



Personal Liability of Public Officials

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Threats To Office Holders

- Liability for Public Money
- Liability for Injuries To Others
- Bonds
- Release from Liability
- Removal From Office
- Defense and Indemnity
- OPERS Funds: Protection and Exposure

Liability for Public Money



- Ohio public officials are liable for public money
 - Strictly Liable for subordinates
 - Liable for all money received or collected (R.C. 9.39)

Why Would Anyone Want to Be a Public Official in Ohio?



Notorious Cases

- *Cordray, Atty. Gen., et al., v. International Preparatory School, et al.; Shabazz, Appellee* (2010), 128 Ohio St.3d 50
 - “The treasurer of a community school is a public official and may be **strictly liable** to the state for the loss of public funds.”
- *Seward v. National Surety Co.* (1929), 120 Ohio St. 47
 - “It has been the general policy, not only with government employees and appointees, but with...county officers...and all public officials, to hold the public official accountable for the moneys that come into his hands as such official...”
- *Crane Tp. Ex rel. Stalter v. Secoy* (1921), 103 Ohio St. 258
 - “It is pretty well settled under the American system of government that a public office is a public trust, and that public property and public money in the hands of or under the control of such officer or officers constitute a trust fund, for which the official as trustee should be held responsible to the same degree as the trustee of a private trust fund.”

Gary Zeigler – Stark County Treasurer

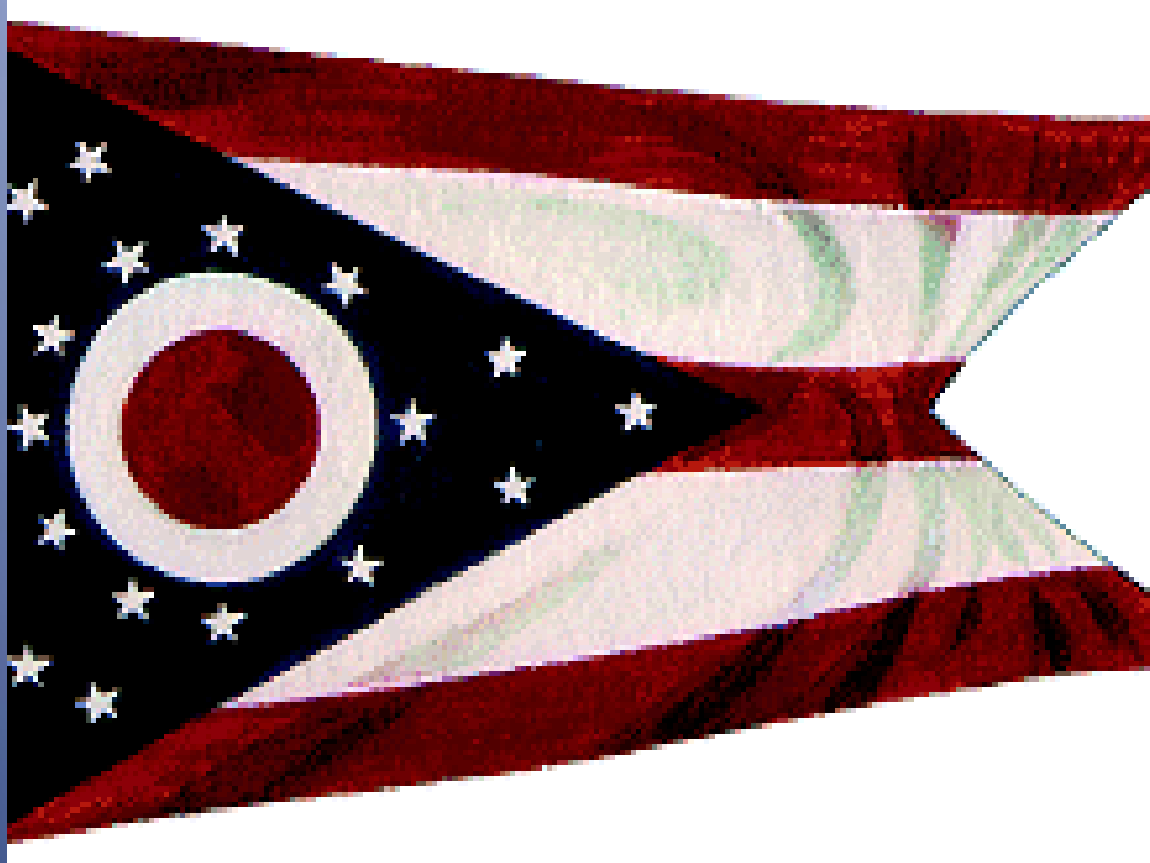
- “A criminal can alter a person’s life in a split second by making them a victim of crime. My family and I were victims of crime. Vince Frustaci’s theft, and Shirley Cutshall’s cover-up, cost me my job and most of my assets.”
- “Yet my family and I were told to pay for someone else’s crime. I never thought this could happen in our county.”

Your superhighway to a brick wall: Audit Findings

- Auditor files audit with AG to institute civil action
- Audit findings taken as true; YOU have to rebut them
- If the audit includes a finding of malfeasance or gross neglect of duty, filed with Prosecuting Attorney for criminal action

Auditor Proposed Legislation

- Requires bond set based upon entity's revenue
- If entity unauditable, state funding and fiscal officer suspended
- Education requirements



State Law Liability

Ohio Revised Code Chapter 2744



White Castle and You

Every slider has five holes: so does immunity for political subdivisions

New Liability for Roads and Sewers

-
- Slippery Roads
 - Upgraded Sewers

State Law Liability

- No personal immunity when acts are:
 - Manifestly outside the scope of the employee's responsibilities
 - Taken with malicious purpose, in bad faith, or in a wanton or reckless manner.



What is “Reckless”?

- Reckless has been defined as conduct that was committed knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent. *Cater v. Cleveland* (1998), 83 Ohio St.3d 24, 33.

Examples of “Reckless”

- Issue of fact as to whether driving an emergency vehicle 61 miles per hour in a 35 mile per hour zone while crossing the center line of a street was reckless. *Hunter v. City of Columbus* (10th App. Dist.)
- Issue of fact as to whether the conduct of employees of Cuyahoga Dept. of Children and Family Services was reckless in supervising visits of minor child who was sexually assaulted during supervised visit. *Rankin v. Children & Family Serv.* (Ohio Supreme Court)
- Childrens Services agency was reckless in placing a foster child with a history of sexually abusing younger children with first-time foster parents who had young children, without warning the family about the foster child’s sexual behavior. *C.S. Hahn v. Wayne Cty. Children Servs.* (9th App. Dist.)

When is your duty not to just the public?

- An employee may be individually liable if she has duty that allows a lawsuit by an individual: “actionable duty”
- Absent a special relationship or a statutory duty, there is no duty to prevent a third-person from harming another
 - Special relationship: when an individual takes charge of a person whom he knows or should know is likely to cause harm to others if not controlled
 - Statute must expressly impose civil liability or a duty, cannot merely set forth something that the employee may do
- Without a duty, there is no liability, even if conduct is culpable

Actionable Duty

- No: cop fails to take weapon away from teen who later accidentally shoots friend
- Maybe:
 - Day 1: Cop arrests drunk, takes car
 - Day 2: Drunk gets his car back
 - Day 3: Drunk kills innocent driver



Federal Liability

Violation of Constitutional Rights

- First Amendment right to free speech;
 - Summary judgment denied to supervisor on employee's First Amendment claim following discipline for making statements to the FBI about activities in the department. *See v. City of Elyria*, 502 F.3d 484 (6th Cir. 2007)
- Fourth Amendment
 - Deputies liable for Fourth Amendment violation for assisting landlord in removing tenant's belongings from the tenant's house and into a pickup truck for the landlord to haul away. *Cochran v. Gilliam*, 656 F.3d 300 (6th Cir. 2011).
 - School District denied qualified immunity following strip search of students following report that a credit card and other items were missing. *Knisley v. Pike County Joint Voc. Sch. Dist.*, 604 F.3d 977 (6th Cir. 2010)

Federal Liability, Cont.

Qualified Immunity

- Government officials immune from liability for performance of discretionary functions



Federal Liability, Cont.

Qualified Immunity

- To determine whether an official is immune, Courts consider:
 - (1) whether a “clearly established” constitutional or statutory right has been violated; and
 - (2) Whether the official acted objectively reasonable in light of the clearly established right

Employment Liability

A supervisor or manager may be held jointly and or severally liable with his/her employer for discriminatory conduct of the supervisor or manager in violation of Ohio law. *Genaro v. Cent. Transp.* (1999), 84 Ohio St.3d 293.



Bonds



Bonds, Cont.

- County office holders required to give bond before entering office
- Bond requirements set by Ohio Revised Code and vary from office to office

BOND OF TOWNSHIP CLERK.

KNOW ALL MEN BY THESE PRESENTS:

That we John H. Ault as principal and
Jacob Musser &
F. H. Wenger

as sureties are held and firmly bound unto the Trustees of Banghunan Township,
in the County of Wayne, and State of Ohio, in the penal sum of
One Thousand dollars, to the payment of which
well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

WITNESS our hands this 20th day of November A. D. 1904

THE CONDITION of this obligation is such that whereas the above bound

John H. Ault
was on the Eighth day of Nov 1904, duly elected
Clerk of Banghunan Township, in the County
of Wayne and State of Ohio, for the term of TWO YEARS from the
First (1) day of January 1904, and until his successor shall be
elected or appointed and qualified.

Now if the said John H. Ault shall faithfully
perform his duties as said Clerk, then this obligation shall be void, and of no effect; otherwise to be
and remain in full force and virtue in law.

John H. Ault
Jacob Musser
F. H. Wenger

The above bond, with sureties thereon, approved by us.

H. B. Black
Ben Graham
J. A. Malt } Trustees.

Bonds, Cont.

Example of a Statutory Bond Requirement

- Bond Requirements for a County Treasurer are Found in R.C. 321.02
 - Treasurer must give bond to the state in amount set by the Board of County Commissioners
 - The Expense or premium for the bond is paid by the Board and charged to the general fund of the County
 - If Board feels more money has passed or is about to pass into the hands of the treasurer than would be covered by the bond amount, the board may demand an additional bond from the Treasurer
 - If the Treasurer fails or refuses to post the additional bond, the office will become vacant

Bonds, Cont.



If breach of bond of county Treasurer is shown, the prosecuting attorney shall commence an action on the bond of the county Treasurer

Bonds, Cont.



- Remember:
 - Bonds pay the County and the bondholder can collect all of the bond amount from the officeholder
- Consider:
 - Crime coverage from an insurer

Applicability of Immunity to an Action on an Officeholder's Bond

- A County Official may be civilly liable up to the amount of the Official's bond (*Greenpoint Credit v. Ohio Farmers Insurance Co.*)
- An additional exception to the general grant of immunity to County Officials



Release From Liability



The Ohio Revised Code allows a Board of County Commissioners to release certain individuals from liability for the loss of certain funds that are beyond the control the office holder or his staff (R.C. 131.18)

Office Holder Liability, Cont.

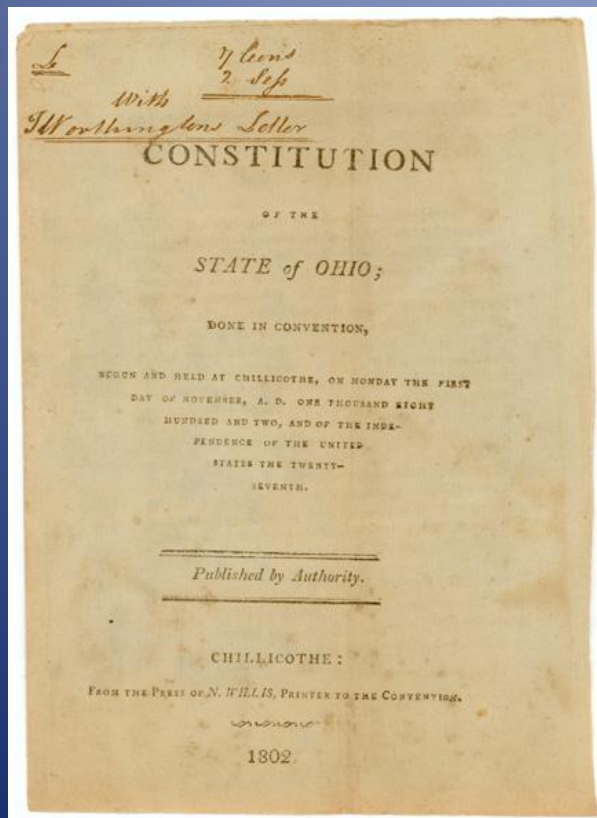


- Removal of Office Holders
- Defense and Indemnity of Office Holders
- Collection of Asserted Debts

Removal of Office Holders

The Ohio Constitution

The Ohio Revised Code



Removal of Office Holders, Cont.



Article II of the Ohio Constitution allows for removal for “misconduct involving moral turpitude”

Removal of Office Holders Cont.

- The Ohio Revised Code:
 - General Removal Provisions
 - Removal of Particular County Officials



Removal of Office Holders, Cont.

- General Provisions for the Removal of Office Holders:

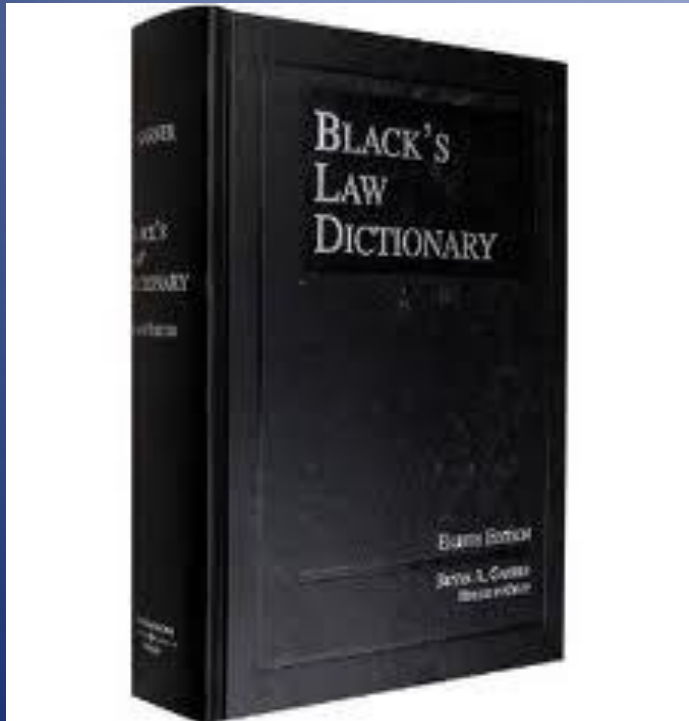


- R.C. 3.07
- R.C. 3.08
- R.C. 3.09
- R.C. 3.10

Removal of Office Holders, Cont.

- R.C. 3.07 provides for removal from office for misconduct in office, including:
 - Willfully and flagrantly exercising authority or power not authorized by law;
 - Refusing or willfully neglecting to enforce the law or perform an official duty;
 - Gross neglect of duty;
 - Gross immorality;
 - Drunkenness, misfeasance, malfeasance, or nonfeasance;

Definitions



- Misfeasance: The improper performance of some act which a man may lawfully do.
- Malfeasance: Evil doing; ill conduct. The commission of some act which is positively unlawful; the doing of an act which is wholly wrong and unlawful.
- Nonfeasance: Nonperformance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty.

Removal of Office Holders, Cont.

- R.C. 3.08 provides the specific procedure to remove an Officer from office:
 - Filing of a written or printed Complaint setting forth the charge in the Court of Common Pleas where the officer resides;



R.C. 3.08, Cont.

- The Complaint must be signed by “qualified electors” of the political subdivision;
- The Complaint must be served on the officer at least 10 days before the hearing;
- The hearing must be had within 30 days from the date the Complaint was filed;
- The Court may suspend the Officer pending the hearing

R.C. 3.08, Cont.

- The Hearing:
 - Removal proceedings may be heard by a judge or jury trial;
 - Jury trial will consist of 12 jurors
 - Need 9 or more jurors to find at least one count of the Complaint true to remove officer;
 - If less than 9 jurors find the charges of the Complaint are true → Complaint is dismissed



Removal of Office Holders, Cont.

- The Revised Code also has specific removal statutes
- For example, § 21.37 of the Revised Code states:
“... of the
suit
Revised

UNCONSTITUTIONAL

Removal of Office Holders, Cont.



State ex. Rel. Zeigler v. Zumbar,
2011-Ohio-2939

Defense and Indemnity of Office Holders



Defense and Indemnity of Office Holders

- R.C. 305.14 authorizes counties to employ outside legal counsel for their defense
- Procedure:
 - Prosecutor and Board of Commissioners apply to Court of Common Pleas;
 - Court approves application;
 - Court authorizes the Board to employ legal counsel to assist the County Prosecuting Attorney



Defense and Indemnity of Office Holders

- R.C. 309.10 allows certain County Boards to employ their own legal counsel, including:
 - A School Board



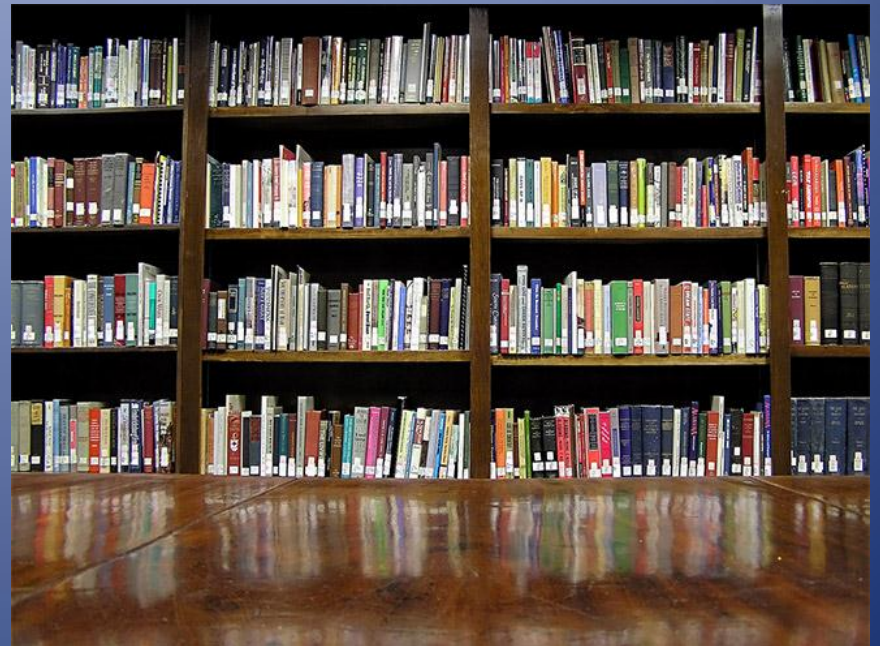
Defense and Indemnity of Office Holders

- R.C. 309.10 allows certain County Boards to employ their own legal counsel, including:
 - County Board of Developmental Disabilities



Defense and Indemnity of Office Holders

- R.C. 309.10 allows certain County Boards to employ their own legal counsel, including:
 - Board of Library Trustees



Defense and Indemnity of Office Holders

- R.C. 309.10 allows certain County Boards to employ their own legal counsel, including:
 - Appointment of an Attorney to assist Prosecutor in a criminal case



Defense and Indemnity of Office Holders

- R.C. 309.09(C)
County Boards of Commissioners to employ their own legal counsel, including:
 - Appointment of an Attorney up to salary of Prosecutor



Defense and Indemnity of Office Holders

- R.C. 309.10 allows certain County Boards to employ their own legal counsel, including:
 - County Hospital Trustees
 - With approval of the County Commissioners;
 - For the collection of delinquent accounts;



Defense of a County Employee in Cases Involving Claims of Damages

- R.C. 2744.07(A)(1) provides for the defense of a county employee for damage claims



- Duty to defend an employee if act occurred:
 - While employee acting in good faith; and
 - Not manifestly outside the scope of employment or official responsibilities

Indemnity



- R.C. 2744.07(A)(2):
Political subdivisions must indemnify and hold harmless its employees for damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function
 - Does not apply to punitive or exemplary damages

PERS Funds



PERS Funds, Cont.



PERS funds are
exempt from
actions by
creditors

PERS Funds, Cont.

An employee may lose their ability to collect their PERS funds:



- If an individual is charged with theft in office (R.C.145.57(B)):
 - No PERS payments may be made prior to certain time frames
 - Note: “theft in office” includes *permitting* the use of the office in aid of the theft. R.C. 2929.41.

PERS Funds, Cont.



PERS funds will be forfeited if an offender is being sentenced for:

- Bribery;
- Engaging in a pattern of corrupt activity; or
- Theft in office

Questions?

