

Downtown Redevelopment Districts

Amended Substitute House Bill No. 233, effective August 5, 2016, authorizes municipal corporations to utilize a new tax increment financing program (TIF) in a downtown redevelopment district or innovation district for the purpose of rehabilitating historic buildings and promoting economic development. The TIF property tax exemption may be for up to 70% for up to 10 years, or 30 years with school approval or if the school district is made fully whole. The district may be enclosed by a continuous boundary consisting of no more than 10 acres and must contain at least one historic building to be rehabilitated. These districts may not be created in areas used exclusively for residential purposes or used for development of residential areas. The payments in lieu of taxes (PILOTs) may be used for public infrastructure improvements within the district, for loans or grants to owners of historic buildings for rehabilitation of historic buildings in the district, or to make loans to owners of non-historic buildings in the district for repairs and improvements to the buildings. A portion may also be used to make contributions to special improvement districts or community improvement corporations to promote or enhance the district.

If the proposed district includes an area equipped with a high speed broadband network, the municipal corporation may designate an "innovation district" within the district to attract technology oriented businesses. In that event, PILOTs may be used to make grants or loans to technology-oriented businesses, including incubators and accelerators, to start or develop a qualified business.

The tax levies that are not included in a TIF exemption for incentive districts are also excluded from these districts. In addition, a county is entitled to receive 50% of the inside millage it would have received unless it otherwise agrees. Owners of property in a district may agree to impose a redevelopment charge on the property in addition to the PILOTs to pay for certain costs.

Other Recent Legislation of Interest

Substitute House Bill No. 182 (effective September 13, 2016). This bill revises the laws relating to Ohio Revised Code Section 715.72 JEDDs, including by permitting the residential portion of mixed-use developments to be included in a JEDD with residents being subject to the JEDD tax, by requiring JEDD contracts to include an economic development plan and by allowing property owners to file complaints in common pleas court to opt-out of the JEDD under certain circumstances, including if they can prove that implementation of the economic development plan does not materially benefit them or their employees. The bill also amends the enterprise zone program by making retail facilities eligible under the program if approved by the overlapping school district.

Substitute House Bill No. 413 (effective September 28, 2016).

This bill makes many changes to township laws, but also includes an amendment to the tax increment financing program definition of "public infrastructure improvement" for municipal corporations, counties and townships to include continued maintenance of public roads and water and sewer lines.

Substitute House Bill No. 463 (effective April 6, 2017). In

addition to amendments to the state foreclosure process, this bill changes the Community Reinvestment Area program to increase the length of an exemption for the remodeling of all structures to 15 years.

Substitute Senate Bill No. 235 (effective March 28, 2017). This bill authorizes a six year property tax exemption for the increase in value of commercial or industrial property prior to development or redevelopment on the site. The exemption terminates early if the property becomes occupied, if the property is sold or if the property is rezoned to not permit commercial or industrial uses. The substitute bill limits the exemption to those authorized by a city, county or township, with notice to the impacted school district and JVS. It provides for recoupment of three years of exempted tax savings under certain circumstances, including upon sale of the property while exempted.

Recent Decisions of Interest

Public Records. Whether an exception to public-records disclosure applies to dashcam recordings requires a case-by-case review to determine whether the requested recordings contain investigative work product. Having reviewed the three recordings at issue in this case, the court concluded that the public entity should have released all three dashcam recordings to the newspaper making the public records request, with the 90 seconds of post-*Miranda* questioning redacted as investigatory work product compiled in anticipation of litigation. *State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 2016-Ohio-7987 (Ohio Supreme Court).

Ballot Initiative. The Board of Elections properly refused to place a proposed city ordinance on the ballot because a significant portion of the proposed ordinance contained administrative provisions attempting to govern the execution of existing law rather than enacting new law and, accordingly, was beyond the scope of the municipality's authority. *State ex rel. Sensible Norwood v. Hamilton Cty. Bd. of Elections*, 2016-Ohio-5919 (Ohio Supreme Court).

Public Records. An education information company's petition for writ of mandamus to compel a school district's release of certain personally identifiable information of its students as public records was granted to the extent that those students' parents had provided written consent to the release of such information. *State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist.*, 2016-Ohio-5026 (Ohio Supreme Court).

Public Records. The Ohio Supreme Court has ruled that the names of lawyers, their billing rates and the narrative description of services provided appearing on legal invoices are exempt from Ohio's public records law. *Ex rel. Pietrangelo v. City of Avon Lake*, 2016-Ohio-2974 (Ohio Supreme Court).

Ohio Constitution's Retroactivity Clause. Art. II, Sec. 28 of the Ohio Constitution (the Retroactivity Clause) did not prohibit the Ohio Department of Education from reducing a school district's school foundation funding based on the Ohio Department of Education's calculation that the school district had been overpaid because the Retroactivity Clause does not apply to political subdivisions. *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 2016-Ohio-2806 (Ohio Supreme Court).

Open Meetings. The Open Meeting Act prohibits any private prearranged, but not necessarily "real time," discussion of public business by a majority of the members of a public body, regardless of whether the discussion occurs face to face, telephonically, by video conference, or electronically by email, text, tweet or other form of communication. *White v. King*, 2016-Ohio-2770 (Ohio Supreme Court).

Park Districts. The Ohio Supreme Court denied the township trustees' petition for writ of prohibition to prevent a probate judge from issuing orders that imposed duties, obligations and fees on the township trustees related to the operation of a park district created by a probate court, because the probate court does not "patently and unambiguously" lack jurisdiction to issue the orders where the township trustees eliminated a source of funds to operate the park district, and the probate court's authority to create park districts includes the authority to issue orders to enforce the probate court's court entry creating the park district. *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520 (Ohio Supreme Court).

Trespass. Ohio Court of Claims recommended judgment on property owner's indirect trespass claim against the Ohio Department of Transportation where evidence showed that the high levels of salt in the property owner's groundwater was the result of the Ohio Department of Transportation's application of road salt on a roadway that bordered the property owner's land. *Edwards v. Ohio Dept. of Transp.*, 2016-Ohio-1277 (Ohio Court of Claims).

Public Records. The customer list and customer email addresses maintained by a park district's golf course were not public records because those records qualified as exempt trade secrets, under Sections 1333.61(D) and 149.43(A)(1)(v) of the Ohio Revised Code, where, among other things, access to the list was very limited and the list had economic value. *Salemi v. Cleveland Metroparks*, 2016-Ohio-1192 (Ohio Supreme Court).

Tax Levies. The board of elections is under a "clear legal duty" to remove a tax levy from the ballot, because the township only timely passed one resolution to place the tax levy on the ballot instead of the two levies required to be adopted and certified to the board of elections 90 days before the election, under Section 5705.03(B) of the Ohio Revised Code. *Cornerstone v. Greene County*, 2016-Ohio-313 (Ohio Supreme Court).

Elections. The Ohio Supreme Court issued a writ of mandamus to compel a city council to approve an ordinance placing a proposed amendment to the city's charter on the ballot, because (i) including a title of the proposed measure, as required under Section 731.31 of the Ohio Revised Code, was not necessary in this case because the charter amendment consists of only two provisions, the text of which comprises four brief paragraphs, (ii) alerting signers to the charter amendment's "full nature" is not statutorily required and (iii) changing the petition form to include the name of the committee seeking the charter amendment is not prohibited by any cited authority. *State ex rel. Carrier v. Hilliard City Council*, 2016-Ohio-155 (Ohio Supreme Court).

Real Property Taxation. A parcel of land owned by a board of education and leased to a farmer for farming is exempt from real estate property taxation because Section 3313.44 of the Ohio Revised Code provides an exemption on the basis of ownership by the board of education alone, without a restriction on use of the property. *Talawanda City School Dist. Bd. of Edn. v. Testa*, 2015-Ohio-5450 (Ohio Supreme Court).

Public Records. An individual's key card swipe data relating to parking usage in a county administration building are public records where the data are no longer security records because the individual is no longer the county executive, the key card swipe data has been released to the press and the county administration building to which the key card related has been demolished, so that data contained on the key card cannot disclose the configuration of the building's critical systems and, thus, are not non-disclosable infrastructure records under Section 149.433 of the Ohio Revised Code. *State ex rel. Ohio Republican Party v. FitzGerald*, 2015-Ohio-5056 (Ohio Supreme Court).

Traffic Enforcement Cameras. An appellate court affirmed the trial court's injunction that enjoins enforcement of provisions of the state's current budget act that would reduce state funding to the city because of the city's noncompliance with another state statute regulating the use of traffic enforcement cameras, for which the trial court had also granted the city injunctive relief. *Toledo v. Ohio*, 2017-Ohio-215 (Ohio App. 6th Dist.).

Lodging Tax. The city's additional lodging tax violated Section 5739.09(B)(1) of the Ohio Revised Code because the city may not levy a lodging tax once the county has already done so. *Evans v. Avon*, 2016-Ohio-5460 (Ohio App. 9th Dist.).

Single-Subject Rule. The 2012 mid-biennium review budget bill (HB487, 129th General Assembly) violates the Ohio Constitution's prohibition against legislation containing more than one subject, because it extended beyond "budget related items" to include a provision altering the Bureau of Workers' Compensation payment schedule for workers who lost limbs, appendages and other organs in work-related accidents. *Kljun v. Morrison*, 2016-Ohio-2939 (Ohio App. 8th Dist.).

Traffic Enforcement Cameras. In an action to declare that Amended Substitute Senate Bill No. 342, which addresses traffic enforcement cameras, is an unconstitutional violation of the Ohio Constitution's Home Rule Amendment, the trial court did not err in granting summary judgment to the state, ruling that the challenged legislation is not unconstitutional in its entirety because the challenged legislation is a general law. *Springfield v. State*, 2016-Ohio-725 (Ohio App. 2nd Dist.).

Public Records. The appellate court issued a writ of mandamus to compel a board of education to release personnel records to the extent they relate to adults who were the subject of executive session meetings of the board of education for a specific period of time because the request was reasonably limited in scope. *State ex rel. Strothers v. Keenon*, 2016-Ohio-405 (8th Appellate District).

Regional Council of Governments. This opinion notes various undertakings a county, townships and municipal corporations may do with or for a regional council of governments to enable the council to demolish neglected and abandoned buildings and remediate other nuisance properties. *2017 Op. Att'y General No. 2017-001*.

Public Offices Subject to Audit. A public college or university foundation established as a private nonprofit corporation, the primary purpose of which is to solicit and receive, on behalf of a state college or university, gifts, donations and bequests made for the benefit or use of the state college or university, and that is responsible for keeping records of donations for the state college or university, constitutes a "public office" under Section 117.01(D) of the Ohio Revised Code, subject to audit by the Auditor of State pursuant to Section 117.10(A) of the Ohio Revised Code. Moneys received, collected by or due an officer or employee of the public college or university foundation in the performance of that employee's or officer's duties are public moneys as defined in Section 117.01(C) of the Ohio Revised Code. *2016 Op. Att'y General No. 2016-013*.

County Budget Commission. If a county auditor lists real property located in township territory annexed to a municipality on the general tax list and duplicate of real and public utility property as part of a municipality, but not as part of the township in which it also is located, and the county budget commission relies upon the tax list to adjust rates of taxation and fix the amount of taxes to be levied, the county auditor has no authority to reimburse the township for any share of inside millage it might have received had township taxes been levied on the real property located in the township or otherwise reallocate tax revenue to the township. *2016 Op. Att'y General No. 2016-012*.

County Budget Commission. Sections 3709.28 and 3709.29 of the Ohio Revised Code do not require a county budget commission to reduce the amount of a general health district appropriation measure that the county auditor apportions to a member township under Section 3709.28(C) of the Ohio Revised Code to an amount that does not exceed the revenue generated by the township general levy for current expenses within the ten-mill limitation. However, the county budget commission may adjust the amount of a general health district appropriation measure that the county auditor has apportioned to a township pursuant to Section 3709.28(C) of the Ohio Revised Code when the county budget commission reviews the township's tax budget pursuant to Section 5705.32(A) of the Ohio Revised Code. The county budget commission should adjust the apportionment to ensure that the deductions for the township's share of the health district appropriations taken from the township's real property tax revenue at the semiannual apportionment of funds among the member townships and municipalities of the health district (i) do not exceed the amount of township revenue permitted to be used for those deductions and (ii) that the township is left with sufficient general levy revenue for other appropriations that the county budget commission determines may be made from the township's general fund. *2016 Op. Att'y General No. 2016-002*.

Motor Vehicle Fuel Tax. A township may expend motor vehicle fuel excise tax revenues paid to the township under Section 5735.27(A)(5)(d) of the Ohio Revised Code to (i) purchase tools and supplies utilized for the repair and upkeep of a building housing township road machinery and equipment and (ii) provide utility services such as electricity, natural gas, water and telephone to a building housing township road machinery and equipment. *2015 Op. Att'y General No. 2015-036*.

Credit Card Withdrawals and Controls. Although Ohio law does not explicitly authorize a public entity to use a credit card to withdraw cash from a financial transaction device or ATM or to obtain cash back in a credit card transaction, if the governing body of the public entity determines that cash withdrawals are necessarily implied from its other powers, that determination should be memorialized by legislative, or, if applicable, administrative action, explicitly authorizing the cash withdrawals and referencing the entities' credit card policy. Public entities should exercise the utmost care and diligence in authorizing and permitting credit card usage, particularly when cash withdrawals are involved, and should develop, maintain and strictly apply appropriate authorization and tracking controls incident to credit card usage, with a particular emphasis on cash withdrawals. *Auditor of State Bulletin 2016-004* (superseding *Auditor of State Bulletin 2016-003*).

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