

Ohio Public Law Update

March 2012

Local Government Innovation Program

The Local Government Innovation Program, which was established in the State Budget Bill signed by the governor on June 30, 2011, was amended by Substitute House Bill 371, effective March 22, 2012. This loan and grant program was created to encourage political subdivisions to plan and implement projects expected to create more efficient services, particularly by collaborating with other political subdivisions. Loans will bear interest at zero percent. Loan awards will be made quarterly and grant awards will be made twice a year, both under a competitive process beginning July 1, 2012.

Under the program, applications are submitted directly to the Department of Development, which will submit them to the newly established Local Government Innovation Council for evaluation and selection. The council may award up to \$100,000 in total grants and \$100,000 in total loans to an individual political subdivision per innovative project, or up to \$500,000 in grants and loans per project for projects involving a group of political subdivisions (averaging no more than \$100,000 per subdivision).

To ensure that awards are made to subdivisions of different sizes, funds for each round of awards are required to be allocated in the following manner:

- At least 30 percent to political subdivisions that are not counties and have a population of less than 20,000 residents or counties with a population of less than 235,000 residents;
- At least 30 percent to political subdivisions that are not counties and have a population of 20,000 residents or more or counties with a population of 235,000 residents or more.

Projects eligible for funding include the costs of feasibility studies as well as the costs of implementing projects. The council and Department of Development staff will evaluate proposals based on several factors across four categories: financing, collaboration, success measures and significance measures. For example, more points are awarded for a higher local match, for including more than one participating subdivision and for higher estimated savings resulting from a proposed collaboration.

Recent Decisions of Interest

Where a village charter failed to define the term “majority vote” in the section establishing the procedure for filling a vacancy on village council, the Ohio Supreme Court determined that it meant a “number that is more than half of a total; a group more than 50 percent” and, accordingly, the respondent in a *quo warranto* action who had received three of six votes from village council to fill the vacancy had not achieved the required majority necessary to be entitled to hold the office. Instead, the relator was entitled to the office because the village council’s failure to fill the vacancy within the time specified by the charter imposed a duty on the mayor to fill the vacancy by appointment, which the mayor satisfied by appointing the relator. *State ex rel. Johnson v. Richardson*, 2012-Ohio-57 (Ohio Supreme Court).

Personal identifying information in a housing authority’s lead-poisoning documents, such as the names of occupants, their social security and telephone numbers, their children’s names and dates of birth, the names, addresses and telephone numbers of caregivers, and their places of

employment, did not serve to document the organization, functions, policies, decisions, procedures, operations or other activities of the housing authority and, thus, were not obtainable under the Public Records Act. The remainder of the information on the requested documents was, however, subject to disclosure under the Public Records Act. *State ex rel. O'Shea & Assocs. Co. v. Cuyahoga Metropolitan Housing Authority*, 2012-Ohio-115 (Ohio Supreme Court).

Because the city had been engaged in the governmental function of urban renewal with the goal of eliminating slum conditions, it was immune, under the Political Subdivision Immunity Statute, from the developers' promissory-estoppel claims based on the city's failure to provide the anticipated funding for the project. *Inwood Village, Ltd. v. Cincinnati*, 2011-Ohio-6632 (Ohio App. 1st Dist.).

Because of its private economic purpose of facilitating the development of the business community by attracting new and expanding businesses to Ashtabula County, the Growth Partnership for Ashtabula County, a nonprofit corporation granted tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, was not a charitable institution entitled to a property tax exemption. *Growth Partnership for Ashtabula County v. Testa*, 2012-Ohio-37 (Ohio App. 11th Dist.).

The pipes and ditch that the township had installed on a homeowner's property are not a "sewer system" that would expose the township to liability for negligent maintenance under the negligent-proprietor-function exception to the Political Subdivision Immunity Statute because (i) the township did not have legal authority to enter upon the homeowners' lands to maintain the pipes and ditch, (ii) the installation was at the localized request of prior owners of the homeowner's property and (iii) no evidence existed that the pipes and ditch are part of a larger "system." Even if the pipes and ditch constituted a "sewer system," the negligent-proprietor-function exception would still not apply because the reconstruction and redesign necessary to alleviate the problem is a governmental function. *Guenther v. Springfield Township Trustees*, 2012-Ohio-203 (Ohio App. 2d Dist.).

Recent Legislation of Interest

Substitute House Bill 209. This act, which becomes effective March 22, 2012, permits political subdivisions to authorize an eligible public depository to redeposit certain qualifying deposits in deposit accounts with one or more financial institutions that are federally insured. The full amount that may be re-deposited in any one financial institution, plus accrued interest, must be insured by the Federal Deposit Insurance Corporation. The pledging requirements applicable to a public depository apply to the amount of public moneys held that are not federally insured.

The act further removes the one-year maturity limitation on certificates of deposits with respect to interim deposits.

Substitute House Bill 225. This act, which also becomes effective March 22, 2012, contains a variety of investment, accounting, employee benefit, contracting and other provisions affecting political subdivisions. The following is a brief summary of certain provisions in the act:

- Permits Ohio to invest state interim funds in Chapter 133 obligations of counties, townships, municipal corporations and school districts that mature within one year of issuance.
- Broadens the eligible investments for county inactive money and money in a county library fund (i) to include obligations of political subdivisions located outside of the county, in addition to those located inside the county, (ii) to extend from five to 10 years the maximum maturity for certain investments of those moneys and (iii) to otherwise extend the maturity of up to 25 percent of the county's average portfolio of those moneys beyond 10 years under certain circumstances.
- Increases the amount a county or township may hold in a reserve balance account used to stabilize its budget.
- Allows counties, municipal corporations, townships, school districts and certain other districts

to use moneys held in a reserve balance account to also pay for deductibles under a self-insurance program (if the subdivision is authorized to establish such a program) and for certain workers' compensation self-insurance plan deductibles and assessments.

- Permits Hocking, Ross and Vinton Counties to form a joint county department of jobs and family services as a pilot project.
- Beginning in tax year 2012, authorizes the county auditor to review and approve property tax exemptions for certain public property, such as streets, additions to publicly owned buildings used exclusively for a public purpose and certain property of the state or of Ohio's universities.
- Permits counties to give notice of and receive proposals through a secure electronic system, permits competitive sealed bids to be submitted to a county in other than a sealed envelope, if specifically provided by the county, and permits a county board of revision to authorize a procedure for the electronic filing of tax valuation complaints.
- Provides that no county-elected officer may be required to exercise powers, perform functions or render services under an agreement for shared services among political subdivisions entered into under Revised Code Section 9.482 without the officer's written consent.
- Authorizes counties and townships to offer a health and wellness employee benefit and certain other benefits to employees.
- Authorizes counties, municipal corporations and townships to provide for direct deposits of payroll payments.
- Permits a regional council of governments be formed to operate a public safety answering point as part of a countywide 9-1-1 system.
- Extends certain provisions of the new community authority program that were applicable to new community authorities established by December 31, 2011 to new community authorities established in the three-year period following the effective date of this act.

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