

OASBO

Rationale for Changes in the ORC Regarding Treasurer Liability

Proposed Amendment to HB 87

Ohio law requires that school treasurers be subject to what is known as “strict liability” when it comes to the expenditure of public funds on behalf of the school district. In other words, regardless of whether payments were made by mistake, or fraud was committed, the treasurer may be held personally liable. The Auditor of State can issue a Finding for Recovery naming the treasurer, and the treasurer’s personal assets are at risk.

We want a narrow change in law clarifying that treasurers (and other school administrators) will not be subject to financial risk (including their personal assets) when mistakes are made in making payments to teachers when such payments follow the procedure set forth by law, unless the loss results from the treasurer’s (or other school administrator’s) negligence or other wrongful act. Bottom Line ~ we’re asking for relief from “strict liability” when teacher payroll payments are made because of an error that does not result from negligence or other wrongdoing. Treasurers’ personal assets should not be at risk in this situation unless they have been negligent or have committed other wrongful acts.

The Problem:

The treasurer makes payroll payments to teachers on behalf of the district board, based on non-financial information supplied by the superintendent or his/her designee (such as verification of licensure).

- The treasurer has no authority in hiring decisions.
- Many districts have HR departments to handle verification of licensure and confirmation that the teacher holds the proper license for assigned duties.
- By law, no treasurer is required to verify the accuracy of nonfinancial information or data of the school district (except as otherwise specifically required).
- If someone forgets to renew their license or lacks proper credentials but is inadvertently hired and payroll payments made, the treasurer is the only person in the district who is financially liable.
- The employee performed the service for the district and is entitled to payment.

The Proposed Solution:

The following legislative changes to the Ohio Revised Code are proposed to reduce the financial risk of school district treasurers when improper payroll payments to teachers are made based on reliance of licensure verification information supplied by others in the district.

Proposed revisions to ORC § 3319.36:

Requirements for payment of teacher for services.

- Streamline the process for collecting and verifying teacher licenses.
- Set forth updated requirements that must be satisfied in order for a treasurer to draw a check for payments to teachers.
 - Superintendent collects the licenses and verifies the information to the treasurer/CFO.
- Clarify that neither the treasurer/CFO nor superintendent will be held financially liable for erroneous payments that comply with these requirements (absent negligence or wrongdoing).

OASBO believes it is in the best interest of the State to make the requested changes. Districts should have the opportunity to correct problems rather than staff members punished. The practice by the

Auditor of State of holding treasurers financially liable in these cases will likely have a chilling effect on districts' ability to find highly qualified individuals for the position of treasurer.

The proposed provisions in HB 705 will not prohibit the Auditor of State from issuing citations to school districts and/or working with district staff to develop improved procedures. When payments have been made by mistake to employees not properly credentialed, corrective action may be called for, however, the treasurer's (or superintendent's) personal assets should not be at risk in these cases.

Proposed revisions to ORC § 3313.31

Treasurer to perform all duties relating to moneys.

The current law establishes that a treasurer is not required to verify the accuracy of the district's nonfinancial information or data (unless otherwise required by law). It follows that a treasurer generally should not be liable for payments made in reliance on the district's nonfinancial information or data [unless the loss results from the treasurer's negligence or other wrongful act]. The proposed language inserted makes this clarification.

Proposed revisions to ORC § 3313.25

Bond of Treasurer of Board.

The language inserted in this section clarifies the scope of liability of a school district treasurer. This clarification is necessary to align a treasurer's scope of liability with a treasurer's duties under ORC § 3313.31, and in order to attract candidates to become school district treasurers.

Additional Q&A on Strict Liability:

Q: What is the history of strict liability in Ohio?

A. Under ORC § 9.39, “[a]ll public officials are liable for all public money received or collected by them or their subordinates under color of office.” This statute imposes “strict liability” on such public officials, without regard to the public official’s negligence or other wrongful act, when the official authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which an illegal expenditure is made. This statute is based on prior case law. Some Ohio supreme court judges, however, have noted the need for legislative action to enact “curative statutes” to provide reasonable and equitable relief “to the honest and basically diligent public officials.” *See State ex rel. Vill. of Linndale v. Masten*, 18 Ohio St.3d 228, 229 (Ohio 1985) (concurring opinion).

Q: What exceptions are there to strict liability?

A. The legislature has already provide some relief to strict liability in ORC § 131.18, by authorizing certain public bodies, including a board of education, to release and discharge a treasurer from all personal liability for a loss of public funds under certain circumstances, specifically, when the loss of public funds “results from fire, robbery, burglary, flood, or inability of a bank to refund public money lawfully in its possession belonging to such public funds” and provided that the loss has not resulted from the treasurer’s negligence or other wrongful act.

Q: Why add this narrowly-tailored change?

A. ORC § 3313.31 already provides that except as otherwise required by law, “no treasurer shall be required to verify the accuracy of nonfinancial information or data of the school district.” It logically follows that since a treasurer is not required to verify the accuracy of teacher licensure, the treasurer should not be held personally liable for payments made in reliance on the accuracy of this nonfinancial information, provided the treasurer complies with the legal requirements in ORC § 3131.36 which authorizes payments, and provided there has been no treasurer negligence or other wrongdoing.

Q: What safeguards exist to protect public funds in this situation?

A. At least three safeguards exist: (1) ORC § 3319.36 includes requirements that must be satisfied in order for a treasurer to draw a check for payments to teachers, and a treasurer is not protected from liability if the treasurer fails to follow these procedures; (2) under ORC § 3319.36 as revised, a treasurer is not protected from liability if an erroneous payment results from the treasurer’s negligence or other wrongdoing; and (3) the Auditor may continue to follow the Auditor’s past practice of issuing a citation to the school district for this type of violation.