



County Elected Official Personal Liability and Statutory Bond Requirements

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Threats To Office Holders and/or Public Employees

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

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)



Liability for Injury to Others: Ohio

Ohio Revised Code Chapter 2744

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



Liability for Injury to
Others: Federal

Federal Liability

- § 1983 imposes liability for violations of vested rights
 - Constitutional Rights
 - Rights granted under Federal statutes
- Qualified Immunity
- Employment Liability

Bonds



Release From Liability

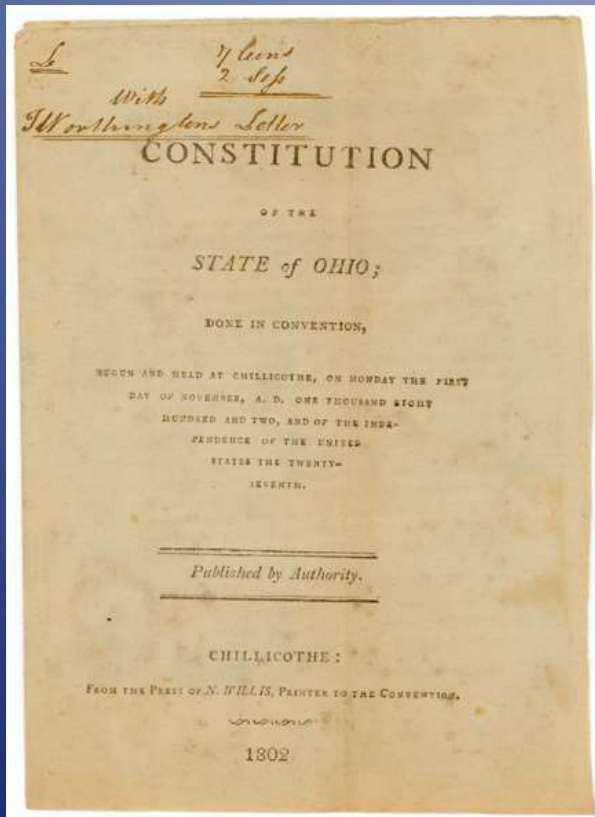


The Ohio Revised Code allows a Board of County Commissioners to release certain individuals from liability for the loss of certain funds that are beyond the control the office holder or his staff (R.C. 131.18)

Removal of Office Holders

The Ohio Constitution

The Ohio Revised Code



Defense and Indemnity of Office Holders and Employees

- 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



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



Criminal Liability – Dereliction of Duty

- “No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office”.
(R.C. 2921.44(E))
- Violation is a second degree misdemeanor



Bonds



Ginny Shrimplin
CORSA Marketing Manager

Difference Between Bond and Insurance Coverage

- Insurance – Insurer agrees to indemnify the insured for losses covered up to the limit of the policy.
- Bonds – The surety company pays on behalf of the elected official to make the county whole. However, the Elected Official is required to indemnify the surety company.

Individual Bonds

- Covers only individual named on the bond and is required by state statute.
- All Elected Officials are required to have an Individual Bond.
 - Auditors Individual Bond: Minimum of \$5,000, Maximum of \$20,000
 - Treasurer Individual Bond: Amount Fixed by County Commissioners

AG Opinion 65-87

- Where it is provided by statute that an individual shall file a performance bond to either qualify for office or employment, such individual is required to file an individual official bond.
- Such individual may not merely be included under a blanket bond.

Blanket Dishonesty/Faithful Performance Coverage

- Covers all other employees of the county who are not required by state statute to have an individual bond.

Crime Coverage

Employee Dishonesty / Faithful Performance Coverage:

Loss of Money, Securities and other property which the Member sustains resulting directly from one or more dishonest or fraudulent acts committed by an Official or Employee acting alone or in collusion with others, or from the failure of an Official or Employee to perform faithfully his duties or to account properly for all monies and property received by virtue of his position of employment.



CORSA Members

- Employees not required to have an individual bond.
 - Limit: \$1,000,000
 - No Deductible
 - CORSA Members contact CORSA, not Individual Bond Holder.
- Elected Officials (Individual Bonds)
 - \$250,000 excess of the Individual Bond

Theft by Treasurer's Employee

ORC 9.39 Liability for public money received or collected

“All public officials are liable for all public money received or collected by them or by their subordinates under color of office”.

Employee Dishonesty Losses

Ohio Attorney General's (OAG) Cost

- OAG will also seek reimbursement from dishonest employee for investigation/prosecution/oversight costs.
- If dishonest employee can't pay, OAG will seek reimbursement from Elected Official.
- CORSA provides \$1,000 Sublimit under Claims Expense.

Audit Findings

- CORSA reimburses county for failure of covered Employee to faithfully perform his duties.
- Coverage applies only to those individuals **NOT** required to carry an individual bond.

Discovery Period

Loss under the Employee Dishonesty / Faithful Performance is covered only if discovered no later than one year from the end of the **Coverage Period**.

For More Information Contact

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