COLERAIN
1794 225TH ANNIVERSARY 2019

Minutes

October 22, 2019

1. **Opening of Meeting**

Mr. Rajagopal called the meeting to order at 6PM with all Board members present.

2. **Executive Session** 6:00 PM

Mr. Weckbach requested the Board conduct an executive session in accordance with Ohio Revised Code §121.22(G)(1) to discuss employment and compensation of public employees and §121.22(G)(3) to discuss pending and imminent litigation with the Township law director.

Dan Unger made a motion for the Board conduct an executive session in accordance with Ohio Revised Code §121.22(G)(1) to discuss employment and compensation of public employees and §121.22(G)(3) to discuss pending and imminent litigation with the Township law director and Greg Insco offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

The Board returned from executive session at 7:01PM. All Board members were present. Mr. Weckbach said there was nothing to report.

3. **Pledge of Allegiance** 7:00 PM

All recited the Pledge of Allegiance.

4. **Meditation (Moment of Silence)**

Mr. Rajagopal asked everyone to join in a moment of silence.

5. **Fiscal Office** – Approval of Minutes from October 8, 2019

Mrs. Harlow requested the Board approve the October 8, 2019, minutes.

Greg Insco made such motion and Dan Unger offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Mrs. Harlow requested the Board amend the agenda to consider the approval of amended minutes.
Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Mrs. Harlow requested the Board approve the September 10, 2019, minutes, as amended.
Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Mrs. Harlow requested the Board approve the September 24, 2019, minutes, as amended.
Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

6. Presentations

a. Presentation on the Colerain Avenue Corridor Study by Eric Anderson

Eric Anderson, community planner with KZF Design, provided an update on the Colerain Ave. Corridor Study, which is about 95% complete. He said the report was submitted today and they are now seeking feedback.

Mr. Rajagopal said they didn't speak to the business community directly. Mr. Anderson said they had a public meetings in September, to which they invited 430 businesses via mailed postcards. There were press releases and newsletter articles about the meetings.

Mr. Anderson said the draft reports is on the website. We will accept public comment until November, then publish the final report in December. He said we have received a $750,000 grant for sidewalks and streetscape on Colerain Ave., from Jonrose and Shadycrest.

Mr. Weckbach said the presentation will be posted on the Township website.

b. Presentation on the Megaland Replacement Project by Staff

Mr. Weckbach gave an update on the Megaland Replacement project. He said there are some potential designs on poster boards in the rotunda. He said these are not yet the specifics. He said the concepts all have the theme of heroes, including our fire, EMS and police.

Mr. Insco said public services should be included, too. He also asked about grant funding. Mr. Weckbach said there is a grant application on the agenda tonight. Mr. Insco said for everyone to give feedback. He said Megaland was so special because of the community involvement, so everyone needs to feel they're a part of this!

c. Presentation on Property Maintenance Partnerships by Mike Peck

Mr. Weckbach said this will be rescheduled.

7. Citizens Address

Mr. Rajagopal reminded speakers to keep their comments to five minutes.

Dick Semple spoke about the Megaland proposals. He said all three are horrible. He said the themes are all destruction and this will cost too much just to implement the theme. He said a natural theme would be better.

Paul Borgarding is the owner of a food truck. He said he's asked property owners about setting up at other businesses and learned that this is not allowed under our Zoning. He asked to see if the Township can amend the code to allow this.

Mr. Insco said we should look at this. He said he sees this as a farmers' market.

Mr. Rajagopal asked about location. Mr. Borgarding suggested Northbrook Shopping Center.

Linda Gauggel said there are burrs at the dog park and this should be maintained. She also said the water is not working. She asked about the Community Resource Center and if the programs have been relocated. She asked why the mums and pumpkins placed at the corner of Springdale and Colerain were removed. She said there are some lights burnt out there, too. She said she enjoys decorating for holidays and has decorations at her home near Cella and Dolomar drives. She said new businesses and residents don't know anything about us and suggested we reach out to them. She asked Mr. Unger about the vacant lot on Pippin Road. He said they put in a driveway, but there is no permit to put in anything. Ms. Gauggel said she would like to see more residents do more things.

Mr. Insco suggested we do contest for beautiful lighting for seasons.

Bruce Peirano offered his congratulations on the $750,000 grant and said we should prioritize sidewalks. He said the Megaland themes are based on a fad. He suggested a more traditional playground. He said we don't need to have a regional park as the roads are too congested already. Regarding the permissive license fee, he said the Township would re-prioritize funds instead of asking for more money.

Sharon Sligar presented Mrs. Harlow and Mr. Insco with cookies in appreciation for their work. She said the curb is cracked on her driveway. She was told this would be repaired, but it hasn't yet. She said she's selling her home to get the hell out of Colerain.

Rich McVay spoke about the corridor study. He said it's now done and encouraged the Board to hold to the plan. He asked about the target market for the Megaland project. He asked about data on usage and the number of kids within a mile of this park. He said the Board needs to think about the thought process for placement of parks.

Austin Musser, representing Joseph Auto Group, said he is here to speak about the KZF corridor study. He said they have concerns about the traffic and have asked for a meeting with the Township. He said they don't support this plan as it currently stands. He listed some of their concerns. He said they are concerned about the procedure of how the plan was developed. He said the engineering just doesn't work. He said the median U-turns are not possible with the narrowness of the road. He said there isn't enough distance between the traffic signals. He said the Township knows the plan doesn't work.

Mr. Unger asked about the engineering. Mr. Musser said it's an outside service they contracted. Mr. Unger suggested Mr. Musser and Mr. Anderson meet to work out some of the differences of opinion.

Mr. Rajagopal said he'd like to meet with the business community to hear their concerns.

Kathy Mohr said she would like to address Northgate Mall contract. She said she asked for a signed contract, but there is not one. She read an email from Chief Denney about this. She is upset this wasn't discussed at a meeting. She wants a PowerPoint presentation of what we do have at the mall. She said for the majority of the year, we've not had department heads at the Trustee meetings. She said she's asked questions and received no response. She wants a Trustee to be an adult and get these questions answered. The Board is negligent in their responsibilities. She said we already have a $25 tax on there and should not increase taxes.

Mr. Unger said legal counsel advised them not to engage Ms. Mohr in conversation.

Mr. Rajagopal suggested Ms. Mohr send questions before the meetings. She said she gets no response.

Christine Frieburg spoke about the corridor study and said she agrees with Joseph Auto Group. She wants things to stay simple. She said there are a lot of legitimate questions that are not being answered. She said the Board constantly refers to Mr. Milz. She said all she's seen is "rubber stamping" of Mr. Milz's ideas by the Board. Regarding Megaland, she said all of the designs are horrible. She read quotes on leadership.

8. Administrative Reports

Mr. Weckbach said Mr. Milz and Chief Denney are excused. There was no report from Chief Cook.

Mr. Ionna provided an update on Shuster Ct. and said we received two bids for the demolition, which is scheduled for early- to mid-December. He said we are moving as fast as we can legally. He said food trucks are not permitted in Colerain Township. He said if the Board would like to change this, his department can work on it.

Mr. Weckbach said he was not aware of the mums and pumpkins. He said we have a quote to fix the lights. For Royal Heights, we have a "punch list" at the end to take care of any final items. He said we installed car counters to get our data for the parks. He said this is the last meeting before the election. He encouraged everyone to do their homework and get out and vote.

9. Trustees' Report

Mr. Unger said Police Officer Pat Quinn was hired by the Township 17 years ago today. He said he met with residents of Sovereign Drive about their concerns. He said the Board authorizes Mr. Milz to operate the CIC. He said tonight we're just setting the hearing to talk about the $5 license fee. He said Ms. Mohr said she doesn't receive a response, but cautioned her to not send emails to all three Board members, as this could be considered an unlawful meeting of the Board. He said she claims we get bad advice from Mr. Barbiere, but we've won everything. Mr. Unger said the Board defers to Mr. Milz because they don't talk outside of meetings. He said four residents filed affidavits against the Township, which was a complaint to the state auditor that the fiscal officer was not performing her duties. He said the state auditor found nothing wrong. He asked that a copy of the documents be attached to these minutes.

Mr. Insco said Chris Henson from the Coleraine Historical Society is here and he announced their open house on November 20. He said he is doing a random thank you event each month for the residents. He said this Friday is free Zumba. He said a positive item about each of the candidates for Township trustee.

Mr. Rajagopal he said he went to the safety board meeting about the intersection of Colerain and Struble. He said reflective poles have been installed. He is also meeting about sidewalks on Pippin Road near Northwest High School.

10. New Business

Public Safety

a. Motion to Accept Grant Funding From the Ohio Department of Public Safety

Chief Cook recommended adoption of a motion for the acceptance of $2690.00 in grant funding. This is grant funding from the State of Ohio's Public Safety's Priority One Grant. These funds will be allocated towards the purchase of airway training manikins for the department's training division. These training manikins will be used to help train the department's paramedics in advanced airway management of the critical ill or injured patient.
Dan Unger made such motion and Raj Rajagopal offered the second.
Mr. Rajagopal said it's great he found this grant and it's a good training opportunity for our first responders. Chief Cook said they need to stay current with their skills.
The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

b. Resolution to Dispose of Township Vehicles and Equipment Valued at $2,500 or Less

Chief Cook recommended the approval of Resolution #47-19, "RESOLUTION FOR DISPOSAL BY SALE OF VEHICLES WHICH ARE OBSOLETE, UNFIT, OR UNNEEDED FOR PUBLIC USE (O.R.C. Sec 505.10)," which authorized the disposal of surplus items valued at $2,500 or less. Colerain Township will periodically evaluate the existing fleet and equipment inventory for items that are no longer of value to Township operations and that can be sold to external parties. Colerain proposes to auction, the GovDeals for the disposal of the following items:

1. Lot 1 – Skid of old various makes of Light Bars
2. Lot 2 – Skid of old Partitions out of 2011-2013 Dodge Chargers
3. Lot 3 – Skid of old various makes of Light/Siren Control Boxes
4. 1980 – V - Bottom Boat with trailer
5. 1980 – V - Bottom Boat with trailer
6. 2001 – Honda 25hp Outboard Motor (0726)
7. 2001 – Honda 25hp Outboard Motor (1293)
8. Lot 1 – 2 Skids of old Stihl Saws, Trimmers and Leaf Blowers
9. Lot 2 – 2 Skids of old various makes of Light Bars
10. Lot 3 – 1 Skid of 3 old Positive Pressure Fans

Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Public Services

a. Motion Authorizing the Purchase of Capital Equipment - Snow Plows

Mr. Weckbach recommended adoption of a motion to purchase two snow plows that were included in the 2019 Capital Budget. Consistent with current practice, all capital purchases are brought before the Board of Trustees for approval. The total budget for these two purchases was $14,000. The actual purchase price for these two items is $13,800 or $200 under budget.

Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No – None

b. Motion Authorizing the Administrator to Submit State Capital Grant for the Megaland Replacement Project

Mr. Weckbach recommended adoption of a motion authorizing the Administrator to submit a State Capital Grant request for the Megaland Replacement Project and to sign all related documents that may be necessary and relevant to obtaining this financial assistance. Every two years, the State of Ohio starts the process of collecting potential projects for inclusion in the State's capital budget. In prior years, the State has delegated the review of potential capital projects to a local community business group. For Hamilton County, the group has historically been the Cincinnati Business Committee (CBC). The State Capital Grant process is a highly competitive process and is a process that moves fairly quickly. Therefore, staff has drafted a grant proposal that will follow a similar format from prior years. The difficulty of this process is that the CBC will release the grant documents and process with a very narrow application window that may not coincide with a future Board of Trustee meeting. The final submitted grant may differ slightly, as the grant requirements, deadlines, and materials may change between now and the anticipated submission date (November 2019).

Dan Unger made such motion and Raj Rajagopal offered the second.
Mr. Rajagopal said it's great to seek grants from the state.
Mr. Unger asked if the grant request is based on what's presented tonight.
Mr. Weckbach said we will submit the presentation then funding will be dispersed to communities. They are not deciding on exact construction.
The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

c. Motion to set Public Hearing on December 03, 2019 and December 10, 2019 - $5 Permissive License Fee

Mr. Weckbach recommended adoption of a motion for a Public Hearing to be set to consider the adoption of a $5 Permissive License Fee on December 03, 2019 at 6:00PM in the Colerain Township Trustee Chambers and on December 10, 2019 at 7:00PM in the Colerain Township Trustee Chambers. With the most recent state biannual fiscal year budget, the State of Ohio enacted a new law that allowed Townships to adopt an additional $5 per vehicle motor license registration fee. Colerain Township should consider adoption of this fee in order to make additional progress on the enhancement and replacement of Township roads. This fee would allow the Township to address an additional 0.4-0.5 miles of roadway each year. The

Board is required to have two public hearings on this matter and the public hearings must be three to ten days apart.

Greg Insco made such motion and Dan Unger offered the second.
Mr. Insco said the residents have right to speak on this.
Mr. Rajagopal asked about the resolution.
Mr. Weckbach said this was provided to the Board just for reference.
Mr. Unger said he has no problem having input.
The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

d. Resolution to Dispose of Township Vehicles and Equipment Valued at Greater than $2,500

Mr. Weckbach recommend the approval of Resolution 48-19, "RESOLUTION FOR DISPOSAL BY PUBLIC SALE OF VEHICLES (VALUE GREATER THAN $2,500) WHICH ARE OBSOLETE, UNFIT, OR UNNEEDED FOR PUBLIC USE (O.R.C. Sec 505.10)," authorizing the disposal of surplus items valued at more than $2,500. Colerain Township will periodically evaluate the existing fleet and equipment inventory for items that are no longer of value to Township operations and that can be sold to external parties. Colerain proposes to auction, the GovDeals for the disposal of the following items:
1989 International Dump Truck
2001 Dodge Ram
1999 Diamond Trailer
2000 International Trailer
2008 G-Force Trailer

Greg Insco made such motion and Dan Unger offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

e. Resolution to Dispose of Township Vehicles and Equipment Valued at $2,500 or Less

Mr. Weckbach recommended the approval of Resolution #49-19, "RESOLUTION FOR DISPOSAL BY SALE OF VEHICLES WHICH ARE OBSOLETE, UNFIT, OR UNNEEDED FOR PUBLIC USE (O.R.C. Sec 505.10)," authorizing the disposal

of surplus items valued at $2,500 or less. Colerain Township will periodically evaluate the existing fleet and equipment inventory for items that are no longer of value to Township operations and that can be sold to external parties. Colerain proposes to auction, the GovDeals for the disposal of the following items:
2003 Chevrolet S-10
2000 Bobcat Trailer

Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Planning & Zoning

a. Resolution Declaring Nuisance and Ordering Abatement

Mr. Ionna requested the Board approve Resolution #50-19, "RESOLUTION DECLARING NUISANCE AND ORDERING ABATEMENT."

Dan Unger made such motion and Raj Rajagopal offered the second. No discussion and the roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

b. Motion to set Public Hearing on December 10, 2019 - Zone Map Amendment (ZA2019-06)

Mr. Ionna recommended adoption of a motion for a Public Hearing to be set for a Zone Map Amendment for Zoning Case ZA2019-06 on December 10, 2019 at 7:00PM in the Colerain Township Trustee Chambers. The Colerain Township Zoning Commission is expected to make a recommendation on the Zone Map Amendment for the rezoning of 30 acres on the north side of W. Kemper Rd. at their November 19, 2019 Regular Meeting. This Zone Map Amendment would require a Public Hearing to be held in front of this Board of Trustees within 30 days of that recommendation. This public hearing was originally slated to be before the Trustees in November and had to be rescheduled.

Dan Unger made such motion and Raj Rajagopal offered the second.

Mr. Unger asked if this will change the density. Mr. Ionna said they want to apply for a planned development.
Mr. Rajagopal asked about a tax abatement. Mr. said there is none.

The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Administration

a. Motion to Appoint Members to the Colerain Township WeThrive! Team

Mr. Weckbach recommended adoption of a motion to appoint the following individuals to the WeThrive! Team per resolution 36-19:
◦ Ron Henlein,
◦ Bill Nadler,
◦ Jay Dennis.
The Township advertised the need for resident representatives on the WeThrive! Team consistent with Resolution 39-19. The Township received six application submissions, interviewed three candidates and found all three to be tremendously positive people who want to make a positive difference in their community.

Greg Insco made such motion and Raj Rajagopal offered the second.

Mr. Unger asked if each of them will complete the volunteer application form.
Mr. Weckbach said they already have.
Mr. Rajagopal offered his thanks for helping our Township.

The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

11. Consent Items

a. Agreement with Spring Grove Cemetery - Indigent Burial

Mr. Weckbach recommended adoption of all consent items. Mr. Robert Rainey was a resident of Colerain Township and passed away on August 13, 2019. Mr. Rainey was considered indigent and his burial is the obligation of Colerain. The agreement with Spring Grove Cemetery provides for his cremation and disposition. The total cost is $795.

Raj Rajagopal made such motion and Dan Unger offered the second.

Mr. Unger said it's the Township's charge to respectfully handle the remains.
Mr. Insco said he's pleased to live in a community who cares.

The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

12. Fiscal Office Report

Mrs. Harlow reminded everyone to be safe on Halloween. She also encouraged citizens to do their research and vote in the election.

13. Executive Session – if needed

There was no need for Executive Session.

14. Adjournment

With no further business to come before the Board, Dan Unger made a motion to adjourn and Raj Rajagopal offered the second. The roll was called:
Yes - Greg Insco, Raj Rajagopal, Dan Unger
No - None

Fiscal Officer

Trustee

Trustee

Trustee

OHIO AUDITOR OF STATE
KEITH FABER

88 East Broad Street
Columbus, Ohio 43215
ContactUs@ohioauditor.gov
(800) 282-0370

July 10, 2019

Carrie Davis
8364 Royal Heights Drive
Cincinnati, OH 45239

Kylen Peck
7321 Apple Valley Ct.
Cincinnati, OH 45247

Kristen Campbell
8545 Livingston Rd.
Cincinnati, OH 45251

Jacob Davis
8364 Royal Heights
Cincinnati, OH 45239

On June 12, 2019, the Ohio Auditor of State's Office received your sworn affidavits and supporting evidence to initiate a Fiscal Integrity Act complaint against Colerain Township Fiscal Officer, Heather Harlow.

Pursuant to Ohio Revised Code Section 507.13, the Auditor of State reviews complainants' submissions to determine whether clear and convincing evidence supports the allegations that the fiscal officer, with respect to their fiscal duties purposely, knowingly, or recklessly: failed to perform a fiscal duty *expressly required by law* or committed any act *expressly prohibited by law*.

Within thirty calendar days, unless for good cause additional time is required, this office submits its findings in writing to the township fiscal officer and the persons initiating the complaint if the finding is that the allegations are not supported by clear and convincing evidence. If the finding is to the contrary, the complaint is forwarded to the Ohio Attorney General for further consideration.

As the complainants, the Fiscal Integrity Act requires you to identify the specific statutory duty that was allegedly violated by Ms. Harlow.

The Auditor of State has reviewed your submission and the applicable sections of Ohio Revised Code delineating the statutory duties of township fiscal officers. The Office has determined that your complaint has failed to demonstrate by clear and convincing evidence that Ms. Harlow has violated a specific statutory duty imposed upon her or that she has committed any act expressly prohibited by law.

However, for good cause, the Office is staying its consideration of the matter to provide you with an opportunity to provide additional information. Specifically, please provide any specific Colerain Township Resolutions or Ordinances which directed Ms. Harlow to act, and the specific statutory violation allegedly committed by Ms. Harlow because of her failure to follow that specified Township Resolution or Ordinance. If this information is received by **July 31, 2019** the Office will consider this information in resolving this complaint.

We appreciate your diligence in service to the Colerain Township community.

Very truly yours,

Keith Faber
Ohio Auditor of State

Mary DeGenaro

Mary DeGenaro
Chief Legal Counsel

Dear Ms. DeGenaro:

Thank you for the opportunity to supplement our complaint to address that my "complaint has failed to demonstrate by clear and convincing evidence that Ms. Harlow has violated a specific statutory duty imposed upon her or that she has committed any act expressly prohibited by law," and requesting that we provide additional information, specifically:

1) ""Any specific Colerain Township Resolutions or Ordinances which directed Ms. Harlow to act" and
2) "the specific statutory violation allegedly committed by Ms. Harlow because of her failure to follow that specified Township Resolution or Ordinance"

Thank you for staying consideration of the matter to allow more information.

I, personally, contacted your offices approximately 2 weeks ago and inquired as to whether or not we had met all requirements in our sworn affidavits and attachments properly for the department to investigate this matter. A person reviewed my documents over the phone thoroughly with me and advised me that I had provided all required information and in a form acceptable to the office. So, I was a bit surprised to receive your notice.

Also, be aware that, I made a public records request and assistance from this office for records that may assist in drafting this addendum. The records provided after waiting 2 weeks did not include the pertinent documents, being records which specify in a previous complaint under this authority, the legal citations requested. I amended my records requests and no such information has yet to be provided in order to make this task more manageable for both me in drafting and your staff in implementing this section.

Additionally, the prosecuting statute (below) does not require a "statutory" specification nor does it make any reference to Resolutions or Ordinances. The Township adopts all laws of the state unless specifically voided, altered or expanded by Resolution or Ordinance. Hence, all Federal and State law is thereby incorporated into the governance and legislation of the township.

It is noteworthy that not one of the cases forwarded to me in my public records request include a citation as to the offense committed in the sworn affidavit. Nor does the sworn affidavit include an "expressly" prohibited or mandated act or duty within the sworn affidavit. While there are numerous citations in the evidence provided with the sworn affidavit.

> **504.04 Exercise of powers under limited home rule government.**
>
> (A) A township that adopts a limited home rule government may do all of the following by **resolution, provided that any of these resolutions, other than a resolution to supply water or sewer services in accordance with sections 504.18 to 504.20 of the Revised Code, may be enforced only by the imposition of civil fines as authorized in this chapter:**
>
> **(1) Exercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws, except that the township shall comply with the requirements and prohibitions of this chapter, and shall enact no taxes other than those authorized by general law, and except that no resolution adopted pursuant to this chapter shall encroach upon the powers, duties, and privileges of elected township officers or change, alter,**

combine, eliminate, or otherwise modify the form or structure of the township government unless the change is required or permitted by this chapter;

The absence of an ordinance or resolution is not citable.

Generally, an "alleged violation" are the *actions* one has taken that another believes is against the law.

"Expressly" prohibited or imposed by law does not require a legal citation to the "act". The acts that constitute an offense are way too broad. Merely, a "duty" upon which the fiscal Officer is customarily required to perform or not performed referenced in ANY document is sufficient. Just as the rulings from the other cases regarding tax filings that were prosecuted. In fact, the OAC makes it clear that the complainants are not required to cite the alleged infraction, but the conduct / "substance facts" of the matter:

OAC 117.7.03 (B)

"The substance facts constituting the(sic) of the purposeful, knowing, or reckless failure of the said township fiscal officer to perform a fiscal duty expressly imposed by law, with respect to the fiscal duties of the office of township fiscal officer, or of the said township fiscal officer's purposeful, knowing, or reckless commission of any act expressly prohibited by law, with respect to the fiscal duties of the office of township fiscal officer, is set forth herein below are as follows:"

The Fiscal Officer's oath to "faithfully perform the duties of the office" is a broad and inclusive legal duty required by law that encompasses all duties that fall under "fiscal duties."

Regardless. We are submitting this addendum to our original complaint. Please consider any or all of the foregoing citations as "expressed" duties of the Township Fiscal Officer. Thank you.

ADDENDUM TO SWORN STATEMENT

CULPABILITY – The elected township fiscal officer is the party, ultimately, with the duty to perform the actions omitted in a timely and fiscally responsible manner.

Working under:

Ohio Revised Code

507.13 Allegations of violations.

(A) (1) If a township fiscal officer purposely, knowingly, or recklessly fails to perform a fiscal duty **expressly imposed by law with respect to the** fiscal duties of the office of township fiscal officer **or purposely, knowingly, or recklessly comm**its any act expressly prohibited by law with respect **to the fiscal duties of that office, four resi**dents of the township may submit sworn affidavits **alleging the violation, together with evidenc**e supporting the allegations, to the auditor of state. **The sworn affidavits and evidence shall be** submitted in the format prescribed by rule of the **auditor of state under section** 117.45 **of the** Revised Code. A person who makes a false statement in a sworn affidavit, for purposes of this section, **is guilty of falsification under section 2921.13 of** the Revised Code.

(2) The auditor of state shall review the sworn **affidavits and the evidence. Within thirty calendar** days after receiving the sworn affidavits, un**less, for good cause, additional time is required, the** auditor of state shall determine whether cle**ar and convincing evidence supports the allegations.** If the auditor of state finds that no allegation **is supported by clear and convincing evidence, the** auditor of state shall submit those findings in **writing to the township fiscal officer and the persons** who initiated the sworn affidavits. If the au**ditor of state finds by clear and convincing evidence** that an allegation is supported by the evidence, the auditor of state shall submit those findings in writing to the attorney general, the township fiscal officer, and the persons who initiated the sworn affidavits. The findings shall include a copy of the sworn affidavits and the evidence submitted under division (A)(1) of this section.

We assert that the duly elected and sworn Fiscal Officer, Heather Harlow, cost taxpayers nearly $70K by failing to complete required forms timely. One instant being the OPERS error and the other being in a late filing. The former was itemized in an audit report management letter by the State Auditor providing the Fiscal Officer every opportunity to correct the former, timely, and recoup the funds. Such process would take less than 3 hours to compile, complete form 941X and file.

The Fiscal Officer is an independent office separate and apart from the Board of Trustees. Her actions are not dictated by Resolutions or Ordinances of the trustees except when contrary to state and federal law and the rules of the State Auditor and the various other department within the State, including the Department of Taxation, regarding the manner in which fiscal duties are to be performed. The Fiscal Officer can not rely upon an order, or lack thereof, as an excuse to not perform the customary duties of her office. In fact, the Fiscal Officer would have a duty to challenge any resolution or ordinance that would be in violation of a federal or state law, rule, or regulation.

Harlow refused to do her job.

> {¶55} The term "refuse" should be given its "common, everyday meaning," because it is not ambiguous, and it is not defined in Chapter 117. See Am. Fiber Sys., Inc. v. Levin, 125 Ohio St.3d 374, 2010-Ohio-1468, ¶24, quoting State v. Dorso, 4 Ohio St.3d 60, 62 (1983); see also Stewart v. Vivian, 151 Ohio St.3d 574, 2017-Ohio-7526, ¶25 (citations omitted). "Refuse" is defined as to "[i]ndicate or show that one is not willing to do something." Oxford University Press, https://en.oxforddictionaries.com, (accessed June 26, 2018); see also Webster's Ninth New Collegiate Dictionary, 991 (1991) (Defining "refuse" as "to show or express unwillingness to do or comply with"). Further, "willingness" is defined as "the quality or state of being prepared to do something; readiness." Id; see also Webster's at 1350 (Defining "willing" as "prompt to act or respond"). It follows that showing or expressing unpreparedness to do something constitutes a refusal to do something.

Ohio Administrative Code:

117-2-01 Internal controls..

(A) All public officials are responsible for the design and operation of a system of internal control that is adequate to provide reasonable assurance regarding the achievement of objectives for their respective public offices in certain categories.

(B) "Internal control" means a process effected by those charged with governance, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Reliability of financial reporting;

(2) Effectiveness and efficiency of operations;

(3) Compliance with applicable laws and regulations; and

(4) Safeguarding of assets against unauthorized acquisition, use or disposition.

(C) Internal control consists of the following five interrelated components:

(1) Control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.

(2) Risk assessment, which is the entity's identification and analysis of relevant risks to the achievement of its objectives, forming a basis for determining how the risks should be managed so as to identify and assess the risks of material misstatements, whether due to fraud or error, at the financial statement and relevant assertion levels.

(3) Control activities, which are policies and procedures that help ensure management directives are carried out so as to identify and assess the risks of material misstatements, whether due to fraud or error, at the financial statement and relevant assertion levels.

(4) Information and communication, which are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.

(5) Monitoring, which is a process that assesses the quality of internal control performance over time.

(D) When designing the public office's system of internal control and the specific control activities, management should consider the following:

(1) Ensure that all transactions are properly authorized in accordance with management's policies.

(2) Ensure that accounting records are properly designed.

(3) Ensure adequate security of assets and records.

(4) Plan for adequate segregation of duties or compensating controls.

(5) Verify the existence and valuation of assets and liabilities and periodically reconcile them to the accounting records.

(6) Perform analytical procedures to determine the reasonableness of financial data.

(7) Ensure the collection and compilation of the data needed for the timely preparation of financial statements.

(8) Monitor activities performed by service organizations.

(E) Consideration should be given to the cost benefit of the controls. The cost of controls should not exceed their benefit.

The Auditor of the State of Ohio more succinctly summarizes the "duties" of the Township Fiscal Officer in the linked training presentation. (Particularly starting at Page 4)

https://ohioauditor.gov/trainings/lgoc/2014/Duties%20Of%20A%20Township%20Fiscal%20Officer.pdf

117.01 Definitions

(D) "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(E) "Public official" means any officer, employee, or duly authorized representative or agent of a public office.

117-1 (D) "Public office" shall have the same meaning as defined in section 117.01 of the Revised Code.

(G) "Local public office" means all public offices other than state agencies including institutions of higher education as defined in section 3345.12 of the Revised Code.

***State v. Drawl*, 2018-Ohio-4084, 2018-T-0011**

{¶56} Under Rule 117-2-02(A) of the Ohio Administrative Code, appellant was required to maintain an accounting system and accounting records sufficient to enable her office to "identify, assemble, analyze, classify, record and report its transactions, maintain accountability for the related assets (and liabilities, if generally accepted accounting principles apply), document compliance with finance-related legal and contractual requirements and prepare financial statements required by rule 117-2-03 of the Administrative Code."

Ohio Revised Code:

3.07 Misconduct in office - forfeiture.

Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.

117.43 Rules for requirements for accounting and financial reporting for public offices other than state agencies.

(A) The auditor of state may prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies.

Rules adopted pursuant to this section may refer to publications of government agencies or private organizations recommending systems or standards to be followed in governmental accounting and financial reporting.

507.04 Personal attendance at board meetings - request for copies of township records.

(A) The township fiscal officer shall keep an accurate record of the proceedings of the board of township trustees at all of its meetings, and of all its accounts and transactions, including the acceptance of the bonds of township officers. The township fiscal officer shall personally attend at least one meeting of the board during each quarter of every year, unless prevented by the occurrence of an emergency from attending.

507.03 Bond.

Except as otherwise provided in section 3.061 of the Revised Code, the township fiscal officer, before entering upon the discharge of official duties, shall give a bond, payable to the board of township trustees, with sureties approved by the board, in the sum determined by the board but not less than the sum provided in this section, and conditioned for the faithful performance of the duties of the office of township fiscal officer. This bond shall be recorded by the township fiscal officer, filed with the county treasurer, and carefully preserved.

507.021 Assistants to fiscal officer - compensation.

(A) The township fiscal officer may hire and appoint one or more persons as the fiscal officer finds necessary to provide assistance to the township fiscal officer or deputy fiscal officer. The township fiscal officer may set the compensation of those persons subject to the prior approval of the board of township trustees. Those persons shall serve at the pleasure of the township fiscal officer or, in the absence of the township fiscal officer, the deputy fiscal officer. The township fiscal officer may delegate to an assistant any of the duties the fiscal officer is otherwise required to perform. The appointment of assistants under this section does not relieve the township fiscal officer of responsibility to discharge the duties of the office but shall serve to provide assistance to the fiscal officer in performing those duties.

5747.06 Employer's duty to withhold tax.

(A) Except as provided in division (E)(3) of this section, every employer, including the state and its political subdivisions, maintaining an office or transacting business within this state and making payment of any compensation to an employee who is a taxpayer shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, as far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this chapter and Chapter 5748. of the Revised Code with respect to the amount of such compensation included in the employee's adjusted gross income during the calendar year. The employer shall deduct and withhold the tax on the date that the employer directly, indirectly, or constructively pays the compensation to, or credits the compensation to the benefit of, the employee. ...

ORC 5707.(B3) pertaining to requirement to withhold the appropriate sums from employee .

5747.15 Failure to file or remit tax - filing frivolous, dilatory or fraudulent claim.

(A) In addition to any other penalty imposed by this chapter or Chapter 5703. of the Revised Code, the following penalties shall apply:

(1) If a taxpayer, qualifying entity, or employer required to file any report or return, including an informational notice, report, or return, under this chapter fails to make and file the report or return within the time prescribed, including any extensions of time granted by the tax commissioner, a penalty may be imposed not exceeding the greater of fifty dollars per month or fraction of a month, not to exceed five hundred dollars, or five per cent per month or fraction of a month, not to exceed fifty per cent, of the sum of the taxes required to be shown on the report or return, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which filed.

5747.19 Filing incomplete, false, and fraudulent returns.

No person shall knowingly fail to file any return or report required to be filed by this chapter, or file or knowingly cause to be filed any incomplete, false, or fraudulent return, report, or statement, or aid or abet another in the filing of any false or fraudulent return, report, or statement.

5747.99 Penalty.

(A) Whoever violates section 5747.19 of the Revised Code is guilty of a felony of the fifth degree.

(B) Whoever violates any provision of sections 5747.01 to 5747.19 of the Revised Code, or any lawful rule promulgated by the tax commissioner under authority of any provision of those sections, for the violation of which no other penalty is provided in this section, shall be fined not less than one hundred nor more than five thousand dollars.

Federal Law:

26 U.S. Code § 6413. Special rules applicable to certain employment taxes

(a) ADJUSTMENT OF TAX

(a) ADJUSTMENT OF TAX

(1) GENERAL RULE

If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER

For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

CITATIONS TO ALLEGED VIOLATIONS

The "alleged violations" include any or all of the following or the aforementioned:

I cite, broadly, The US Code, the US Code of Federal Regulation, the Ohio Revised Code, the Ohio Administrative Code, the US Constitution, and the Ohio Constitution expressly require that "persons" responsible, specifically the Fiscal Officer of a political subdivision of the State, is the ultimate responsible party required to compile, complete and submit all tax filings as required by law, rule or regulation. Such "person" is also mandated to correct all known inaccuracies on such forms, filings, and submissions to both the State of Ohio and the US Department of Taxation. This is a no-brainer. The Auditor and Attorney General's Office is best situated to determine which law, regulation or rule is most appropriate upon the presentations of facts and evidence to their respective offices. Rarely does a lay Complainant / victim have the responsibility to perform the duties of lawyers, prosecutors, or investigators in citing laws more specifically. However, we have provided our best efforts of complying:

Federal Law (The OAC has corresponding state statutes regarding these same issues including the mandate to correct errors reported in Form IT941 and IT941-X. For example ORC 5747.06):

26 U.S. Code § 6415. Credits or refunds to persons who collected certain taxes

(a) ALLOWANCE OF CREDITS OR REFUNDS

Credit or refund of any overpayment of tax imposed by section 4251, 4261, or 4271 may be allowed to the person who collected the tax and paid it to the Secretary if such person establishes, under such regulations as the Secretary may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund.

The Township paid the persons affected in whole. The "may" is in regards to the Statute of Limitations and other conditionals to receive the refund / credit. It is NOT relative to the duty to correct the reporting.

(b) CREDIT ON RETURNS

Any person entitled to a refund of tax imposed by section 4251, 4261, or 4271 paid, or collected and paid, to the Secretary by him may, instead of filing a claim for refund, take credit therefor against taxes imposed by such section due upon any subsequent return.

(c) Refund of overcollections
In case any person required under section 4251, 4261, or 4271 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

Since the firefighters were made whole, the overcollection was due to the Township and taxpayers who paid these funds. The Township was "entitled thereto".

(d) Refund of taxable payment
Any person making a refund of any payment on which tax imposed by section 4251, 4261, or 4271 has been collected may repay therewith the amount of tax collected on such payment.

26 U.S. Code § 6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. ...

26 USC § 6652(c)(6)(C) person

(C)For purposes of this subsection, the term "person" means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs.

26 U.S. Code § 6011. General requirement of return, statement, or list

(a) General rule
When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

27 CFR § 70.702 - Forms and instructions.

(a)*Tax return forms and instructions.* Tax forms and instructions are developed by the Bureau to explain the requirements of Chapters 32, 51, 52, and 53 of Title 26 of the United States Code or regulations issued thereunder, and are issued for the assistance of taxpayers in exercising their rights and discharging their duties under such laws and regulations. The tax return forms are the instruments through which taxes are collected.

(b)*Other forms and instructions.* The Bureau provides other necessary or appropriate forms for assisting the public in complying with the technical requirements of the laws and regulations administered by the Bureau. The material contained in the forms and instructions, and the arrangement thereof, is carefully considered and is designed to lead the preparer step-by-step through an orderly accumulation of data to an accurate report of the information required.

Instructions for Form 941-X At Page 3 "TIP"

https://www.irs.gov/pub/irs-pdf/i941x.pdf

When you discover an error on a previously filed Form 941, you must: Correct that error using Form 941-X, File a separate Form 941-X for each Form 941 that you're correcting, and File Form 941-X separately. Don't file Form 941-X with Form 941.

26 CFR § 31.6001-2 - Additional records under Federal Insurance Contributions Act.

§ 31.6001-2 Additional records under Federal Insurance Contributions Act.

(a)*In general.*

(1) Every employer liable for tax under the Federal Insurance Contributions Act shall keep records of all remuneration, whether in cash or in a medium other than cash, paid to his employees after 1954 for services (other than agricultural labor which constitutes or is deemed to constitute employment, domestic service in a private home of the employer, or service not in the course of the employer's trade or business) performed for him after 1936. Such records shall show with respect to each employee receiving such remuneration -

(i) The name, address, and account number of the employee and such additional information with respect to the employee as is required by paragraph (c) of § 31.6011(b)-2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(ii) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(iii) The amount of each such remuneration payment which constitutes wages subject to tax. See §§ 31.3121(a)-1 to 31.3121(a)(12)-1, inclusive.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected. See paragraph (b) of § 31.3102-1 for provisions relating to collection of amounts equivalent to employee tax.

(v) If the total remuneration payment (paragraph (a)(1)(ii) of this section) and the amount thereof which is taxable (paragraph (a)(1)(iii) of this section) are not equal, the reason therefor.

(2) Every employer shall keep records of the details of each adjustment or settlement of taxes under the Federal Insurance Contributions Act made pursuant to the regulations in this part. The employer shall keep as a part of his records a copy of each statement furnished pursuant to paragraph (c) of § 31.6011(a)-1.

26 CFR § 31.6413(a)-1 - Repayment or reimbursement by employer of tax erroneously collected from employee.

(a)*Federal Insurance Contributions Act* *and* *Railroad Retirement Tax Act* -

(v) If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee FICA or RRTA tax that was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of its records a written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of such amount. For this purpose, a claim for refund or credit by the employee includes instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see § 31.6413(c)-1). This paragraph (a)(2)(v) does not apply for purposes of overcollected Additional Medicare Tax under section 3101(b)(2) or section 3201(a) which must be repaid or reimbursed to the employee in the calendar year in which the overcollection is made.

(vi) For purposes of this paragraph (a)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

The Fiscal Officer was well aware of the overpayment at the time of settlement with OPERS. She was formally notified and advised to correct the errors contingent to the OPERS case in a Management Letter in late 2018 (before the statute of limitations expired). She was then reminded again in multiple meetings by residents to correct the error and the huge loss of funds at stake. The Fiscal Officer did not seek a formal legal opinion, opted to not review the matter in any way, and expressly stated she wasn't going to do anything to correct it. The Fiscal Officer retained and admitted it was her duty to perform or to assure the performance of this specific duty of her office.

(vii) For the period of limitations on credit or refund of taxes, see § 301.6511(a)-1.

26 CFR § 31.6413(a)-2 - Adjustments of overpayments.

(a)*In general.*

(1) An employer who has overcollected or overpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, and has repaid or reimbursed the amount of the overcollection of such tax to the employee, shall correct such error as provided in this section. However, this section only applies to overcollected or overpaid Additional Medicare Tax under section 3101(b)(2) or section 3201(a) if the employer has repaid or reimbursed the amount of the overcollection of such tax to the employee in the year in which the overcollection was made. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an overpayment of tax shall be made on the form prescribed by the IRS that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(3) Every adjusted return on which an overpayment is corrected pursuant to this section shall certify that the employer has repaid or reimbursed its employee, except where taxes were not withheld from the employee or where, after reasonable efforts, the employer cannot locate the employee. Every adjusted return shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by this section and § 31.6413(a)-1 and by the instructions relating to the adjusted return. Every adjusted return, filed by an employer, for overpayment of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the adjusted return is filed, must also certify that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

The Fiscal Officer may claim that locating and obtaining this consent was overburdensome. However, their agreement was done collectively in the Settlement Agreement. I was assured by the IRS that simply attaching the Settlement Agreement would suffice for notice. Also, please note, that the filing of Form 941-X specifically does NOT require the firefighters to amend THEIR tax returns because of the nature of the error. It did not affect their individual income, so this excuse to not bother to fill out the form is unfounded. In respect to the cost-benefit analysis, per the instructions for Form 941-X, wherein they estimate the time necessary to understand and complete such form, the IRS estimates it will only take about 5 hours. This estimate is overly high. The cost to achieve a $60,000 benefit would be negligible – about 3 hours and requiring no professional services. Please review the form.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-2.

The Fiscal Officer would be required to re-issue W-2s, W-2C, in completing the Form 941-X. This is a simple data entry process.

(b)*Federal Insurance Contributions Act* *and* *Railroad Retirement Tax Act* -

(1)*Overcollection ascertained before return is filed.* If an employer collects more than the correct amount of employee FICA or RRTA tax from an employee, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, and repays or reimburses the employee under § 31.6413(a)-1(a)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the overcollection under § 31.6413(a)-1(a)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(2)*Error ascertained after return is filed* -

(i)*Employee tax.* If an employer files a return for a return period on which FICA tax or RRTA tax is required to be reported and reports on the return more than the correct amount of employee FICA or RRTA tax, and if the employer ascertains the error after filing the return, and repays or reimburses the employee the amount of the overcollection of employee tax, as provided in § 31.6413(a)-1(a)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. However, for purposes of Additional Medicare Tax under section 3101(b)(2) or section 3201(a), if the amount of the overcollection is not repaid or reimbursed to the employee under § 31.6413(a)-1(a)(2)(ii), there is no overpayment to be adjusted under this section and the employer may only adjust an overpayment of such tax attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount withheld, pursuant to this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed before the expiration of the period of limitations on credit or refund. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(ii)*Employer tax.* If an employer files a return for a return period on which FICA or RRTA tax is required to be reported and reports on the return more than the correct amount of employer FICA or RRTA tax, and if the employer ascertains the error after filing the return, the employer may correct the error through an interest-free adjustment as provided in this section. The employer must first repay or reimburse the employee the amount of any overcollection of employee tax, if any, as required by § 31.6413(a)-1(a)(2), before making the adjustment for the employer tax. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed before the expiration of the period of limitations on credit or refund. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(c)*Income tax withheld from wages* –

Please be advised, we included these sections of law in order to clarify what might be claimed as an affirmative defense of the Fiscal Officer, which, read out of context "may" appear to say correction of these issues is optional. They are not. The controlling citation states the correction "shall" and "must" be completed and on the appropriate forms. The above citations are the choices – the "mays" – of how the funds can be returned and making distinctions between "credits" and "refunds" and the timing of such corrections. The correcting of the W-3 and 941 via Form 941X is not optional. To due so out of time caused the loss of about $60,000. In the same way, a penalty is issued for failing to file any return timely. The Fiscal Officer failed to perform her duties and to follow the law timely and directly caused the loss of these monies. Nonfeasance.

26 CFR § 31.6674-1 - Penalties for fraudulent statement or failure to furnish statement.

§ 31.6674-1 Penalties for fraudulent statement or failure to furnish statement.

Any person required to furnish a statement to an employee under the provisions of section 6051 or 6053(b) is subject to a civil penalty for willful failure to furnish such statement in the manner, at the time, and showing the information required under such section (or § 31.6051-1 or § 31.6053-2), or for willfully furnishing a false or fraudulent statement to an employee. The penalty for each such violation is $50, which shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act. See section 7204 for criminal penalty.

26 U.S. Code § 7204. Fraudulent statement or failure to make statement to employees

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

RULINGS:

FINDING NUMBER 2014-003 Noncompliance

26 U.S.C. § 3403 states that the employer sh**all be liable for the payment of the tax required to** be deducted and withheld under this chapte**r, and shall not be liable to any person for the** amount of any such payment.

Policies and procedures should be established and implemented to verify that income taxes are properly and timely remitted to the IRS and Ohio Department of Taxation and required returns filed in a timely manner. Failure to do so could result in assessment of fines and penalties against the Village as well as possible findings for recovery being issued in future audits.

FINDING NUMBER 2014-004 Noncompliance/Finding for Recovery

As Fiscal Officer, Wanda Lacey was the official responsible for withholding and remitting the required income taxes from Village employee earnings. Wanda Lacey withheld, as required, various taxes during 2013 and 2014. However, at various points during 2013 and 2014, Wanda Lacey failed to remit federal tax withholdings of the Village's employees to the federal government in a timely manner, which resulted in gross neglect of duty amounting to reckless disregard for the Village. No supporting documentation could be provided to support that any federal remittances were made for the third or fourth quarters of 2013, or for any quarter of 2014, until July 2015. As a result, the Village incurred penalties and late charges from the federal government. These penalties and late charges totaled $8,166 and were paid by the Village from July 7, 2015 through July 9, 2015. The payment of penalties and late charges is not considered to serve a proper public purpose and would have been avoided had the funds been remitted as required by law.

In accordance with the foregoing facts, and pursuant to Ohio Rev. Code § 117.28, a finding for recovery for public monies illegally expended is hereby issued against Wanda Lacey, former Fiscal Officer, in the amount of $8,166, and in favor of the Village of New Madison. Wanda Lacey's bonding company is the Cincinnati Insurance Company.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure was made is strictly liable for the amount of the expenditure. Seward v. National Surety Corp., 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code §9.39; State ex rel. Village of Linndale v. Masten, 18 Ohio St.-3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen.

The Village should implement policies and procedures to verify that all payroll withholdings and **remittances are paid in a timely manner as to avoid any penalties and late charges. Failure to do so could result in waste of Village resources and findings for recovery.**

Findings: Lancaster Mayor Kuhn pleads guilty on charges related to failure to file tax returns

https://ohioauditor.gov/news/pressreleases/Details/3318

In Re: Amanda Spies, Fiscal Officer, Goshen Township

AUC Section 210, para A14& 16 requiring the preparation of financial records free from material error, whether due to fraud or error.

ORC 5705.10I requires that funds in specific accounts for specific purposes shall be used only for such purposes. (Forfeited funds to the IRS is not a public purpose).

26 USC 3102(a) requires all employers to deduct and remit the accurate amounts due to the IRS in order to avoid penalties and to recoup overpayments.

CONCLUSION:

https://ohioauditor.gov/news/pressreleases/Details/3503

State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), provides that expenditures made by a governmental unit should serve a public purpose. Typically the determination of what constitutes a "proper public purpose" rests with the judgment of the governmental entity, unless such determination is arbitrary or unreasonable. Further, Auditor of State Bulletin 2003-005 states that the Auditor of State's Office will only question expenditures where the legislative determination of a proper public purpose is manifestly arbitrary and incorrect. The law requires that employers withhold taxes from employees' paychecks and remit those taxes to the government. The United States Internal Revenue Code requires employers to deduct from wages paid to employees the employees' share of FICA taxes and individual income taxes. See 26 U.S.C. §3102(a) and §3402(a). ... See 26 U.S.C. §7501(a). The employer is liable for the withheld portion of the employee's wages and must pay over the full amount to the government each quarter. See United States v. Farr, 536 F.3d 1174, 1176 (10th Circ. 2008).

And

ORC 117.42. Attorney general may enforce laws by legal action. Upon request of the auditor of state, the attorney general may file and prosecute to judgment or decree appropriate actions to prevent the unlawful expenditures of public funds, cancel contracts not made in compliance with law, enforce liabilities arising from false certifications or failure to furnish financial reports, secure compliance with this chapter, secure compliance with fiscal, accounting, or budgeting requirements, opinions, or adjustments made in an audit report, secure compliance with the laws, ordinances, rules, and orders pertaining to any public office, and enforce generally the laws relating to the expenditure of public funds. All sums collected as a result of any action taken under this chapter shall be placed in the treasury of the appropriate public office.

HISTORY: RC § 117.19, 138 v H 440 (Eff 3-13-81); RC § 117.42, 141 v H 201. Eff 7-1-85.

Likewise, "a township fiscal officer (who) purposely, knowingly, or recklessly fails to perform (and refuses to perform) a fiscal duty expressly imposed by law with respect to the fiscal duties of the office of township fiscal officer or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of that office, "does not serve a proper public purpose."

"(The) Auditor of State's Office will only question expenditures where the legislative (or the Fiscal Officer's) determination of a proper public purpose is manifestly arbitrary and incorrect. The law requires that employers withhold taxes from employees' paychecks and remit those taxes to the government. The United States Internal Revenue Code requires employers to deduct from wages paid to employees the employees' share of FICA taxes and individual income taxes" and the that the Fiscal Officer correct all errors regarding such transactions which would result in the retrieval of over $60,000 by filing mandated Forms W-2C, W-3, and 941-X. A determination by the Fiscal Officer and the opinions of others not bearing her authority and responsibility that is contrary to law is "manifestly arbitrary and incorrect".

The Fiscal Officer failed in the performance of her expressed duties required by statutory law to correct the known error for over 3 years. Refused to abide by the recommendations of the Auditor of State. Refused to heed the warnings of residents. Her failure to perform her duties related to the OPERS settlement and the late filings of tax has cost the Township over $60,000. The Fiscal Officer is liable to repay the lost funds she forfeited by her violation of clear and unequivocal state and federal law.

Respectfully Submitted,

____ Carrie Davis

____ Jacob Davis

____ Kristen Campbell

____ Kylen Peck

OHIO AUDITOR OF STATE
KEITH FABER

MEMORANDUM

TO: **Mary DeGenaro, Chief Legal Counsel**

FROM: **Robert F. Smith, Assistant legal Counsel**

DATE: **September 9, 2019**

RE: **Colerain Township Fiscal Integrity Act complaint**

On June 3, 2019, four residents of Colerain Township, Hamilton County, Ohio signed affidavits alleging violations committed by Heather Harlow, the elected Fiscal Officer for the Township, and requesting the Auditor of State's office begin proceedings to remove her from office pursuant to R.C. 507.13. On June 20, 2019, the Fiscal Integrity Act Committee (Committee) met to preliminarily discuss the allegations.

The initial issue which we discussed related to the failure of the affidavits to mention the specific statutory duty which the Fiscal Officer allegedly failed to perform. The affidavit recited facts, but there was no specific allegation of a statutory duty. I researched the Ohio Revised Code and the U.S. Code Annotated and did not identify a specific statutory duty imposed upon the Fiscal Officer with regard to the actions alleged. However, I did note that, pursuant to *State v. Metheney,* 87 Ohio App. 3d 562, a violation of a municipal ordinance may be the basis for a specific statutory duty, the failure of which to perform could provide the basis for removal.

After I brought this to your attention, Legal contacted one of the affiants to inquire as to the specific statutory duty which was the basis for the removal action. The affiant submitted two (2) supplemental documents specifically on this subject.

I have reviewed both supplemental documents. Neither document provides a specific statutory duty which relates to the actions or, in this instance, the failure to act, alleged in the initial affidavits. Those affidavits specifically relate to the allegation that the Fiscal Officer failed to file appropriate federal tax forms related to an error in contributions to firefighters' pensions. The failure alleged related to the failure to file IRS Form 941-X and corrected W-2C forms with the IRS.

After reviewing the suggested statutes from the supplemental documents, I was not able to identify a specific statutory duty which the Fiscal Officer had violated. There were general duties, there were duties imposed upon the "employer", and there were duties which involved unrelated state and federal tax filings. However, there were no specific duties related to the filing of a form to obtain a refund from the IRS.

Base on this information, I am respectfully recommending that the Committee decline to move forward with the Colerain Township Fiscal Integrity Act complaint.

OHIO AUDITOR OF STATE
KEITH FABER

88 East Broad Street
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(800) 282-0370

September 11, 2019

Carrie Davis	Kylen Peck	Kristen Campbell	Jacob Davis
8364 Royal Heights Dr.	7321 Apple Valley Ct.	8545 Livingston Rd.	8364 Royal Heights Dr.
Cincinnati, OH 45239	Cincinnati, OH 45247	Cincinnati, OH 45251	Cincinnati, OH 45239

Pursuant to Ohio Revised Code Section 507.13, the Auditor of State reviewed your sworn affidavits, original and two supplemental submissions consisting of supporting evidence and argument in support of the Fiscal Integrity Act complaint initiated by you against Colerain Township Fiscal Officer, Heather Harlow.

When considering FIA complaints, this office is statutorily directed to measure the alleged conduct against the applicable sections of Ohio Revised Code delineating the express statutory fiscal duties of township fiscal officers, and determine whether clear and convincing evidence supports the allegations that the fiscal officer purposely, knowingly, or recklessly: failed to perform a fiscal duty *expressly required by law* or committed any act *expressly prohibited by law*.

As the complainants, the Fiscal Integrity Act requires you to identify the specific Township resolution, ordinance or statutory duty that was allegedly violated by Ms. Harlow. Allegations of a failure to meet general duties of the office are insufficient to support a FIA removal action.

After due consideration and deliberation, the Auditor of State has determined that your complaint has failed to demonstrate by clear and convincing evidence that Ms. Harlow has violated a specific duty imposed upon her or that she has committed any act expressly prohibited by law. In light of this determination, we will not be forwarding the affidavits to the Attorney General, and this decision concludes the matter.

We appreciate your diligence in service to the Colerain Township community.

Very truly yours,

Keith Faber
Ohio Auditor of State

Mary DeGenaro

Mary DeGenaro
Chief Legal Counsel

cc: Heather Harlow, Colerain Township Fiscal Officer

OHIO AUDITOR OF STATE
KEITH FABER

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September 25, 2019

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This is in response to an email to this office from Ms. Davis expressing her disappointment in the decision made on your Fiscal Integrity Act Complaint and seeking clarification.

The Auditor of State has determined that the affidavits and supporting documents did not establish a violation of a "fiscal duty *expressly imposed by law* with respect to the fiscal duties of the office of township fiscal officer," as required by R.C. 507.13(A)(1). The language cited is identical to that contained in R.C. 2921.44(E), the Dereliction of Duty statute. Therefore, case law interpreting this statute is controlling in any matter involving this specific portion of the Fiscal Integrity Act.

In *State v. Gaul,* 117 Ohio App.3d 839, the Eighth District Court of Appeals reviewed the dereliction of duty conviction of the former Cuyahoga County Treasurer. One of the issues Mr. Gaul raised on appeal was that the State was statutorily mandated to prove that he had failed to carry out a duty *expressly* imposed by law. The Court reviewed the duties the State argued that Mr. Gaul had violated, found them to be general duties or common law duties, and that neither types of duty could support a finding that the Treasurer violated a duty expressly imposed by law. As a result his conviction was reversed.

As the complaint did not rise to the level of alleging a violation of a specific statutory duty as a matter of law, this office had no reason to reach out to Ms. Harlow to present us with evidence or a legal argument.

In this matter, as in the *Gaul* case, the affidavits and supporting documents that you filed refer to general duties, or statutes which are not specific to the violation alleged. Therefore, the Auditor of State was required to conclude that the violations alleged did not establish a violation of a fiscal duty expressly imposed by law with respect to the fiscal duties of the office of township fiscal officer.

We appreciate your diligence in service to the Colerain Township community.

Very truly yours,

Keith Faber
Ohio Auditor of State

Mary DeGenaro

Mary DeGenaro
Chief Legal Counsel

cc: Colerain Township Fiscal Officer, Heather Harlow