



Ohio Revised Code Section 733.78 Violations by fiscal officers.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

(A) As used in this section, "fiscal officer" means a village fiscal officer, a village clerk-treasurer, a village clerk, a city auditor, a city treasurer or, in the case of a municipal corporation having a charter that designates an officer who, by virtue of the charter, has duties and functions similar to those of the city or village officers referred to in this section, the officer so designated by the charter.

(B)(1) If a 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 fiscal officer or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of the office of fiscal officer, a member of the legislative authority of the municipal corporation may submit a sworn affidavit alleging the violation, together with evidence supporting the allegations, to the auditor of state. The sworn affidavit 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 affidavit and the evidence. Within thirty calendar days after receiving the sworn affidavit and evidence, unless, for good cause, additional time is required, the auditor of state shall determine whether clear 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 fiscal officer and the person who initiated the sworn affidavit. If the auditor 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 fiscal officer, and the person who initiated the sworn affidavit. The findings shall include a copy of the sworn affidavit and the evidence submitted under division (B)(1) of this section.

(3)(a) The attorney general shall review the auditor of state's findings and the sworn affidavit and evidence. Within ten business days after receiving them, unless, for good cause, additional time is required, the attorney general shall determine whether clear and convincing evidence supports the



allegations. If the attorney general finds that no allegation is supported by clear and convincing evidence, the attorney general, by certified mail, shall notify the auditor of state, the fiscal officer, and the person who initiated the sworn affidavit that no complaint for the removal of the fiscal officer from public office will be filed.

(b) If the attorney general finds by clear and convincing evidence that an allegation is supported by the evidence, the attorney general, by certified mail, shall notify the auditor of state, the fiscal officer, and the person who initiated the sworn affidavit of that fact, and shall commence an action for the removal of the fiscal officer from public office under division (C) of this section.

(c) Nothing in this section is intended to limit the authority of the attorney general to enter into mediation, settlement, or resolution of any alleged violation before or following the commencement of an action under this section.

(C)(1)(a) The attorney general has a cause of action for removal of a fiscal officer who purposely, knowingly, or recklessly fails to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office of fiscal officer or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of the office of fiscal officer. Not later than forty-five days after sending a notice under division (B)(3)(b) of this section, the attorney general shall cause an action to be commenced against the fiscal officer by filing a complaint for the removal of the fiscal officer from public office. If any money is due, the attorney general shall join the sureties on the fiscal officer's bond as parties. The court of common pleas of the county in which the fiscal officer holds office has exclusive original jurisdiction of the action. The action shall proceed de novo as in the trial of a civil action. The court is not restricted to the evidence that was presented to the auditor of state and the attorney general before the action was filed. The action is governed by the Rules of Civil Procedure.

(b) If the court finds by clear and convincing evidence that the fiscal officer purposely, knowingly, or recklessly failed to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office of fiscal officer or purposely, knowingly, or recklessly committed any act expressly prohibited by law with respect to the fiscal duties of that office, the court shall issue an order removing the fiscal officer from office and any order necessary for the preservation or restitution of public funds.



(2) Except as otherwise provided in this division, an action for removal from office under this section is stayed during the pendency of any criminal action concerning a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any criminal violation in Title XXIX of the Revised Code related to conduct in office, if the person charged in the criminal action committed the violation while serving as a fiscal officer and the conduct constituting the violation was related to the duties of the office of fiscal officer or to the person's actions as the fiscal officer. The stay may be lifted upon motion of the prosecuting attorney in the related criminal action.

(3) Prior to or at the hearing, upon a showing of good cause, the court may issue an order restraining the fiscal officer from entering the fiscal officer's office and from conducting the affairs of the office pending the hearing on the complaint. If such an order is issued, the court may continue the order until the conclusion of the hearing and any appeals under this section.

(4) The legislative authority of the municipal corporation shall be responsible for the payment of reasonable attorney's fees for counsel for the fiscal officer. If judgment is entered against the fiscal officer, the court shall order the fiscal officer to reimburse the legislative authority for attorney's fees and costs up to a reasonable amount, as determined by the court.

(D) The judgment of the court is final and conclusive unless reversed, vacated, or modified on appeal. An appeal may be taken by any party, and shall proceed as in the case of appeals in civil actions and in accordance with the Rules of Appellate Procedure. Upon the filing of a notice of appeal by any party to the proceedings, the court of appeals shall hear the case as an expedited appeal under Rule 11.2 of the Rules of Appellate Procedure. The fiscal officer has the right of review or appeal to the supreme court.

(E) If a final judgment for removal from public office is entered against the fiscal officer, the office shall be deemed vacated, and the vacancy shall be filled as provided in section 733.31 of the Revised Code. Except as otherwise provided by law, an individual removed from public office under this section is not entitled to hold any public office for four years following the date of the final judgment, and is not entitled to hold any public office until any repayment or restitution required by the court is satisfied.



(F) If a municipal corporation's charter establishes a procedure for the removal of officers from office that conflicts with the removal procedure established by this section, the procedure for the removal of officers in the charter prevails.

(G) For the purposes of this section:

(1) A person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the person intends to accomplish thereby, it is the person's specific intention to engage in conduct of that nature.

(2) A person acts knowingly, regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(3) A person acts recklessly when, with heedless indifference to the consequences, the person perversely disregards a known risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person perversely disregards a known risk that such circumstances are likely to exist.

(H) The proceedings provided for in this section may be used as an alternative to the removal proceedings prescribed under sections 3.07 to 3.10 of the Revised Code or other methods of removal authorized by law.