *Briggs v. Dinsmore Township Bd. of Zoning Appeals*, 161 Ohio App.3d 704, 831 N.E.2d 1063 (Ohio Ct. App. 2005) (affirming the standard set forth in *Duncan*).

⁵⁹⁴ PLANNING AND ZONING LAW, *supra* note 348, at § 9:1.

⁵⁹⁵ *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (Ohio 1984), cited in *Flynn v. Boardman Township Bd. of Zoning Appeals*, 110 Ohio App. 3d 149, 673 N.E. 2d 928 (Ohio Ct. App. 1995) (finding that “the...standard of unnecessary hardship should...be used in regard to requests for use variances”); *Duncan v. Vill. of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (Ohio 1986) (finding that area zoning variances are subject to the practical difficulties standard).

⁵⁹⁶ *Kandell v. City Council of Kent, Ohio* 1991 WL 147448 (Ohio Ct App. 1991).

Conditional Use

A conditional use differs from a variance. Unlike a variance, which requests a deviation from the provisions of the zoning resolution, a conditional use (or special exception) is a legitimate use of property pursuant to the terms of the zoning resolution, yet the use may have a significant impact upon the zoned property. Therefore, certain prescribed conditions must be met before the use will be allowed.⁵⁹⁷ These conditions, which distinguish a permitted use (a use expressly permitted by the zoning resolution) from a conditional use, are set forth within the zoning code.

Generally, in issuing a conditional zoning certificate, a BZA is governed by the terms and conditions of the zoning resolution itself.⁵⁹⁸ Thus, “[t]he standards for granting or denying each use will differ from ordinance to ordinance.”⁵⁹⁹ It remains the responsibility of the BZA to interpret and apply the standards in the resolution.⁶⁰⁰

Procedures

The township zoning resolution often provides rules and regulations pertaining to the BZA. The BZA, in accordance with these rules and regulations, can organize and adopt rules.⁶⁰¹

BZA meetings are called by the chairperson, and at such other times as the board determines appropriate, and shall be open to the public.⁶⁰² The chair, and if the chairperson is absent, the acting chairperson may administer oaths.⁶⁰³ The BZA may compel the attendance of witnesses.⁶⁰⁴ Minutes of BZA hearings shall be kept by the BZA secretary or clerk and shall include the vote of each member upon each question.⁶⁰⁵ In addition to minutes, a court reporter is generally present to take a verbatim transcript of the proceedings. If a member is either not present or fails to vote, the minutes should note this fact.⁶⁰⁶ The BZA should keep “records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of trustees and be a public record.”⁶⁰⁷

Procedure for Appeal of Decision of Administrative Official

“[A]ny person aggrieved...by any officer of the township [or those] affected by any decision of the administrative officer” may appeal to the BZA.⁶⁰⁸ Such appeals must be taken

⁵⁹⁷ PLANNING AND ZONING LAW, *supra* note 348, at §§ 9:2, 9:11.

⁵⁹⁸ PLANNING AND ZONING LAW, *supra* note 348, at § 9:12 (citing *Nunamaker v. Bd. of Zoning Appeals of Jerusalem Twp.*, 2 Ohio St.3d 115, 443 N.E.2d 172 (1982)).

⁵⁹⁹ PLANNING AND ZONING LAW, *supra* note 348, at § 9:12.

⁶⁰⁰ PLANNING AND ZONING LAW, *supra* note 348, at § 9:12.

⁶⁰¹ OHIO REV. CODE ANN. § 519.15.

⁶⁰² OHIO REV. CODE ANN. § 519.15.

⁶⁰³ OHIO REV. CODE ANN. § 519.15.

⁶⁰⁴ OHIO REV. CODE ANN. § 519.15.

⁶⁰⁵ OHIO REV. CODE ANN. § 519.15.

⁶⁰⁶ OHIO REV. CODE ANN. § 519.15.

⁶⁰⁷ OHIO REV. CODE ANN. § 519.15.

⁶⁰⁸ OHIO REV. CODE ANN. § 519.15.

within twenty (20) days following the decision that is the reason for the appeal.⁶⁰⁹ The filing must include a notice of appeal and state the grounds for the appeal. It must be filed with the officer from whom the appeal is taken and with the BZA.⁶¹⁰ After the filing of the notice of appeal, the officer whose decision is being appealed shall immediately send all documents pertaining to the decision to the BZA.⁶¹¹

The BZA shall then “fix a reasonable time for the public hearing of the appeal....”⁶¹² Each interested party shall receive ten (10) days’ notice in writing of the public hearing.⁶¹³ Notice of the hearing shall also be published once in one or more newspapers of general circulation⁶¹⁴ in the county at least ten (10) days prior to the hearing.⁶¹⁵ Parties may represent themselves at the hearing or be represented by an attorney.⁶¹⁶

Following the hearing, the BZA shall render a written decision and its findings of fact and conclusions within a “reasonable time” after the appeal has been submitted to the board.⁶¹⁷ Such a written decision and findings of fact and conclusions shall be delivered to each of the parties to the appeal.

Appeal From BZA Decision

If a party is aggrieved by the decision of the BZA, the BZA’s decision may be appealed to the Court of Common Pleas.⁶¹⁸

⁶⁰⁹ OHIO REV. CODE ANN. § 519.15.

⁶¹⁰ OHIO REV. CODE ANN. § 519.15.

⁶¹¹ OHIO REV. CODE ANN. § 519.15.

⁶¹² OHIO REV. CODE ANN. § 519.15.

⁶¹³ OHIO REV. CODE ANN. § 519.15.

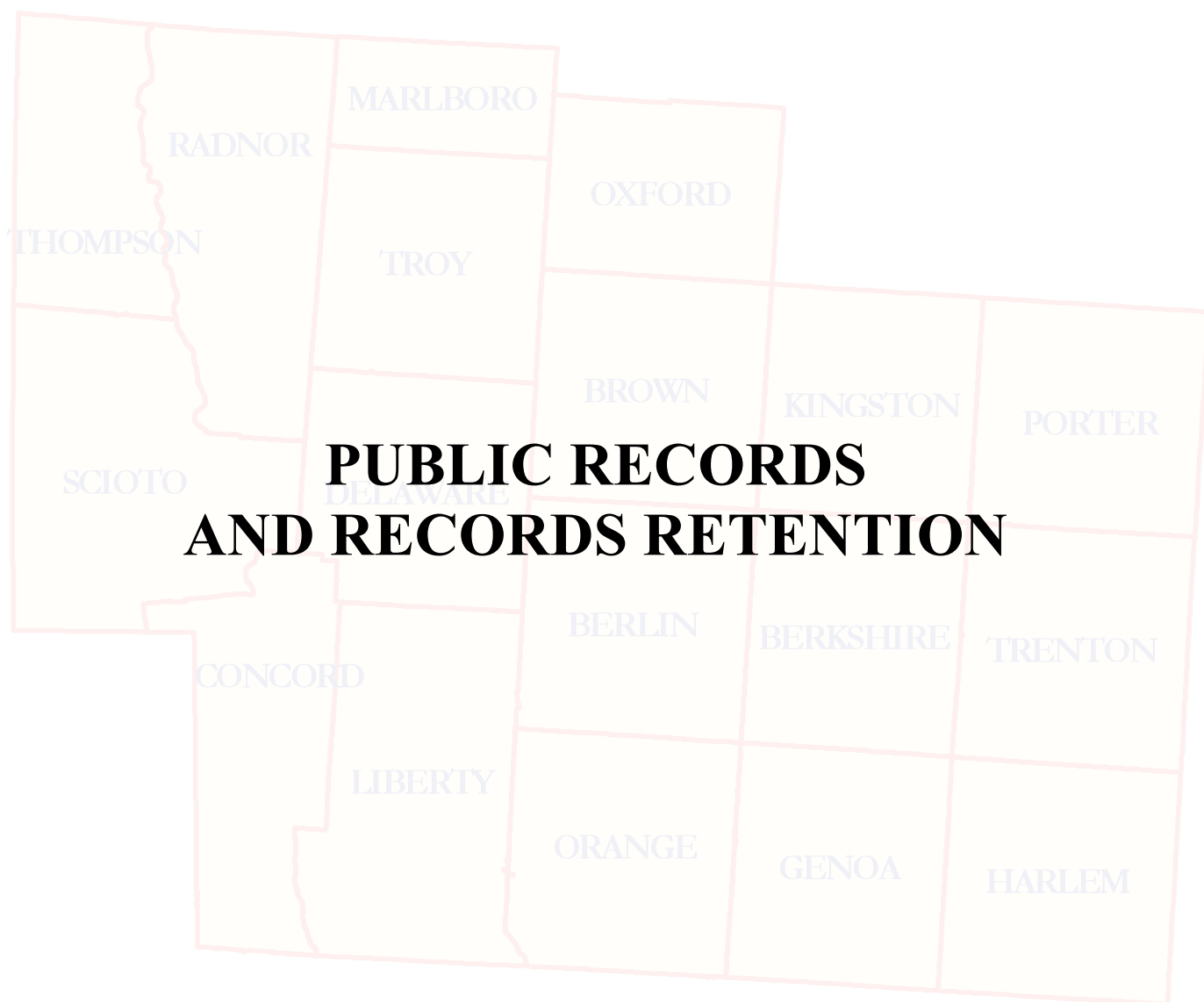
⁶¹⁴ Pursuant to O.R.C. § 7.12, a newspaper of general circulation is defined as “a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or sixteen pages in the tabloid format; (2) It contains at least twenty-five per cent editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service “Statement of Ownership, Management, and Circulation” (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication.”

⁶¹⁵ OHIO REV. CODE ANN. § 519.15.

⁶¹⁶ OHIO REV. CODE ANN. § 519.15.

⁶¹⁷ OHIO REV. CODE ANN. § 519.15.

⁶¹⁸ See OHIO REV. CODE ANN CHAPTER 2506.



Ohio's Public Records Law

Ohio's Public Records Law is codified in O.R.C. § 149.43.

Definitions

As provided by the Ohio Revised Code, the following definitions apply concerning public records:

- "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.⁶¹⁹
- "Public Record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the records listed in R.C. § 149.43(A)(1)(a) through (cc).⁶²⁰

General Application of Ohio's Public Records Law

Unless excepted by law from being a public record, all records kept and maintained by a township are public records.⁶²¹

Availability of Public Records

Upon receipt of a request for public records, townships are under a duty to produce public records for inspection and/or copying/reproduction. Concerning inspection of public records, O.R.C. § 149.43(B)(1) states that "[u]pon request . . . all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours."⁶²² Upon request for copies and/or reproduction of a public record, O.R.C. § 149.43(B)(1) states that "a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time."⁶²³ There is no requirement that the township or person responsible for the public record permit or allow the person seeking the copy of the public record to, themselves, make the copy of the public record.⁶²⁴

⁶¹⁹ OHIO REV. CODE ANN. § 149.011(G).

⁶²⁰ OHIO REV. CODE ANN. § 149.43(A)(1).

⁶²¹ OHIO REV. CODE ANN. § 149.43.

⁶²² OHIO REV. CODE ANN. § 149.43(B)(1).

⁶²³ OHIO REV. CODE ANN. § 149.43(B)(1).

⁶²⁴ OHIO REV. CODE ANN. § 149.43(B)(6).

Maintenance of Records

Consistent with the express, statutory goal “[t]o facilitate broader access to public records” and consistent with the requirements and duties under O.R.C. § 149.43(B) to produce public records, a township “shall organize and maintain public records in a manner that they can be made available for inspection or copying.”⁶²⁵ In addition, the township shall have a copy of its current records retention schedule available “at a location readily available to the public.”⁶²⁶

Requests for Public Records

There are no requirements governing the means, format, style or content of public records requests. In other words, a public records request can be made by any means, be in any format, be in any style, and does not have to contain any specific information.

A. Prohibition Against Placing Conditions on Requests

Except as required or authorized by state or federal law, conditions cannot be placed on requests for public records. According to O.R.C. § 149.43(B)(4):

no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.⁶²⁷

B. Written Requests, Identification, Purpose

In accordance with O.R.C. § 149.43(B)(5), a township may ask the person making the public records request to:

- Make the request in writing
- Ask the requester's identity
- Inquire about the intended use of the information.⁶²⁸

These requests may only be made **after** disclosing to the person making the request that:

a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.⁶²⁹

⁶²⁵ OHIO REV. CODE ANN. § 149.43(B)(2).

⁶²⁶ OHIO REV. CODE ANN. § 149.43(B)(2).

⁶²⁷ OHIO REV. CODE ANN. § 149.43(B)(4).

⁶²⁸ OHIO REV. CODE ANN. § 149.43(B)(5).

⁶²⁹ OHIO REV. CODE ANN. § 149.43(B)(5).

C. Ambiguous and/or Overly Broad Requests

If a public records request is ambiguous or overly broad or where the person making the request has difficulty in making the request, “such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request.”⁶³⁰ Under such circumstances, the township “shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.”⁶³¹

Choice of Media

A person requesting a copy/reproduction of a public record shall have a choice of media upon which the public record is copied/reproduced.⁶³² Specifically:

The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.⁶³³

Cost

A township may charge the actual cost of copying or reproducing the public record.⁶³⁴ The cost encompasses materials, but does not include labor. The township may require the person making the request “to pay in advance the cost involved in providing the copy of the public record.”⁶³⁵

Postage/Delivery

Pursuant to O.R.C. § 149.43(B)(7), a person making a request for public records may request that copies of the public records be delivered to that person or any other person via U.S.

⁶³⁰ OHIO REV. CODE ANN. § 149.43(B)(2).

⁶³¹ OHIO REV. CODE ANN. § 149.43(B)(2).

⁶³² OHIO REV. CODE ANN. § 149.43(B)(6).

⁶³³ OHIO REV. CODE ANN. § 149.43(B)(6).

⁶³⁴ OHIO REV. CODE ANN. § 149.43(B)(1).

⁶³⁵ OHIO REV. CODE ANN. § 149.43(B)(6).

mail or other means of delivery or transmission.⁶³⁶ Under such circumstances, “a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy.”⁶³⁷

Costs incurred in the mailing, delivery, or transmission of public records in response to a public records request may be collected from the individual making the public records request. Specifically, a township “may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.”⁶³⁸

Denial of a Request for Public Records

A. Non-Existent Record

Where a request is made for a record that the township does not have or that the township has not maintained or does not maintain, O.R.C. § 149.43 does not require the creation of new documents to satisfy the demands of a requester.⁶³⁹

B. Denial of Entire Record

In accordance with O.R.C. § 149.43(B)(3), if a public records request is ultimately denied, the township or person responsible for the public record “shall provide the requester with an explanation, including legal authority, setting forth why the request was denied.”⁶⁴⁰ If the initial request for the records was made in writing, the explanation shall be provided in writing.⁶⁴¹

C. Redaction

Where a public record exists, but “contains information that is exempt from the duty to permit public inspection or to copy the public record,” O.R.C. § 149.43(B)(1) states that:

the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible.⁶⁴²

⁶³⁶ OHIO REV. CODE ANN. § 149.43(B)(7).

⁶³⁷ OHIO REV. CODE ANN. § 149.43(B)(7).

⁶³⁸ OHIO REV. CODE ANN. § 149.43(B)(7).

⁶³⁹ *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 580 N.E.2d 1085 (Ohio 1991).

⁶⁴⁰ OHIO REV. CODE ANN. § 149.43(B)(3).

⁶⁴¹ OHIO REV. CODE ANN. § 149.43(B)(3).

⁶⁴² OHIO REV. CODE ANN. § 149.43(B)(1).

Pursuant to O.R.C. § 149.43(A)(11), “redaction” as related to public records means:

obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.⁶⁴³

According to O.R.C. § 149.43(B)(1), “[a] redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.”⁶⁴⁴ As a denial of a request for a public record, all redactions must be supported with an explanation of the redaction that includes legal authority setting forth why the request was denied.⁶⁴⁵ Such explanation, including legal authority, must be provided to the person who made the public records request.⁶⁴⁶ If the initial request for the records was made in writing, the explanation shall be provided in writing.⁶⁴⁷

Records Requests for Peace Officer, Parole Officer, Probation Officer, Bailiff, Prosecuting Attorney, Assistant Prosecuting Attorney, Correctional Employee, Community-Based Correctional Facility Employee, Youth Services Employee, Firefighter, EMT, or Investigator of the Bureau of Criminal Identification and Investigation Residential or Familial Information

Pursuant to O.R.C. § 149.43(A)(1)(p), peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information is not a public record.⁶⁴⁸

Pursuant to O.R.C. § 149.43(A)(7), "Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information" means any information that discloses any of the following about these positions:

- The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

⁶⁴³ OHIO REV. CODE ANN. § 149.43(A)(11).

⁶⁴⁴ OHIO REV. CODE ANN. § 149.43(B)(1).

⁶⁴⁵ OHIO REV. CODE ANN. § 149.43(B)(3).

⁶⁴⁶ OHIO REV. CODE ANN. § 149.43(B)(3).

⁶⁴⁷ OHIO REV. CODE ANN. § 149.43(B)(3).

⁶⁴⁸ OHIO REV. CODE ANN. § 149.43(A)(1)(p).

- Information compiled from referral to or participation in an employee assistance program;
- The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;
- The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;
- The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state or federal law;
- The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;
- A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.⁶⁴⁹

⁶⁴⁹ OHIO REV. CODE ANN. § 149.43(A)(7)(a-g).

For purposes of the Ohio Public Record Law, "peace officer" has the same meaning as in section 109.71 of the Revised Code.⁶⁵⁰ Also, "'firefighter' means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village."⁶⁵¹ Additionally, "'EMT' means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code."⁶⁵²

Consequences of Failing to Comply with Ohio's Public Records Law

A person that is aggrieved by an alleged failure of a public office or person to comply with Ohio's Public Records Law may file an action for mandamus.⁶⁵³ A mandamus action is a court action to force a public office or person to comply with the law. Such an action may be brought in the court of common pleas, the appellate court, or the Supreme Court of Ohio.⁶⁵⁴ If the person prevails in the mandamus action, such person may be awarded court costs, attorney's fees, and, if applicable, statutory damages.⁶⁵⁵ According to O.R.C. § 149.43(C)(1), statutory damages amounts to one hundred dollars (\$100.00) per business day for every day the request was not complied with, beginning with the date the mandamus action was filed, up to a maximum of one thousand dollars (\$1,000.00).

Furthermore, O.R.C. 149.351 requires that public records shall not be "removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of" unless explicitly provided for by law, or established "under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code."⁶⁵⁶ A person who is aggrieved by the wrongful removal, destruction, mutilation or transfer of such a public record may file a civil action "to recover a forfeiture in the amount of one thousand dollars for each violation, but not to exceed a cumulative total of ten thousand dollars, regardless of the number of violations, and to obtain an award of the reasonable attorney's fees incurred by the person in the civil action not to exceed the forfeiture amount recovered."⁶⁵⁷ Thus, the amounts that can be recovered in forfeiture for the destruction or damage of records, as well as the amount of attorney's fees which can be recovered, are limited to ten thousand (\$10,000.00).

Training Requirement

In accordance with O.R.C. § 149.43(E)(1), all elected officials, including township officials or their appropriate designees, shall attend training on Ohio's Public Records Law as

⁶⁵⁰ OHIO REV. CODE ANN. § 149.43(A)(7).

⁶⁵¹ OHIO REV. CODE ANN. § 149.43(A)(7).

⁶⁵² OHIO REV. CODE ANN. § 149.43(A)(7).

⁶⁵³ OHIO REV. CODE ANN. § 149.43(C)(1).

⁶⁵⁴ OHIO REV. CODE ANN. § 149.43(C)(1).

⁶⁵⁵ OHIO REV. CODE ANN. § 149.43(C)(1).

⁶⁵⁶ OHIO REV. CODE ANN. § 149.351(A).

⁶⁵⁷ OHIO REV. CODE ANN. § 149.351(B)(2).

approved by the Ohio Attorney General.⁶⁵⁸ The training shall be for a minimum of three (3) hours “for every term of office for which the elected official was appointed or elected to the public office involved.”⁶⁵⁹ For a list of training sessions being offered by the Attorney General, see the Ohio Attorney General’s website:

<http://www.ohioattorneygeneral.gov>

Required Public Records Policy

Pursuant to O.R.C. § 149.43(E)(1), all public offices shall adopt a public records policy for responding to requests for public records.⁶⁶⁰ Such policy shall be in compliance with Ohio’s Public Records Law.⁶⁶¹ Except as otherwise permitted by O.R.C. § 149.43, the policy shall not do any of the following:

- limit the number of public records that the public office will make available to a single person,
- limit the number of public records that it will make available during a fixed period of time,
- establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight (8) hours.⁶⁶²

The policy shall be distributed to “the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office.”⁶⁶³ In the case of a township, this employee is most likely the township fiscal officer. Whether the fiscal officer or another employee, the records custodian or records manager or other employee that has custody of the records shall be required to acknowledge receipt of a copy of the public records policy.⁶⁶⁴

The public records policy shall also be included in any handbook or manual of general policies and procedures for all employees of the public office, if such a manual or handbook exists or is maintained.⁶⁶⁵ This is most likely an employee handbook or manual provided to all employees.

Pursuant to O.R.C. § 109.43, the Ohio Attorney General is charged, for purposes of providing guidance to public offices in drafting a public records policy as required by O.R.C. § 149.43(E)(1), with drafting a model public records policy. Such policy is available on the Ohio Attorney General’s website at:

<http://www.ohioattorneygeneral.gov>

⁶⁵⁸ OHIO REV. CODE ANN. § 149.43(E)(1).

⁶⁵⁹ OHIO REV. CODE ANN. § 109.43(B).

⁶⁶⁰ OHIO REV. CODE ANN. § 149.43(E)(1).

⁶⁶¹ OHIO REV. CODE ANN. § 149.43(E)(1).

⁶⁶² OHIO REV. CODE ANN. § 149.43(E)(1).

⁶⁶³ OHIO REV. CODE ANN. § 149.43(E)(2).

⁶⁶⁴ OHIO REV. CODE ANN. § 149.43(E)(2).

⁶⁶⁵ OHIO REV. CODE ANN. § 149.43(E)(2).

While a model policy is available from the Ohio Attorney General, the Delaware County Prosecuting Attorney has drafted a model policy for use throughout Delaware County. This model policy appears on the following pages.

TOWNSHIP PUBLIC RECORDS POLICY

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I. Introduction:

It is the policy of the _____ Township, Delaware County, Ohio Board of Township Trustees ("Board") that openness leads to a better informed citizenry, which leads to better government and better public policy. It is therefore the policy of the Board and the government of _____ Township, Delaware County, Ohio ("_____ Township") to strictly adhere to the state of Ohio's Public Records Act.

II. Purpose:

The Board acknowledges that _____ Township maintains many records including, but not limited to, both fixed medium (i.e. paper, film, etc.) and electronic (i.e. email) that are used in the administration and operation of _____ Township. The records maintained by the Board and/or _____ Township and the ability to access them are a means to provide trust between the public and _____ Township. To foster, maintain, and continue to build such trust, the Board and _____ Township, in accordance with state law, adopts this Public Records Policy ("Policy"). (R.C. § 149.43(E)(1)).

III. Definitions:

As provided by the Ohio Revised Code, the following definitions apply to this Policy:

- "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (R.C. § 149.011(G)).
- "Public Record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the records listed in R.C. § 149.43(A)(1)(a) through (z). (R.C. § 149.43(A)(1)).

IV. Scope:

All records of the Board and _____ Township are public records unless they do not meet either or both of the definitions of “Records” or “Public Record” as defined by the Ohio Revised Code (R.C. § 149.011(G) and R.C. § 149.43(A)(1)) or are otherwise specifically exempt from disclosure pursuant to the Ohio Revised Code or applicable federal law.

V. Internal Procedure:

- Each office, department, or function that maintains records shall designate and maintain a designated employee who serves as the custodian of all records maintained by that office, department, or function.
- Each such designated employee and/or record custodian shall have a copy of this Policy or, in lieu of this Policy, a public records policy developed by that individual office, department, or function. The designated employee and/or record custodian shall, in writing, acknowledge receipt of this Policy or the public records policy developed by that individual office, department, or function in lieu of this Policy. (See Form 1) (R.C. 149:43(E)(2)).
- This Policy, as well as, the Schedules of Records Retention and Disposition (RC-2) applicable to that office, department, or function are located at every location of that office in which the public may be given access to records.
- This Policy is a part of and shall be located in and/or attached to the _____ Township Employee Handbook.
- A poster which generally describes this Policy shall be displayed at every location in which the public may access records.

VI. Fees and Costs:

- Unless a different fee is required by law, in accordance with R.C § 149.43, the following fee schedule is established for providing copies or reproductions of public records:

Media Type	Unit	Cost Per Unit
Letter or Legal Sized Paper Copy (Single Side)	Page	\$0.05
Letter or Legal Sized Paper Copy (Double Side)	Two Sided Page	\$0.05
Certified Paper Copy	Page	\$1.00
Microfiche	Fiche	\$0.50
Film Duplication	16mm Roll	\$15.00
Film Duplication	35mm Roll	\$20.00
Computer Diskette	3.5" Diskette	\$1.00
Audio Cassette Tape	Tape	\$1.00
Video Cassette Tape	Tape	\$2.50
CD/CD Rom	Disk	\$1.00
Email Documents	Various Forms	See Cost Per Unit Above

- The above fee schedule shall be clearly posted and visible to the public at all locations authorized to provide copies of public records. (See Form 2).
- Advance payment is required before any copies are prepared.
- The Board and/or _____ Township shall charge the actual cost of material for media not listed in the fee schedule above.
- As a result of security issues and to preserve the integrity of _____ Township's computer systems, the Board and/or _____ Township will not accept blank media supplied by the requesting party. The Board or _____ Township will supply the media. The cost of the media is included in the fee schedule above or, if not contemplated in the fee schedule above, the media will be supplied at cost.
- The Board and/or _____ Township shall notify the requesting party in advance in writing of any costs for labor or materials in situations where an outside vendor must be hired to fulfill the request(s).
- The Board and/or _____ Township will charge the actual costs of postage and mailing supplies when the requesting party requires the public records to be transmitted via the United States Postal Service or any type of priority mail service.

VII. Availability/Inspection

- Upon request and subject to R.C. § 149.43(B)(1), all public records shall be promptly prepared and made available for inspection to any person during regular business hours, with the exception of legal holidays.
- Copies or reproductions of the requested records shall be made available at cost

(See Fee Schedule) and within a reasonable period of time.

- “Promptly” and “Reasonable,” as used above and in connection with the preparation and production of the requested records, is to be determined by the facts and circumstances of each public records request and should take into account the following:
 1. The opportunity for legal review,
 2. The volume of records requested, and
 3. the proximity of the location where the records are stored.

VIII. Requests for Public Records

- Any person, including corporations, individuals, and even governmental agencies, may request public records, and will be allowed prompt inspection of public records and copies within a reasonable amount of time upon request.
- No specific language is required to make a request for public records. The requester must, however, identify the records requested with sufficient clarity to allow the Board and/or _____ Township to identify, retrieve, and review the records.
- If it is not clear what records are being sought, the records custodian shall contact the requester for clarification and should inform the requester of the manner in which the office keeps its records.
- The requester may be asked, but is not required, to:
 1. Put a records request in writing,
 2. Provide his or her identity, or
 3. Provide the intended use of the requested public record.

If the requester is asked for any of this information, he or she shall first be advised of the following:

1. The requester does not have to answer any of these questions, and
2. The requester's refusal to provide any of this information does not impair the requester's right to inspect and/or receive copies of the requested public records. (R.C. 149.43(B)(5)).

- For the purpose of enhancing the ability of the Board and/or _____ Township to identify and provide for prompt inspection and/or copies of the requested records in a reasonable period of time, the requester shall be provided with Form 3 for the requester to complete. In providing Form 3 to the requester, the requester shall be informed:
 1. The requester does not have to complete Form 3, and
 2. The requester's refusal to complete or provide any and/or all information on Form 3 does not impair the requestor's right to inspect and/or receive copies of the requested public records. (R.C. 149.43(B)(5)).

IX. Response/Release

- Requests for public records shall be processed the same regardless of the means by which the request was made. (Note Section X - Special Provisions for Public Records Requests Received by Email, Regular Mail, or Other Delivery Service.)
- The records custodian shall complete the public records request using Form 4.
- Requests for records that are capable of being satisfied immediately and about which there are no issues concerning release should be satisfied immediately.
- Requests for public records that are not capable of being satisfied immediately shall be dealt with as follows:
 1. Voluminous/Copying or Reproduction Time Required Request: (Form 5)
 - a. Each such request for public records should be evaluated for the estimated number of copies required to satisfy the request and/or an estimated length of time required to gather the records.
 - b. The requester shall be informed of the estimated length of time required to respond.
 - c. The requester shall be informed of the estimated total fee/cost associated with copying or reproducing and delivery of the record(s) and that such estimated total cost must be paid in full prior to the record(s) being copied or reproduced.
 - d. The requester shall be informed that any difference between the total estimated cost and the total actual cost shall be settled either by _____ Township re-paying any overage or, prior to the delivery of the records, the requester paying any deficit.
 - e. The requester shall be informed of any items within the request that may be exempt from disclosure.
 - f. If the request is made verbally the above information shall be provided to the requester either verbally or in writing. If the request is made in writing, the requester shall be informed of the

above information in writing.

- g. All such information as required above shall be provided to the requester no more than three (3) days after receiving the request.
- h. Considering the volume of records requested, the requested records should be made available to the requester within a reasonable period of time.

2. Legal Issue Concerning Release: (Form 6)

- a. In the event a request for public records is made to inspect and/or obtain a copy of a record whose release may be prohibited or exempted by either state or federal law, the request shall be forwarded to legal counsel (Delaware County Prosecuting Attorney or other township legal counsel) for research and/or review.
- b. The person submitting the request shall be advised that their request is being reviewed by legal counsel to ensure that protected and/or exempted information is not improperly released. If the request is made verbally this information shall be provided to the requester either verbally or in writing. If the request is made in writing, the requester shall be informed in writing.
- c. If after review, it is determined that the record shall be released, refer to the procedures in subsection (A) and (B) above, whichever, depending on the record(s) requested, is applicable.
- d. If after review, it is determined that the record shall NOT be released, refer to Section XIII.

- Copied records may be forwarded to the requestor by any means reasonably acceptable to the requester.
- Records whose release is prohibited or exempted by either state or federal law, or which are not considered public records as defined by R.C. 149.43(A)(1), shall NOT be subject to public inspection. Refer to Section XIII.

X. Special Provisions for Public Records Requests Received by Email, Regular Mail, or Other Delivery Service

- Requests for public records received by email, regular mail, or other delivery service shall be responded to in the same manner as public records requests received via any other means, except that the records custodian, upon receipt of the request, shall, by any means practical, contact the requester and advise them as follows:
 - 1. Advance payment is required prior to providing copies of public records,
 - 2. The estimated total fee/cost associated with copying or reproducing and

delivery of the record(s) and that such estimated total cost must be paid in full prior to the record(s) being copied or reproduced.

3. That any difference between the total estimated cost and the total actual cost shall be settled either by _____ Township re-paying any overage or, prior to the delivery of the records, the requester paying any deficit.
 4. Any items within the request that may be exempt from disclosure.
- Upon receipt of the fees/costs and where no issues concerning release exist, the copied or reproduced records shall be forwarded to the requester by any means reasonably acceptable to the requester.
 - Voluminous requests, requests requiring time for copying or reproduction, and/or requests involving legal issues concerning release shall in all other respects be handled in accordance with Section IX.

XI. Medium

- The requester shall be permitted to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or record custodian determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or records custodian. When the requester makes a choice, the public office or records custodian shall provide a copy of it in accordance with the choice made by the requester. (R.C. 149.43(B)(6)).
- Persons seeking copies of public records are not permitted to make their own copies of the requested records regardless of means or media. (R.C. 149.43(B)(6)).

XII. Limited Requests

- In accordance with section 149.43(B)(7) of the Ohio Revised Code, the Board and _____ Township limits the number of requested public records to be transmitted through United States mail to a maximum of ten records per month, unless the requester certifies that the records or information in them will not be used for commercial purposes.
- For purposes of this section, "commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

XIII. Response/Denial

➤ Records Not Maintained by the Office Where the Request is Made

1. The requested records have never been maintained by the office where the request is made,
2. The requested records are no longer maintained or have been disposed of or transferred pursuant to applicable Schedules of Record Retention and Disposition (RC-2),
3. The requested record is a record that has been disposed of pursuant to an Application of the One-Time Records Disposal (RC-1) or Certificate of Records Disposal (RC-3),
4. The requested record is not a record used or maintained by the office where the request is made. In such case, the requester shall be notified that in accordance with Ohio Revised Code Section 149.40, that there is no requirement to create records to meet public record requests.

➤ Ambiguous or Overly Broad Request for Public Records (R.C. 149.43(B)(2))

If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the office responsible for the requested public record cannot reasonably identify what public records are being requested:

1. The request may be denied.
2. However, the requestor shall be provided with an opportunity to revise the request. In such case, the records custodian shall inform the requester of the manner in which records are maintained by the office and accessed in the ordinary course of the office's or records custodian's duties.

➤ Denial of the Public Records Request

1. The request for a record or public record maintained by the office where the request is made may be denied if the record that is requested is prohibited from release due to applicable state or federal law.
 - a. Any denial of public records requested must include an explanation, including legal authority.

- b. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.
 - c. Employees shall consult legal counsel if they are unsure of whether the record requested should be withheld from disclosure.
- 2. As governed by R.C. 149.43(B)(3), if a request is ultimately denied, in whole or in part, the requester shall be provided with an explanation, including legal authority, setting forth why the request was denied.
- 3. If the initial request was provided in writing, then the explanation shall also be provided in writing.
- 4. The explanation shall not preclude the Board or _____ Township from relying upon additional reasons or legal authority in defending an action commenced pursuant to R.C. 149.43.

➤ Redaction/Procedure

1. Definition and Effect of a Redaction

- a. "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Ohio Revised Code. (R.C. 149.43 (A)(1)).
- b. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction. (R.C. 149.43(B)(1)).

2. Redaction Procedure

- a. If a public record contains certain information that is exempt from the duty to permit public inspection or to copy the public record, the information within the public record that is exempt shall be redacted and that information in the record which is not exempt shall be made available.
- b. Where a redaction is to be made, the records custodian shall reproduce a copy of the page where the redaction is to be made. The redaction shall be made on the copied page. The copied page shall then be re-copied with the redactions. The resulting copy shall be the page that is released to the requester.

- c. The first reproduction page with the original redactions made by the employee is the work sheet. It shall be attached to the original record, and maintained in accordance with the retention period established for the original document.
- d. When making that public record available for public inspection or copying, the records custodian shall notify the requester of any and all redactions and/or make any and all redactions plainly visible. (R.C. 149.43(B)(1)).
- e. As governed by R.C. 149.43(B)(3), if a request is ultimately denied, in whole or in part, including redactions, the requester shall be provided with an explanation, including legal authority, setting forth why the request was denied.
- f. If the initial request was provided in writing, then the explanation shall also be provided in writing.
- g. The explanation shall not preclude the Board or _____ Township from relying upon additional reasons or legal authority in defending an action commenced pursuant to R.C. 149.43.

XIV. Special Provisions Related to Email

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. Email shall be treated in the same fashion as records in any other format and should follow the same retention schedules.

- Records in private email accounts used to conduct public business are subject to disclosure, and all employees or representatives of the Board and _____ Township are instructed to retain their e-mails that relate to public business and to copy them to their business email accounts and/or to the office's records custodian.
- The records custodian is to treat the emails from private accounts as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

XV. Grievances

- If a person allegedly is aggrieved due to the inability to inspect a public record or due to the inability to receive a copy of the public record, the person shall be advised that they may contact the senior representative of the office where the request was made.
- If the person is not satisfied after contacting the senior representative of the office where the request was made, they shall be advised that Ohio Revised Code section 149.43 provides a legal means for addressing their complaint in these disputes. (R.C. 149.43(C)(1) and(2)).

XVI. Failure to Respond to a Public Records Request

The Board and _____ Township recognize the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the failure to comply with a request may result in a court ordering the Board and/or _____ Township to comply with the law and to pay the requester's attorney's fees and damages.

XVII. Training and Education

The Board and _____ Township continue to update and address all education, training, disclosure, and policy requirements mandated by R.C. 109.43 and R.C. 149.43(E)(1)(2).

FORM 1

<p>ACKNOWLEDGEMENT OF RECEIPT OF THE _____ TOWNSHIP PUBLIC RECORDS POLICY</p>
--

I, _____ am the designated employee and/or
record custodian for _____ Township. I hereby acknowledge that I have
received on this _____ day of _____, 20____ a copy of the _____
Township Public Records Policy dated _____.

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

FORM 2

<p align="center">FEE SCHEDULE AND POLICY REGARDING FEES FOR COPIES AND REPRODUCTIONS OF PUBLIC RECORDS</p>
--

Unless a different fee is required by law, in accordance with R.C § 149.43, the following fee schedule is established for providing copies or reproductions of public records:

Media Type	Unit	Cost Per Unit
Letter or Legal Sized Paper Copy (Single Side)	Page	\$0.05
Letter or Legal Sized Paper Copy (Double Side)	Two-Sided Page	\$0.05
Certified Paper Copy	Page	\$1.00
Microfiche	Fiche	\$0.50
Film Duplication	16mm Roll	\$15.00
Film Duplication	35mm Roll	\$20.00
Computer Diskette	3.5" Diskette	\$1.00
Audio Cassette Tape	Tape	\$1.00
Video Cassette Tape	Tape	\$2.50
CD/CD Rom	Disk	\$1.00
Email Documents	Various Formats	See Cost Per Unit Above

- The above fee schedule shall be clearly posted and visible to the public at all locations authorized to provide copies of public records.
- Advance payment is required before any copies are prepared.
- The Board and/or _____ Township shall charge the actual cost of material for media not listed in the fee schedule above.
- As a result of security issues and to preserve the integrity of _____ Township's computer systems, the Board and/or _____ Township will not accept blank media supplied by the requesting party. The Board or _____ Township will supply the media. The cost of the media is included in the fee schedule above or, if not contemplated in the fee schedule above, the media will be supplied at cost.
- The Board and/or _____ Township shall notify the requesting party in advance in writing of any costs for labor or materials in situations where an outside vendor must be hired to fulfill the request(s).
- The Board and/or _____ Township will charge the actual costs of postage and mailing supplies when the requesting party requires the public records be transmitted via the United States Postal Service or any type of priority mail service.

FORM 3

<p style="text-align: center;">_____ TOWNSHIP, OHIO REQUEST FOR PUBLIC RECORDS (FORM 3)</p>
--

The _____ Township, Ohio government belongs to the citizens of _____ Township, Ohio. We conduct our government activities in the open and we are proud of our strong commitment to this important principle of democracy.

IMPORTANT:

COMPLETION OF THIS FORM IS NOT MANDATORY. YOUR REFUSAL TO COMPLETE OR PROVIDE ANY AND/OR ALL INFORMATION ON THIS FORM WILL NOT AFFECT YOUR RIGHT AND/OR ABILITY TO INSPECT AND/OR RECEIVE COPIES OR REPRODUCTIONS OF THE REQUESTED RECORDS. (R.C. 149.43(B)(5)).

IF YOU CHOOSE TO COMPLETE THIS FORM, IT WILL HELP US TO BETTER AND MORE EFFECTIVELY SERVE YOU IN PROVIDING YOU WITH THE RECORDS YOU ARE REQUESTING.

1. GENERAL INFORMATION: (Please Print.)

Today's Date	
Name	
Street Address	
City	
State	
Zip Code	
Telephone Number	
Facsimile Number	

2. INFORMATION ON RECORD REQUESTED: (Please Print.)

With as much specificity as possible, please describe what records you are requesting. (Use the back or attach other sheets as needed.)

3. INSPECTION OF RECORD: (Check your preference below.)

There is no charge to inspect public records while in the _____ Township, Ohio office where the records are kept. _____ Township, Ohio has adopted and provides photocopies and reproductions of public records in accordance with the Fee Schedule and Policy Regarding Fees for Copies and Reproductions of Public Records.

<input type="checkbox"/>	I would like to inspect these records in the office when they are ready.
<input type="checkbox"/>	I would like these records copies/reproduced and I will pick them up when they are ready.
<input type="checkbox"/>	I would like these records copied and mailed to me at the address on this form.

4. MEDIUM:

Preferred Medium (i.e. paper, email (pdf or locked format only), CD-Rom, etc . . .) for Copy/Reproduction. ⁶⁶⁶	
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⁶⁶⁶ Medium is limited by the determination of the record custodian as to the types of media upon which the record can reasonably be duplicated as an integral part of the normal operations of the public office or records custodian.

FORM 4

PROCESSING FORM FOR REQUESTS FOR PUBLIC RECORDS

Name of Requester	
Date Request Received	
Date Request Completed	

Name of Employee Handling Request	
--	--

1. ESTIMATED NUMBER OF COPIES/FEES

Type of Unit	Estimated Number of Units	Cost Per Unit	Estimated Total of Fees/Costs

2. PREPAYMENT (REQUIRED)

<input type="checkbox"/> Prepaid

Amount of Prepayment	
Receipt Number	

3. ACTUAL NUMBER OF COPIES/FEES

Type of Unit	Actual Number of Units	Cost Per Unit	Actual Total of Fees/Costs

4. SETTLEMENT WITH REQUESTOR

Yes / No / Not Applicable	Settlement Necessary
Yes / No / Not Applicable	Settlement Made

Amount of Refund to Requester	
Check/Warrant Number	

OR

Amount Due From Requester	
Paid	Yes / No

5. RECORDS NOT AVAILABLE

	Record has never been maintained by the Township.		
	Record is no longer maintained or has been disposed of or transferred pursuant to RC-2		
	Record has been disposed of pursuant to an application of One-Time Records Disposal RC-1 or Certificate of Records Disposal (RC-3)		
	Record is prohibited from release due to applicable state or federal law. <table border="1"> <tr> <td>Cite for the applicable state or federal law.</td><td></td></tr> </table>	Cite for the applicable state or federal law.	
Cite for the applicable state or federal law.			

6. LEGAL ISSUE

	Record has been forwarded to legal counsel for research/review.				
	Record has been reviewed by legal counsel and records are to be released in their entirety.				
	Record has been reviewed by legal counsel and contained non-releasable material. <table border="1"> <tr> <td></td><td>Non-releasable material has been redacted</td></tr> </table> <table border="1"> <tr> <td>Cite for the applicable state or federal law permitting redaction.</td><td></td></tr> </table>		Non-releasable material has been redacted	Cite for the applicable state or federal law permitting redaction.	
	Non-releasable material has been redacted				
Cite for the applicable state or federal law permitting redaction.					
	Record has been reviewed and release of the entire record has been denied by legal counsel. <table border="1"> <tr> <td>Cite for the applicable state or federal law.</td><td></td></tr> </table>	Cite for the applicable state or federal law.			
Cite for the applicable state or federal law.					

FORM 5

Date

Mr. John Requester
123 North Sandusky Street
Delaware, Ohio 43015

Re: Public Request to _____

Dear Mr. Requester:

This letter is to acknowledge receipt by _____ of your public records request dated _____. Be assured, this office has every intent of fulfilling your request, however, your request has been determined to be voluminous and/or requires time to copy and/or reproduce the requested records. As a result, the purpose of this letter is to advise you of the following concerning your request:

1. The estimated length of time required to respond to your request is _____. Therefore, you can expect your request to be completed by this office on _____, 20 ____.
2. The estimated total fee/cost associated with copying or reproducing and delivery of the requested records is _____. This amount must be paid to this office in advance of any copying or reproduction of the requested records. If you have not done so already, please forward this amount to this office as soon as possible so that this office may proceed with your request and have your records ready for you on the date specified above. A failure to forward this amount will result in a delay or the requested records not being produced. Any difference between the total estimated cost and the actual total cost shall be settled either by: a) _____ Township re-paying any overage to you; or b) prior to the delivery of the records, you paying _____ Township any deficit.
3. There are/are not items within your request that may be exempt from disclosure. These items which may be exempt are as follows.

Should you have any questions, please feel free to contact me at (740) _____, or email me at _____, or send mail to or meet with me personally at the above address.

Sincerely,

Records Custodian

FORM 6

Date

Mr. John Requester
123 North Sandusky Street
Delaware, Ohio 43015

Re: Public Request to _____

Dear Mr. Requester:

This letter is to acknowledge receipt by _____ of your public records request dated _____. Please be advised your request is being reviewed by legal counsel. I will contact you regarding your request as soon as legal counsel completes its review and advises me regarding your request.

Should you have any questions, please feel free to contact me at (740) _____, or email me at _____, or send mail to or meet with me personally at the above address.

Sincerely,

Records Custodian

Required Public Records Policy Poster

Pursuant to O.R.C. § 149.43(E)(2), every public office shall have a “poster that describes its public records policy.”⁶⁶⁷ The poster shall be posted “in a conspicuous place in the public office and in all location where the public office has branch offices.”⁶⁶⁸

To be used in conjunction with the model public records policy on the preceeding pages, the Delaware County Prosecuting Attorney has created the model poster which appears on the following page:

⁶⁶⁷ OHIO REV. CODE ANN. § 149.43(E)(2).

⁶⁶⁸ OHIO REV. CODE ANN. § 149.43(E)(2).

Township

Public Records Policy

_____ Township has a public records policy adopted pursuant to O.R.C. § 149.43.

Records and Public Records are defined respectively in R.C. §§ 149.011(G) and 149.43(A)(1)

Public records are available Monday through Friday, during regular office hours, excluding legal holidays.

For assistance in reviewing public records and/or obtaining copies of public records please contact the office records custodian:

_____ At
(740) _____ - _____

Public records will be promptly prepared and made available in a reasonable period of time.

If a public records request requires research and/or review, you will receive a written response and/or the records within a reasonable period of time.

See posted fee schedule and/or Delaware County Public Records Policy for cost of copies.

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Poster pursuant to O.R.C. § 149.43 (E)(2)

Log of Public Records Requests

The State of Ohio Auditor plans to step up efforts to ensure that public offices are complying with requests for public records. According to the Auditor, those efforts will include spot-checks for compliance, timeliness, and accuracy of records releases. While the practice of tracking and maintaining records of public records requests has always been recommended, in light of the Auditor's plan, such practices become even more important.

The Auditor has recommended that all local governments maintain a log of all public records requests. At a minimum, the log should contain the date the request is received, the date of the response to the request, the name of the person or entity making the request (if given by the requester), the name of the person fulfilling the request, a description of the records requested, and, if the request is denied in whole or in part, the legal authority supporting the denial of the record (ie: exemption or redaction). In connection with the log, the Auditor also suggests that copies of the records released be kept and maintained.

In order to avoid audit issues, boards of township trustees should consider adopting policies requiring the use of a log of public records requests. The log should be similar to the chart below. The purpose of the chart is to track and log public records requests. This chart contains the information that the Auditor would likely request in conducting an audit to check for compliance with requests for public records. In connection with this chart, it is recommended that copies of the released records be kept and maintained in a file separate and apart from where the requested records are ordinarily kept and maintained. This segregation of files allows for the retention of exact copies of what was released or, as the case may be, not released (i.e.: exemptions and redactions).

(NAME OF AGENCY/DEPARTMENT/SUBDIVISION)										
LOG OF PUBLIC RECORDS REQUESTS										
(PERIOD OF TIME COVERED BY LOG)										
	DATE RECEIVED	DATE OF RESPONSE	NAME OF REQUESTING PERSON OR ENTITY	DESCRIPTION OF RECORDS REQUESTED	COPY OF RELEASED RECORDS KEPT		EXEMPTION/ REDACTION		LEGAL AUTHORITY FOR EXEMPTION/ REDACTION	NAME OF PERSON FULFILLING REQUEST
					YES	NO	YES	NO		
1										
2										
3										
4										
5										
6										
7										
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Township Records Commission

Pursuant to O.R.C. § 149.42, in each township there is established a township records commission.⁶⁶⁹ The township records commission consists of the chairperson of the board of township trustees and the township fiscal officer.⁶⁷⁰ The commission shall meet at least once every twelve (12) months and upon the call of the chairperson.⁶⁷¹

The purpose of the township records commission is to “review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by township offices.”⁶⁷²

Records Retention

When the township records commission has approved any township application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission may dispose of records as follows:

- The commission shall send that application or schedule to the Ohio Historical Society for its review.
- The Ohio Historical Society shall review the application or schedule within a period of not more than sixty (60) days after its receipt.
- Upon completion of its review, the Ohio Historical Society shall forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the Auditor of State for the Auditor's approval or disapproval.
- The Auditor shall approve or disapprove the application or schedule within a period of not more than sixty (60) days after receipt of it.
- Before public records are to be disposed of, the commission shall inform the Ohio Historical Society of the disposal through the submission of a certificate of records disposal and shall give the Society, for a period of fifteen (15) business days, the opportunity to select for its custody those public records that it considers to be of continuing historical value.⁶⁷³

The township records commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.⁶⁷⁴

⁶⁶⁹ OHIO REV. CODE ANN. § 149.42.

⁶⁷⁰ OHIO REV. CODE ANN. § 149.42.

⁶⁷¹ OHIO REV. CODE ANN. § 149.42.

⁶⁷² OHIO REV. CODE ANN. § 149.42.

⁶⁷³ OHIO REV. CODE ANN. § 149.42.

⁶⁷⁴ OHIO REV. CODE ANN. § 149.42.

Ohio Sunshine Laws Manual

The Ohio Attorney General regularly publishes a manual about Ohio's Public Records Law entitled "Sunshine Laws Manual" or "Yellow Book." The manual is intended to be used on a local level by local public officials. Townships are highly advised to obtain a copy of the manual. It is available upon request from the Ohio Attorney General and is available online at the address below:

<http://www.ohioattorneygeneral.gov>



Cellular Towers and Zoning

Generally, O.R.C. § 519.211 states that township zoning cannot regulate or control public utilities. In *Campanelli v. AT&T Wireless Services*, the Ohio Supreme Court found that wireless telecommunications companies are public utilities.⁶⁷⁵ Thus, their towers cannot be regulated by township zoning in most circumstances.⁶⁷⁶ However, O.R.C. § 519.211(B) specifically addresses telecommunications towers and allows a township, under very specific circumstances, to regulate them.⁶⁷⁷

Largely, the ability of townships to regulate telecommunications towers through zoning depends upon whether a proposed new tower meets the definition of “telecommunications tower” found in O.R.C. § 519.211(B)(1). Specifically, the most common type of telecommunications tower, a “free-standing telecommunications tower,” is defined as “any free-standing structure...that meets *all* of the following criteria:

- 1) The free-standing...structure is proposed to be constructed on or after October 31, 1996,
- 2) The free-standing...structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services,
- 3) The free-standing...structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use,
- 4) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.
- 5) The free-standing structure...is proposed to have attached to it radio frequency transmission or reception equipment.”⁶⁷⁸

In determining if a proposed telecommunications tower meets these requirements, the township must examine how the area surrounding the tower is zoned. Based on the definition found in O.R.C. § 519.211(B)(1), the area must be zoned for “residential use.” Accordingly, the Ohio Supreme Court in *Symmes Twp. Board of Trustees v. Smyth* held that the area surrounding the tower must actually be zoned and designated for some type of residential use.⁶⁷⁹ It is not considered “residential use” when the area has some other type of non-residential zoning designation and also contains residences.⁶⁸⁰

Assuming that a telecommunications tower meets this definition, O.R.C. § 519.211 (B)(2) addresses the erection of telecommunications towers. Under that subsection, a township

⁶⁷⁵ *Campanelli v. AT&T Wireless Services*, 85 Ohio St.3d 103, 107, 706 N.E.2d 1267, 1269 (Ohio 1999).

⁶⁷⁶ *Campanelli v. AT&T Wireless Services*, 85 Ohio St.3d 103, 105, 706 N.E.2d 1267, 1269 (Ohio 1999).

⁶⁷⁷ See OHIO REV. CODE ANN. § 519.211(B)(1).

⁶⁷⁸ OHIO REV. CODE ANN. § 519.211(B)(1)(a)-(e).

⁶⁷⁹ *Symmes Twp. Board of Trustees v. Smyth*, 87 Ohio St.3d 549, 550, 721 N.E.2d 1057 (Ohio 2000).

⁶⁸⁰ *Symmes Twp. Board of Trustees v. Smyth*, 87 Ohio St.3d 549, 550, 721 N.E.2d 1057 (Ohio 2000).

has zoning authority “with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower...”⁶⁸¹ However, this authority is limited. First, it is not extended to the maintenance or use of the tower or to any change or alteration that does not substantially increase the tower’s height. Second, it presumes that both the board of trustees and property owners adjacent to the location of the proposed tower receive advance notice of the tower via certified mail pursuant to O.R.C. § 519.211(B)(4)(a). Such notice must meet the requirements of O.R.C. § 519.211(B)(3)(a) and should be directed to both the trustees and the owners of property adjacent to the tower.⁶⁸²

Note, however, that once notice has been received, there is a very short time frame within which a neighbor or trustee may object to the tower. If no objection is made within *fifteen* (15) days from the date of mailing of the notice, the township does not have zoning authority to regulate erection of the tower. If the trustees receive an objection or if a trustee makes an objection within fifteen (15) days, the trustees must act within *five* (5) days of receipt of the objection and have the township fiscal officer send notice to the person or company proposing to construct the tower. The notice must indicate that O.R.C. §§ 519.02-519.25 apply to the tower and that the township has zoning authority over it. Otherwise, if no objection is received from owners of property adjacent to the tower or made by a board member within fifteen (15) days or the fiscal officer does not send notice within five (5) days, the township has no zoning authority over erection of the tower.⁶⁸³

Agriculture and Zoning

Agriculture is defined broadly by O.R.C. § 519.01.⁶⁸⁴ This definition includes an extensive, though not exhaustive, list of what constitutes agriculture or agricultural activities under Ohio law.⁶⁸⁵

Case law has expanded the already broad statutory definition of what constitutes agriculture. Common activities associated with agriculture, such as “animal husbandry,” have come to be accepted within the statute’s purview.⁶⁸⁶ Thus, “agriculture” includes rodeos,⁶⁸⁷ riding stables,⁶⁸⁸ and the breeding, raising, and care of dogs.⁶⁸⁹

⁶⁸¹ OHIO REV. CODE ANN. § 519.211(B)(2).

⁶⁸² OHIO REV. CODE ANN. § 519.211(B)(3)(b).

⁶⁸³ OHIO REV. CODE ANN. § 519.211.

⁶⁸⁴ See OHIO REV. CODE ANN. § 519.01.

⁶⁸⁵ OHIO REV. CODE ANN. § 519.01.

⁶⁸⁶ See *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 151 N.E.2d 533 (Ohio 1958).

⁶⁸⁷ *Griebeling v. Troy Township*, 1991 WL 87144 (Ohio Ct. App. 1991) (citing *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 151 N.E.2d 533 (Ohio 1958)).

⁶⁸⁸ *Griebeling v. Troy Township*, 1991 WL 87144 (Ohio Ct. App. 1991) (citing *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 151 N.E.2d 533 (Ohio 1958)).

⁶⁸⁹ *Harris v. Rootstown Township Zoning Board of Appeals*, 44 Ohio St.2d 144, 338 N.E.2d 763 (Ohio 1975).

Except under limited circumstances, townships may not use zoning to regulate the use of land utilized for agricultural purposes.⁶⁹⁰ This includes buildings or structures incident to the use of the land for agricultural purposes.⁶⁹¹

In limited circumstances, agriculture may be regulated. Such circumstances include in platted subdivisions approved under O.R.C. §§ 711.05, 711.09, or 711.10, or in any area consisting of fifteen (15) or more contiguous lots approved under O.R.C. § 711.131 under the following circumstances:

- 1) Agriculture on lots of one (1) acre or less,⁶⁹²
- 2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one (1) acre but not greater than five (5) acres by: set back building lines, height, and size,⁶⁹³
- 3) Dairying and animal and poultry husbandry on lots greater than one (1) acre but not greater than five (5) acres when at least thirty-five (35%) percent of the lots in the subdivision are developed with at least one (1) building, structure, or improvement that is subject to real estate tax or tax on mobile homes under O.R.C. § 4503.06.⁶⁹⁴

The above exceptions do not apply to lots that are five (5) acres or greater.⁶⁹⁵ Thus, agriculture is not subject to zoning when conducted on lots that are five (5) acres or larger.

Farm markets are subject to some limited zoning regulations. The aspects and limitations on regulating farm markets through township zoning are stated in O.R.C. § 519.21(C).

There remains the concern that simple agriculture may become commercial activity. No bright-line test exists that unequivocally distinguishes “agriculture” from “commercial activity.” Nevertheless, there are particular land uses and activities that, either directly or by interpretation, may be deemed to be “agriculture.” Questions about particular activities falling under the definition of “agriculture” must be addressed on a case-by-case basis.

Farm residences and homes for farm workers do not fall under the definition of agriculture.⁶⁹⁶ Although the Revised Code includes both farming and ranching under the definition of agriculture, a residence does not fall under the definition of agriculture and, therefore, may be regulated through zoning.⁶⁹⁷

⁶⁹⁰ OHIO REV. CODE ANN. § 519.21(A).

⁶⁹¹ OHIO REV. CODE ANN. § 519.21(A).

⁶⁹² OHIO REV. CODE ANN. § 519.21(B)(1).

⁶⁹³ OHIO REV. CODE ANN. § 519.21(B)(2).

⁶⁹⁴ OHIO REV. CODE ANN. § 519.21(B)(3).

⁶⁹⁵ OHIO REV. CODE ANN. § 519.21(B).

⁶⁹⁶ 1962 Ohio Op. Att’y Gen. No. 62-3440.

⁶⁹⁷ OHIO REV. CODE ANN. § 519.01; 1962 Ohio Op. Att’y Gen. No. 62-3440.

Cooperative Agreements

Under O.R.C. § 9.482, political subdivisions, including townships, are permitted to contract with any other political subdivision for joint services, whereby one subdivision will perform for the recipient subdivision any service that the recipient subdivision is otherwise legally authorized to exercise, perform or render. In other words, O.R.C. § 9.482 authorizes townships to contractually agree “to exercise any power, perform any function, or render any service” for another contracting political subdivision, so long as the recipient subdivision is lawfully authorized to perform the service itself. Note that an agreement by one township to perform services for another subdivision does not, under any circumstances, deprive the recipient subdivision of its powers, functions, or authority, even if the recipient subdivision agrees that said power or function will be performed on its behalf by the other under a contract.⁶⁹⁸

In addition, O.R.C. § 9.482 permits a township to contract for the collection, administration, or enforcement of any tax on behalf of another subdivision, so long as the contracting subdivisions do not enter into any agreement “to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment function, or render any investment service on behalf of a contracting subdivision.”⁶⁹⁹

Townships are required to obtain the written consent of any non-participating political subdivision in the event that any service contracted for will take place within the jurisdiction of the non-participating subdivision.⁷⁰⁰

Junk Motor Vehicles

A) Definitions

The Ohio Revised Code defines the following terms as follows:

1) Collector’s Vehicle

“Collector’s vehicle” means any motor vehicle or agricultural tractor or traction engine that is of special interest, that has a fair market value of one hundred dollars or more, whether operable or not, and that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector’s item, leisure pursuit, or investment, but not as the owner’s principal means of transportation.⁷⁰¹

2) Junk Motor Vehicle

“Junk motor vehicle” means a motor vehicle that meets all of the following criteria:

⁶⁹⁸ OHIO REV. CODE ANN. § 9.482(B).

⁶⁹⁹ OHIO REV. CODE ANN. § 9.482(B).

⁷⁰⁰ OHIO REV. CODE ANN. § 9.482(C).

⁷⁰¹ OHIO REV. CODE ANN. § 4501.01(F).

- a) Three model years old, or older;
- b) Apparently inoperable;
- c) Extensively damaged, including, but not limited to, any of the following: missing wheels, tires, engine, or transmission.⁷⁰²

B) Storage of Junk Motor Vehicles

A “board of township trustees may adopt resolutions as the board considers necessary to regulate the storage of junk motor vehicles on private or public property within the unincorporated area of the township.”⁷⁰³ Such resolution shall not restrict any of the following:

- 1) operation of a scrap metal processing facility licensed under authority of O.R.C. § 4737.05 to 4737.12;
- 2) operation as a motor vehicle salvage dealer, salvage motor vehicle auction, or salvage motor vehicle pool of a person licensed under Chapter 4738. of the Revised Code;
- 3) provision of towing and recovery services conducted under O.R.C. § 4513.60 to 4513.63, including the storage and disposal of junk motor vehicles removed from public or private property in accordance with those sections.⁷⁰⁴

Whoever violates any such resolution is guilty of a minor misdemeanor.⁷⁰⁵ Each day that a violation of such resolution continues constitutes a separate offense.⁷⁰⁶ Fines levied and collected as a result of any such violations shall be paid into the township general revenue fund.⁷⁰⁷

In addition to imposing a penalty, a board of trustees may institute “an action for injunction, mandamus, or abatement, or any other appropriate action or proceeding to prohibit the storage of junk motor vehicles in violation” of the resolution.⁷⁰⁸

C) Storage of Collector’s Vehicles

No resolution regulating the storage of junk motor vehicles shall “prevent a person from storing or keeping, or restrict a person in the method of storing or keeping, any collector’s vehicle on private property.”⁷⁰⁹ The resolution may, however, require any unlicensed collector’s vehicle

⁷⁰² OHIO REV. CODE ANN. § 505.173 (E).

⁷⁰³ OHIO REV. CODE ANN. § 505.173(A).

⁷⁰⁴ OHIO REV. CODE ANN. § 505.173(A).

⁷⁰⁵ OHIO REV. CODE ANN. § 505.173(D).

⁷⁰⁶ OHIO REV. CODE ANN. § 505.173(D).

⁷⁰⁷ OHIO REV. CODE ANN. § 505.173(D).

⁷⁰⁸ OHIO REV. CODE ANN. § 505.173(B).

⁷⁰⁹ OHIO REV. CODE ANN. § 505.173(A).

stored in the open to be concealed, by means of buildings, fences, vegetation, terrain, or other suitable screening.⁷¹⁰

Regardless of whether it is licensed or unlicensed, a collector's vehicle is a "junk motor vehicle" if the collector's vehicle meets the definition of "junk motor vehicle" as that term is defined in the Ohio Revised Code.⁷¹¹ If a collector's vehicle meets all of the criteria for being a "junk motor vehicle," then "a board of township trustees . . . may regulate the storage of that motor vehicle on private or public property in the same manner that the board may regulate the storage of any other junk motor vehicle and, in case of a violation of [any such regulation] . . . , may pursue any remedy provided by law."⁷¹²

D) Removal of Junk Motor Vehicles

Subject to certain restrictions (See O.R.C. §§ 505.871(D) and 505.173), the "board of township trustees may provide, by resolution, for the removal of any vehicle in the unincorporated territory of the township that the board determines is a junk motor vehicle," including collector's vehicles that meet the definition of a "junk motor vehicle."⁷¹³ In order for the board of trustees to find that a vehicle is a junk motor vehicle, the vehicle must meet all of the criteria of being a "junk motor vehicle" as that term is specifically defined by the Ohio Revised Code.

1) Removal from Public Property

"If a junk motor vehicle is located on public property, the board of township trustees may provide in the resolution for the immediate removal of the vehicle."⁷¹⁴

2) Removal from Private Property

"If a junk motor vehicle is located on private property, the board of township trustees may provide in the resolution for the removal of the vehicle not sooner than fourteen (14) days after the board serves written notice of its intention to remove or cause the removal of the vehicle on the owner of the land and any holders of liens of record on the land."⁷¹⁵

The notice required to remove a junk motor vehicle from private property shall include all of the following:

- a) General description of the vehicle to be removed;
- b) A statement that the board has determined that the vehicle is a junk motor vehicle;

⁷¹⁰ OHIO REV. CODE ANN. § 505.173 (A).

⁷¹¹ OHIO REV. CODE ANN. § 505.173(C).

⁷¹² OHIO REV. CODE ANN. § 505.173(C).

⁷¹³ OHIO REV. CODE ANN. § 505.871(A) and (F).

⁷¹⁴ OHIO REV. CODE ANN. § 505.871(B).

⁷¹⁵ OHIO REV. CODE ANN. § 505.871(C)(1).

- c) A statement that if the owner of the land fails to remove the vehicle within fourteen (14) days after service of the notice, the board may remove or cause the removal of the vehicle;
- d) A statement that any expenses the board incurs in removing or causing the removal of the vehicle may be entered upon the tax duplicate and become a lien upon the land from the date of entry.⁷¹⁶

Notice shall be sent by certified mail, return receipt requested, to the owner of the land where the junk motor vehicle is located and to any holders of liens of record on the land.⁷¹⁷ Where notice is sent by certified mail and is refused or unclaimed, or if an owner's address is unknown and cannot reasonably be ascertained by an exercise of reasonable diligence, the notice shall be published once in a newspaper of general circulation in the township before the removal of the vehicle.⁷¹⁸ If the land where the vehicle is located contains a house or other structures, the notice shall also be posted on the house and/or other principal structure on the land.⁷¹⁹

“A notice sent by certified mail shall be deemed to be served for purpose of this section on the date it was received as indicated by the date on a signed return receipt.”⁷²⁰ “A notice given by publication shall be deemed to be served for purposes of this section on the date of the newspaper publication.”⁷²¹

If the junk motor vehicle remains fourteen (14) days after notice has been served, the “board of township trustees may cause the removal or may employ the labor, materials, and equipment necessary to remove . . . [the] junk motor vehicle.”⁷²² Any and “all expenses incurred in removing or causing the removal of . . . [the] junk motor vehicle, when approved by the board, shall be paid out of the township general fund from moneys not otherwise appropriated, except that if the expenses exceed five hundred dollars (\$500.00), the board may borrow moneys from a financial institution to pay the expenses in whole or in part.”⁷²³

The board of trustees, through any lawful means, may collect the expenses, including any fees or interest paid to borrow moneys, incurred in removing or causing the removal of the junk motor vehicle.⁷²⁴ “The board may direct the township fiscal officer to certify the expenses and a description of the land to the county auditor, who shall place the expenses upon the tax duplicate as a lien upon the land to be collected as other taxes and returned to the township general fund.”⁷²⁵

⁷¹⁶ OHIO REV. CODE ANN. § 505.871(C)(2).

⁷¹⁷ OHIO REV. CODE ANN. § 505.871(C)(3).

⁷¹⁸ OHIO REV. CODE ANN. § 505.871(C)(3).

⁷¹⁹ OHIO REV. CODE ANN. § 505.871(C)(3).

⁷²⁰ OHIO REV. CODE ANN. § 505.871(C)(3).

⁷²¹ OHIO REV. CODE ANN. § 505.871(C)(3).

⁷²² OHIO REV. CODE ANN. § 505.871(D).

⁷²³ OHIO REV. CODE ANN. § 505.871(D).

⁷²⁴ OHIO REV. CODE ANN. § 505.871(E).

⁷²⁵ OHIO REV. CODE ANN. § 505.871(E).

Noise

Ohio Revised Code sections 505.17 and 505.172 are relevant to control of noise. Each section provides at least one option for the township to regulate noise.

Under O.R.C. § 505.17(A), a township may regulate, pursuant to O.R.C. § 4513.221, noise from passenger cars, motorcycles, and internal combustion engines in any areas outside of municipal limits in two ways. First, pursuant to O.R.C. § 4513.221(A)-(B), a township may regulate noise from passenger cars or motorcycles operating on streets and highways. This type of regulation establishes a maximum decibel level at a distance of fifty feet from the noise source.⁷²⁶ The maximum decibel levels and how such levels are to be measured are specified by O.R.C. § 4513.221(B). No regulation under O.R.C. § 4513.221 may be enforced unless signs giving notice of the regulation are posted along the roads and streets. The second type of regulation, described in O.R.C. § 4513.221(E), prohibits the operation of passenger cars, motorcycles, and other devices using internal combustion engines without proper mufflers. This provision applies to vehicles and devices operated anywhere within the unincorporated areas of the township. See O.R.C. § 4513.221(E)(1)-(4) for what may be controlled through this type of regulation.

Both types of regulations under O.R.C. § 4513.221 must be enacted by resolution before either may become effective. O.R.C. § 505.17(B)(1) requires the township fiscal officer to post copies of the regulation in five (5) conspicuous public places in the township for thirty (30) days. Also, the regulation must be published in a newspaper of general circulation in the township for three (3) consecutive weeks.⁷²⁷

O.R.C. § 505.172(B) provides another option for the township to regulate noise. According to that section:

[A] board of township trustees may adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the division of liquor control or that is generated within any areas zoned for residential use.⁷²⁸

Thus, a township may regulate noise pursuant to O.R.C. § 505.172(A) only within areas zoned residential or on any premises for which the Department of Liquor Control has issued a “D” permit.⁷²⁹ A regulation pursuant to O.R.C. § 507.172 may be adopted by resolution.⁷³⁰

⁷²⁶ OHIO REV. CODE ANN. § 4513.221(B).

⁷²⁷ OHIO REV. CODE ANN. § 505.17(B)(1).

⁷²⁸ OHIO REV. CODE ANN. § 505.172(B).

⁷²⁹ OHIO REV. CODE ANN. § 505.172(B).

⁷³⁰ See Sample Forms.

Note that the statute creates exceptions to noise regulations. Specifically, O.R.C. § 505.172 excepts the following from noise regulations: agricultural activities (as described in O.R.C. § 1.61), mining (as described in O.R.C. § 1513.01), and drilling for either oil or gas (as described in O.R.C. § 1514.01).⁷³¹

HIPAA

HIPAA is the “Health Insurance Portability and Accountability Act of 1996” and consists of a set of regulations designed to guard the privacy of medical patients.⁷³²

Some townships have Fire Departments with EMT’s and police departments that need to keep in mind that any records of medical care must be kept within HIPAA guidelines. Primarily, no medical record should be disclosed without the consent of the individual to whom it pertains. The only time this information may be disclosed without consent is for the purposes of treatment or health care operations if so required. Additionally, individuals have the right to inspect their own medical records.

If the township keeps any employee medical records, these records must also be maintained in a HIPAA-compliant manner. Generally, only those with a need to know the information should have access to it. Even then, they must have access only to as much information as is minimally necessary. These records need to be kept under lock and key with access given only to those who require it.

If you have any questions regarding the release of a medical record or about complying with HIPAA regulations, please contact the Delaware County Prosecutor’s Office.

Nuisance Abatement

Generally, the Ohio Revised Code allows a township, after giving proper notice and meeting certain specified conditions, to correct particular nuisance conditions occurring on properties within the township. Specifically, the township can abate nuisances such as noxious weeds and junk pursuant to O.R.C. § 505.87 and abate dangerous structures pursuant to O.R.C. § 505.86.

Under O.R.C. § 505.86(B), a board of township trustees, by resolution:

“may provide for the removal, repair, or securance of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective by any fire department under contract with the township or by the county building

⁷³¹ OHIO REV. CODE ANN. § 505.172(B).

⁷³² See Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1955, 42 U.S.C. 300(g)(gg)(21) (2005).

department or other authority responsible under Chapter 3781 of the Revised Code for the enforcement of building regulations or the performance of building inspections in the township, or buildings or other structures that have been declared unfit for human habitation by the board of health of the general health district of which the township is a part.”⁷³³

Costs incurred by the township in taking such action may be certified to the county auditor to be placed on the tax duplicate and collected as taxes on that property.⁷³⁴ Particular conditions and notice requirements must be met before a township can abate nuisances created by such structures and certify the costs to the tax list.⁷³⁵ See O.R.C. § 505.86 and contact the Delaware County Prosecutor’s Office before taking any action.

Pursuant to O.R.C. § 505.87, “[a] board of township trustees may provide for the abatement, control, or removal of vegetation, garbage, refuse, and other debris from land in the township, if the board [through a resolution] determines that the owner’s maintenance of such vegetation, garbage, refuse, and other debris constitutes a nuisance.”⁷³⁶ Costs incurred by the township in taking such action can be certified to the county auditor to be placed on the tax duplicate and collected as taxes on that property.⁷³⁷ Again, particular conditions and notice requirements must be met before taking action. See O.R.C. § 505.87 and contact the Delaware County Prosecutor’s Office before taking any action.⁷³⁸

Planned Unit Development (PUD)

A planned unit development (PUD) is “a development which is planned to integrate residential, commercial, industrial, and any other use,”⁷³⁹ including open spaces, lakes, ponds, and common areas.⁷⁴⁰ Therefore, PUD’s permit various land uses on the same tract, both allowing for a mixture of dwelling units and providing for a means of gathering, improving, and maintaining usable open space.⁷⁴¹ They allow for local planning and zoning techniques that facilitate the planned development of large tracts and encourage greater creativity in land use.⁷⁴²

In adopting PUD regulations, aspects of land development normally regulated by zoning may vary within an area with a single zoning classification;⁷⁴³ they need not be uniform in order

⁷³³ OHIO REV. CODE ANN. § 505.86(B).

⁷³⁴ OHIO REV. CODE ANN. § 505.86(C)(1).

⁷³⁵ OHIO REV. CODE ANN. § 505.86(B).

⁷³⁶ OHIO REV. CODE ANN. § 505.87(A).

⁷³⁷ OHIO REV. CODE ANN. § 505.867(D).

⁷³⁸ See Sample Forms.

⁷³⁹ OHIO REV. CODE ANN. § 519.021.

⁷⁴⁰ *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 10, 630 N.E.2d 313, 317 (Ohio 1994).

⁷⁴¹ *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 8, 630 N.E.2d 313,316 (Ohio 1994).

⁷⁴² *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 9, 630 N.E.2d 313,316 (Ohio 1994).

⁷⁴³ *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 8, 630 N.E.2d 313,316 (Ohio 1994).

to both accommodate unified development and promote the purposes of zoning.⁷⁴⁴ Thus, within a PUD area, there may be found “single-family dwellings, multi-family units, schools, open spaces, recreational facilities and other collateral nonresidential uses.”⁷⁴⁵

O.R.C. § 519.021 governs the adoption of PUD regulations by townships. Ohio Revised Code section 519.021 requires that regulations adopted by a board of trustees for a PUD “further the purpose of promoting the general public welfare, encourag[e] the efficient use of land and resources, promot[e] greater efficiency in providing public and utility services, and encourag[e] innovation in the planning and building of all types of development.”⁷⁴⁶ Note that any such regulations apply to the property *only at the election of the property’s owner and must include standards to guide the board of township trustees and/or BZC in approving or disapproving development within the PUD.*⁷⁴⁷

Under O.R.C. § 519.021, PUD’s may be adopted in the township zoning resolution utilizing *one* of the following *four* procedures:

- 1) Pursuant to section 519.021(A), a board of township trustees may adopt PUD regulations that establish standards that *will* apply to property that becomes a part of a PUD, but *do not automatically apply to any property in the township.*⁷⁴⁸ In this instance, once PUD regulations have been adopted, *property owners may apply to have their property rezoned as a PUD.*⁷⁴⁹ Once PUD has been approved for the property, all prior zoning classifications for the property cease to exist.⁷⁵⁰ The actual change to the zoning plan and zoning map is legislative and is subject to referendum pursuant to O.R.C. § 519.12. Once property is rezoned as a PUD, it must comply with the regulations associated with the PUD.⁷⁵¹ Any approval or disapproval of subsequent uses or development of the property in the PUD are not amendments to or supplements to a township zoning resolution.⁷⁵² Such approval or disapproval of subsequent uses is administrative and subject to appeal pursuant to Ohio Revised Code Chapter 2506.
- 2) Pursuant to section 519.021(B), upon *application of a property owner or owners*, a board of trustees *simultaneously may both establish a PUD for a property and adopt regulations that will apply to that PUD.*⁷⁵³ Once such a PUD has been approved for the property, all prior zoning classifications for the property cease to exist.⁷⁵⁴ The

⁷⁴⁴ OHIO REV. CODE ANN. § 519.021; 10 OHIO JUR. 3D. § 87.

⁷⁴⁵ *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 9, 630 N.E.2d 313,316 (Ohio 1994) (citing *Gray v. Trustees of Monclova Twp.*, 38 Ohio St.2d 310, 311, 67 O.O.2d 365, 366, 313 N.E.2d 366, 367 (Ohio 1974)).

⁷⁴⁶ OHIO REV. CODE ANN. § 519.021.

⁷⁴⁷ OHIO REV. CODE ANN. § 519.021 (emphasis added).

⁷⁴⁸ OHIO REV. CODE ANN. § 519.021(A).

⁷⁴⁹ OHIO REV. CODE ANN. §§ 519.021(A)-(B).

⁷⁵⁰ OHIO REV. CODE ANN. § 519.021(A).

⁷⁵¹ OHIO REV. CODE ANN. § 519.021(A).

⁷⁵² OHIO REV. CODE ANN. § 519.021(A).

⁷⁵³ OHIO REV. CODE ANN. § 519.021(B).

⁷⁵⁴ OHIO REV. CODE ANN. § 519.021(B).

actual change to the zoning plan and zoning map is legislative and is subject to referendum pursuant to O.R.C. § 519.12. Any approval or disapproval of subsequent uses or development of the property are not amendments to or supplements to a township zoning resolution.⁷⁵⁵ Such approval or disapproval of subsequent uses is administrative and subject to appeal pursuant to O.R.C. Chapter 2506.

- 3) Pursuant to section 519.021(C), the board of township trustees may rezone property as PUD and adopt regulations for the PUD. Such rezoning is legislative in nature and is subject to referendum pursuant to O.R.C. § 519.12. Although approved, such zoning regulations will not automatically apply to the rezoned property, but will act as a secondary layer of zoning that may be administratively applied at a later time (“Float the Cloud”). Thus, *any other prior or existing zoning regulations will continue to apply to the rezoned property until the property owner requests and the board of trustees or the BZC approves an owner’s application to subject his property to the PUD regulations.*⁷⁵⁶ Any latter application to apply PUD zoning to the already rezoned property “shall not be considered to be an amendment to a township zoning resolution for purposes of section 519.02 of the Revised Code, but may be appealed pursuant to Chapter 2506.”⁷⁵⁷ All plans submitted to actually apply the PUD zoning shall include a plan that complies with the regulations adopted for the PUD as set forth in the zoning resolution.⁷⁵⁸ The actual “removal of the prior zoning district from the zoning map is a ministerial act and shall not be considered to be an amendment or supplement to a township resolution for the purposes of section 519.12 of the Revised Code and may not be appealed pursuant to Chapter 2506. of the Revised Code.”⁷⁵⁹
- 4) The board of township trustees may authorize a PUD as a conditional use in the township zoning resolution pursuant to O.R.C. § 519.14.⁷⁶⁰

Road Vacation/Abandonment

A board of trustee’s responsibility to improve and maintain public roads in the township ceases when a road has been abandoned and/or vacated. Generally, “[a] township shall lose all rights in and to any public road, highway, street, or alley which has been abandoned and not used for a period of *twenty-one years*, after *formal proceedings* for vacation...have been taken.”⁷⁶¹ Note that Ohio courts have considered a road “not in use” when, for over twenty-one years, the road has not been maintained or improved and used solely by abutting landowners, their guests, and service suppliers.⁷⁶²

⁷⁵⁵ OHIO REV. CODE ANN. § 519.021(B).

⁷⁵⁶ OHIO REV. CODE ANN. § 519.021(C).

⁷⁵⁷ OHIO REV. CODE ANN. § 519.021(C).

⁷⁵⁸ OHIO REV. CODE ANN. § 519.021(C).

⁷⁵⁹ OHIO REV. CODE ANN. § 519.021(C).

⁷⁶⁰ OHIO REV. CODE ANN. § 519.021(C).

⁷⁶¹ OHIO REV. CODE ANN. § 5553.042(B) (emphasis added).

⁷⁶² 1976 Ohio Op. Att’y Gen. No. 76-043.

The formal proceedings specified in the Ohio Revised Code call for the board of trustees to petition the board of county commissioners, by resolution, to vacate a road or some portion of it.⁷⁶³ The petition must include “a description of the general route and termini of the road or portion” to be vacated.⁷⁶⁴ The township fiscal officer is responsible for filing the resolution with the board of county commissioners and certifying another copy of it to the county engineer for their consideration.⁷⁶⁵

If the board of county commissioners approves the petition, that board will, by resolution, declare the road or portion vacated and file a certified copy of that resolution with the board of trustees. If the petition is not considered by the board of county commissioners within sixty (60) days of its filing, the road or portion thereof described in the petition will be deemed vacated. Under such circumstances, the board of trustees must adopt another resolution describing the vacated road and explaining that the vacation is an act pursuant to O.R.C. § 5553.045(D).⁷⁶⁶ Such a resolution must be filed with the board of county commissioners, the county recorder, and the county engineer. Once so filed, the board of township trustees may, by resolution, order the road vacated.⁷⁶⁷

If declared vacated, the road will pass to all the abutting landowners.⁷⁶⁸ However, O.R.C. § 5553.042(B) specifies that, in certain circumstances, others still may share in the vacated road’s use. Thus, even though vacated or abandoned roads become private property, they may be used permissibly in the following instances:

- 1) As a right of way for the services facilities of a public utility or electric cooperative, so long as the vacated road previously existed as such and the public utility or electric cooperative continues to render service to the public,
- 2) As ingress and egress for a public utility or electric cooperative to service and maintain its service facilities,⁷⁶⁹
- 3) To trim or remove trees, shrubs, or brush, or other obstacles growing in or encroaching onto the right of way that may affect the operation, use, or access to service facilities,
- 4) As a right of way for public non-motorized vehicular recreational use.⁷⁷⁰

Other than the process described above or a successful action brought by an abutting landowner to acquire title to an abandoned or adversely possessed road,⁷⁷¹ the Ohio Revised Code provides no other means for a township to divest itself of road maintenance.⁷⁷² Thus, absent either of these proceedings, a township must fulfill its duties of road maintenance.

⁷⁶³ OHIO REV. CODE ANN. § 5553.045(B).

⁷⁶⁴ OHIO REV. CODE ANN. § 5553.045(B).

⁷⁶⁵ OHIO REV. CODE ANN. § 5553.045(B).

⁷⁶⁶ OHIO REV. CODE ANN. § 5553.045(D).

⁷⁶⁷ OHIO REV. CODE ANN. § 5553.045(E).

⁷⁶⁸ OHIO REV. CODE ANN. § 5553.045(E).

⁷⁶⁹ See OHIO REV. CODE ANN. § 5553.043.

⁷⁷⁰ OHIO REV. CODE ANN. §§ 5553.042(B)(1)-(4). See OHIO REV. CODE ANN. § 5553.044.

⁷⁷¹ 1977 Ohio Op. Att’y Gen. No. 028 (1977).

⁷⁷² 1977 Ohio Op. Att’y Gen. No. 028 (1977).

Providing Township Employee Health Benefits

In discussing the provision of health care benefits to township officers and employees, it is appropriate to remember that a board of township trustees is empowered only with that authority either provided by law or necessarily implied therefrom. Accordingly, a board of township trustees has only as much authority and power as conferred to it by the Ohio Revised Code.⁷⁷³

O.R.C. § 505.60 allows a board of trustees to provide insurance for its officers and employees. More specifically, pursuant to O.R.C. § 505.60:

[t]he board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees.⁷⁷⁴

As such, a board of trustees may negotiate and contract for the purchase of a long-term insurance policy for township officers and employees.⁷⁷⁵ This includes contracting for group health care services with insuring health corporations holding certificates of authority under Chapter 1751 of the Revised Code,⁷⁷⁶ such as health maintenance organizations.⁷⁷⁷ Note, however, that an insurance company authorized to do business in Ohio must issue the policies.⁷⁷⁸ Also, competitive bidding need not be used to purchase health insurance benefits from a private company under O.R.C. § 505.60.⁷⁷⁹

A board of township trustees is limited to the provisions of the Revised Code and, thus, the requirements of O.R.C. § 505.60. As such, in providing for these benefits, O.R.C. § 505.60(B) requires that coverage among township employees be uniform. That is, “township officers and full-time township employees and their immediate dependants” must be offered “the same benefits.”⁷⁸⁰ No distinctions may be drawn among groups of officers or employees under O.R.C. § 505.60.⁷⁸¹ Thus, “[e]very township officer and employee who receives health

⁷⁷³ See *Henn v. Universal Atlas Cement Co.*, 76 Ohio Law Abs. 439, 144 N.E.2d 917 (1957).

⁷⁷⁴ OHIO REV. CODE ANN. § 505.60(A).

⁷⁷⁵ OHIO REV. CODE ANN. § 505.60(A).

⁷⁷⁶ OHIO REV. CODE ANN. § 505.60(B).

⁷⁷⁷ Op. Ohio Att’y Gen. 92-068.

⁷⁷⁸ OHIO REV. CODE ANN. § 505.60(A).

⁷⁷⁹ OHIO REV. CODE ANN. § 505.60(E); 1992 Ohio Op. Att’y Gen. No. 92-068.

⁷⁸⁰ 1998 Ohio Op. Att’y Gen. No. 98-019.

⁷⁸¹ 1998 Ohio Op. Att’y Gen. No. 98-019.

insurance benefits under R.C. 505.60 is entitled...to receive benefits which are uniform with respect to those granted to every other officer and employee under that section.”⁷⁸²

Note that “the board is authorized, but not required” to provide coverage to part-time employees.⁷⁸³ If benefits are offered to part-time employees and their immediate dependents pursuant to O.R.C. § 505.60(B), they too must receive the “same benefits” offered to full-time employees. No distinctions in coverage may be made between full-time and part-time township employees and their dependents if coverage is offered to both full-time and part-time township employees and their dependents.⁷⁸⁴

O.R.C. § 505.60 “does not require that the premium charged or the amount paid for each trustee be uniform...”⁷⁸⁵ Only *coverage* must be uniform.⁷⁸⁶ “If, in order to provide uniform coverage, the township must spend different amounts for different township trustees, that variation in expenditure is permitted under [O.R.C. § 505.60].”⁷⁸⁷

In addition, O.R.C. § 3901.56 permits health and life insurers, including public employee benefit plans, to offer a “wellness or health improvement program that provides rewards or incentives” in order to encourage or reward participation.⁷⁸⁸ Rewards and incentives may include, but are not limited to: “merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program.”⁷⁸⁹

When health insurance benefits are provided, “[a]ny township officer or employee may refuse to accept the insurance coverage without affecting the availability of such insurance coverage to other township officers and employees.”⁷⁹⁰ Additionally, if a township officer or employee refuses to accept or is denied coverage under O.R.C. § 505.60(D):

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. . . [O.R.C. § 505.60(A)] that the officer or employee otherwise obtains, but not to exceed an amount equal to the average premium paid by the township for its officers and employees under policies it procures under [505.60].⁷⁹¹

⁷⁸² 1998 Ohio Op. Att’y Gen. No. 98-019.

⁷⁸³ 1990 Ohio Op. Att’y Gen. No. 90-064.

⁷⁸⁴ 1984 Ohio Op. Att’y Gen. No. 84-086; 1998 Ohio Op. Att’y Gen. 98-019.

⁷⁸⁵ 1992 Ohio Op. Att’y Gen. No. 92-068.

⁷⁸⁶ 1992 Ohio Op. Att’y Gen. No. 92-068.

⁷⁸⁷ 1992 Ohio Op. Att’y Gen. No. 92-068.

⁷⁸⁸ OHIO REV. CODE ANN. § 3901.56.

⁷⁸⁹ OHIO REV. CODE ANN. § 3901.56.

⁷⁹⁰ OHIO REV. CODE ANN. § 505.60(C).

⁷⁹¹ OHIO REV. CODE ANN. § 505.60(D).

This does not allow for compensation in the amount the township pays for insurance coverage to be added to an employee's salary. Rather, it allows for the reimbursement of "out-of-pocket" premiums of health insurance otherwise obtained. The board of trustees may require proof of such before reimbursing an employee under these circumstances.

Moreover, Article II, Section 20 of the Ohio Constitution restricts the availability of insurance acquired under O.R.C. § 505.60 for trustees. In order for a trustee or officer of a township to receive health or hospitalization insurance, the purchase of the insurance must have been authorized prior to the trustee's existing term in office.⁷⁹² Article II, Section 20 of the Ohio Constitution states that the salary or compensation of an officer is fixed and cannot be changed during the officer's existing term. Health insurance is considered a fringe benefit to employment and constitutes a part of a trustee's compensation.⁷⁹³ Thus, the board of trustees must authorize by resolution the purchase of health or hospitalization insurance before a new term begins.⁷⁹⁴ "[T]he township is not permitted, during an existing term of a township trustee, to authorize the purchase of health or hospitalization insurance for the trustee during that term."⁷⁹⁵

If a township does not provide health care benefits directly to its employees and officers under O.R.C. § 505.60, then the board may pass a resolution allowing, under certain circumstances, for the reimbursement of the premium costs those individuals incur in securing their own health care plans. This authority is pursuant to O.R.C. § 505.601. For an officer or employee to qualify for premium reimbursements under this statute, the following conditions must be met:

- 1) The board of township trustees must have adopted a resolution that states that the township has chosen not to procure a health care plan under section 505.60 of the Revised Code and has chosen instead to reimburse its officers and employees for each out-of-pocket premium attributable to the coverage provided for them for insurance benefits described in division (A) of section 505.60 of the Revised Code that they otherwise obtain.
- 2) That resolution must provide for a uniform maximum monthly or yearly payment amount for each officer or employee to cover themselves and their immediate dependents, beyond which the township will not reimburse the officer or employee.
- 3) That resolution must state the specific benefits listed in division (A) of section 505.60 of the Revised Code for which the township will reimburse all officers and employees of the township. The township may not reimburse officers and employees for benefits other than those listed in division (A) of section 505.60 of the Revised Code.⁷⁹⁶

⁷⁹² 1992 Ohio Op. Att'y Gen. No. 92-068.

⁷⁹³ 1992 Ohio Op. Att'y Gen. No. 92-068.

⁷⁹⁴ 1992 Ohio Op. Att'y Gen. No. 92-068.

⁷⁹⁵ 1992 Ohio Op. Att'y Gen. No. 92-068.

⁷⁹⁶ OHIO REV. CODE ANN. § 505.601

Comprehensive Zoning Plan

A township comprehensive zoning plan is just that. It is a township wide plan or goal as to future zoning and growth in the township. It generally takes into account growth or lack thereof in terms of population, businesses, industry, etc . . . and provides a plan for prospective various changes to zoning that the township would like to see or believes may result. Such plans are generally created in conjunction with and based on input received from the regional planning commission. Yet, there is no specific statutory guidance in creating and revising such a plan.

The “authority to adopt a system of zoning has...been granted to townships by the provisions of [O.]R.C. Chapter 519.”⁷⁹⁷ Though there is no specific authority providing townships with a procedure for creating and/or revising a “comprehensive zoning plan,”⁷⁹⁸ Chapter 519 of the Ohio Revised Code “provides a comprehensive system for adopting township zoning” that legal authorities regard as encompassing “[t]he adoption of a comprehensive plan ...”⁷⁹⁹ Thus, Revised Code Chapter 519 can be interpreted to provide requirements regarding the adoption of comprehensive zoning plans.⁸⁰⁰

Townships, “in accordance with a comprehensive plan,” may enact zoning regulations consistent with Ohio Revised Code Chapter 519.⁸⁰¹ In first enacting a comprehensive zoning plan:

“the duties of a township...include the formation of a township zoning commission [(BZC)] to prepare the zoning plan, the adoption of the plan by a board of township trustees, the submission of the plan to the electors residing in the unincorporated area of the township, and the filing of a voter approved plan with the county recorder and the appropriate planning commission.”⁸⁰²

Note that “[a]fter township zoning regulations have been enacted, *any attempt to amend or supplement them should comply with the requirements of [O.]R.C. 519.12.*”⁸⁰³ As such, in revising a comprehensive zoning plan, the procedures specified in O.R.C. § 519.12 must be observed.⁸⁰⁴

⁷⁹⁷ 2002 Ohio Op. Att’y Gen. No. 2002-032.

⁷⁹⁸ PLANNING AND ZONING LAW, *supra* note 348, at § 4:38.

⁷⁹⁹ 2002 Ohio Op. Att’y Gen. No. 2002-032.

⁸⁰⁰ 2002 Ohio Op. Att’y Gen. No. 2002-032.

⁸⁰¹ OHIO REV. CODE ANN. § 519.02 and *see* PLANNING AND ZONING LAW, *supra* note 348, at §§ 4:38, 8:15; 2002 Ohio Op. Att’y Gen. No. 2002-032.

⁸⁰² 1995 Ohio Op. Att’y Gen. No. 95-038.

⁸⁰³ 2002 Ohio Op. Att’y Gen. No. 2002-032 (quoting Op. Ohio Att’y Gen. 72-118) (emphasis added).

⁸⁰⁴ 2002 Ohio Op. Att’y Gen. No. 2002-032. *See City of Moraine v. Bd. of County Comm’ns of Montgomery County*, 67 Ohio St.2d 139, 144, 423 N.E.2d 184, 187 (Ohio 1981) (discussing the legislative authority to amend zoning regulations in the absence of statutory mandate).

The procedures detailed in the “Amending the Zoning Resolution” subsection of the “Board of Zoning Commissioners” section of this manual are applicable to and should be followed in revising a comprehensive zoning plan. Such amendment procedure generally follows and is in accordance with O.R.C. § 519.12. However, it is unlikely that a referendum is applicable to an amendment to a comprehensive plan as it is simply a plan or guide and lacks any true mechanism of regulatory enforcement. Thus, instead of referring to gatherings of the BZC and trustees to consider such an amendment as hearings, they should be referred to as meetings. Generally, the amendment process includes the following steps:

- 1) Revision by Amendment Initiated by:
 - Motion of the Township Zoning Commission (BZC),
 - Passage of a resolution by the Board of Township Trustees,
 - Filing of a petition by one or more owners of affected property.⁸⁰⁵
- 2) BZC Sets Date for Public Meeting:
 - Must be at least twenty (20) but no more than forty (40) days after motion, resolution, or petition described above is initiated.
 - Notice of the meeting must be given by one publication in one (1) or more newspapers of general circulation in the township at least ten (10) days prior to the meeting.⁸⁰⁶
- 3) BZC Publishes and Mails the Appropriate Notices as Determined by the Number of Parcels Affected:
 - If ten (10) or fewer parcels of land are affected, in addition to the published notice, written notice of the meeting must be mailed by the BZC to all affected owners at least ten (10) days prior to the meeting. Both the published and mailed notices must contain all items listed in O.R.C. §§ 519.12(C)(1)-(8).⁸⁰⁷
 - If ten (10) or more parcels of land are affected, notice need only be published. The published notice must contain all items listed in O.R.C. §§ 519.12(D)(1)-(6).⁸⁰⁸
- 4) BZC, within Five (5) Days after Motion, Resolution, or Petition Described above Is Initiated, Transmits the Motion, Resolution, or Petition Along with the Text and Map of the Affected Area to the County Planning Commission.⁸⁰⁹
- 5) BZC Meets
- 6) BZC, within Thirty (30) Days of Their Meeting on the Revision:
 - Recommends the approval or denial or modification of the revision,
 - Submits their Recommendation to Board of Trustees.⁸¹⁰

⁸⁰⁵ See OHIO REV. CODE ANN. § 519.12(A)(1).

⁸⁰⁶ See OHIO REV. CODE ANN. § 519.12(A)(2).

⁸⁰⁷ See OHIO REV. CODE ANN. §§ 519.12(B)-(C).

⁸⁰⁸ See OHIO REV. CODE ANN. §§ 519.12(D)(1)-(6).

⁸⁰⁹ See OHIO REV. CODE ANN. § 519.12(E).

7) Board of Trustees, upon Receipt of the Recommendation of the BZC:

- Sets a date for a meeting on the matter no more than thirty (30) days from receipt of the BZC recommendation, along with the motion, resolution, or petition and the text and map of the affected area.⁸¹¹
- Notice of the meeting must be given by publication in a newspaper of general circulation at least ten (10) days prior to the meeting.⁸¹² The published notice must contain all items listed in O.R.C. §§ 519.12(G)(1)-(5).⁸¹³

8) Board of Trustees Publishes Notice as Determined by the Number of Parcels Affected:

- If ten (10) or fewer parcels of land are affected published notice must contain all items listed in O.R.C. §§ 519.12(F)(1)-(7).⁸¹⁴
- If ten (10) or more parcels of land are affected, the published notice must contain all items listed in O.R.C. §§ 519.12(G)(1)-(5).⁸¹⁵

9) Trustees Meet

10) Board of Trustees, within Twenty (20) Days of Their Meeting on the Revision:

- Adopts or denies the recommendation of the BZC or adopts some modification of them.⁸¹⁶
- If the Board of Trustees denies or modifies the BZC's recommendation, it must be by majority vote.⁸¹⁷

11) If the Revision Is Approved by the Board of Trustees:

- The Board of Trustees, within five (5) days of the revision taking effect, must file the text and maps of the revision with the county recorder.⁸¹⁸

Any questions about this process may be directed to the Delaware County Prosecutor's Office.

Conflicts of Interest

Because township officials serve as government officers while at the same time acting as community leaders, they often face the potential for conflicts of interest.⁸¹⁹ A conflict of interest arises whenever a public position faces a situation which would subject him or her to divided loyalties or conflicting duties, or tempt him or her to act other than in the public's best

⁸¹⁰ See OHIO REV. CODE ANN. § 519.12(E).

⁸¹¹ See OHIO REV. CODE ANN. § 519.12(E).

⁸¹² See OHIO REV. CODE ANN. § 519.12(E).

⁸¹³ See OHIO REV. CODE ANN. §§ 519.12(G)(1)-(5).

⁸¹⁴ See OHIO REV. CODE ANN. §§ 519.12(F)(1)-(7).

⁸¹⁵ See OHIO REV. CODE ANN. §§ 519.12(G)(1)-(5).

⁸¹⁶ See OHIO REV. CODE ANN. § 519.12(H).

⁸¹⁷ See OHIO REV. CODE ANN. § 519.12(H).

⁸¹⁸ See OHIO REV. CODE ANN. § 519.12(H).

⁸¹⁹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3.

interest.⁸²⁰ In general, township officials should recuse themselves from participating in any official activity presenting a conflict of interest.

Although there is no single test for determining what constitutes a conflict of interest, township officials may face employment-related conflicts in their relationship with other township offices, township-related functions, county governments, other political subdivisions, or within the broader community.⁸²¹ O.R.C. § 102.03 sets forth some of the most common and prohibited conflicts involving public officials. Township officials and employees may not:

“use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.”⁸²²

Conflicts of interest may also occur where a township official or employee seeks to “solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.”⁸²³

The Ohio Revised Code also imposes restrictions on third person activities posing a conflict of interest to any township official’s duties. No individual is permitted to “promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.”⁸²⁴

In addition, certain county officials are prohibited from participating in county contracts in which they hold an interest. Specifically, “[n]o county commissioner shall be concerned...in any contract for work to be done or material to be furnished for the county.”⁸²⁵ Violations of this prohibition could result in a civil action as well as the commissioner forfeiting his/her compensation received on the contract.⁸²⁶ This prohibition does not apply where the commissioner, “being a shareholder of a corporation but not an officer or director, owns not in excess of five per cent of the stock of such corporation and the value of the stock so owned does not exceed five hundred dollars.”⁸²⁷

It is important to note that these are only a few examples of the potential conflicts that could arise as a township official. Issues involving conflicts of interest should be assessed on a case-by-case basis. If there is any situation involving what could potentially be deemed a conflict of interest, township officials should always seek legal advice before proceeding any further.

⁸²⁰ 1985 Ohio Op. Att’y Gen. No. 85-042,

⁸²¹ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3.

⁸²² OHIO REV. CODE ANN. § 102.03(D).

⁸²³ OHIO REV. CODE ANN. § 102.03(E).

⁸²⁴ OHIO REV. CODE ANN. § 102.03(F).

⁸²⁵ OHIO REV. CODE ANN. § 305.27.

⁸²⁶ OHIO REV. CODE ANN. § 305.27,

⁸²⁷ OHIO REV. CODE ANN. § 305.27.

Questions about potential conflicts may be directed to the Delaware County Prosecutor's Office. In addition, the Ohio Ethics Commission serves as an excellent resource on this topic. Questions can be directed through the Commission's website at:

<http://www.ethics.ohio.gov>

Compatibility of Public Offices or Positions

A township officer may not hold another office that is incompatible with the township office.⁸²⁸ Issues involving the compatibility of public offices typically consider whether a person may serve simultaneously in two separate positions. The Ohio Attorney General has established a seven-factor test for determining whether two public positions are compatible.⁸²⁹ Several Ohio courts have used this test in analyzing the compatibility of simultaneously-held positions.⁸³⁰

To determine whether two public offices are compatible with each other, a court may consider the following;

- (1) Whether either position is a check upon or subordinate to the other;
- (2) Whether either position is classified pursuant to O.R.C. § 124.57;
- (3) Whether the empowering statutes limit outside employment;
- (4) Whether one person can physically perform both functions;
- (5) Whether there is a conflict of interest;
- (6) Whether there are any controlling charter provisions, ordinances or regulations; and
- (7) Whether there is a federal, state or local departmental regulation applicable.⁸³¹

As with conflict of interest issues, it is important to remember that issues of compatibility are also assessed on a case-by-case basis. If there is any situation involving a compatibility issue, township officials should always seek legal advice before proceeding any further.

Questions about the compatibility of two simultaneously-held public positions may be directed to the Delaware County Prosecutor's Office. In addition, the Ohio Attorney General offers a helpful reference guide to the many Attorney General opinions that have addressed the compatibility of particular public offices or positions. Titled the "Compatibility of Public Offices or Positions Index," this guide can be found at the Ohio Attorney General's website at:

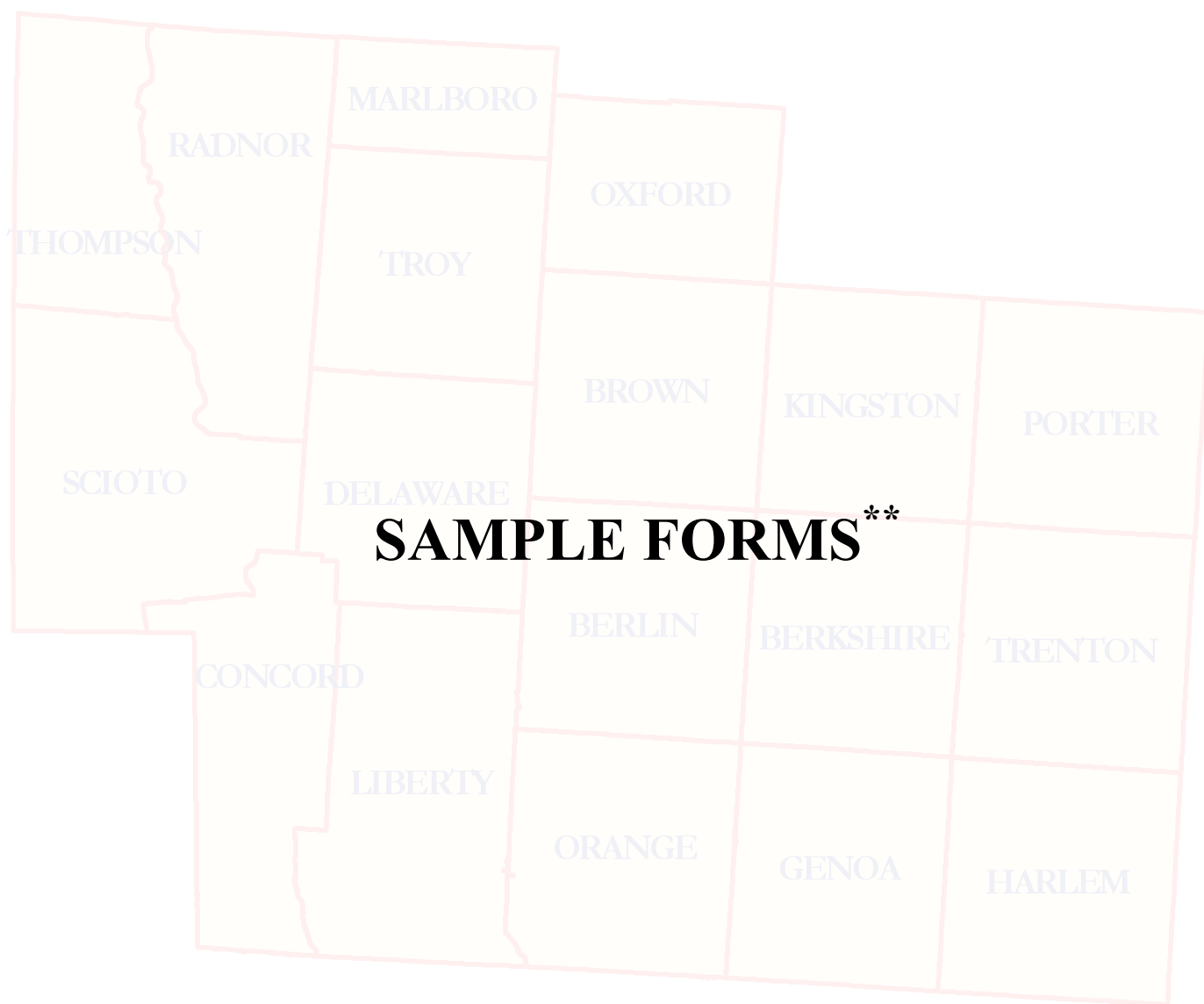
<http://www.ohioattorneygeneral.gov>

⁸²⁸ LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3; *See also* OHIO REV. CODE ANN. § 3.11.

⁸²⁹ *See* 1979 Ohio Op. Att'y Gen. No. 79-111; *See also* 2002 Ohio Op. Att'y Gen. No. 2002-021,

⁸³⁰ *See Rose v. Village of Wellsville, et al.*, 63 Ohio Misc.2d 9, 613 N.E.2d 262 (C.P. 1993); *Esler v. Summit Cnty. et al.*, 39 Ohio Misc.2d 8, 530 N.E.2d 973 (C.P. 1985).

⁸³¹ *See* 1979 Ohio Op. Att'y Gen. No. 79-111; *See also* 2002 Ohio Op. Att'y Gen. No. 2002-021,



^{**} Please note that most of the forms that follow were taken from Baldwin's Ohio Township Law. For those forms taken from Baldwin's Ohio Township Law, the form name, cite, and form number are listed in the heading for the form.

Oh. Township. L. § 65:1

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:1. Notice inviting bids—Proof of publication

Notice is hereby given that bids will be received at the office of the board of township trustees of [_____] Township, [_____] County, Ohio, until *[date and time]* for furnishing the labor and material required for the *[erection/alteration/repair]* of *[describe project]*, according to the plans, surveys, profiles, cross sections, estimates and specifications for the improvement on file with the board of township trustees.

Author's Note:

If the resolution is adopted under RC 9.312, the award should be to the “lowest responsive and responsible bidder.” Otherwise, the award is to be to the “lowest and best” bidder.

The contract will be awarded to the lowest *[and best/responsive and responsible]* bidder.

Bids are to be submitted on a *[lump sum/unit price]* basis.

The attention of bidders is directed to the special statutory provisions, RC 4115.02 et seq., governing the prevailing rate of wages to be paid to laborers and mechanics employed on public improvements, and also to RC 153.59 regarding nondiscrimination.

No bid will be considered which is for a greater sum than the estimated cost, nor unless it be accompanied by a bond or a certified check in the sum of *[\$_____]* to guarantee that if the bid is accepted, a contract will be entered into and the performance of it properly secured.

The board of township trustees reserves the right to reject any and all bids.

[Name and title of township fiscal officer]

PROOF OF PUBLICATION

State of Ohio, [_____] County

[Name] being duly sworn, says that the notice, a copy of which is attached, was published once on *[date]*, being not later than two weeks prior to *[date]*, the date of letting of contracts stated, in *[name of*

newspaper], a newspaper of general circulation in [_____] Township, [_____] County, designated by the board of township trustees of the township.

Sworn to before me and signed in my presence, on [_____].

Notary

Oh. Township. L. § 65:2

Baldwin's Ohio Practice, Local Government Law--Township

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:2. General form of bid

To the Board of Trustees of [_____] Township, [_____] County, Ohio:

The undersigned proposes to furnish all material and to do all work necessary in the construction of *[describe project]*, according to and in compliance with the plans, surveys, profiles, cross sections, estimates and specifications prepared for the same and under the direction and approval of *[title of project officer(s)]* for the following prices for materials and labor, respectively:

[List items and prices]

[Name(s)] are the only persons or companies interested in this bid.

_____ *[Title of bidder]*

[Name and address of bidder]

Oh. Township. L. § 65:3

Baldwin's Ohio Practice, Local Government Law--Township

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:3. Bid bond

Author's Note:

Recovery of a claimant under the bond is subject to RC 153.01 to RC 153.60 the same as if these sections were incorporated in the bond.

BOND

Know all men by these presents, that the undersigned [*name of principal*], as principal, and [*name of surety(ies)*], as surety(ies), are hereby held and firmly bound unto the state of Ohio, for the use of [_____] Township, [_____] County as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on [*date*] to undertake the project known as [*describe project*]. The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate proposals made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed [/\$_____/]. (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this [*date*].

The condition of the above obligation is such, that whereas the above named principal has submitted a bid for [/\$_____/];

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified

in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which contract is made a part of this bond the same as though set forth herein;

Also, if [*name of principal*] shall well and faithfully do and perform the things agreed to be done and performed according to the terms of the contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in carrying forward, performing, or completing the contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation.

The surety hereby agrees that no modifications, omissions, or additions, to the terms of the contract or to the plans or specifications therefor shall in any way affect the obligations of the surety on its bond.

Signed on [_____] /.

Surety

Principal

.....

Oh. Township. L. § 65:4

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:4. Resolution to re-advertise for bids

Today at *[time]* being the time stated in the notice for bids, the bids received were opened, and no acceptable bids were made within the estimate.

It is therefore resolved that *[date and time]* is hereby fixed as the time for letting contracts, that the original estimate be amended per the amended recommended report of the county engineer, and that re-advertisement for bids, as required by law, be published once, not later than two weeks prior to said date, in *[name of newspaper]*, a newspaper published in the county and of general circulation within the township.

Oh. Township. L. § 65:5

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:5. Resolution accepting bid and awarding contract

Whereas, it appears that due notice has been given as required by law, pursuant to proof of notice on file in the fiscal officer's office, for *[describe project]*, and that the bid of *[name of bidder]* is the lowest and best,

Now, therefore, be it resolved by the board of trustees of *[_____]* Township, *[_____]* County, Ohio, that the bid of *[name of bidder]* is accepted upon the bidder's entering into a contract and giving bond in the sum of *[\$_____]* with sureties, to the acceptance of the *[fiscal officer/trustees]*.

Oh. Township. L. § 65:6

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:6. General form of contract for labor and materials

Author's Note:

For examples of contracts for specific projects, see § 65:21 to § 65:23. Except as provided in RC 5705.41, every purchase order, voucher, warrant or contract of a township must be accompanied by the fiscal officer's certificate of availability of funds, § 65:10. Any contract or order for the expenditure of money is void and payment is prohibited if the certificate is omitted.

This agreement, entered into *[date]*, between the board of township trustees of *[_____]* Township, *[_____]* County, Ohio, and *[name of contractor]*, contractor.

Contractor, in consideration of *[\$_____]* to be paid as hereinafter specified, agrees to furnish to the township all the labor and materials required for *[describe project]* in accordance with the attached plans, drawings and specifications, which are made a part of this contract.

Contractor further agrees to furnish the materials and to do the work promptly, in a workmanlike manner, without hindrance or delay. The whole is to be completed to the satisfaction of the township trustees on or before *[date]*.

The township trustees, in consideration of the faithful performance of the work and furnishing the materials, hereby agrees to pay to contractor *[\$_____]*, in installments, upon the certificate of *[identify source of certificate]*, as follows: *[describe amounts or percentages of installments and when payments due]*, and the remainder when all materials have been furnished and all labor has been completed and accepted.

It is mutually agreed that no extra work or materials shall be charged for unless ordered in writing by the trustees.

Witness our signatures on the date first above written.

Board of Trustees of *[_____]* Township, *[_____]* County, Ohio

_____ Trustee

_____ Trustee

_____ Trustee

Signed in duplicate in the presence of:

Contractor

.....

Witness

.....

Witness

[Insert certificate of availability of funds, § 65:10.]

Oh. Township. L. § 65:7

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:7. Performance bond (except construction manager)

Author's Note:

Recovery of a claimant under the bond is subject to RC 153.01 to RC 153.60 the same as if these sections were incorporated in the bond.

Know all persons by these presents, that we, the undersigned [*name of principal*], as principal, and [*name of surety*], as sureties, are hereby held and firmly bound unto [_____] Township, [_____] County, in the penal sum of [_____] dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this [*date*].

The condition of the above obligation is such, that whereas the above named principal did on the [_____] day of [_____] [_____] enter into a contract with [_____] which said contract is made a part of this bond the same as though set forth herein;

Now, if the said [_____] shall well and faithfully do and perform the things agreed by [_____] to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

Signed *[date]*.
Surety

Principal

.....

Oh. Township. L. § 65:8

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:8. Performance bond—Construction manager

Know all persons by these presents, that we, the undersigned *[name of principal]*, as principal, and *[name of surety]*, as sureties, are hereby held and firmly bound unto *[name of political subdivision]*, in the penal sum of *[_____]* dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed *[date]*.

The condition of the above obligation is such, that whereas the above named principal did on *[date]*, entered into a contract with *[name of political subdivision]* which said contract is made a part of this bond the same as though set forth herein;

Now, if the said *[name of principal]* shall well and faithfully do and perform the things agreed by and between *[name of principal]* and *[name of political subdivision]* to be done and performed according to the terms of the said contract; we agreeing and assenting that this undertaking shall be for the benefit of the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the contract shall in any way affect the obligation of the surety on its bond.

Oh. Township. L. § 65:9

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:9. Resolution approving bond and contract

On *[date]*, *[name of contractor]*, whose bid for *[describe project]* was previously accepted by this board, executed a contract for the work and submitted a bond as required by law. The contract and the bond and its amount and sureties are satisfactory and are hereby approved.

Oh. Township. L. § 65:10

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:10. Certificate of availability of funds

(RC 5705.41)

Author's Note:

Except as provided in RC 5705.41, this certificate or equivalent wording must be attached to every purchase order, voucher, warrant, or contract entered into by a township. See §§ 65:6, 65:15 to 65:17, 65:21 to 65:23.

CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that [\$/_____], the amount required to meet the contract, obligation, or expenditure for the attached, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of the *[name of fund, with appropriation item code number]*, free from any outstanding obligation or encumbrance.

[Date]

[Title of fiscal officer]

CERTIFICATION/AFFIDAVIT IN COMPLIANCE WITH O.R.C. SECTION 3517.13

STATE OF _____

COUNTY OF _____, ss:

Personally appeared before me the undersigned, a bidder or representative of a bidder in competitive bidding on behalf of _____ for a contract for the purchase of goods and/or services to be let by Township/County of Delaware, Ohio who, being duly cautioned and sworn, makes the following statement with respect to prohibited activities constituting a conflict of interest or other violations under section 3517.13 of the Ohio Revised Code, and further states that the undersigned has the authority to make the following representation on behalf of the entity if the undersigned as an individual is not the bidder himself or herself:

1. On behalf of the individual, partnership or other unincorporated business, association, estate, or trust that all of the following persons, if applicable, are in compliance with 3517.13 (I)(1)⁸³²:

⁸³² O.R.C. § 3517.13(I)(1)(a) provides:

[N]o political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year, to any individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785. of the Revised Code, estate, or trust if any of [those persons listed in ¶ 1, a–h] . . . has made, as an individual, within the previous twenty-four months, one or more contributions totaling in excess of one thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

O.R.C. § 3517.13(I)(1)(b) prohibits award of such a contract

[I]f **any combination** of the following has made, within the previous twenty-four months, one or more contributions totaling in excess of two thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee: (i) The individual; (ii) Any partner or owner of the partnership or other unincorporated business; (iii) Any shareholder of the association; (iv) Any administrator of the estate; (v) Any executor of the estate; (vi) Any trustee of the trust; (vii) The spouse of any person identified in divisions (I)(1)(b)(i) to (vi) of this section; (viii) Any child seven years of age through seventeen years of age of any person identified in divisions (I)(1)(b)(i) to (vi) of this section; (ix) Any political action committee affiliated with the partnership or other unincorporated business, association, estate, or trust.” (Emphasis added.)

- a. the individual;
 - b. each partner or owner of the partnership or other unincorporated business;
 - c. each shareholder of the association;
 - d. each administrator of the estate;
 - e. each executor of the estate;
 - f. each trustee of the trust;
 - g. each spouse of any person identified in (a) through (f) of this section;
 - h. each child seven years of age to seventeen years of age of any person identified in (a) through (f) of this section;
 - i. any combination of persons identified in (a) through (f) of this section.
2. On behalf of a corporation or business trust, except a professional association organized under Chapter 1785 O.R.C., that all of the following persons, where applicable, are in compliance with 3517.13 (J)(1)⁸³³:
- a. an owner of more than twenty per cent of the corporation or business trust;
 - b. each spouse of an owner of more than twenty per cent of the corporation or business trust;
 - c. each child seven years of age to seventeen years of age of an owner of more than twenty per cent of the corporation or business trust;
 - d. any combination of persons identified in (a) through (c) of this section.

⁸³³ O.R.C. § 3517.13(J)(1)(a) provides:

[N]o political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year, to a corporation or business trust, except a professional association organized under Chapter 1785. of the Revised Code, if any of [those persons listed in ¶ 2, a–c] . . . has made, as an individual, within the previous twenty-four months, taking into consideration only owners for all of that period, one or more contributions totaling in excess of one thousand dollars to the holder of a public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

O.R.C. § 3517.13(J)(1)(b) prohibits award of such a contract

[I]f **any combination** of the following has made, within the previous twenty-four months, taking into consideration only owners for all of that period, one or more contributions totaling in excess of two thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee: (i) Owners of more than twenty per cent of the corporation or business trust; (ii) Spouses of owners of more than twenty per cent of the corporation or business trust; (iii) Children seven years of age through seventeen years of age of owners of more than twenty per cent of the corporation or business trust; (iv) Any political action committee affiliated with the corporation or business trust. (Emphasis added.)

BIDDER:

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

Sworn to before me and subscribed in my presence by the above named person this _____ day of _____, 20____.

NOTARY PUBLIC: _____

My Commission Expires: _____

CERTIFICATION/AFFIDAVIT IN COMPLIANCE WITH O.R.C. SECTION 3517.13

STATE OF _____

COUNTY OF _____, ss:

Personally appeared before me the undersigned, a representative of the prospective contractor on behalf of _____ for a contract for the purchase of goods and/or services to be let by Township/County of Delaware, Ohio who, being duly cautioned and sworn, makes the following statement with respect to prohibited activities constituting a conflict of interest or other violations under section 3517.13 of the Ohio Revised Code, and further states that the undersigned has the authority to make the following representation on behalf of the entity if the undersigned as an individual is not the contractor himself or herself:

1. On behalf of the individual, partnership or other unincorporated business, association, estate, or trust that all of the following persons, if applicable, are in compliance with 3517.13 (I)(1)⁸³⁴:

⁸³⁴ O.R.C. § 3517.13(I)(1)(a) provides:

[N]o political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year, to any individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785. of the Revised Code, estate, or trust if any of [those persons listed in ¶ 1, a–h] . . . has made, as an individual, within the previous twenty-four months, one or more contributions totaling in excess of one thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

O.R.C. § 3517.13(I)(1)(b) prohibits award of such a contract

[I]f **any combination** of the following has made, within the previous twenty-four months, one or more contributions totaling in excess of two thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee: (i) The individual; (ii) Any partner or owner of the partnership or other unincorporated business; (iii) Any shareholder of the association; (iv) Any administrator of the estate; (v) Any executor of the estate; (vi) Any trustee of the trust; (vii) The spouse of any person identified in divisions (I)(1)(b)(i) to (vi) of this section; (viii) Any child seven years of age through seventeen years of age of any person identified in divisions (I)(1)(b)(i) to (vi) of this section; (ix) Any political action committee affiliated with the partnership or other unincorporated business, association, estate, or trust.” (Emphasis added.)

- a. the individual;
 - b. each partner or owner of the partnership or other unincorporated business;
 - c. each shareholder of the association;
 - d. each administrator of the estate;
 - e. each executor of the estate;
 - f. each trustee of the trust;
 - g. each spouse of any person identified in (a) through (f) of this section;
 - h. each child seven years of age to seventeen years of age of any person identified in (a) through (f) of this section;
 - i. any combination of persons identified in (a) through (f) of this section.
2. On behalf of a corporation or business trust, except a professional association organized under Chapter 1785 O.R.C., that all of the following persons, where applicable, are in compliance with 3517.13 (J)(1)⁸³⁵:
- e. an owner of more than twenty per cent of the corporation or business trust;
 - f. each spouse of an owner of more than twenty per cent of the corporation or business trust;
 - g. each child seven years of age to seventeen years of age of an owner of more than twenty per cent of the corporation or business trust;
 - h. any combination of persons identified in (a) through (c) of this section.

⁸³⁵ O.R.C. § 3517.13(J)(1)(a) provides:

[N]o political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year, to a corporation or business trust, except a professional association organized under Chapter 1785. of the Revised Code, if any of [those persons listed in ¶ 2, a–c] . . . has made, as an individual, within the previous twenty-four months, taking into consideration only owners for all of that period, one or more contributions totaling in excess of one thousand dollars to the holder of a public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

O.R.C. § 3517.13(J)(1)(b) prohibits award of such a contract

[I]f **any combination** of the following has made, within the previous twenty-four months, taking into consideration only owners for all of that period, one or more contributions totaling in excess of two thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee: (i) Owners of more than twenty per cent of the corporation or business trust; (ii) Spouses of owners of more than twenty per cent of the corporation or business trust; (iii) Children seven years of age through seventeen years of age of owners of more than twenty per cent of the corporation or business trust; (iv) Any political action committee affiliated with the corporation or business trust. (Emphasis added.)

CONTRACTOR:

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

Sworn to before me and subscribed in my presence by the above named person this _____ day of _____, 20____.

NOTARY PUBLIC: _____

My Commission Expires: _____



Employer Outreach: 1-888-400-0965
www.opers.org

STEP 1: Personal Information

_____ — _____ — _____

STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification.

This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.

Signature _____ Today's Date ____/____/____
Do not print or type name

Oh. Township. L. § 67:24

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Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 67. Zoning—Forms

VI. Township Board of Zoning Appeals

§ 67:24. Notice of hearing on zoning appeal

(RC 519.15)

Author's Note:

Notice must be given by one publication in one or more newspapers of general circulation in the county at least 10 days before the date of the hearing; and in writing to parties in interest. Publishing in an online version of a newspaper is not considered publishing in a “newspaper of general circulation” for notice purposes.

NOTICE OF PUBLIC HEARING TOWNSHIP BOARD OF ZONING APPEALS

A public hearing will be held before the township board of zoning appeals on *[date, time and place]*, for the purpose of hearing the following: *[insert matters on appeal]*.

Township Board of Zoning Appeals of *[_____]* Township

Chair

[Affidavit of publication. See, e.g., § 65:1.]

Oh. Township. L. § 67:25

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Part II. Forms

Chapter 67. Zoning—Forms

VI. Township Board of Zoning Appeals

§ 67:25. Resolution of board of zoning appeals approving zoning variance

(RC 519.14(B))

Whereas the zoning resolution of [_____] Township provides that a variance in use may be approved by the Planning and Zoning Commission, consistent with the spirit and intent of the zoning resolution and subject to approval by the Township Board of Zoning Appeals;

Whereas, [name] has applied to the Planning and Zoning Commission for permission to [describe variance], and the Planning and Zoning Commission has denied such use; and [name] has now appealed the denial of [his/her] request to the Board of Zoning Appeals;

Be it resolved that [name] is hereby granted a variance as requested.

Oh. Township. L. § 67:26

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Part II. Forms

Chapter 67. Zoning—Forms

VI. Township Board of Zoning Appeals

§ 67:26. Resolution revoking zoning variance

(RC 519.14(D))

Whereas the [_____] Township Board of Zoning Appeals on [date] approved and issued a variance to [name] on the condition that [state conditions of variance], and

Whereas [name] has failed to comply with the terms of the variance in the following particulars: [state violation(s)];

Now, therefore, be it resolved that the variance issued to [name] on [date] is hereby revoked.

Oh. Township. L. § 67:5

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Part II. Forms

Chapter 67. Zoning—Forms

II. Township Zoning Commission

§ 67:5. Resolution making appropriation for zoning commission

(RC 519.05)

Be it resolved that there is hereby appropriated the sum of /\$_____/ for the employment or contract with such planning consultants and executive and other assistants as the Township Zoning Commission deems necessary, payment to be made by the board of township trustees upon the submission of statements approved by the commission.

Oh. Township. L. § 67:7

Baldwin's Ohio Practice, Local Government Law--Township

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Part II. Forms

Chapter 67. Zoning—Forms

II. Township Zoning Commission

§ 67:7. Resolution by zoning commission to employ planning consultants

(RC 519.05)

Whereas, the Township Zoning Commission of [_____] Township, [_____] County, Ohio, needs professional assistance in the preparation of a plan, including both text and maps, representing its recommendations to the township trustees for the carrying out by the board of the powers, purposes, and provisions set forth in RC Ch. 519, and

Whereas, the Board of Township Trustees has appropriated funds for this purpose,

Now, therefore, be it resolved by the [_____] Township Zoning Commission that it is necessary to employ *[name(s) of consultant(s)]* as consultants, and *[he/she/they]* shall be employed, upon the following terms: *[state terms]*.

**BOARD OF TRUSTEES
_____ TOWNSHIP, DELAWARE COUNTY, OHIO**

RESOLUTION NO. _____

**A RESOLUTION PROVIDING FOR THE CREMATION AND BURIAL OF THE REMAINS
OF A TOWNSHIP RESIDENT WHO HAS DIED INDIGENT.**

PREAMBLE

WHEREAS, _____ was a _____ Township resident and
_____ died on _____, 20____; and,

WHEREAS, _____ was indigent at the time of his/her death; and,

WHEREAS, his/her only identified next-of-kin is a minor child who is also indigent; and,

WHEREAS, R.C. § 9.15 requires townships to bury or cremate the remains of an indigent individual at the expense of the township in which the person had a legal residence at the time of death; and,

WHEREAS, to comply with R.C. § 9.15, the _____ Township Board of Trustees (“Board”) desires to make arrangements and pay for the cremation and burial of _____’s remains in the _____ Township Cemetery; and,

WHEREAS, the Board desires to place a stone or concrete marker at _____’s grave indicating his/her name, age, and date of death.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

1. The Board recognizes that township resident _____ died on _____ and was indigent at the time of his/her death, and that his/her only identified next-of-kin is a minor child.
2. The Board, pursuant to R.C. § 9.15(A), shall pay for the cremation of _____’s remains and will provide a plot at _____ Township Cemetery for the burial of the cremated remains. The funds to be used for this purpose shall come from the Township’s General Fund and shall be monies not otherwise encumbered.

3. The Board, pursuant to R.C. § 9.15(C), shall pay for a marker to be placed at _____'s gravesite from General Fund monies not otherwise encumbered. The marker shall indicate the deceased's name, age, and date of death
4. The Board appoints _____ to make arrangements with _____ Funeral Homes and/or any other company necessary to carry out the purposes of this Resolution.
5. All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.
6. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

**BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO**

Trustee _____

Trustee _____

Trustee _____

Oh. Township. L. § 68:1

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

I. Acquisition of Property

§ 68:1. Resolution authorizing purchase of real property

(RC 511.11)

Whereas, *[name]* is the owner of the following described real estate in *[_____]* Township: *[insert legal description]*

And whereas, *[name]* has offered to sell the real estate, consisting of *[_____]* acres with *[_____]* foot frontage on *[identify street or road]*, to *[_____]* Township, for the sum of *[\$_____]*;

Now, therefore, be it resolved by the board of trustees of *[_____]* Township, *[_____]* County, Ohio, that the purchase of the above-described real estate is hereby approved for the purpose of *[state purpose]*, and the fiscal officer is hereby authorized to issue *[his/her]* warrant and voucher for payment of the same.

Oh. Township. L. § 68:4

Baldwin's Ohio Practice, Local Government Law--Township

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Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

II. Town Hall

§ 68:4. Resolution to submit question of acquiring, improving or moving town hall to voters

(RC 511.01)

Author's Note:

See RC 511.02 for provisions on levying a tax or issuing bonds to build, improve or remove a town hall. See also §§ 61:1 to 61:11 and Ch. 63. The following resolution must be certified to the board of elections not later than 4:00 p.m. of the 90th day before the election.

Whereas, it is necessary to *[build a town hall/(improve/enlarge/remove) the present [_____] Town Hall]*, and the estimated cost of *[construction/improvement/enlargement/removal]* exceeds \$50,000; it is therefore

Resolved, that the question of *[building a/(improving/enlarging/removing) the]* town hall be submitted to the electors of the township at the *[primary/special/general]* election on *[date]*.

Further resolved, that the fiscal officer is directed to certify a copy of this resolution to the *[_____]* County Board of Elections, not later than 4:00 p.m. on *[date]*.

[Insert fiscal officer's certificate, § 60:21.]

Oh. Township. L. § 68:5

Baldwin's Ohio Practice, Local Government Law--Township

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Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

II. Town Hall

§ 68:5. Resolution for purchase of site and erection of town hall

(RC 511.01 to RC 511.03)

It appearing to the satisfaction of the board of township trustees that at the election a majority of the ballots cast were in favor of the purchase of a site and the building of a town hall; it is, therefore, ordered that a site for a town hall be purchased and a hall built thereon, and a tax of *[describe]* levied on all the property in the township to pay for the same.

Oh. Township. L. § 68:8

Baldwin's Ohio Practice, Local Government Law--Township

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Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

IV. Parks

§ 68:8. Petition to establish township park

(RC 511.18)

[Date]

To the Board of Trustees of [_____] Township, [_____] County, Ohio:

The undersigned, who are electors in the township, including all municipal corporations in the township, and who equal or exceed one-tenth of the total vote cast in such township at the general election next preceding, request that the board of township trustees proceed pursuant to law to organize a park district and to establish a free public park within this township.

[Petitioner's name and address]

[repeat as needed]

Oh. Township. L. § 68:13

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:13. Application for submission of question of establishing a cemetery to voters

(RC 517.04)

Author's Note:

This application must be signed by at least six electors of the township, and must be certified to the board of elections by the township clerk not later than 4:00 p.m. of the 90th day before the election and at least 20 days before the election the clerk must post written notice in at least three public places in the township.

To the fiscal officer of [_____] Township [_____] County, Ohio:

The undersigned, electors of [_____] Township, respectfully request that a cemetery be established on the following tract of land [*describe as accurately as possible*], which tract of land will cost, including enclosing and improving the same, as estimated, [\$_____].

The undersigned request that action on this application be taken as provided in RC 517.05.

[Name and address of elector]

[repeat as needed]

Oh. Township. L. § 68:14

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

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Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:14. Resolution to submit question of establishing cemetery to voters

(RC 517.04)

Author's Note:

The board of township trustees may make this order on its own motion without a previous application, but no land can be purchased without an affirmative vote.

It appearing to the board of township trustees of [_____] Township, [_____] County, Ohio, that it is advisable, necessary and proper that a cemetery be established, and that the same is desired by a considerable number of the electors of said township, it is hereby resolved that at the next *[primary/general]* election held in the township, the proposition of the purchase of the following tract of land *[describe as accurately as possible]*, the estimated cost of which, including enclosing and improving, will be about [\$], be submitted to a vote of said electors, as provided in RC 517.05.

Oh. Township. L. § 68:15

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:15. Notice of election on question of establishing cemetery

(RC 517.05)

Author's Note:

After the trustees have made the order, or a written application signed by six electors has been filed, the fiscal officer must give at least 20 days notice before the election that the vote will be taken, by posting written or printed notices in at least three public places. RC 517.05.

If the vote is in favor of the proposition, and the board of township trustees proceed to make the purchase, the fact should be made to appear in a resolution when the purchase is made, and before any order is issued for payment.

[Date]

To the electors of [_____] Township [_____] County, Ohio:

You are hereby notified that at the election to be held on [date], the proposition of whether or not the board of township trustees of the township shall purchase for cemetery purposes the following described tract of land, to wit: [describe accurately], and shall make a levy for its purchase and maintenance from year to year, will be submitted to the electors of the township. The estimated cost of the cemetery, including enclosing and improving the same, is [\$/_____]. The electors favoring the proposition shall put on their ballots for township officers the word "Cemetery," and if a majority of the votes cast at the election favors the proposition, the board of township trustees shall procure the land for cemetery purposes.

Fiscal Officer

Oh. Township. L. § 68:16

Baldwin's Ohio Practice, Local Government Law--Township

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Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:16. Resolution ordering purchase of site for cemetery

(RC 517.05)

It appearing to the satisfaction of the board of township trustees that at the election held on *[date]*, a majority of all the votes cast at the election were in favor of the purchase of the following described real estate *[describe accurately]* for cemetery purposes, and that notice thereof had been posted in at least three public places, at least twenty days before the election, it is hereby resolved that the tract of land be purchased at /\$_____, and that upon the delivery of a good and sufficient deed therefor, the fiscal officer issue an order in the sum of /\$_____, to *[name]*, in payment thereof.

Oh. Township. L. § 68:17

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

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Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:17. Deed for cemetery lot

(RC 517.07, RC 517.14, RC 759.12, RC 759.31)

Author's Note:

All deeds to cemetery lots must be recorded by the township fiscal officer. No other recording is necessary. RC 517.07. This deed by the trustees to the purchaser grants a mere easement for burial purposes and provides only the right of burial, ornamentation, and erection of monuments. Any deed executed after July 24, 1986, may include additional requirements of the grantee, such as: (1) list of names and addresses of the persons to whom the grantee's property would pass by intestate succession; (2) require grantee to notify the board in writing of changes in address; (3) other terms authorized by RC 517.07.

DEED FOR CEMETERY LOT

Lot No. [_____] Section [_____]

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned members of the board of trustees of [_____] Township, [_____] County, Ohio, in consideration of [\$_____], to us paid by [name and address], grantee, the receipt whereof is hereby acknowledged, hereby grant, bargain, sell, and convey to the grantee and [his/her] heirs forever, the following described lot or parcel of land in [_____] Cemetery, to-wit: Lot No. [_____] in Section [_____] as described on the plat of the Cemetery on file in the office of the fiscal officer of the township.

To have and to hold the same to the grantee and [his/her] heirs, to be used for the purposes of burial only, subject to the laws of this state regarding cemeteries and the rules and regulations of the officers having control of the cemetery.

Witness our signatures, [date].

Signed and Acknowledged in presence of:

Trustee

[repeat as needed]

Witness

[repeat as needed]

State of Ohio, [_____] County

Acknowledged before me by the above trustees, on [_____] .

Notary

DATE: _____

RESOLUTION NO. _____

**IN THE MATTER OF ADOPTING A RESOLUTION TO REGULATE NOISE WITHIN THE
UNINCORPORATED TERRITORY OF _____ TOWNSHIP PURSUANT TO OHIO
REVISED CODE SECTION 505.172:**

The Board of Trustees of _____ Township, Delaware County, Ohio met in regular session on
the _____ day of _____, 20 ____ at _____ with the following members present:

_____, _____, _____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS; it is the opinion of this _____ Township Board of Trustees (“Board”) that unnecessary noise in residential areas of this township is detrimental to the public health and safety and constitutes a public nuisance, and

WHEREAS; the Board also recognizes that certain levels of noise are unavoidable, and

WHEREAS; it is the opinion of the Board that the elimination of noise beyond that which is essential to everyday living is beneficial to all residents of this township, and

WHEREAS; it is the intent of this Resolution to prohibit noise that is unnecessary in residential areas of this township, and

WHEREAS; Section 505.172 of the Ohio Revised Code authorizes a board of township trustees to adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the division of liquor control or that is generated within any area zoned for residential use.

NOW THEREFORE BE IT RESOLVED, as follows:

(A) DEFINITIONS

Plainly Audible - As used in this Resolution, plainly audible means any noise or sound produced by any source that can be clearly heard by a person using normal hearing faculties.

(B) CERTAIN NOISE PROHIBITED

No person in the unincorporated territory of _____ Township shall make and no landowner or lawful occupant of land shall permit at any premises to which a D permit has been issued by the division of liquor control or that is zoned for residential use, the making of any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities and not a resident of the property from which the noise or sound emanates. The noise or sound must be plainly audible at a distance of one hundred (100) feet or more from the property from which the noise emanates.

(C) EXAMPLES OF NOISES

The following noises or sounds, which constitute a non-exclusive list, may be considered a violation of this Resolution if they violate division (B) of this Resolution:

1. Horns, Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any public street or public place; a creation by means of any such signaling device an unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable length of time. This shall not apply to the use of any such signaling device as a warning of danger.
2. Radios, Phonographs, etc. The use or operation of any radio, phonograph, television, tape recorder, loudspeaker, cassette or compact disc player, MP-3 player, or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or on the property in which such machine or device is operated and who are voluntary listeners thereto.
3. Yelling, Shouting. Yelling, shouting, hooting, whistling, or singing.
4. Musical Instruments. The use of any drum or other musical instrument or device with or without electronic amplification.
5. Internal Combustion Engines or Other Power Equipment. The operation of any internal combustion engine or other piece of power equipment excluding power mowers, trimmers, chain saws, or tillers.
6. Gunfire. Repeated discharging of firearms for an unreasonably long period of time under the circumstances then existing.

(D) It shall be a prima facie violation of division (B) of this Resolution when the noise can be heard at a distance of one hundred (100) feet or more from the property where the noise or sound emanates.

(E) NOISE FROM MOTOR VEHICLES

No person while operating or occupying a motor vehicle within the unincorporated territory of _____ Township within any area zoned for residential use, or at any premises to which a D permit has been issued by the division of liquor control, shall operate or amplify the noise or sound produced by a radio, tape player, compact disk player, MP-3 player, or other soundmaking device or instrument from within the motor vehicle so that the noise or sound is plainly audible at a distance of one hundred (100) feet or more from the motor vehicle.

(F) The provisions of this resolution shall not apply:

- 1) To any law enforcement motor vehicle equipped with any communication device necessary to the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary to the performance of any emergency procedures.
- 2) To the noise or sound made by a horn or other warning device required or permitted by state law, when used in accordance with state law.

(G) LAW ENFORCEMENT DETERMINATION OF SOURCE

Any law enforcement personnel who hears a sound that is plainly audible as defined herein, shall be entitled to measure the sound according to the following standards:

- 1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.
- 2) Regarding division (E) of this Resolution, the officer must have a direct line of sight and hearing to the motor vehicle producing the noise or sound so that he can readily identify the offending motor vehicle and the distance involved.
- 3) The officer need not determine any particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a noise, sound, or rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.
- 4) Any motor vehicle from which the sound is produced must be located (stopped, standing, or moving) within the unincorporated area of the township in an area zoned for residential use or on any premises to which a D permit has been issued by the division of liquor control. Parking lots and driveways are included.

(H) Any person engaging in activities described in section 1.61 of the Revised Code (Titled: "Agriculture Defined") is exempt from the provisions of this Resolution if the noise is attributed to an activity described in section 1.61 of the Revised Code.

(I) Any person who engages in coal mining and reclamation operations, as defined in division (B) of section 1513.01 of the Revised Code, or surface mining, as defined in division (A) of section 1514.01 of the Revised Code, is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.

(J) Noise resulting from the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering, or storage of crude oil or natural gas is exempt from the provisions of this Resolution.

(K) Nothing in this Resolution shall be deemed to prohibit incidental noise such as that as is made by construction operations, repairs, or maintenance of houses or yards between the hours of 7:00 a.m. and 9:00 p.m.

(L) Refuse collection operations conducted between the hours of 7:00 a.m. and 9:00 p.m. shall be exempted, provided that all equipment is operated in accordance with the manufacturer’s specifications and/or with all standard manufacturers’ mufflers and other noise reducing equipment in use and in proper operating condition. Refuse collection personnel are to avoid loud voices and noises generated by striking cans against their vehicle or other cans.

(L) PENALTY

Whosoever violates divisions (B) or (E) of this Resolution shall be guilty of the level of offense as provided in the most current version of section 505.172 of the Ohio Revised Code for violating any regulation or order, such as the current Resolution, adopted pursuant to section 505.172 of the Ohio Revised Code. Fines levied and collected pursuant to this Resolution shall be paid into the township general revenue fund.

(M) PRIVATE CIVIL ACTION

Pursuant to division (E) of section 505.172 of the Revised Code, any person aggrieved by another person’s violation of this regulation may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing an act or practice that violates this Resolution.

_____ seconded the motion.

VOTING ON THE RESOLUTION:

**BOARD OF _____
TOWNSHIP TRUSTEES**

Township Trustee

Date

Township Trustee

Date

Township Trustee

Date

DATE: _____

RESOLUTION NO. _____

**IN THE MATTER OF AMENDING RESOLUTION NO. _____, ADOPTING A
RESOLUTION TO REGULATE NOISE WITHIN THE UNINCORPORATED TERRITORY
OF _____ TOWNSHIP PURSUANT TO
OHIO REVISED CODE SECTION 505.172:**

The Board of Trustees of _____ Township, Delaware County, Ohio met in regular
session on the _____ day of _____, 20____ at _____ with the following
members present _____ , _____ ,
_____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS; it is the opinion of this _____ Township Board of Trustees that
unnecessary noise in residential areas of this township is detrimental to the public health and safety and
constitutes a public nuisance, and

WHEREAS; this board of trustees also recognizes that certain levels of noise are unavoidable,
and

WHEREAS; it is the opinion of this board of trustees that the elimination of noise beyond that
which is essential to everyday living is beneficial to all residents of this township, and

WHEREAS; it is the intent of this Resolution to prohibit noise that is unnecessary in residential
areas of this township, and

WHEREAS; Section 505.172 of the Ohio Revised Code authorizes a board of township trustees
to adopt regulations and orders that are necessary to control noise within the unincorporated territory of
the township that is generated at any premises to which a D permit has been issued by the division of
liquor control or that is generated within any area zoned for residential use, and

WHEREAS; Section 505.172 of the Ohio Revised Code was amended (2006 HB 385) since the
original Resolution was adopted, and

WHEREAS; The Board, via this Resolution, desires to amend its previous Resolution in
accordance with the amendments to section 505.172 of the Ohio Revised Code.

Resolution No. _____

NOW THEREFORE BE IT RESOLVED,

(A) DEFINITIONS

Plainly Audible - As used in this Resolution, plainly audible means any noise or sound produced by any source that can be clearly heard by a person using normal hearing faculties.

(B) CERTAIN NOISE PROHIBITED

No person in the unincorporated territory of _____ Township shall make and no landowner or lawful occupant of land shall permit at any premises to which a D permit has been issued by the division of liquor control or that is zoned for residential use, the making of any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities and not a resident of the property from which the noise or sound emanates. The noise or sound must be plainly audible at a distance of one hundred (100) feet or more from the property from which the noise emanates.

(C) EXAMPLES OF NOISES

The following noises or sounds, which constitute a non-exclusive list, may be considered a violation of this Resolution if they violate division (B) of this Resolution:

1. Horns: Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any public street or public place; a creation by means of any such signaling unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable length of time. This shall not apply to the use of any such signaling device as a warning of danger.
2. Radios: Phonographs: Etc. The use or operation of any radio, phonograph, television, tape recorder, loudspeaker, cassette or compact disc player or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or on the property in which such machine or device is operated and who are voluntary listeners thereto.
3. Yelling: Shouting. Yelling, shouting, hooting, whistling, or singing.
4. Musical Instruments. The use of any drum or other musical instrument or device with or without electronic amplification.
5. Internal Combustion Engines or Other Power Equipment. The operation of any internal combustion engine or other piece of power equipment excluding power mowers, trimmers, chain saws, or tillers.

Resolution No. _____

6. Gunfire. Repeated discharging of firearms for an unreasonably long period of time under the circumstances then existing.

(D) It shall be a prima facie violation of division (B) of this Resolution when the noise can be heard at a distance of one hundred (100) feet or more from the property where the noise or sound emanates.

(E) NOISE FROM MOTOR VEHICLES

No person while operating or occupying a motor vehicle within the unincorporated territory of _____ Township within any area zoned for residential use, or at any premises to which a D permit has been issued by the division of liquor control, shall operate or amplify the noise or sound produced by a radio, tape player, or other soundmaking device or instrument from within the motor vehicle so that the noise or sound is plainly audible at a distance of one hundred (100) feet or more from the motor vehicle.

(F) The provisions of this resolution shall not apply:

- 1) To any law enforcement motor vehicle equipped with any communication device necessary to the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary to the performance of any emergency procedures.
- 2) To the noise or sound made by a horn or other warning device required or permitted by state law, when used in accordance with state law.

(G) LAW ENFORCEMENT DETERMINATION OF SOURCE

Any law enforcement personnel who hears a sound that is plainly audible as defined herein, shall be entitled to measure the sound according to the following standards:

- 1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.
- 2) Regarding division (E) of this Resolution, the officer must have a direct line of sight and hearing to the motor vehicle producing the noise or sound so that he can readily identify the offending motor vehicle and the distance involved.
- 3) The officer need not determine any particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a noise, sound, or rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.
- 4) Any motor vehicle from which the sound is produced must be located (stopped, standing, or moving) within the unincorporated area of the township in an area zoned for residential use or on any premises to which a D permit has been issued by the division of liquor control. Parking lots and driveways are included.

Resolution No. _____

(H) Any person engaging in activities described in section 1.61 of the Revised Code (Titled: “Agriculture defined”) is exempt from the provisions of this Resolution if the noise is attributed to an activity described in section 1.61 of the Revised Code.

(I) Any person who engages in coal mining and reclamation operations, as defined in division (B) of section 1513.01 of the Revised Code, or surface mining, as defined in division (A) of section 1514.01 of the Revised Code, is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.

(J) Noise resulting from the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering, or storage of crude oil or natural gas is exempt from the provisions of this Resolution.

(K) Nothing in this Resolution shall be deemed to prohibit incidental noise such as that as is made by construction operations, repairs, or maintenance of houses or yards between the hours of 7:00 a.m. and 9:00 p.m.

(L) Refuse collection operations conducted between the hours of 7:00 a.m. and 9:00 p.m. shall be exempted provided that all equipment is operated in accordance with the manufacturer’s specifications and/or with all standard manufacturers’ mufflers and other noise reducing equipment in use and in proper operating condition. Refuse collection personnel are to avoid loud voices and noises generated by striking cans against their vehicle or other cans.

(L) PENALTY

Whosoever violates divisions (B) or (E) of this Resolution shall be guilty of the level of offense as provided in the most current version of section 505.172 of the Ohio Revised Code for violating any regulation or order, such as the current Resolution, adopted pursuant to section 505.172 of the Ohio Revised Code. Fines levied and collected pursuant to this Resolution shall be paid into the township general revenue fund.

(M) PRIVATE CIVIL ACTION

Pursuant to division (E) of section 505.172 of the Revised Code, any person aggrieved by another person’s violation of this regulation may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing an act or practice that violates this Resolution.

_____ seconded the motion.

Resolution No. _____

VOTING ON THE RESOLUTION:

BOARD OF _____
TOWNSHIP TRUSTEES

_____ Township Trustee

Date

_____ Township Trustee

Date

_____ Township Trustee

Date

_____ **TOWNSHIP**

Resolution No. _____

**IN THE MATTER OF ADOPTING A RESOLUTION PROHIBITING THE KEEPING OR
HARBORING OF BARKING OR HOWLING DOGS WITHIN THE UNINCORPORATED
TERRITORY OF _____ TOWNSHIP:**

The Board of Trustees of _____ Township, Delaware County, Ohio met in regular session on the ____ day of _____, 20__ at _____ with the following members present: _____, _____, _____.

Mr./Ms. _____ moved the adoption of the following Resolution:

WHEREAS, R.C. Section 955.221(B)(2) authorizes the Township to adopt resolutions to control dogs within the township; and

WHEREAS, the Board of Township Trustees of _____ Township, Delaware County, Ohio, has received numerous and ongoing complaints regarding barking or howling dogs; and

WHEREAS, the Board deems it necessary to control the nuisance of dogs which howl or bark, or emit audible sounds in a manner which disturbs the peace and lives of residents;

NOW THEREFORE BE IT RESOLVED, as follows:

(A) Definitions.

Plainly Audible - As used in this Resolution, plainly audible means noise or sound that can be clearly heard and is discernible by a person using normal hearing faculties or ordinary auditory senses not enhanced by any mechanical device, such as a microphone or hearing aid, as barking, howling or other noise being made by a dog.

(B) Barking or Howling Dogs.

1. No owner, keeper or harborer shall keep or harbor within the unincorporated area of the township any dog which, at any time of day or night, continually or intermittently howls or barks, or emits any audible sounds or noises for a period of time exceeding _____ (_____) consecutive minutes that are of such an intensity so as to be plainly audible at a distance of one hundred (100) feet or more from the property from which the howling, barking or audible sounds or noises emanate and which are disturbing to the peace and quiet of the neighborhood or are detrimental to the life and health of any individual.

2. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which that person occupies or owns, shall be considered as harboring such dog.

(C) None of the provisions of division (A) hereof shall apply to the use of any dog which is lawfully engaged in hunting or training for the purpose of hunting while accompanied by a licensed hunter or to any dog engaged in herding or corralling of animals for an agricultural purpose. However, such dogs at all other times and in all other respects, shall be subject to this resolution, unless actually in the field and engaged in hunting or in legitimate training for such purpose.

(D) None of the provisions of division (A) hereof shall apply to owners, operators, or employees of duly licensed veterinary hospitals; owners, operators, or employees of duly licensed kennels or animal boarding establishments; or to blind or disabled persons when the dog serves as an aid, guide or leader.

(E) Whoever violates this resolution is guilty of a minor misdemeanor. Each day of continued violation constitutes a separate offense.

Mr./Ms. _____ seconded the motion.

VOTING ON THE RESOLUTION:

DATE: _____ APPROVED: _____

DISAPPROVED:

_____ **TOWNSHIP BOARD OF TRUSTEES**
DELAWARE COUNTY, OHIO

DATE: _____

RESOLUTION NO. _____

**DECLARATION OF NUISANCE AND ABATEMENT
OF NUISANCE PURSUANT TO O.R.C. § 505.87:**

PROPERTY OWNER: _____

PROPERTY ADDRESS: _____

PREAMBLE

WHEREAS, the Board of _____ Township Trustees of Delaware County, Ohio (“Board”) is familiar with the real property at _____ located in _____ Township, Delaware County, Ohio (“Property”); and,

WHEREAS, the known individuals with an ownership interest (including holders of liens of record) in the Property, along with their last and best addresses are as follows:

1. _____

2. _____

WHEREAS, the Property is not maintained by the property owners and contains vegetation, garbage, refuse or other debris that are dangerous, unhealthy, and unsightly; and,

WHEREAS, the Board believes that the property owner’s maintenance of that vegetation, garbage, refuse, or other debris constitutes a nuisance; and,

WHEREAS, the Board hereby seeks to abate, control and/or remove such vegetation, garbage, refuse or other debris from the Property and recover their costs in so doing, all in accordance with O.R.C. § 505.87.

RESOLUTION

THEREFORE, BE IT RESOLVED, AS FOLLOWS:

- A. The Board determines and declares that the property owner's maintenance of vegetation, garbage, refuse, or other debris on the Property constitutes a nuisance.
- B. The Board shall abate, control, or remove such vegetation, garbage, refuse, and other debris from the Property and recover the Board's costs in so doing, all in accordance with O.R.C. § 505.87. Any expenses incurred in abating, controlling, or removing such vegetation, garbage, refuse, or other debris, when approved by the Board, shall be paid out of the Township general fund from moneys not otherwise appropriated.
- C. At least seven (7) days before providing for such abatement, control, or removal of vegetation, garbage, refuse, or other debris, notification shall be provided to all individuals with an ownership interest in the Property, including holders of liens of record. Such individuals/entities are identified above. The Board shall send the notice to the owner of the land by certified mail and by certified mail to lienholders of record; alternatively, if the owner is a resident of the township or is a nonresident whose address is known, the board may give notice to the owner by causing any of its agents or employees to post the notice on the principal structure on the land and to photograph that posted notice with a camera capable of recording the date of the photograph on it. If the owner's address is unknown and cannot reasonably be obtained, it is sufficient to publish the notice once in a newspaper of general circulation in the township.
- D. The contents of the notice shall:
 - (1) Order the owner to abate, control, or remove all vegetation, garbage, refuse, or other debris, the owner's maintenance of which has been determined by the Board to constitute a nuisance;
 - (2) State that if such vegetation, garbage, refuse, or other debris is not abated, controlled, or removed, or if provision for its abatement, control, or removal is not made, within seven (7) days, the Board shall provide for the abatement, control, or removal, and may employ the necessary labor, materials, and equipment to perform the task. Any expenses incurred by the Board in performing that task shall, pursuant to authority provided under O.R.C. § 505.87, be entered upon the tax duplicate and become a lien upon the land from the date of entry.
- E. The Board shall collect the total cost of abating, controlling, or removing vegetation, garbage, refuse, or other debris from the Property. Pursuant to O.R.C. § 505.87, the Board shall make a written report to the county auditor of the Board's action. The Board shall include in the report a proper description of the premises and a statement of all expenses incurred in providing for the abatement, control, or removal of any vegetation, garbage, refuse, or other debris from the Property, including the board's charges for its services, the costs incurred in providing notice, any fees or interest paid to borrow moneys, and the amount paid for labor, materials, and equipment. The expenses incurred, when allowed, shall be entered upon the tax duplicate, are a lien upon the land

from the date of the entry, shall be collected as other taxes, and shall be returned to the Township and placed in the Township general fund.

F. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

G. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

Trustee

Trustee

Trustee

**BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO**

DATE: _____

RESOLUTION NO. _____

**ABATEMENT OF DANGEROUS PROPERTY CONDITIONS, PURSUANT TO
R.C. § 505.86, ON REAL PROPERTY LOCATED AT**

(Delaware County Permanent Parcel Number _____)

PREAMBLE

WHEREAS, the Board of _____ Township Trustees of Delaware County, Ohio (the “Board”) is familiar with the real property located at _____ bearing Delaware County Permanent Parcel Number _____ (The “Property.”) (See Exhibit A– Deed with legal description.) (See Exhibit B – Delaware County Auditor’s Summary, Tax Information and Map), and;

WHEREAS, the Property is wholly located in _____ Township, Delaware County, Ohio; and,

WHEREAS, the individuals with an ownership or lien interest in the Property along with their last known and best addresses are as follows:

1. Name: _____
Address: _____

2. Name: _____
Address: _____

WHEREAS, the Property contains a structure (hereinafter “Structure”) generally described as abandoned, insecure, unsafe and/or structurally defective;

WHEREAS, the Board believes the Structure on the Property to be vacant, not properly maintained, and in a dilapidated and dangerous condition, and;

WHEREAS, the Board has regularly observed the Structure on the Property to be unsecured, open, and accessible to any persons, animals and/or vermin, and;

WHEREAS, the Board believes the Structure to be insecure, unsafe, and/or structurally defective and as such is an attractive nuisance to children and will attract animals, vermin, and/or filth and;

WHEREAS, the Board, pursuant to O.R.C. § 505.86, hereby seeks to remove, repair and/or secure the Structure and recover any and all costs incurred by the Board and/or _____ Township (hereinafter the “Township”) in so doing.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, as follows:

1. The Board, pursuant to O.R.C. § 505.86, intends to remove, repair, and/or secure the Structure on the Property. Any and all costs incurred by the Board and/or the Township in so doing shall be recovered.
2. Prior to taking any action to remove, repair, and/or secure the Structure, the Board respectfully requests that the _____ Township Fire Department, which fire department is under contract with and/or serves the Township, and/or the county building department, inspect the Structure to determine whether the Structure is insecure, unsafe, and/or structurally defective. Following such inspection, the _____ Township Fire Department and/or the county building department shall make a written report of findings concerning the condition of the Structure and immediately forward such written report of findings to the Board.
3. Upon inspection, if the _____ Township Fire Department and/or county building department determines and reports that the Structure is in an insecure, unsafe, and/or structurally defective condition, notification in accordance with O.R.C. § 505.86, will be sent to all individuals with an ownership and/or lien interest in the Property, including the following:

- A. Name: _____
Address: _____

- B. Name: _____
Address: _____

to notify and inform them of the Board’s intentions regarding the removal, repair, and/or securance of the Structure.

4. The notification will be sent via certified U.S. Mail, postage prepaid, to all known addresses for these individuals. If any addresses are unknown and/or cannot reasonably be obtained with certainty or if notification by certified mail is returned “unclaimed” or not delivered, notification will also be published once in a newspaper of general circulation in the Township. Whether mailed or published, the notification(s) shall:
 - A. Identify with specificity the Property and Structure and all persons known to have an ownership or lien interest in the Property.

- B. Order the interested parties to remove, repair, and/or secure the Structure such that the Structure is secure, safe, and structurally sound as determined and approved by the _____ Township Fire Department and/or county building department;
 - C. State that if the Structure is not removed, repaired, or secured, within thirty (30) days, the Board will provide for the removal, repair, and/or securance of the Structure. Any expenses incurred by the Board and/or Township in performing that task shall, pursuant to authority provided under R.C. § 505.86, be collected through a civil action and/or entered upon the tax duplicate and become a lien upon the land from the date of entry.
5. If after thirty (30) days of sending notice, the Structure, following reevaluation by and as re-determined by the _____ Township Fire Department and/or the county building department, is still in an insecure, unsafe, or structurally defective condition, the Structure, pursuant to O.R.C. § 505.86, shall, by any action deemed necessary by the Board, be removed, repaired, and/or secured through the use of either Township employees, materials, and equipment, or through any contractor or person whom the Board may employ. All expenses incurred in such removal, repair, and/or securance, when approved by the Board, shall be paid out of the Township general fund from moneys not otherwise appropriated.
 6. The Board, pursuant to O.R.C. § 505.86, shall collect the total cost of removing, repairing, and/or securing the Structure by choosing, at their discretion, either of the following methods:
 - A. The Board may have the Township Fiscal Officer certify the total costs, together with a proper description of the Property to the county auditor who shall place the costs upon the tax duplicate. The costs are a lien upon the Property from and after the date of entry. The costs shall be collected as other taxes and returned to the Township general fund.
 - B. The Board may commence a civil action to recover the total costs from the owner.
 7. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.
 8. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

Trustee

Trustee

Trustee

TOWNSHIP BOARD OF TRUSTEES
RESOLUTION NO. _____

**A RESOLUTION TO AUTHORIZE AND IMPLEMENT THE PROCEDURES DESCRIBED IN
DIVISIONS (C) AND (D) OF SECTION 3929.86 OF THE OHIO REVISED CODE RELATING
TO PAYMENT TO THE TOWNSHIP OF A PORTION OF INSURED FIRE LOSS CLAIMS AS
SURETY FOR THE REMOVAL, REPAIR, OR SECURING OF BUILDINGS OR
OTHER STRUCTURES DAMAGED BY FIRE**

PREAMBLE

WHEREAS, it is the intent of _____ Township and the _____ Township Board of Township Trustees to deter the commission of arson and related crime, to discourage the abandonment of fire damaged property and to prevent urban blight and deterioration; and,

WHEREAS, section 505.86 of the Ohio Revised Code authorizes townships to provide for the removal, repair, or securance of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective by:

- 1) any fire department under contract with the township or
- 2) by the county building department or other authority responsible under Chapter 3781. of the Revised Code for the enforcement of building regulations or the performance of building inspections in the township, or
- 3) buildings or other structures that have been declared unfit for human habitation by the board of health of the general health district of which the township is a part; and,

WHEREAS, as a means to achieve this stated intent and to recover the costs or expenses incurred by the township in removing, repairing, or securing buildings or other structures in the township damaged by fire that have been declared insecure, unsafe, or structurally defective pursuant to section 505.86 of the Ohio Revised Code, a board of township trustees may, accept security payments and follow the procedures of divisions (C) and (D) of section 3929.86 of the Ohio Revised Code, whenever:

- 1) a policy(ies) of insurance is/are in force providing coverage against the peril of fire on a building or structure, and
- 2) the loss agreed to between the named insured(s) and the company(ies) is more than five thousand dollars (\$5,000.00) and equals or exceeds sixty per cent (60%) of the aggregate limits of liability on all fire policies covering the building or structure on the property; and,

WHEREAS, section 3929.86 (A) of the Ohio Revised Code provides that no insurance company doing business in the state of Ohio shall pay a claim of a named insured for fire damage to a structure located in a township in this state where the amount recoverable for the fire loss to the structure under all

policies exceeds five thousand dollars (\$5,000.00), unless the company first complies with the procedures of divisions (C) and (D) thereof; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code requires that when the loss agreed to between the named insured(s) and the company(ies) equals or exceeds sixty per cent (60%) of the aggregate limits of liability on all fire policies covering the building or structure, the insurance company(ies), in accordance with section 505.86 of the Revised Code, shall transfer from the insurance proceeds to the designated officer of the township in the aggregate:

- 1) two thousand dollars (\$2,000.00) for each fifteen thousand dollars (\$15,000.00), and each fraction of that amount, of a claim, or,
- 2) if, at the time of a proof of loss agreed to between the named insured(s) and the insurance company(ies), the named insured(s) have submitted a contractor's signed estimate of the costs of removing, repairing, or securing the building or other structure, the amount specified in the estimate; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code also requires that such proceeds shall be transferred to the township on a pro rata basis by all companies insuring the building or other structure; and

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code also states that the named insured(s) may submit a contractor's signed estimate of the costs of removing, repairing, or securing the building or other structure after the transfer, and the officer designated by the township to administer such transferred funds shall return the amount of the fund in excess of the estimate to the named insured(s), provided that the township has not commenced to remove, repair, or secure the building or other structure; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code directs the township to designate the officer authorized to carry out the duties of section 3928.86 of the Ohio Revised Code; and,

WHEREAS, division (D) of section 3929.86 of the Ohio Revised Code directs that upon receipt of proceeds by the township as authorized by Ohio Revised Code section 3929.86, the designated officer shall place the proceeds in a separate fund to be used solely as security against the total cost of removing, repairing, or securing such fire damaged building or other structure incurred by the township pursuant to 505.86 of the Ohio Revised Code; and,

WHEREAS, division (D) of section 3929.86 of the Ohio Revised Code, requires that when transferring the funds as required in division (C) of section 3929.86 of the Ohio Revised Code, an insurance company provide the township with the name and address of the named insured(s), whereupon the township shall contact the named insured(s), certify that the proceeds have been received by the municipal corporation or township, and notify them that the following procedures will be followed:

- 1) The fund/proceeds shall be returned to the named insured(s), if the township has not incurred any costs for the repairs, removal, or securing, when repairs, removal, or securing of the building or

other structure have been completed and the required proof has been received by the designated officer. The funds shall be returned to the named insured(s) no later than sixty (60) days after the designated officer receives the required proof.

- 3) If the township has incurred any costs for repairs, removal, or securing of the building or other structure, the costs shall be paid from the fund, and if excess funds remain, the township shall transfer, no later than sixty (60) days after all such costs have been paid, the remaining funds to the named insured(s).
- 4) Nothing in section 3929.86 of the Ohio Revised Code shall be construed to limit the ability of a township to recover any deficiency under section 505.86 of the Revised Code.
- 5) Nothing in section 3929.86 of the Ohio Revised Code shall be construed to prohibit the township and the named insured(s) from entering into an agreement that permits the transfer of funds to the named insured(s) if some other reasonable disposition of the damaged property has been negotiated; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code requires that in order to avail itself of this procedure, a township must:

- 1) adopt a resolution authorizing the procedure described in divisions (C) and (D) of Ohio Revised Code section 3929.86, and
- 2) have filed a certified copy of the resolution for public record with the State of Ohio Superintendent of Insurance; and,

WHEREAS, The provisions of divisions (C) and (D) of Ohio Revised Code section 3929.86 only apply to fire losses that occur after the filing of the certified copy of such resolution for with the State of Ohio Superintendent of Insurance.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TOWNSHIP TRUSTEES OF
_____ TOWNSHIP, DELAWARE COUNTY, STATE OF OHIO AS
FOLLOWS:

SECTION 1.

The Board of Trustees of _____ Township, Delaware County, State of Ohio authorize the procedure described in divisions (C) and (D) of section 3929.86 of the Ohio Revised Code to be implemented as it currently exists, and as it may hereafter from time to time be amended by the Ohio General Assembly, whereby no insurance company doing business in the State of Ohio shall pay a claim of a named insured for fire damage to a structure located in _____ Township, Delaware County, State of Ohio unless the applicable provisions of Section 3929.86 are fully complied with; and,

SECTION 2.

The Board of Trustees of _____ Township, Delaware County, State of Ohio hereby designate _____ as the officer to carry out the duties of section 3929.86 of the Ohio Revised Code; and,

SECTION 3.

_____ is hereby authorized and instructed to file a certified copy of this Resolution with the State of Ohio Superintendent of Insurance; and

SECTION 4.

This Resolution shall immediately take effect upon the filing of a certified copy of this Resolution with the State of Ohio Superintendent of Insurance and shall apply to fire losses that occur thereafter.

Voting on the Resolution:

Date: _____ **Approved:** _____
Trustee

Trustee

Trustee

Disapproved:

Trustee

Trustee

Trustee

BOARD OF TRUSTEES OF
_____**TOWNSHIP,**
DELAWARE COUNTY,
STATE OF OHIO

Oh. Township. L. § 67:21

Baldwin's Ohio Practice, Local Government Law--Township

Current through 2012-2013 Supplementary Pamphlet, Issued November 2012

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 67. Zoning—Forms

V. Zoning Certificates

§ 67:21. Application for zoning certificate

(RC 519.16, RC 519.17)

Application No. [_____] [Date]
To the Board of Trustees, [_____] Township, [_____] County, Ohio:

Application is hereby made for a zoning certificate. It is understood and agreed by the applicant that any error, misstatement or misrepresentation of fact or expression of fact in the application, either with or without intention on the part of the applicant, such as might, or would, operate to cause the issuance of a permit in accordance with this application, shall constitute sufficient ground for the revocation of the permit at any time.

Location

Subdvn.

Lot

Landowner

Address

Tel.

Occupant

Address

Tel.

Class of work: New [_____] Alteration [_____] Addition [_____] Move [_____]

Sign []x[] Acc. Bldg. [] Building use [] Families []
Stories [] Basement [] Type

Usable floor space for use as living quarters exclusive of basements, porches, garages, breezeways, terraces, attics or partial stories. First floor [] sq. ft. Second floor [] sq. ft.

Off-street parking [] sq. ft.

Remarks:

Sketch of lot showing existing buildings and proposed construction. Fill in all dimensions showing all side yard clearances, streets and roads.

Main road frontage [] ft. District [] Setback from side road [] ft. Rear yard clearance [] ft. Side yard clearance: right [] ft. left [] ft. Dimensions of bldg.: Length [] ft. Width [] ft.

Highest point of building [] ft. above established grade.

Applicant's signature

For Use of Zoning Inspector

Fee [] Date paid [] Date filed []

Approved [] Disapproved [] Date []

_____ Zoning Inspector

This application when approved constitutes the zoning permit.

To be filed in triplicate with the office of the Zoning Inspector.

**BOARD OF TRUSTEES
_____ TOWNSHIP, DELAWARE COUNTY, OHIO**

RESOLUTION NO. _____

**RESOLUTION OF INTENT TO SELL BY INTERNET AUCTION PERSONAL
PROPERTY, INCLUDING MOTOR VEHICLES, ROAD MACHINERY, EQUIPMENT,
TOOLS, OR SUPPLIES THAT IS NOT NEEDED FOR PUBLIC USE, IS OBSOLETE,
OR IS UNFIT FOR THE USE FOR WHICH IT WAS ACQUIRED.**

PREAMBLE

WHEREAS, the Board of Trustees of _____ Township, Delaware County, Ohio (“Board”) routinely has personal property, including motor vehicles, road machinery, equipment, tools, or supplies that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, which it desires to sell; and,

WHEREAS, the Board desires to sell that property by Internet auction; and,

WHEREAS, Ohio Revised Code §505.10(D) authorizes the Board to sell personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by Internet auction.

RESOLUTION

**NOW, THEREFORE BE IT RESOLVED BY THE _____ TOWNSHIP BOARD
OF TRUSTEES AS FOLLOWS:**

SECTION 1. INTENT TO SELL PERSONAL PROPERTY BY INTERNET AUCTION

It is the intent of the Board to sell by Internet auction personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired.

When property is to be sold by Internet auction, the Board or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for the particular sale, including requirements for pick-up or delivery, method of payment, and sales tax. This type of information shall be provided on the Internet at the time of the auction and may be provided before that time upon request, after the terms and conditions have been determined by the Board or its representative.

SECTION 2. BOARD REPRESENTATIVE

_____, is hereby designated as and, for all purposes, shall act as the Board's representative in conducting and/or administering Internet auctions held pursuant to this Resolution.

_____, is hereby authorized to negotiate on behalf of the Board a contract with a contractor to conduct Internet auctions consistent with this Resolution.

SECTION 3. EFFECTIVE YEAR OF RESOLUTION

This Resolution is effective only for calendar year 20_____.

SECTION 4. AUCTIONS TO BE CONDUCTED BY CONTRACTOR

The Board, having negotiated a contract, shall contract with GovDeals, Inc. ("GovDeals"), a Delaware corporation, having its principal place of business at 5907 Carmichael Place, Montgomery, Alabama 36117, to conduct the Internet auctions. The GovDeals representative assigned to the Board and his/her contact information is as follows:

Name: _____
Title: _____
Region: _____
Address: _____

Telephone: _____
Cell: _____
Facsimile: _____
Email: _____

SECTION 5. DESCRIPTION OF HOW AUCTIONS WILL BE CONDUCTED

Township owned personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired will be posted on an Internet-based auction system for sale for potential buyers to bid upon and purchase these items. The Internet site where the items are posted is owned, managed, and operated by a contractor known as GovDeals, Inc. ("GovDeals"). The Board will contract with GovDeals to post items and act as a representative of the Board to conduct the auction. Items will be listed for no less than the minimum number of days established by this Resolution.

GovDeals will charge a fee to the Board for items that are sold through GovDeal's Internet auction. For any items that are sold, GovDeals will charge a total fee of twelve and one half percent (12.5%) of the sales price. Of that fee, the Board pays seven and one half percent (7.5%) and the winning bidder pays five percent (5%). There is a minimum fee of Five Dollars (\$5.00).

The base fee of seven and one half percent (7.5%) is reduced as follows on sales where the sale price is greater than One Hundred Thousand Dollars (\$100,000.00):

1. Where an asset sells for more than \$100,000, and up to \$500,000 the GovDeals fee is seven and one-half percent (7.5%) of the winning bid up to \$100,000, plus five and one-half percent (5.5%) of the winning bid for auction proceeds in excess of \$100,000 up to \$500,000.
2. Where an asset sells for greater than \$500,000, and up to \$1,000,000 the GovDeals fee is seven and one-half percent (7.5%) of the first \$100,000 of the winning bid, plus a fee of five and one-half percent (5.5%) of the next \$400,000 of the winning bid, plus a fee of three and one-half percent (3.5%) of the bid amount in excess of \$500,000 up to \$1,000,000.
3. Where an asset sells for greater than \$1,000,000 the GovDeals fee is seven and one-half percent (7.5%) of the first \$100,000 of the winning bid, plus a fee of five and one-half percent (5.5%) of the next \$400,000 of the winning bid, plus a fee of three and one-half percent (3.5%) of the next \$500,000 of the winning bid, plus a fee of two and one-half percent (2.5%) of the bid amount in excess of \$1,000,000.

GovDeals shall collect such fees by collecting all proceeds due the Board from the winning bidder and remitting the proceeds to the Board less the GovDeals fee.

The Board may utilize other disposal approaches, including traditional auctioneer services or sealed bids. However, the Board may not utilize other disposal approaches for an asset at the same time the asset is listed on the GovDeals online auction site or sell by some other means to a prior bidder any item currently or previously listed on the GovDeals site for the purpose of avoiding payment of the GovDeals fee.

SECTION 6. MINIMUM NUMBER OF DAYS THAT PROPERTY WILL BE OFFERED

Personal property sold via Internet auction shall be offered for a minimum of ten (10) days including Saturdays, Sundays, and legal holidays.

SECTION 7. GENERAL TERMS AND CONDITIONS OF SALES

The following terms and conditions shall apply to all sales via Internet auction:

1. Guaranty Waiver. All assets are offered for sale "AS IS, WHERE IS." The Board of Trustees of _____ Township, Delaware County, Ohio and/or _____ Township, Delaware County, Ohio (Seller) make no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered for sale. The Buyer is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect or consequential.

2. **Description Warranty.** Seller warrants to the Buyer the property offered for sale will conform to its description. Any claim for misdescription must be made prior to removal of the property. If Seller confirms the property does not conform to the description, Seller will keep the property and refund any money paid. The liability of the Seller shall not exceed the actual purchase price of the property. Please note upon removal of the property, all sales are final.
3. **Personal and Property Risk.** Persons attending during exhibition, sale or removal of goods assume all risks of damage of or loss to person and property and specifically release the Seller and GovDeals from liability therefore.
4. **Inspection.** Most assets offered for sale are used and may contain defects not immediately detectable. Bidders may inspect the property prior to bidding. Bidders must adhere to the inspection dates and times indicated in the asset description. See special instructions on each asset page for inspection details.
5. **Consideration of Bid.** Seller reserves the right to reject any and all bids and to withdraw from sale any of the assets listed.
6. **Buyer's Certificate.** Successful bidders will receive a Buyer's Certificate by email from GovDeals.
7. **Buyers Premium.** If a Buyers Premium is shown on the auction page bidder box, then that amount (expressed as a percentage of the final selling price) will be added to the final selling price of all items in addition to any taxes imposed.
8. **Payment.** Payment in full is due not later than 5 business days from the time and date of the Buyers Certificate. Payment must be made electronically through the GovDeals Website. Acceptable forms of payment are:
 - PayPal
 - Wire Transfer
 - Visa
 - MasterCard
 - American Express
 - Discover

PayPal and Credit Card purchases are limited to below \$5,000.00. If the winning bid plus applicable taxes, if any indicated, and the buyer's premium, equals more than \$4,999.99, PayPal and Credit Cards may not be used. If Wire Transfer is chosen, a Wire Transfer Transaction Summary page will provide payment and account information. The Wire Transfer must be completed within 5 days.

9. **Removal.** All assets must be removed within ten (10) business days from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Successful bidders are responsible for loading and removal of

any and all property awarded to them from the place where the property is located as indicated on the website and in the Buyer's Certificate. The Buyer will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Under no circumstances will Seller assume responsibility for packing, loading or shipping. See special instructions on each asset page for removal details. A daily storage fee of \$10.00 may be charged for any item not removed within the ten (10) business days allowed and stated on the Buyer's Certificate.

10. Vehicle Titles. Seller will issue a title or certificate upon receipt of payment. Titles may be subject to restrictions as indicated in the asset description on the website.
11. Default. Default shall include (1) failure to observe these terms and conditions; (2) failure to make good and timely payment; or (3) failure to remove all assets within the specified time. Default may result in termination of the contract and suspension from participation in all future sales until the default has been cured. If the Buyer fails in the performance of their obligations, Seller may exercise such rights and may pursue such remedies as are provided by law. Seller reserves the right to reclaim and resell all items not removed by the specified removal date.
12. Acceptance of Terms and Conditions. By submitting a bid, the bidder agrees they have read, fully understand and accept these Terms and Conditions, and agree to pay for and remove the property, by the dates and times specified. These Terms and Conditions are displayed at the top of each page of each asset listed on GovDeals. Special Instructions appearing on the asset page will override certain sections of the terms and conditions.
13. State/Local Sales and/or Use Tax. Buyers may be subject to payment of State and/or local sales and/or use tax. Buyers are responsible for contacting seller or the appropriate tax office, completing any forms and paying any taxes that may be imposed.
14. Sales to Employees. Employees of the Seller may bid on the property listed for auction, so long as they do NOT bid while on duty.

SECTION 8. PUBLICATION

After adoption of this Resolution, notice of the Board's intent to sell unneeded, obsolete, or unfit-for-use township personal property by Internet auction shall be published in a newspaper of general circulation in the township (Delaware Gazette). The notice shall include a summary of the information provided in this Resolution and shall be published at least twice.

Notice may also be posted on the Board's Internet web site. If the notice is posted on the Board's web site, the second notice otherwise required to be published in a newspaper of general circulation in the township may be eliminated, provided that the first notice published in such newspaper meets all the following requirements:

- a) It is published at least two weeks before the Internet auction begins.

- b) It includes a statement that the notice is posted on the Board's Internet web site.
- c) It includes the Internet address of the Board's Internet web site.
- d) It includes instructions describing how the notice may be accessed on the Board's Internet web site.

SECTION 9. POSTING OF NOTICE

A notice similar to the published notice required by Section 8 of this Resolution shall be posted continually throughout the calendar year in a conspicuous place in the Board's office.

SECTION 10. ADOPTION

All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 11. PRIOR RESOLUTIONS

This Resolution supersedes any Resolution of intent to sell personal property via Internet auction adopted by this Board prior to the effective date of this Resolution.

SECTION 12. EFFECTIVE DATE

This Resolution shall take effect immediately upon adoption.

Voted on and signed this ____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

APPROVED AND ADOPTED THIS ____ DAY OF _____, 20____ BY:

**BOARD OF TRUSTEES, _____ TOWNSHIP,
DELAWARE COUNTY, OHIO,**

Township Trustee

Township Trustee

Township Trustee

**LEGAL NOTICE OF INTENT TO SELL PERSONAL
PROPERTY VIA INTERNET AUCTION**

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") routinely has personal property, including motor vehicles, road machinery, equipment, tools, or supplies that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired. It is the intent of the Board to sell such property by Internet auction.

GovDeals, Inc. ("GovDeals"), a Delaware corporation, having its principal place of business at 5907 Carmichael Place, Montgomery, AL 36117, shall conduct the Internet auctions on behalf of the Board. The Internet address of the website where such Internet actions will be conducted is www.govdeals.com.

Personal property sold via Internet auction shall be offered for a minimum of ten (10) days including Saturdays, Sundays, and legal holidays. For any items that are sold, GovDeals will charge a total fee of twelve and one half percent (12.5%) of the sales price. Of that fee, the Board pays seven and one half percent (7.5%) and the winning bidder pays five percent (5%). There is a minimum fee of Five Dollars (\$5.00). The terms and conditions of sale will be displayed at the top of each page of each asset listed by the Board to be sold on GovDeals Internet auction website.

DATE: _____

RESOLUTION NO. _____

**IN THE MATTER OF AUTHORIZING THE SALE OF A 2001 FORD TRUCK
PURSUANT TO OHIO REVISED CODE SECTION 505.10:**

The Board of Trustees of _____ Township, Delaware County, Ohio met in regular open session on the ____ day of _____, 20__ at _____ with the following members present: _____, _____, _____.

_____ Moved the adoption of the following Resolution.

_____ Seconded the adoption of the following Resolution.

PREAMBLE

WHEREAS; the _____ Township Board of Trustees ("Board") owns and possesses a 2001 Ford Truck ("Truck"), and

WHEREAS; Section 505.10(A) of the Ohio Revised Code authorizes a board of township trustees to sell and convey property, including motor vehicles, road machinery, equipment, and tools that is/are not needed for public use, is/are obsolete, or is/are unfit for the use for which it/they was/were acquired, and

WHEREAS; it is the opinion of the Board that the Truck is not needed for public use, is obsolete, and is unfit for the use for which it was acquired, and

WHEREAS; The Board desires to sell the Truck pursuant to O.R.C. § 505.10(A).

RESOLUTION

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") that:

1. The Board owns a 2001 Ford Truck ("Truck") more fully described as follows:

2001 Ford Truck
VIN: 1ABC2345DEF67GH89

2. The Board finds that the Truck is not needed for public use, is obsolete, and is unfit for the use for which it was acquired and as such the Board desires to sell the Truck pursuant to O.R.C. § 505.10(A).

3. It is the opinion of the Board that the Truck has a fair market value in excess of \$2500.00. As a result, the Truck, in accordance with O.R.C. § 505.10(A)(1), shall be sold by sealed bid to the highest bidder.
4. Pursuant to O.R.C. § 505.10(A)(1), the following steps shall be followed in selling the Truck via sealed bid:
 - a. Notice of the time, place, and manner of the sale shall be published at least once a week for two (2) weeks in a newspaper published, or of general circulation, in the township.
 - b. In addition, a typewritten or printed notice of the time, place, and manner of the sale shall be posted in the office of the Board for at least ten (10) days prior to the sale.
 - c. The Board shall prescribe the form of the bid.
 - d. Each bid shall contain the name of the person submitting the bid.
 - e. Bids shall be opened and tabulated at the time stated in the published and posted notices.
 - f. The Truck shall be sold to the highest bidder, except that the Board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed in O.R.C. § 505.10 or may exercise any other options for selling the Truck which may be available to the Board.
5. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Voted on and signed this ____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

APPROVED AND ADOPTED THIS ____ DAY OF _____, 20____ BY:

**BOARD OF TRUSTEES, _____ TOWNSHIP,
DELAWARE COUNTY, OHIO,**

Township Trustee

Township Trustee

Township Trustee

DATE: _____

RESOLUTION NO. _____

**IN THE MATTER OF AUTHORIZING THE SALE OF A DESK
PURSUANT TO OHIO REVISED CODE SECTION 505.10(A)(2)**

The Board of Trustees of _____ Township, Delaware County, Ohio met in regular open session on the ____ day of _____, 20__ at _____ with the following members present: _____, _____, _____.

_____ Moved the adoption of the following Resolution.

_____ Seconded the adoption of the following Resolution.

PREAMBLE

WHEREAS; the Board owns and possesses a wooden desk which it wishes to sell (hereinafter "Property"). The Property is more specifically described as follows:

_____; and,

WHEREAS; it is the opinion of the Board that the Property is not needed for public use, is obsolete, or is unfit for the use for which it was acquired and should be sold; and,

WHEREAS; it is the opinion of the Board that the fair market value of the Property is less than two thousand five hundred dollars (\$2,500.00); and,

WHEREAS; R.C. § 505.10(A)(2) provides that "[i]f the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may ...[s]ell the property by private sale, without advertising or public notification."

RESOLUTION

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board finds that the Property is no longer needed for public use, is obsolete, or is unfit for the use for which it was acquired: and,
2. It is the opinion of the Board that the fair market value of the Property is less than two thousand five hundred dollars (\$2,500.00); and,

3. Pursuant to R.C. § 505.10(A)(2) “[i]f the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may . . . [s]ell the property by private sale, without advertising or public notification;” and,
4. The Board desires to sell the property pursuant to R.C. § 505.10(A)(2); and,
5. The Board establishes _____ (\$ _____) as the minimum amount to be paid to the Board as the purchase price of the Property; and,
6. In accordance with the terms provided herein, Trustee _____ is hereby appointed and authorized to negotiate the sale of the Property and, on behalf of the Board, execute a contract to sell the Property; and,
7. Trustee _____ may promote the sale of the Property by any appropriate means that does not result in a cost to the Township or Board.
8. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Voted on and signed this ____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

APPROVED AND ADOPTED THIS ____ DAY OF _____, 20____ BY:

**BOARD OF TRUSTEES, _____ TOWNSHIP,
DELAWARE COUNTY, OHIO,**

Township Trustee

Township Trustee

Township Trustee

DATE: _____

RESOLUTION NO. _____

**IN THE MATTER OF AUTHORIZING THE SALE OF EQUIPMENT TO THE BOARD
OF TRUSTEES OF _____ TOWNSHIP, DELAWARE COUNTY, OHIO
PURSUANT TO R.C. § 505.101:**

PREAMBLE

WHEREAS; the Board of Trustees of _____ Township, Delaware County, Ohio (“Board”) owns and possesses equipment (collectively “Equipment”) more fully described as follows:

- _____
- _____

WHEREAS; it is the opinion of the Board that the Equipment is not needed for public use, is obsolete, or is unfit for the use for which it was acquired; and,

WHEREAS; R.C. § 505.101 authorizes a board of township trustees, by resolution, to enter into a contract, without advertising or bidding, for the purchase or sale of materials, equipment, or supplies from or to any department, agency, or political subdivision of the state; and,

WHEREAS; the Board of Trustees of _____ Township, Delaware County, Ohio (“_____ Board”), a political subdivision of the State of Ohio, wants to contract with the Board for the purchase the Equipment; and,

WHEREAS; the Board desires to enter into a contract pursuant to O.R.C. § 505.101 to sell the Equipment to the _____ Board.

RESOLUTION

NOW THEREFORE BE IT RESOLVED:

1. The Board finds that the Equipment is not needed for public use, is obsolete, or is unfit for the use for which it was acquired.
2. Pursuant to R.C. § 505.101, the Board hereby approves entering into a contract to sell the Equipment to the Porter Board, a political subdivision of the State of Ohio.
3. The agreed upon purchase price for the Equipment is _____ (\$_____).
4. In accordance with the requirements of R.C. § 505.101:

- A. The Board is the seller of the Equipment. There is no need to establish and the Board does not establish a maximum amount to be paid as the purchase price for the Equipment.
 - B. A description of the Equipment and that which is included with the sale of the Equipment is set forth herein above.
 - C. The Board is the seller of the Equipment. There is no need to appropriate sufficient funds to pay the purchase price for the Equipment.
5. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.
6. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20____ in Trenton Township, Delaware County, Ohio.

**BOARD OF TRUSTEES, _____ TOWNSHIP,
DELAWARE COUNTY, OHIO**

Township Trustee

Township Trustee

Township Trustee