

COUNCIL NEWSLETTER

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APPOINTED NON-RESIDENT FISCAL OFFICER NOW OPTION FOR STATUTORY VILLAGES

Thanks to the adoption of H.B. 245, beginning on February 1, 2002, statutory villages in Ohio now have an option to create an appointed fiscal officer to exercise the powers and duties of the village clerk and treasurer. The position may be created by adoption of an ordinance by two-thirds vote of the legislative authority when there is a vacancy in the office of clerk or clerk-treasurer or 105 days before the primary or general municipal election for a new term for the clerk or clerk-treasurer. The fiscal officer is appointed by the mayor and confirmed by a majority vote of the council.

The village fiscal officer may be removed without cause either by the mayor with the consent of a majority of the council or by a three-fourths vote of the council with or without the consent of the mayor. The legislative authority may also by ordinance abolish the office of village fiscal officer and subsequently restore the elective office.

H.B. 245 also empowers village councils to waive the residency requirement for the fiscal officer position.

Following are some sample ordinances relating to the fiscal officer position:

AN ORDINANCE CREATING THE POSITION OF VILLAGE FISCAL OFFICER IN ACCORDANCE WITH THE PROVISIONS OF SECTION 733.262 OF THE REVISED CODE.

WHEREAS, when there is a vacancy in the office of village clerk or clerk-treasurer, Section 733.262 of the Revised Code empowers this Council to create the position of village fiscal officer, and

WHEREAS, it is the judgment of this Council that the interests of the citizens of the village will be better served through the creation of the position of Village Fiscal Officer;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL, OF THE VILLAGE OF (Name of Village), STATE OF OHIO:

Section 1. In accordance with Section 733.262, Revised Code, there is hereby created the position of Village Fiscal Officer. The salary of the Village Fiscal Officer shall be \$_____, payable (insert language setting forth the basis of the payment of salary.)

Section 2. Village Fiscal Officer shall have those powers, duties, and functions as provided by the general laws of the State of Ohio; and in addition he/she shall have the following powers, duties, and functions: (Here list additional powers, duties and functions conferred upon the Village Fiscal Officer as authorized by Section 733.262 of the Revised Code, if any)

Section 3. In accordance with Section 731.30 of the Revised Code this ordinance shall be an emergency measure necessary to protect the health, safety, welfare, and fiscal integrity of the citizens of the Village of (Name of Village) because of the prolonged inability to fill the position of clerk-treasurer with a resident elector, and this measure shall take effect and be in force from immediately after its passage by the Council of the Village of (Name of Village).

AN ORDINANCE ABOLISHING THE POSITION OF VILLAGE FISCAL OFFICER IN ACCORDANCE WITH THE PROVISIONS OF SECTION 733.262 OF THE REVISED CODE.

WHEREAS, the Council of the Village of (Name) has previously established the position of Village Fiscal Officer, and

WHEREAS, the general laws of the State of Ohio empower this Council to abolish said position, and

WHEREAS, this Council believes it to be in the best interest of the citizens and government of the village of (Name) that the position of Village Fiscal Officer be abolished.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF (NAME), STATE OF OHIO:

Section 1. As of the effective date of this ordinance the position of Village Fiscal Officer, previously created by ordinance, shall be abolished.

Section 2. As of the effective date of this ordinance, and in accordance with Section 733.262 of the Revised Code, the position of Clerk-Treasurer shall be established by operation of law, and the Mayor shall appoint a person to said position who shall have those powers and duties as provided by the Revised Code and as otherwise provided by law.

Section 3. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

AN ORDINANCE APPROVING RESIDENCY OUTSIDE THE VILLAGE OF (NAME) BY THE VILLAGE FISCAL OFFICER IN ACCORDANCE WITH SECTION 733.262 OF THE REVISED CODE

WHEREAS, the position of Village Fiscal Officer has been established, and (name of person holding position) has been appointed to such position by the Mayor and his/her appointment has been approved by the Council, in accordance with the provisions of Section 733.262, and

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WHEREAS, (name of person holding position) resides outside of the Village of (Name) and

WHEREAS, the fact that (name of person holding position) resides outside the Village of (Name) will not impair his/her ability to perform the powers, duties and functions of his position as Village Fiscal Officer, and

WHEREAS, it would create a personal hardship upon (Name of person holding position) if he/she were to be required to reside within the Village of (Name), and

WHEREAS, Section 733.262 of the Revised Code authorizes the Council to approve residency outside the village by persons holding the position of Village Fiscal Officer,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF (NAME), STATE OF OHIO:

Section 1. This Council hereby approves the residency of (Name of person holding office) outside the Village of (name) while he/she holds the position of Village Fiscal Officer.

Section 2. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

NOTE: Model or sample ordinances should be reviewed by the village legal advisor for appropriateness before adoption by the village council.

GENERAL PROVISIONS TITLE OF REVISED CODE CONTAINS INTERESTING SECTIONS RELATED TO MUNICIPALITIES

In addition to Title 7 (Municipal Corporations), other titles of the Revised Code contain sections pertaining to the affairs of statutory cities and villages. Some sections also apply to charter municipalities. Check with your legal counsel for applicability. The following section has been around for several years and was amended in H.B. 94, the all-purpose @budget bill.@

9.03 Political subdivision newsletters and other means of communication.

(A) As used in this section, "political subdivision" means any body corporate and politic, except a municipal corporation that has adopted a charter under Section 7 of Article XVIII, Ohio Constitution, and except a county that has adopted a charter under Sections 3 and 4 of Article X, Ohio Constitution, to which both of the following apply:

(1) It is responsible for governmental activities only in a geographic area smaller than the state.

(2) It is subject to the sovereign immunity of the state.

(B) Except as otherwise provided in division (C) of this section, the governing body of a political subdivision may use public funds to publish and distribute newsletters, or to use any other means, to communicate information about the plans, policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision.

(C) Except as otherwise provided in division (A)(7) of section 340.03 or division (A)(12) of section 340.033 [340.03.3] of the Revised Code, no governing body of a political subdivision shall use public funds to do any of the following:

(1) Publish, distribute, or otherwise communicate information that does any of the following:

(a) Contains defamatory, libelous, or obscene matter;

(b) Promotes alcoholic beverages, cigarettes or other tobacco products, or any illegal product, service, or activity;

(c) Promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry;

(d) Supports or opposes any labor organization or any action by, on behalf of, or against any labor organization;

(e) Supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue.

(2) Compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the purposes described in division (C)(1)(e) of this section. Division (C)(2) of this section does not prohibit the use of public funds to compensate an employee of a political subdivision for attending a public meeting to present information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue, even though the election, levy, or bond issue is discussed or debated at the meeting.

(D) Nothing in this section prohibits or restricts any political subdivision from sponsoring, participating in, or doing any of the following:

(1) Charitable or public service advertising that is not commercial in nature;

(2) Advertising of exhibitions, performances, programs, products, or services that are provided by employees of a political subdivision or are provided at or through premises owned or operated by a political subdivision;

(3) Licensing an interest in a name or mark that is owned or controlled by the political subdivision.

(E) As used in this section, "cigarettes" and "tobacco product" have the same meanings as in section 5743.01 of the Revised Code.

UPDATE ON STATE EX REL. LONG V. CARDINGTON VILLAGE COUNCIL, 92 OHIO ST.3D 54, 748 N.E.2D 58 (2001).

From *An Ohio Sunshine Laws Update Supplement* (Ohio Attorney General's web site at www.state.oh.us)

A private citizen sought to compel the village council, mayor, and clerk/treasurer to comply with requirements of the Open Meetings Act and the Public Records Act. Because those portions of the Revised Code for open meetings, public records, and the duties of a village clerk relate to the same general subject matter, the Ohio Supreme Court construed the three statutes together in reaching its decision. The Court applied the standard it created in *White v. Clinton Cty. Bd. of Commissioners*, 76 Ohio St.3d 416, 667 N.E.2d 1223 (1996), and held that neither the council's audiotapes nor the written

minutes were full and accurate. Neither the tapes nor the written minutes allowed the listener or the reader to understand and appreciate the rationale behind council's decisions. Further, council's committee meetings (for which they had not been keeping minutes) were meetings as defined in statute, and therefore, those minutes must also be full and accurate. Finally, a public body, when adjourning into executive session must state one of the specified statutory reasons for adjournment stating the purpose as personnel and finances was not sufficient. The Court granted the writ and awarded attorneys fees to the citizen.

On December 12, 2001 the Court awarded \$17,623.75 in attorney's fees to the private citizen. State ex rel. Long v. Cardington Village Council, 93 Ohio St.3d 1230 (2001).

Full text of Supreme Court decisions are available on the internet at www.state.oh.us.

RECENT OPINION OF THE ETHICS COMMISSION OF INTEREST TO PUBLIC OFFICIALS AND EMPLOYEES

2001-08 (1) Division (F) of Section 102.03 and Division (A) of Section 2921.43 of the Revised Code do not prohibit a company from promising or giving a uniform discount on its goods or services to a large class of individuals comprised of public officials and employees, as described in this opinion, even if some members of the class serve public agencies that either purchase goods and services from, or regulate, the company;

(2) Division (F) of Section 102.03 of the Revised Code prohibits a company that does business with, or is regulated by, public agencies from promising or offering a discount on its services that is limited to individual public officials or employees who have official duties and responsibilities that affect the financial interests of the company, or which are selective, differential, or in disproportion to the benefits provided to all other public officials and employees who comprise the class, as described in this opinion, that is eligible for the discount.

The complete texts of the advisory opinions of the Ohio Ethics Commission are available on the internet at www.state.oh.us.