



# Ohio Public Law Update

December 2011

## Ohio Municipalities Now Allowed to Grant Parking Franchises

Under provisions of House Bill 153, effective September 29, 2011, the Ohio General Assembly authorized municipalities to grant a public parking franchise to a private entity or certain public entities including counties, port authorities and transportation improvement districts. The agreement granting the parking franchise may permit the franchisee to use public streets or other public property to install, replace and maintain parking meters or similar devices and to operate those parking meters and devices including by collecting the revenues from the parking meters.

The municipal corporation and franchisee may specify in the franchise agreement that the franchisee will pay a lump sum fee or a periodic fee, or both, for the property right and privilege granted. The franchise may be granted for a term of up to 30 years.

Squire Sanders participated in the preparation of the legislation authorizing this new authority.

## Itemized Attorney Invoices Are Not Public Records

On November 29, 2011 the Ohio Supreme Court decided a public records case dealing with attorney-client privilege. *State ex rel. Dawson v. Bloom-Carroll Local School District*, Slip Opinion No. 2011-Ohio-6009. In that case, the relator (a parent) requested that the school district provide her with itemized lawyer invoices relating to matters involving her and her children. The school district refused to provide the invoices and instead provided only summaries of the itemized invoices that included the attorneys' names, the fee total, and the general matters the attorneys and the school district discussed. The relator also requested, and the school district refused to provide, letters from the school district's insurance company to the school district in which the insurance company identified the lawyer that would represent the school district, evaluated the relator's claim against the school district and instructed the school district to cooperate with the attorney it selected to represent the school district.

The Ohio Supreme Court held that the school district was correct to disclose only the summaries of the itemized attorney invoices. The Ohio Supreme Court noted that those invoices "contained detailed descriptions of work performed by the district's attorneys, statements concerning their communications to each other and . . . counsel, and the issues . . . researched" and, thus, were either

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protected by the attorney-client privilege or “so inextricably intertwined with the privileged materials as to also be exempt from disclosure.” The Ohio Supreme Court also held that the letters from the school district’s insurance company to the school district were protected from disclosure by the attorney-client privilege because the “insurance company stands in the shoes of the district.”

## Other Recent Decisions of Interest

### Public Records

A “joint self-insurance pool whose members include most of Ohio’s counties and that is recognized by the IRS as a government instrumentality is not a ‘public office’ for public records law purposes and therefore needn’t disclose minutes of its board meetings. But it is, as a nonprofit corporation with government-service contracts, subject to disclosure requirements for its financial and compensation records.” *State ex rel. Bell v. Brooks*, 2011-Ohio-4897 (Ohio Supreme Court).

### JobsOhio

The portion of the legislation establishing JobsOhio (i.e., a nonprofit corporation to perform certain state economic development functions) that attempted to confer exclusive, original jurisdiction on the Ohio Supreme Court to consider the constitutionality of that legislation is unconstitutional, as the establishment of such an entity does not fall within one of the categories of cases for which the Ohio Constitution grants the Ohio Supreme Court original jurisdiction. *ProgressiveOhio.org v. Kasich*, 2011-Ohio-4101 (Ohio Supreme Court).

### Executive Session; Open Meetings Law

An executive session convened by a board of education to discuss a finance-related legal issue with its bond and tax counsel did not violate the open meeting law because the board of education did not deliberate during the executive session. *Cincinnati Enquirer v. Cincinnati Board of Education*, 2011-Ohio-703 (Ohio App. 1st Dist.).

### Commercial Activity Tax (CAT)

Ohio’s commercial activity tax (CAT), as it applies to gross receipts from the sale of motor vehicle fuels, is not an impermissible tax upon motor vehicle fuel. *Beaver Excavating Company v. Levin*, 2011-Ohio-3649 (Ohio App. 10th Dist.). The appellants in that case filed an appeal with the Ohio Supreme Court.

### Demotion of Police and Firefighters

A city must base its decision to demote police officers or firefighters of a certain rank under Section 124.37 of the Ohio Revised Code on their length of service at that rank, not their length of service with the department. *Norris v. Elyria*, 2011-Ohio-4169 (Ohio App. 9th Dist.).

### Extraterritorial Emergency Calls

A police officer responding to a call for assistance outside of his jurisdiction pursuant to his professional obligation is considered to be on an emergency call for purposes of the state immunity statutes, although evidence is insufficient to establish existence of a mutual-aid agreement between the police officer’s home jurisdiction and the jurisdiction in which he was responding to a call for assistance. *Smith v. McBride*, 2011-Ohio-4674 (Ohio Supreme Court).

### Tax Levied for Countywide 9-1-1 System

“Proceeds of a tax levied pursuant to R.C. 5705.19(BB) for the establishment and operation of a countywide 9-1-1 system may be used by a county to fund the acquisition or construction of a permanent improvement to provide a suitable facility to serve as a public safety answering point in the countywide 9-1-1 system.” 2011 Op. Att’y General No. 2011-031.

### Open Meetings Law

“The ‘open meetings’ requirement of R.C. 121.22 is not satisfied when members of a public body . . . vote by secret ballot.” 2011 Op. Att’y General No. 2011-038.

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