

# Legal Implications of Written Communications

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## Introduction

- Written communication and the law
- Ohio's Public Records Act
- Financial reporting: "Dos" and "Don'ts"
- Debt-collection communication: "Dos" and "Don'ts"





## Legal Implications of Written Communication

- State and federal law govern written communication in the public sector
- Know the law or face the consequences
- Considerations for written communication
  - Document retention programs
  - Truth, accuracy and timeliness of certain disclosures and public statements
  - Collection of debts and bankruptcy



## Ohio's Public Record's Act

- Written communication is evidence
- Because of the Act, all written communication and documentation should be produced under the assumption that it will be reviewed by members of the public
- The Act applies to state, county, city, village, township, and school district units





## Ohio's Public Record's Act

- Ohio Revised Code section 149.43(B)(1) states that upon request, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours



## Ohio's Public Record's Act

- What does the Act require?
  - Upon request, and unless exempt under law, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time
  - A public office organize and maintain public records in a manner that they can be made available for inspection or copying
  - A public office have available a copy of its current records retention schedule at a location readily available to the public





## Ohio's Public Record's Act

- What is a “public record”?
  - Records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code
  - *WHAT ARE RECORDS....*



## Financial Disclosures and Reporting

- Financial disclosures and any public statements regarding the financial condition of the municipality are subject to federal securities laws
- Governing bodies:
  - Securities and Exchange Commission (“SEC”)
  - Municipal Securities Rulemaking Board (“MSRB”)





## Financial Disclosures and Reporting

- SEC purpose:
  - to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation
- The Office of Municipal Securities coordinates the SEC's municipal securities activities
  
- MSRB purpose:
  - to protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market through



## Financial Disclosures and Reporting

- MSRB governs the “dos” and “don'ts” of municipal securities
- MSRB was designed to protect investors and the public interest regarding municipal securities
- MSRB is a self-regulatory organization that is subject to oversight by the SEC





## Financial Disclosures and Reporting

- MSRB mission: to protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market through:
  - The establishment of rules for dealers and municipal advisors;
  - The collection and dissemination of market information; and
  - Market leadership, outreach and education.



## Financial Disclosures and Reporting

- Concerns regarding financial reporting
  - Financial misrepresentations
  - Timeliness of reporting
- Impact of misrepresentations and untimely reporting
  - Public relations embarrassment
  - SEC sanctions, including personal civil liability





## Financial Disclosures and Reporting

- Examples of misrepresentations and untimely reporting:
  - Harrisburg, Pennsylvania
  - Miami, Florida
- Potential sanctions
  - Cease and desist orders
  - Monetary sanctions
  - Personal civil liability



## Financial Disclosures and Reporting

- Other considerations
  - Statements made on websites and other social media will likely be considered public statements
  - Accordingly, special attention must be given to the content placed on social media





## Collection Communication

- Income taxes
- Utilities
- Court costs
- Ambulance fees



## Collection Communication

- Must be clear, concise and persuasive
- Internal collection notes should be produced with the assumption that they will be used in a court of law for collection purposes
  - Do the notes demonstrate the tax payer's acquiescence of the debt due?
  - Do the notes create an issue as to what is due?







## Collection Communication

- Collecting on debt discharged in bankruptcy
  - 11 U.S.C. section 524 prohibits collection attempts on debts discharged in bankruptcy
  - Taxes, utilities, ambulance fees, etc. are subject to discharge in bankruptcy



## Collection Communication

- Municipal income tax is discharged and therefore prohibited from being collected if the following 5 questions are answered in the **affirmative**:
  1. The tax return was FILED more than 2 years before the bankruptcy filing;
  2. The tax return was DUE more than 3 years before the bankruptcy filing;
  3. The tax liability was ASSESSED more than 240 days before the bankruptcy filing;



## Collection Communication

- Continued:
  4. The tax payer did not file a fraudulent tax return or engage in tax fraud; and
  5. A tax return was actually filed for the delinquent tax liability
- If **all five** are present the tax debt is **discharged**

## Questions?

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