



Dave Yost • Auditor of State

Bulletin 2015-005

Auditor of State Bulletin

DATE ISSUED: May 18, 2015

TO: All Public Offices and Independent Public Accountants

FROM: Dave Yost
Ohio Auditor of State

SUBJECT: Abuse Standards

The Comptroller General of the United States' *Government Auditing Standards*, commonly referred to as Generally Accepted *Government Auditing Standards* (GAGAS), indicate that "abuse" involves behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, or violation of laws or regulations, or the terms of a contract or a grant agreement. **GAGAS 4.07**. Prospectively, for audit periods beginning July 1, 2015 and after, auditors will report abuse on the part of any public official coming to our attention. If auditors become aware of abuse that could be quantitatively or qualitatively significant, auditors will obtain evidence to ascertain the potential effect of the abuse. After performing the additional work, auditors may determine that the abuse requires reporting as fraud or illegal acts, and, in either case, appropriate further action will be taken. **GAGAS 4.08**.

Regarding abuse, the Auditor of State has adopted and will use commonly utilized and widely known definitions from relevant Opinions of the Ohio Ethics Commission and a provision of the Ohio Revised Code. In relation to this Abuse standard, "member of the public official's immediate family" means the official's spouse; children and step-children, whether dependent or not; parents and step-parents; siblings; grandparents; and grandchildren-- regardless of where these relatives live. Immediate family also includes any other person related to the official, by blood or marriage, who resides in the same household as the public official. **Ohio Ethics Commission, Advisory Opinions 2009-06;**

2008-03; 1990-010; and 1980-001. Further, a “business associate” includes any individuals, companies, or organizations with which the public official is acting together to pursue a common business purpose. Examples of a public official’s business associates include the official’s partners in a partnership; co-owners of a business; outside employer; and co-members of an LLC. **Ohio Ethics Commission, Advisory Opinion 2009-06.** For the purpose of this auditing function, “public official” includes “...any elected or appointed officer, employee, or agent of the state or any political subdivision whether in a temporary or permanent capacity.” **Ohio Revised Code, Section 2921.01(A).** Virtually every person who is in public service in any role falls within this definition of public official. Public official includes any person who is elected to, appointed to, or employed by any public agency, including, but not limited to, any state agency, county, city, village, township, school district, public library, and regional authority. Individuals may be public officials for this purpose regardless of whether they are serving on a full or part-time basis, under temporary or permanent tenure, or on a compensated or uncompensated arrangement. **Ohio Ethics Commission, Advisory Opinion 2009-06.**

If auditors discover conduct which may constitute abuse under the foregoing standards, notice to the public official and opportunity for comment will be provided in a manner similar to that utilized for proposed Findings for Recovery. The public official will be afforded written notice of the potential abuse with sufficient information to identify, with reasonable specificity, the assertion. The public official will be afforded a period of five days to respond to the finding with an explanation or other pertinent information. Before including a finding for abuse in the audit report, auditors will consider the explanation, information, and pertinent data provided in the public official’s response. Independent Public Accountants (IPAs) will also follow the notification and response procedures noted above. IPAs must also notify the Regional Office when a potential abuse issue is identified.

An example of a potential finding of abuse involves a local board that adopted administrative policies which expressed the expectation that its employees would “...exercise the same care incurring travel expenses that a prudent person would exercise if traveling on personal business and expending personal funds.” While attending a conference in Columbus, members of the board stayed at a hotel at a room rate of \$319 per night, per person. Further, valet parking charges of \$69 per person were incurred by two of the attendees, and the public body expended some \$3,966 for expenses incident to the attendance of four officials. There were many other hotels in the vicinity of the conference charging approximately \$100 per night. The actions of the board members were not prudent, reasonable, or necessary.

A second example involves a local board that entered into a contract with a manager which required that the board pay all of the employee’s previously incurred undergraduate and

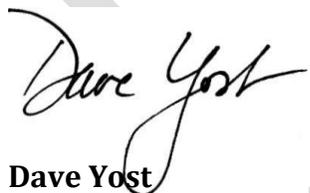
graduate education debt. The contract did not specify the amount of the indebtedness which the board would pay, and there is no evidence that board members were aware of the amount at the time of their approval of the arrangement. The amount at issue was in excess of \$170,000, which the board ultimately paid out of public funds. The board also approved an additional payment of approximately \$80,000 to cover the costs of the employee securing an MBA at a private university. Not only did the board expend exorbitant amounts in this context, but the failure of the board to ascertain the amount of its undertaking and the potential impact of the payments on the financial status of the district demonstrates indifference to the board's public responsibilities and a lack of prudence. It warrants a finding of abuse.

GAGAS 4.11 explains that the elements of a finding should include its *criteria*, which in the context of abuse would include "... expected performance . . . against which performance is compared or evaluated." The criteria in the first example are the existence of many other hotels in the vicinity of the conference charging approximately \$100 per night. A prudent person would not spend 200 percent more than was necessary to secure lodging for each night.

The criteria in the second example are reasonable compensation packages offered to staff with comparable responsibility (including staff in other governments and perhaps even nongovernmental equivalent positions) versus the total compensation, including the tuition, paid to this staff person.

Therefore, findings of abuse should compare the abusive behavior to a reasonable prudent person standard.

Questions concerning this bulletin should be addressed to the Legal Division at 800-232-0370.



Dave Yost
Ohio Auditor of State