

Questions and Answer Session with Desiree Forbes
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October 19, 2009

Judge Schneider introduced Desiree Forbes, Assistant Chief Legal Counsel for the Auditor of State. Several questions pertaining to the financial aspect of the transition had been posted on the task force wiki. Ms. Forbes had access to those questions and began by answering them.

Q1. Is it acceptable for the law librarian (a CLLRB employee as of 1/1/10) to manage the 2009 audit of public funds on the Association's behalf? Is it the Auditor's expectation that the historical financial records associated with the spending of statutory funds stay at the library under the CLLRB's management? Is it acceptable for the CLLRB/CLLR Fund to pay for the 2009 audit since it's an audit of statutory funds and has heretofore been paid with statutory funds? Does the CLLRB or the Association have to take any formal action to authorize the use of CLLR funds to pay for the 2009 audit? I don't see answers to any of this in the Auditor's Bulletin 2009-009 IVC

A1. The staff of the State Auditor's Office always requires access to someone who can answer questions arising during the audit. If they are auditing 2009, obviously the questions will relate mostly to 2009 transactions and events. So, if the new librarian can answer these questions, it will be OK. If not, they will need to contact the previous librarian or other resource. This circumstance is similar to when they audit any entity that had a turnover in the CFO position due to an election, etc. So, it is fairly common. They will need access to the records supporting the 2009 statements. Does this concern arise because the previous Association may continue to exist, and therefore wants to retain all records related to their stewardship period? Even if the previous association continues to exist, the Auditor's office is only auditing public money, and it would seem that the records supporting the receipt and use of public money would move to the new location (assuming there is a new location).

Q2. Auditor's Bulletin 2009-009 IV. B. seems to suggest that the end of year will be tidy with all checks issued and cleared before January 1 and the emptying out of the checking account by January 1. The reality is that some checks (payments for December bills) won't have been cashed by January 1. Why wouldn't we freeze all spending as of December 31 but wait until we reconcile the bank statement and do the December accounting before handing the county a check for the CLLR Fund? Related to that, if we get, for example, a Municipal Court check in mid-December, I have to deposit that to cover the bills that we're obligated to pay in December and to meet payroll. (Last payroll is December 29 here.) IV.B.1.b. suggests we are to send any December income to the CLLRF but that would transfer library responsibility to the CLLRB before January 1 and would leave the Association without the statutory funds to meet its financial obligations.

A2. It is assumed that the Association will close its bank account. In doing so, it seems logical that they must prepare a final reconciliation, and retain enough cash in the old account to pay outstanding checks that have not cleared. In other words, they would

reduce the amount they transfer to the new entity so they won't bounce any checks. It is still unclear how they would reconcile and/or close the account and transfer it by January 1. One suggestion would be to accept any reasonable method of achieving this. So maybe they stop writing checks the last part of December so the account will reconcile as of that pre- 12/31/09 date and transfer. If they don't have sufficient cash to pay their last few bills, they shouldn't write the checks. Instead, they should ship those invoices to the new entity as the Bulletin explains above.

Q3. I just want to verify that per Auditor of State Bulletin 2009-009 that Law Libraries are not subject to the requirement of refunding 90% of unspent fine monies to the county. My understanding is any unspent 2009 fine monies can be transferred to the new CLLRF. Is this correct?

A3. HB 420 repealed ORC § 3375.56 effective January 1, 2010. They did not enact a similar statute. This repeal becomes effective at the end of the year. The transfer was required to take place on the first Monday of the new year. As the Law Library will have transferred its funds as of this date, we interpreted this to mean that the last year for the refunding was 2008/2009.

Q4. Our library still needs to be audited for years 2008/2009. Who will be responsible for payment of that audit in 2010? Our Association will no longer exist after 2009, as we have no private monies. Our librarian would like to know if the audit for year 2009 can be prepaid, encumbered, etc.

A4. Uncodified provisions of the Bill provide that each LLA will transfer both of the following to the CLLRF on or before January 1, 2010: All "unspent fines and penalties" in the Association's general fund and retained monies fund collected pursuant to ORC §§ 3375.50 to 3375.53. Therefore, the cash payment to a county should equal the sum of the cash balances in its general and retained monies fund as of the transfer date. When the Association transfers its cash to the county, it should also send unpaid invoices to the County Auditor for encumbering and payment. If the Association must transfer all its cash, then it has no way of paying for the audit. And considering they ship the invoices for payment, it would seem that the intent is to continue financial operations seamlessly, which again infers the new entity can pay for the 2009 audit.

Q5. My library is one of the libraries that will be charged rent next year, although they are calling it a Cost Allocation Fee. Had HB 66 remained in effect the amount of rent we would have paid once the 100% mark was reached was \$98,000. After becoming a county agency, we will be charged a Cost Allocation Fee of \$128,000 -- \$30,000 more than had HB 66 remained in effect. The county policy is that they charge any agency that receives funding from outside the general fund a Cost Allocation Fee.

A5. Each county has its own policies and procedures. They do have the ability to charge each department/agency fund money to help pay for the cost of space/utilities, etc. This would not be an impermissible use of monies in the LLRF.

Q6. I have accumulated a considerable amount of sick/vacation time in 26 years of service. If I retire before 12/31/09 the money I am entitled to as a pay-out for this

time would come from the County General Fund. However, beginning on 1/1/10, salaries and benefits for Law Library employees must now come from the CLLRF, unless the Commissioners supplement this fund with money from the general fund. If I retire after 1/1/10 the sick/vacation time I have accumulated will have to be paid out of the special fund, resulting in yet another hit to the money available for services, research, materials, etc. Can the monies associated with this accumulated time through 12/31/09 be put into a trust by the County Commissioners, to be used for pay-out purposes when the time arises?

A6. If you were to retire before the end of this year, the county would be responsible for this cost. However, there does not seem to be any way to require the county to place this money in "trust" as it is not restricted for any legal purpose. The county may choose to voluntarily transfer that amount from the General Fund to the CLLRF, but as it is not legally restricted, I don't see a way to force that issue.

Q7. Can you suggest how county-wide contracting could best be handled or negotiated collectively in view of the fact that different agencies and departments currently utilize different methods (ie., bids, RFP's, sole source letters) to acquire their legal resources. Are these processes legally required or simply a matter of local policy?

A7. There are some aspects (budgetary requirements 5705.41 certifications, competitive bidding requirements, etc) that are mandated by statutes. The rest, however, is local policy.

Additional questions were then asked by members.

Q8. Will the state-wide consortium which begins operation in 2011 alleviate the competitive bidding requirement in the future?

A8. I can't say for sure – but it seems like that might be a possibility.

Q9. What happens to multiyear contracts at the end of this year? How will the auditor's office look at this situation in future audits?

A9. This depends on whether the contracts are required to be competitively bid. I am not sure if the CLLRB would then be required to re-bid the contracts or not. If the item is NOT required to be competitively bid, it will be up to the CLLRB to determine if they would like to assume the terms of the contract. If the CLLRB ratifies and fulfills the terms of the contract there should not be a problem.

Q10. It has been suggested that Associations not dissolve before their records are audited. Is that advisable?

A10. Again, the State Auditor's concern is the access to the records as discussed in Q1 above.

Q11. If the CLLRB denies a purchase request must it give a reason? Some CLLRBs are planning to deny everyone until a future date in case they inadvertently purchase materials without approval.

A11. The CLLRB is not required to give a reason for denial.

Q12. What can we do with Association CD's that do not mature until mid-2010?

A12. CD's may be able to be transferred to the county instead of an early termination.

Q13. Who signs contracts for the CLLRB? The librarian, all board members, the county fiscal officer?

A13. As discussed, this will depend on the rules/regulations adopted by the CLLRB and what degree of authority they delegate.

Q14. Will there need to be a separate certification for estimated resources for CLLRBs?

A14. It does not appear that a separate certification would be required, but rather would be included in the budgeting process for that FY.

Q15. Will Law Library employees be subject to FMLA since they will become county employees or will they be an entity unto themselves?

A15. This question is actually outside the jurisdiction of the Auditor of State, so it must be answered by a different agency.

Q16. If a multi-year contract now meets the requirements of competitive bidding will it be void? – See question 9 above for partial answer.

Q17. Section 311 of HB 420 address the transfer of an employee's sick and service time, but what about vacation? Should the employee's vacation be cashed out before 1/1/10? Can the accumulated vacation time transfer over? Since this issue is going to be one of the first the CLLRB must deal with, Judge Schneider has asked Ms. Forbes for an Auditor's Bulletin answering this question by the end of the year if possible.

A17. In looking at HB 420, I noticed that Section 311 (uncodified, I believe) provides for the disposition of unused vacation leave for the two classes. This provision appears to contemplate two separate groups of LLA employees - (1) the librarian and assistants whose received compensation pursuant to ORC § 3375.49 and (2) for all other employees of the LLA. I will consider each below.

A. Law Librarian and Assistant Compensated Pursuant to ORC § 3375.49

It appears that there is a choice in how to handle accumulated vacation leave for these employees. The Bill permits the compensation of the employee for unused vacation leave accumulated during service with the LLA. This payout would be at the final rate of pay while employed by the LLA. The caveat to this, however, is that such payout shall not exceed the maximum that a county employee is permitted to earn and accumulate under ORC § 325.19.

Alternatively, the Bill permits a credit to the employee for accrued but unused vacation leave acquired during service with the LLA. Again, the caveat to this provision is that

any such credit shall not exceed the vacation leave a county employee is permitted to earn and accumulate under ORC § 325.19.

Additionally, this section directs the LLRB to consider an employee's prior service with the LLA as service with the county for purposes of determining years of service pursuant to ORC § 325.19.

B. Other LLA Employees

The portion of Section 311 that considers other LLA employees does not provide for the same benefits. It gives the LLRB the ability to consider any part of the LLA employee's prior service with the LLA as service with the county for purposes of determining years of service pursuant to ORC § 325.19. This section does not, however, provide for payout of unused vacation leave for those employees.

I believe this answers the questions posed by the task force members. As HB 420 does provide for the disposition of accumulated vacation leave, I don't know that it would be efficient for the AOS to issue a separate technical bulletin on the matter. We will, however, audit in accordance with the provisions of HB 420.

Q18. You said that if the cllrb passes a resolution and honors multi year contracts signed by the association things should be ok. What if the county prosecutor (for example) has also signed a multi year contract w/ a vendor that does not expire until 2011. Can they continue to work under that contract and then go before the cllrb in 2011 when that contract is up for renewal? I don't want them to get some sort of citation for 2010 for not bringing that contract before the cllrb.

A18. ORC § 307.51(G) provides that after 1-1-10, no county office "shall purchase, lease, rent, operate, or contract for the use of any legal research or reference materials available in print, audio, visual, or other medium or, notwithstanding section 307.842 of the Revised Code, any equipment necessary to support the utilization of that medium without prior approval of the board."

It is my interpretation of this provision that the requirements imposed would only apply to a contract entered into after 1-1-10. Any county office that is in the middle of a multi-year contractual term for these items would be "grandfathered" in regarding this section. This section would then apply once those existing contracts have expired.

For example, if the county prosecutor's office is in the middle of a 3 year term with West as of 1-1-10, this section would not apply. The prosecutor's office would simply follow the requirements of ORC § 307.51(G) when it next seeks to contract for the provision of such services.

Q19. Is the 2% only statutory fines and penalties or should it include any money the library takes in for services (copier fees, etc) or even any general fund supplement the library might receive?

A19. Ohio Rev. Code § 3375.481 states that “each county treasurer shall deposit ... **two per cent of the funds deposited pursuant to section 307.515** ... from the **immediately preceding calendar year** into the statewide consortium of county law library resources boards fund. (emphasis added)

The statutory language refers to funds deposited pursuant to ORC § 307.515. As we know, that statute provides the framework and distribution schedule for fine and penalty moneys. There is no reference to moneys otherwise collected by or gifted to the CLLRB. As such, it would appear that the 2% only be from fine and penalty moneys.

Q20. Also according to that same section the county treasure shall deposit on or before Feb. 15 the 2%. Is that 2% of the previous year's revenue, or a projection of the upcoming year's revenue? Will we deposit 2% of 2010 revenue in Feb. 2011?

A20. Additionally, the statutory language refers to the 2% being from the immediately preceding calendar year. So, yes, it would appear that you would deposit the 2010 revenue in February of 2011.