

COUNCIL OF THE VILLAGE OF YELLOW SPRINGS

SPECIAL COUNCIL MEETING:

Law Director Search: Legal Team Presentations

AGENDA

IN COUNCIL CHAMBERS @ 6:00 P.M.

Wednesday, January 28, 2015

CALL TO ORDER

ROLL CALL

PRESENTATIONS

Bricker & Eckler	6:00 PM
Frost Brown Todd	7:00 PM
Coolidge Wall	8:00 PM

A 15-20 minute Executive Session will follow the first two sessions.

EXECUTIVE SESSION (9pm)

For the Purpose of Discussion of the Hiring of a Village Official.

ADJOURNMENT

The next meeting of the Council of the Village of Yellow Springs will be held at 7:00 p.m. on Monday, February 2, 2015 in Council Chambers, John Bryan Community Center, 100 Dayton Street.

The Village of Yellow Springs is committed to providing reasonable accommodations for people with disabilities. The Council meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the Village Clerk of Council's Office at 767-9126 or via e-mail at clerk@yso.com for more information.



October 24, 2014

COLUMBUS | CLEVELAND
CINCINNATI-DAYTON
MARIETTA

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VIA EMAIL AND OVERNIGHT MAIL

Patti Bates, Village Manager
Village of Yellow Springs
100 Dayton Street
Yellow Springs, Ohio 45387

RE: RFQ for Legal Services – Village of Yellow Springs, Ohio

Dear Ms. Bates:

Enclosed please find our firm's response to the Village's Request for Qualifications for Legal Services. Thank you in advance for your consideration. If you should have any questions or need additional information and/or documentation, please do not hesitate to contact us directly.

Respectfully submitted,

Marie-Joëlle C. Khouzam

David J. Lampe

Enclosure



Bricker & Eckler LLP

Proposal Prepared for The Village of Yellow Springs, Ohio

Request for Qualifications Response

Legal Services for
The Village of Yellow Springs, Ohio
October 24, 2014

5.0: Statement of Interest

Bricker & Eckler LLP is pleased to submit information about the firm's qualifications to provide legal services to the Village of Yellow Springs. Bricker & Eckler's commitment to public entities throughout Ohio began with its founding in 1945. The firm has extensive experience working with all types of Ohio political subdivisions, including the State of Ohio, counties, municipalities, villages, townships, state universities, public school districts, special improvements districts and the like. Locally, we currently provide or have recently provided legal services to Butler Township, Turtlecreek Township, Montgomery County Library, City of Grandview Heights, Beavercreek City Schools, Dayton Public Schools, Warren County Port Authority, Cincinnati Metropolitan Sewer District and the City of Dayton, among other local governmental entities.

The firm has been honored with a variety of recognitions and awards over the years. Most recently, Bricker & Eckler was one of the 20 law firms across the country to be named to The *National Law Journal's* "2013 Midsize Law Firm Hot List." The firm was also named to the 2013 "BTI Brand Elite," with rankings in the following categories: "Bet-the-Company" litigation, "Movers and Shakers" and "Tech-Savvy."

Like the Yellow Springs community, Bricker & Eckler fosters a collaborative and diverse environment, understanding the many benefits of unique perspectives and active participation across a variety of cultures, backgrounds and opinions. Our firm has a long history of promoting and supporting diversity and inclusion. Recruiting and retaining women, minorities and members of the LGBT community is of great importance to the future of our business, our clients and our communities. We strive to form a cohesive team within our firm and with our clients that supports openness and optimizes the unique strengths of individuals.

Bricker & Eckler welcomes the opportunity to provide legal counsel to the Village of Yellow Springs and commits unreservedly to provide the very finest quality of experience, dedication and service. A unique and exceptional community like Yellow Springs deserves an extraordinary partner. Our experience, our enthusiasm for the work we perform for our clients and the relationships we forge with those clients distinguishes Bricker & Eckler's team from others. If there are any questions about this proposal or additional information required regarding Bricker & Eckler's experience and qualifications, please contact Joëlle Khouzam at 614.227.2311/jkhouzam@bricker.com or David Lampe at 513.870.6561/dlampe@bricker.com.

5.1: Experience and Qualifications

About Bricker & Eckler LLP

With locations in West Chester, Columbus, Cleveland and Marietta, Bricker & Eckler is one of Ohio's leading law firms. Our attorneys serve as trusted business advisors for government agencies, health care facilities, school districts, municipalities, businesses, nonprofit organizations and individuals.

Bricker & Eckler is one of the largest public law firms in the state of Ohio, representing more than 1,000 governmental agencies, including cities, counties, school districts and housing authorities. We have dozens of attorneys who focus their practices on public law matters, including finance, governmental powers, economic development, real estate, environmental, employment/labor, construction, litigation, tax, energy and OSHA. In addition, Bricker & Eckler is a full-service law firm — education, health care, insurance, financial services, manufacturing, construction and real estate are examples of some of the other key industries we serve.

We are dedicated to providing superior client service. Clients that come to Bricker & Eckler for counsel in one particular area often experience the benefit of our full-service capabilities. We are large enough to provide effective and sophisticated counsel across a wide variety of industries and areas of practice while also delivering highly personalized service and access to our most experienced attorneys. Reflecting our Midwestern roots, the firm is recognized by clients for integrity, hard work and value for the dollar.

A complete directory of the firm's attorneys, services, up-to-date news, legislation and publications can be found online through the following outlets:

WEBSITE: www.bricker.com

TWITTER: [@BrickerLaw](https://twitter.com/BrickerLaw)

CLIENT TESTIMONIALS: www.bricker.com/testify

Operating Philosophy

Bricker & Eckler is organized into practice groups around specific areas of the law, allowing attorneys to benefit from the collective experiences and knowledge of their peers in specific practice areas. We also integrate broader, cross-disciplinary expertise through organized industry groups. Through our industry groups, we gather and share our knowledge and experience within our clients' various industries. One such group concentrates the attorneys who provide legal services to public sector clients.

Clients are the heart of our business. Being responsive and proactive in anticipating and meeting client needs and expectations is critical. We make it our business to understand each client's business objectives and then deliver legal services that help accomplish those goals. We appreciate that excellent communication with our clients is the linchpin of our collective success. Client service is about creating a partnership, earning your loyalty and becoming a trusted advisor, focusing on value from your perspective.

Our Attorneys

Bricker & Eckler employs 150 attorneys statewide, all of whom are members in good standing of the Ohio Bar. Although our attorneys are located in four cities in Ohio, we enjoy a cohesive culture where teamwork is highly valued. We invest in and utilize technologies such as video conferencing to keep us connected.

Our attorneys collaborate with one another, both within and among the various practice and industry groups. They also bring a rich assortment of experiences that complement their legal abilities. We have school law attorneys who are former teachers, Ohio Department of Education employees and social workers; construction law attorneys who are also engineers; health care attorneys who are former health care practitioners; and a tax attorney who worked for the IRS. Additionally, many of our attorneys sit on the boards of various community entities.

If Bricker & Eckler is selected to provide legal services to the Village of Yellow Springs, Joëlle Khouzam, David Lampe and Shannon Martin, partners in the firm's Public Sector industry group, will serve as the primary attorneys for all legal matters.

Marie-Joëlle C. Khouzam: Practicing labor, employment and municipal law, Joëlle is a partner with the firm's Labor & Employment group. She routinely represents employers and management in labor and employment law matters, workers' compensation and municipal law. She also helps clients with representation and defense of property owners and property managers in fair-housing discrimination cases. She was appointed as City Attorney to Grandview Heights, Ohio, in January 2006.

David J. Lampe: Practicing education, labor and employment law, David is a partner in the firm's Education group. His practice emphasizes the representation of public school districts and educational service centers on matters involving education law; public sector labor law; collective bargaining; grievance arbitration; unfair labor practice charges; employment law; harassment, discrimination and misconduct investigations; policy development; student matters; litigation; and workers' compensation.

M. Shannon Martin: Shannon is a partner in the firm's Public Finance group and focuses her practice on the general counsel, finance, real estate development and property management needs of health care and public sector clients, banks and other lending institutions, developers, and nonprofit and for-profit corporations. A resident of Greene County, Shannon is active in the community and currently serves on the Greene County Economic Development Council. She also is uniquely familiar with the Village of Yellow Springs, having served as Assistant Village Solicitor supporting John Chambers for many years prior to joining Bricker & Eckler in 2008.

Joëlle, David and Shannon will call upon support from other attorneys in the firm as needed and will coordinate and supervise the delegation of tasks and completion of the final product, ensuring that the Village of Yellow Springs always receives the best possible service. Given the depth and breadth of our experience, our specialized services can be delivered cost efficiently as the lead attorneys can delegate portions of a matter to the attorneys and assistants best qualified to perform specific tasks.

Resumes of experience and professional qualifications for the attorneys proposed to provide legal services to the Village of Yellow Springs are provided at the end of this proposal. The

resumes of experience and professional qualifications for all Bricker & Eckler attorneys can be viewed at www.bricker.com.

Scope of Services and Experience

Bricker & Eckler seeks to truly understand your organization so we can provide effective counsel tailored to meet your goals. Our philosophy is that the client comes first. We approach each situation individually and tailor our services to your unique challenges.

Our experience in various practice areas allows our firm to assist the Village of Yellow Springs with the full spectrum of legal challenges that it may encounter. Here are just a few of the issues in which we regularly assist public sector clients:

- Creating “quality contracting” bid specifications to be adopted by political subdivisions to improve construction bidder quality.
- Representing municipalities in collective bargaining negotiations with respect to its police, fire and other unionized staff.
- Serving as special counsel for townships in economic development matters, including tax increment financing.
- Serving as general counsel to a central Ohio township in land use and zoning matters.
- Assisting in the creation of the first home rule township in central Ohio.
- Serving as special counsel to the Ohio Township Association on public finance matters.
- Serving as general counsel and bond counsel for several Ohio port authorities with respect to general matters, including real estate acquisition and disposition and financing matters.
- Facilitating the creation of a new community authority and serving as bond counsel for the issuance of bonds for the acquisition and construction of road, sewer and other infrastructure improvements.
- Representing a large southwestern Ohio urban school district as bond counsel and construction counsel for a bond issue of approximately \$245 million.

General Counsel Experience

If Bricker & Eckler is selected to serve as legal counsel to the Village of Yellow Springs, Joëlle Khouzam, David Lampe and Shannon Martin, partners in the firm’s Public Sector industry group, will serve as the primary legal advisors to the Village Council, Village Manager and other department heads.

Joëlle, David and Shannon will determine how to best deploy other resources in the firm to accomplish the tasks outlined in the RFQ on behalf of the Village of Yellow Springs: responses to legal inquiries; preparation, review and proposal of legislation; public representation; representation in litigation proceedings; preparation, interpretation and implementation of ordinances; assessing compliance with ordinances; real estate and property acquisition, disposal, transfer and management; human resources issues; training; document review, drafting and approval; and representation on Planning Commission and Board of Zoning Appeals issues and regulations. In addition, Joëlle, David, Shannon or another member of the firm’s Public Sector industry group will be available to attend regularly scheduled and special meetings as requested and to provide legal analysis, advice and opinions in a timely fashion as issues arise. As appropriate, our attorneys can also participate in meetings over the phone or via teleconference in an effort to minimize travel expenses.

Public Sector Law Experience

Please find below more information about our experience relating to advising clients on ethics laws, government contracting and procurement, Public Records and Open Meetings Act, construction, public finance, real estate, land use and zoning, eminent domain and environmental law.

Ethics Law Compliance: Ohio's ethics laws prohibit public officials, including part-time board members, local officials and some unpaid appointees, from receiving certain gifts, meals or entertainment. The laws also regulate those who give the gifts or pay for the meals and entertainment of public officials. Every public official or employee and every individual corporation that provides anything to a public official should be aware of Ohio's ethics laws and related guidance.

Government Contracting and Procurement: Bricker & Eckler is experienced with the procurement and contracting laws applicable to Ohio political subdivisions. The firm has represented numerous governmental entities in procurements and sales of everything from fire engines to real estate and has helped craft and guide clients through complex RFP processes.

Public Records and Open Meetings Act: Bricker & Eckler attorneys represent clients with issues relating to public records and open meeting laws (collectively referred to as the Sunshine Laws), such as: providing counsel and assistance to ensure compliance and prompt response to public records requests, including drafting public records policies, records retention schedules and responses regarding denial of requests or redaction of records; advising on meetings held in compliance with the Open Meetings Act; advising on issues that arise after allegations of violations, including representing our clients in litigation when necessary; and counseling clients regarding Sunshine Laws practices and compliance concerns raised by the Ohio Auditor of State.

Construction: Bricker & Eckler's Construction group provides a full range of services in the construction industry, focusing its practice primarily on the representation of public owners and heavy/highway contractors, as well as health care facility owners and water and wastewater facility owners. Our attorneys act as construction counsel on all aspects of construction, including compliance with applicable statutes and administrative rules, preparing front-end construction and bidding documents, addressing bid disputes, reviewing prevailing wage issues, and resolving or litigating claims during and after construction. We have experience negotiating general contractor, construction manager at-risk and design-build agreements on projects in the private sector with values up to \$300 million. The Construction group represents school districts, libraries and other public owners on capital projects of all sizes and complexity.

Public Finance: For more than 60 years, Bricker & Eckler has worked with the State of Ohio and its political subdivisions in connection with bond transactions of all sizes for public infrastructure and development projects. Bricker & Eckler's Public Finance group is comprised of lawyers who have actively participated in numerous complex financings and the drafting of much of the applicable Ohio statutory and constitutional provisions governing bond financing in Ohio.

Each year, attorneys in Bricker & Eckler's Public Finance group work on scores of financings for dozens of public issuers across the state of Ohio. Our list of local

government bond clients continues to grow as we establish new relationships with counties, municipalities, school districts, port authorities, and other special purpose districts and authorities that come to us because of favorable recommendations from other clients (public officials) and investment bankers.

We have experience with public financings from all perspectives, having served as bond counsel, underwriter's counsel, trustee counsel, special economic development counsel, issuer's counsel, and special hospital and company counsel.

The firm's Public Finance group's familiarity with economic development and economic development financings is equally extensive. We have served as bond counsel in connection with many Department of Development, port authority, tax increment financing (TIF), special assessment, new community authority and revenue issues for various projects, including commercial, retail, office and residential projects.

On a day-to-day basis, we aid the state, cities, villages, townships, counties, school districts, libraries, universities and colleges seeking the most economical and efficient ways to finance their capital programs. Examples of typical financings include port authority bond fund revenue bonds, tax anticipation notes issued to alleviate cash flow problems encountered by townships, voted general obligation bonds issued by school districts to finance new school buildings, unvoted special assessment bonds issued by cities to finance parking facilities and street improvements, and tax-exempt leases and mortgage revenue bonds issued by counties to finance water and sewage treatment plants.

Real Estate/Land Use and Zoning: Our real estate team assists the firm's clients in all aspects of their real estate dealings, from purchase and sale to complex development projects involving site selection, rezoning, annexation, variances, building permits, public improvements, government-provided development incentives and tax credits, creative financing, land subdivision, wetlands off-sets, environmental assessments and cleanups, and more. We have also drafted township zoning legislation, particularly in response to new technologies such as cell towers and wind farms.

Eminent Domain: Bricker & Eckler has extensive experience in assisting various political subdivisions and other appropriating entities in the use of eminent domain to acquire property needed for public projects.

Environmental Law: Bricker & Eckler's hallmark in the environmental area is our knowledge, experience and relationship with environmental regulators, from the director of the Ohio Environmental Protection Agency (EPA) to the staff permitting personnel in the field. Because we have a thorough understanding of this multifaceted, complex area of law, we have established a high level of credibility and work diligently to maintain it with the agencies (both the Ohio EPA and the U.S. EPA), the governmental enforcement personnel (the Ohio Attorney General's Office and the U.S. Department of Justice) and our colleagues within the Ohio environmental bar with cases and transactions. This credibility is transferred to our clients, so they can achieve their goals when confronted with environmental challenges.

5.2: Evaluation Criteria

As one of the largest public law firms in the state of Ohio with experience representing more than 1,000 political subdivisions, Bricker & Eckler is uniquely positioned to serve as legal counsel to the Village of Yellow Springs and meets all the stated evaluation criteria outlined in the RFQ.

We will work proactively with the Village of Yellow Springs to see that its goals are properly addressed and that project requirements are delivered on time. Our depth of resources and diversity of practice areas, coupled with our experience representing publicly elected boards, enable us to be ready to handle whatever legal, contractual and personnel challenges the Village of Yellow Springs may face.

With approximately 20 attorneys whose practice is devoted exclusively to public sector law, we can provide a ready answer to nearly any question and can craft advice from a holistic perspective, anticipating potential complications and avoiding unintended adverse consequences.

Attorneys in the firm's Public Sector group have extensive experience responding to legal inquiries on behalf of government officials and local government personnel; preparing and proposing legislation; representing clients before legislative committees and other government agencies; providing counsel and advice to local governments on issues such as sovereign immunity, official immunity, open meetings and open records; providing counsel on real estate law issues that directly involve government entities; advising clients on developmental land use planning and environmental laws, rules and regulations, including experience in wetland mitigation, solid waste management and economic development law; advising political subdivisions on construction contracts; representing public sector clients during administrative personnel actions, adverse actions, grievances and employee appeals; and representing municipal governments before administrative personnel boards and state and federal agencies.

The lead attorneys specifically proposed to provide legal services to the Village of Yellow Springs, Joëlle Khouzam, David Lampe and Shannon Martin, have extensive experience relating to public sector law. Joëlle has been practicing law for more than 20 years and was appointed as City Attorney to Grandview Heights, Ohio in January 2006. David has been practicing law for nearly 15 years. Shannon has been practicing law for more than 20 years and previously served as Assistant Law Director for the City of Huber Heights, Ohio, and Assistant Village Solicitor for the Village of Yellow Springs, Ohio.

Joëlle works out of the firm's main office in Columbus, while David and Shannon work out of the firm's West Chester office. Both offices are within 60 miles of the Village of Yellow Springs, which will allow timely attention to the Village's legal needs.

5.3: Sample Correspondence

The following pages contain a memorandum discussing the open meetings and public records exception. It was used to educate incoming members to Grandview Heights City Council.

M E M O R A N D U M

TO: Members of Grandview Heights City Council

CC: Mayor DeGraw, Mr. Bowman, Department Heads, Ms. Nicodemus

FROM: Marie-Joëlle C. Khouzam

DATE: January 7, 2014

RE: Recap of Ohio Open Meetings and Public Records Laws

To assist you in handling some of the issues that come before City Council, please keep the following limitations regarding open meetings and public records in mind. Ohio's Public Records Act (O.R.C §149.43) and Open Meetings Law (O.R.C §121.22(B)(1)) have been dissected and been the subject of much litigation. In 2007, the public-records law was significantly overhauled, with significant penalty provisions for non-compliance. More recent amendments capped the sanctions, but the relevance of properly dealing with requests remains an important subject. The offices of the Ohio Attorney General and State Auditor have compiled a book on this topic, referred to as the Yellow Book or Sunshine Laws book. It is updated every year or two, because this is a complicated and ever-changing area of law. The following is a mere summary of relevant provisions. Don't hesitate to contact me if you would like more information.

Ohio's Open Meetings Act

O.R.C. §121.22(A) and (C) together state that "This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law []", and that "All meetings of any public body are declared to be public meetings open to the public at all times..." "Further, "The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section."

What is a "public body"?

A public body is any board, commission, committee or similar decision-making body of a state agency, institution or authority and any legislative authority, board, commission, committee, agency, authority or similar decision-making body of a county, township, municipal corporation, school district or other political subdivision or local public institution or any subcommittee of a public body, or any committee or subcommittee thereof. *Note:* a public office that is a "body" for public-records purposes is not necessarily a public body for purposes of the OMA.

MEMO: Members of Grandview Heights City Council Members
RE: Recap of Ohio Open Meetings and Public Records Laws
DATE: January 7, 2014
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What is a “meeting”?

A “meeting” is a **prearranged** gathering of a **majority** of the members of a public body **to discuss or conduct public business**. Where all three characteristics exist, the gathering is a meeting, regardless of how it was initiated.

What if members of the public body are not “deliberating” or “discussing” public business?

A gathering of the members of a public body is not automatically a meeting where they act only as passive observers in a ministerial fact-gathering capacity or informational session, although this subject has been the basis for litigation. A “discussion” is an exchange of words, comments or ideas. The simple presentation of information to a public body, without more, does not necessarily constitute a discussion. “Deliberation” involves the weighing and examination of reasons for and against a course of action, which is more than information gathering or fact finding. One court described the term as involving “a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision.” Keep in mind that the statute indicates that the Act is to be liberally construed.

Unlike Council’s legislative authority, quasi-judicial bodies whose purpose is to adjudicate on matters, such as the Board of Zoning Appeals, are permitted to deliberate (evaluate and resolve disputes) in private, and are thus not subject to the Open Meetings Act. As such, when a public body is acting in its quasi-judicial capacity, that public body does not have to vote publicly to adjourn for deliberations or to take action following those deliberations

Can members of a public body have conversations amongst themselves about public business without issuing a meeting notice?

Gatherings of public body members outside the traditional meeting context are difficult to characterize. Standing alone, one-on-one conversations between individual members, either in person or by telephone, do not violate the Act. However, a conference call between a majority of the members where public business is discussed is prohibited. A public body may also not circumvent the Act by scheduling back-to-back discussions of public business which, taken together, are attended by a majority of the members. Such “round-robin” or “serial” meetings may violate the Act. Members should be mindful of this within the context of back-and-forth e-mails.

MEMO: Members of Grandview Heights City Council Members
RE: Recap of Ohio Open Meetings and Public Records Laws
DATE: January 7, 2014
PAGE: 3

Do work sessions constitute "meetings" subject to the Open Meetings Act?

Yes.

Statutory Exceptions to Open Meetings (permissible Executive Sessions):

In addition to enumerated statutory exceptions, there are eight subjects that can be reviewed in a properly called executive session without violating the Act. These are enumerated in O.R.C. §121.22(G):

(1) *Personnel*: To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing.

(2) *Property*: To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

(3) *Court Action*: Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) *Collective bargaining*: Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) *Confidential Matters*: Matters required to be kept confidential by federal law or regulations or state statutes;

(6) *Security Arrangements*: Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) *Certain Hospitals' Trade Secrets*: In the case of a county, joint township, or municipal hospital as defined in the Revised Code, to consider trade secrets as defined in O.R.C. §1333.61;

MEMO: Members of Grandview Heights City Council Members
RE: Recap of Ohio Open Meetings and Public Records Laws
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(8) *Economic Development*: To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under designated state programs, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

Public Records Act

Ohio has its own "sunshine law" which is not synonymous with the federal Freedom of Information Act. As a starting point, (1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, ..." O.R.C. §149.43. "Records" include any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. As such, voicemail messages, emails, and other non-paper documents may constitute public records if all three parts of the definition are met.

There are 28 statutory exceptions to the definition of "public records". The key exceptions, abbreviated, are:

- (a) Medical records;
- (b) Records pertaining to probation, parole proceedings, and community control sanctions/post-release control sanctions;
- (c) Records pertaining to abortion consent requirements applicable to minors;
- (d) Records pertaining to adoption proceedings;
- (e) Information in a record contained in the putative father registry;

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RE: Recap of Ohio Open Meetings and Public Records Laws
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(f) Records relating to certain enumerated probate-court and health-department records arising from adoption proceedings;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records, as defined (this is an extensive and very challenging area, and one should not assume, based on the heading of this category, that all investigative law-enforcement records are immune from disclosure);

(i) Records pertaining to mediations protected by certain provisions of the Revised Code;

(j) DNA records stored in the DNA database pursuant to of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction;

(m) Intellectual property records;

(n) Donor profile records;

(o) New-hire records maintained by the department of job and family services;

(p) Certain personal information relating to safety forces personnel and other enumerated employees (although there is an exception to the exception for journalists);

...

(r) Information pertaining to the recreational activities of a minor;

(s) Records relating to investigations by a statutorily established child fatality review board;

(t) Records provided to and statements made by the executive director of a children services agency or a prosecuting attorney investigating the death of a child;

...

MEMO: Members of Grandview Heights City Council Members
RE: Recap of Ohio Open Meetings and Public Records Laws
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(v) Records the release of which is prohibited by state or federal law (the so-called "catch-all" exception, and includes a number of exceptions or privileges, such as the attorney-client privilege, income tax returns, trade secrets as defined by state law, juvenile records, SSNs, security records, etc.);

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority;

(x) Financial statements and data submitted by persons seeking housing subsidies or assistance from the Ohio housing finance agency;

...

(z) Discharges recorded with a county recorder;

...

(bb) Records relating to JobsOhio's activities.

Generally, public records requests must be responded to within a "reasonable" period. Failing to do so gives rise to potential sanctions. The City has developed a form to help narrow any search requests that are submitted, and Department Heads and certain key personnel have been trained on how to handle document requests. The persons responsible for responding to such requests have also been trained to ask the City Attorney for guidance if there is a concern that a request is overly broad or ambiguous. The City is not required to create records, summaries, or spreadsheets in response to requests, only to look at records kept in the ordinary course of its official business in responding to them.

The City has a Records Commission and a record retention and disposition policy/schedule which dictates how long records of official business are to be maintained. Ms. Nicodemus maintains a log of documents destroyed on this schedule.

Council members should keep in mind that emails reflecting official business can also constitute public records.

5.4: References

The references listed below include public sector clients for which Bricker & Eckler has been engaged as legal counsel on an extensive number and range of matters. We would be happy to provide additional references upon request.

Hon. Ray E. DeGraw, Mayor
City of Grandview Heights
Phone: 614.481.6211
Email: rdegrow@grandviewheights.org

Eugene L. Hollins (Gene), City Solicitor
City of Powell
Phone: 614.464.1211

John E. Gotherman Esq., General Counsel
Ohio Municipal League
Phone: 614.221.4349

Mario Basora, Superintendent
Yellow Springs Exempted Village School District
Phone: 937.767.6604
Email: mbasora@yssschoools.org

Dr. Karen L. Mantia, Superintendent
Lakota Local School District
Phone: 513.430.9769
Email: karen.mantia@lakotaonline.com



Contact Info

Office: Columbus
Title: Partner
Phone: 614.227.2311
Fax: 614.227.2390
Email: jkhouzam@bricker.com

Bricker & Eckler LLP

100 South Third Street
Columbus, OH 43215-4291
614.227.2300 Main
614.227.2390 Fax
www.bricker.com

Services

Employment & Labor
Employment Counseling

Marie-Joëlle C. Khouzam

Practicing labor, employment and municipal law, Joëlle C. Khouzam is a partner with Bricker's employment law group. She routinely represents employers and management in labor and employment law matters, workers' compensation, and municipal law. She also helps clients with representation and defense of property owners and property managers in fair-housing discrimination cases. She was appointed as City Attorney to Grandview Heights, Ohio in January 2006. Additionally, Joëlle serves as an appointed mediator for U.S. Equal Employment Opportunity Commission cases.

Professional & Community Activities

- Member, The Catholic Foundation Board of Directors
- President, Ohio Municipal Attorneys Association
- Member, Ohio Management Lawyers Association Steering Committee
- Former Board Member, Grandview Chamber of Commerce, Children's Hunger Alliance, St. Stephen's Community House, Members First Credit Union

Presentations & Published Works

- "Navigating the Bermuda Triangle of Leave Laws: ADAAA, FMLA, and Worker's Compensation Laws," HR Academy Webinar, Ohio Chamber of Commerce, June 11, 2014
- "Using Non-Compete, Non-Solicitation, and Non-Disclosure Agreements," HR Academy Webinar, Ohio Chamber of Commerce, July 9, 2014
- "The Family and Medical Leave Act and Other Leave Challenges," Builders Exchange, April 24, 2014
- "Workplace Investigations," Lorman Seminars, May 16, 2014
- "Administering the Family and Medical Leave Act in Ohio," Lorman Seminars, March 27, 2014
- "Employment Law Update," Lorman Seminars, December 6, 2013
- "Social Media Issues in the Workplace," Federal Bench-Bar Retreat, Ohio State Bar Association, October 25, 2013

Awards & Recognitions

- Listed, *Best Lawyers in America* (Employment Law - Management; Labor Law - Management)
- Listed, *Ohio Super Lawyers* (Corporate Counsel, Employment Law, Top 25 Women in Columbus)
- Martindale-Hubbel AV Preeminent and Bar Register of Preeminent Women Lawyers
- Grandview Chamber of Commerce established the Khouzam Workforce Development Scholarship, 2013

Awards & Recognitions - continued

- Listed, International Who's Who of Management Labour & Employment Lawyers
- Recipient, Ohio Diversity Council's 2009 Most Powerful and Influential Women in Ohio Award
- Recipient, 2008 Northwest Rotary Woman of the Year
- Recipient, Columbus Bar Association Community Service award

Bar Admissions & Activities

- Board of Governors, Columbus Bar Association, 2005 to 2009
- Past Chair of the Columbus Bar Association's Labor & Employment Law Committee and the Community Service Committee
- Member, Columbus Bar, Ohio State Bar, American Bar Associations

Education

- University of Toledo (J.D. 1991)
- Fulbright Fellowship, Universität Innsbruck in Austria
- Bowling Green State University (B.A. *cum laude* 1985)



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Services

Education
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Workers' Compensation
Higher Education Services
Public Sector

David J. Lampe

David Lampe is a partner in Bricker & Eckler's Education group who practices education, labor and employment law. His practice emphasizes the representation of public school districts and educational service centers on matters involving education law; public sector labor law; collective bargaining; grievance arbitration; unfair labor practice charges; employment law; harassment, discrimination and misconduct investigations; policy development; student matters; litigation; and workers' compensation.

David has both trained administrators and presented at education law forums across Ohio on a wide assortment of matters affecting public schools such as employee evaluation, discipline and nonrenewal; collective bargaining; harassment, discrimination and misconduct investigations; Public Records Act; Open Meetings Act; First Amendment and cyber law issues; special education; student residency, tuition, attendance and custody; student homelessness; hazing and bullying; student privacy laws; transportation; media relations; board ethics; and workers compensation.

David has also served as counsel for school boards and public agencies before the State Employment Relations Board, Office of Civil Rights, Equal Employment Opportunity Commission, Ohio Civil Rights Commission, Industrial Commission of Ohio, Board of Revisions, federal and state court, and numerous arbitrators. He has also represented private sector clients before the National Labor Relations Board.

Professional & Community Activities

- Guest lecturer, Xavier University - Masters in Education Program
- Member, Cincinnati Public School's Adopt-A-Class Program
- Member, Ohio Counsel of School Board Attorneys, National School Boards Association Council of School Attorneys

Awards & Recognitions

- Listed, *Ohio Super Lawyers*®—Rising Stars Edition in Schools & Education 2009, 2012-2013

Bar Admissions & Activities

- Member, Ohio State Bar Association
- Member, Northern Kentucky Bar Association
- Admitted, Ohio (2000), Kentucky (2001), U.S. District Court, S.D. Ohio (2001)

Education

- The Ohio State University (J.D., 2000)
- University of Oxford - United Kingdom, Comparative Law Program (1998)
- University of Cincinnati (B.B.A. in finance, 1997)



M. Shannon Martin

Shannon Martin is a partner in Bricker & Eckler's Health Care and Public Finance groups and participates in the firm's Real Estate Industry group. She is located in the Cincinnati/Dayton office.

Shannon focuses on the general counsel, finance and real estate development and property management needs of health care and public sector clients, banks and other lending institutions, developers, and non-profit and for-profit corporations. She advises clients on a full range of general governance, compliance and operational matters and has diverse transaction experience including serving as borrower's counsel, bond counsel and bank counsel on financing transactions, and as counsel to buyers, sellers, developers, utility companies and public entities on acquisition and development projects.

Shannon's health care practice includes representing hospitals and other health care organizations, including nursing, assisted living and long-term care facilities, with respect to general counsel matters, such as corporate compliance and governance for non-profits and public sector requirements for public hospitals. She also advises health care clients with respect to financing and real estate matters, including bond and other financing facilities, medical practice acquisitions and physician leasing, equipment leases and the purchase, sale and development of health care facilities.

Shannon also serves as general counsel and special counsel to port authorities, counties, municipal corporations and other political subdivisions in connection with a variety of operational and legislative matters, Public Records Act and Open Meeting Act compliance, land-use issues, public improvement projects, public-private partnerships, procurement processes and disputes, conflicts of interest, charter review and amendment processes, annexations and appropriations. Shannon also advises clients on Ohio's economic development laws, programs and resources, including use of tax increment financing, creation and operation of special improvement districts, joint economic development zones, community reinvestment areas, state and federal loan and grant programs and the like.

Shannon's real estate experience also includes work with procurement and sale of real estate, zoning, leasing, condominium creation and operation, ground leases, management contracts and the like for a wide range of developments, including office and medical office, ancillary health care facilities, industrial and commercial space, student housing, long-term care facilities and multi-use projects.

Professional & Community Activities

- Greene County Community Foundation (2004-Present), Executive Committee, Past President
- Bellbrook/Sugarcreek Education Foundation (2005-Present), Past President
- Greene County Economic Development Council (fka Retention & Expansion Committee) (2006 to present)

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Services

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Eminent Domain
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Real Estate Acquisition & Development
Zoning & Land Development
Public Finance
Economic Development
Economic Development Compliance Services
Public Sector

Professional & Community Activities - continued

- Recovery Centers, Inc. (dba Women's Recovery Center) (2006-2013), Executive Committee, Past President
- Artemis Center for Alternatives to Domestic Violence – Board of Directors (1997-2003), President (2000-2002)
- Member, NAIOP, Dayton Chapter
- Member, Ohio Hospital Association
- Member, American Health Lawyers Association
- Member, National Association of Bond Lawyers (NABL)
- Member, Dayton Area Defense Contractors Association

Presentations & Published Works

- "IRS Revenue Proclamation 97-13 and Management Contract Compensation Models," Presented January, 2014 Cincinnati and Columbus, Ohio
- "Construction Project Management, A Survey of Critical Laws You Need to Know," Presented November, 2008, Cincinnati, Ohio
- "Ohio's New Eminent Domain Laws," Presented March, 2008 to the Joint Annual Meeting of the American Association of Civil Engineers, Dayton Chapter and the Society of Military Engineers, WPAFB
- "Public Utilities and Ohio's New Eminent Domain Laws", Presented January, 2008 to the International Right of Way Association, Regional Chapter
- "Common Interest Communities: Condominiums, PUDs and Subdivisions," Presented May, 2007, University of Dayton Law School and Fall, 2006, Cincinnati, Ohio

Awards & Recognitions

- Ranked as AV Preeminent by Martindale-Hubbell
- Named, Ohio Rising Star, Ohio Super Lawyers, 2005, 2006 & 2007
- Peacekeepers Award, Artemis Center for Alternatives to Domestic Violence, 2003
- Forty Under Forty Award, *Dayton Business Journal*, 2002

Bar Admissions & Activities

- American, Ohio and Dayton Bar Associations

Education

- Cleveland Marshall College of Law (J.D., 1993)
- John Carroll University (B.A., 1990)



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Services

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Procurement
Government Audits &
Investigations
Public Records & Open Meetings
Act
Shale, Oil & Gas
Public Sector

Maria J. Armstrong

Maria Armstrong is a partner and chair of Bricker & Eckler's Regulated Industries group, which includes a number of practices such as Government Relations; Insurance & Financial Services; Energy & Public Utilities; Environment; and Green Strategies. She represents private and governmental clients in all aspects of state and local government with an emphasis on campaign finance, election law, ethics, public contracting, and renewable energy. Maria serves as legal counsel to corporations, ballot issue committees and trade associations in support or opposition to statewide ballot initiatives, constitutional amendments, and referenda. In addition, she assists numerous corporations and nonprofit entities with corporate compliance and governmental regulations relative to public ethics, lobbying and campaign finance laws. She also provides legal and service support to providers and contractors seeking to obtain, challenge, renew or modify state contracts or grant agreements.

Maria also works with clients on various aspects of advanced energy and energy efficiency developments including power purchase agreements and leasing arrangements. She structures projects to take full advantage of various financing opportunities and models and assists clients with negotiating their energy contracts. Maria has been heavily involved in Ohio's developing shale oil market, working with numerous landowners on leasing and title curative matters.

Before joining Bricker & Eckler, Maria served in several public offices, including six years in the Office of the Ohio Governor. From 1996 through 1999, Maria served as Chief Legal Counsel to the Ohio Governor George V. Voinovich and provided counsel directly to the Governor, Lieutenant Governor, and Cabinet on legal and ethical matters, high-level policy concerns, and legislative initiatives. In this capacity, Maria served as the Governor's liaison to the Attorney General, Supreme Court, Ethics Commission, and Inspector General.

Maria also served as a Commissioner of the Environmental Review Appeals Commission, where she handled all aspects of administrative appeals from the Ohio Environmental Protection Agency and other environmental agencies. As General Counsel to the Ohio Department of Administrative Services, Maria managed the legal and legislative divisions, playing a statewide policy role on administrative and procurement matters and providing legal support for construction, contracting, formal and informal bidding procedures, state procurement, personnel, collective bargaining, and equal opportunity matters. Maria started her legal career as an Assistant City Attorney and Prosecutor in the Columbus City Attorney's Office, where she served at various times in the civil, criminal and appellate divisions.

Maria practices before the Ohio Elections Commission, Ohio Ethics Commission and all administrative agencies, as well as the state and federal Courts. Her focus is on assisting clients to understand the regulatory framework and establish practical governance policies and protocols.

Professional & Community Activities

- Board Member, Huckleberry House

Professional & Community Activities - continued

- Board Member, Ohio Energy Project
- Former Board Member, Capitol Square Review and Advisory Committee
- Former Member, Senator DeWine's Federal Appointment Advisory Group

Presentations & Published Works

- "Government Affairs Quick Hits," Bricker & Eckler LLP CLE seminar, July 22, 2014
- "Hatch Act Changes Allow Most Public Employees to Seek Political Office," October 14, 2013
- "A Political Action Committee? We're Just a Few Concerned Citizens!" September 24, 2013
- "How to Navigate the ODNR Well Database and Well Locator," Ohio State Bar Association CLE, August 2013
- "Top Five Dos and Don'ts for Lobbyist Filers," August 26, 2013
- "Ohio Utilities File 10-Year Plans to Meet State's Renewable Energy Requirements," May 21, 2013
- "Ohio Ethics Commission Releases New Gift and Entertainment Guidelines for State Government Employees and Public Officials," March 6, 2013
- "Ohio Ethics Commission Releases Guidance on Revolving Door Laws and Financial Disclosure Obligations," February 14, 2013
- "I'm not the levy police, but since you asked ...," Ohio Association of School Board Officials annual meeting, 2012
- "Political Activity in a Nonprofit World," Bricker & Eckler LLP seminar, 2012
- "Lobbying Activity by Non-Profit Organizations: Benefits of 501(h) Election," Joint Legislative Ethics Commission CLE seminar, 2012
- "Running A Levy Campaign: Top 4 Complaints in School Levy Campaigns," Buckeye Association of School Administrators CLE seminar, 2012
- "Legislative Simulation," Ohio Certified Public Manager Program, The Ohio State University John Glenn School of Public Affairs, 2012
- "Building Bridges — Developing and Maintaining Relationships with the Lawyers and Law Firms that Represent the Regulated Community," Council on Governmental Ethics Laws annual national conference, 2012
- "What you need to know about oil, gas, shale, wind, and solar panel leases," Ohio School Boards Association Law School Workshop, 2012
- "Corporate Political Activity: PACs, Independent Expenditures and Other Permissible Activities," Columbus Rotary Club monthly luncheon meeting, 2012
- "Ethics in Local Government Management," Ohio/City/County Management Association Winter Conference, 2011
- Women in Public Finance (Ohio Chapter) panel presentation on Alternative Energy Financing, 2011
- Ohio General Assembly Reforms Renewable and Advanced Energy Tax Policy, July 22, 2011
- Court Rules Volunteer Transition Workgroups Are Not "Public Offices" Subject to Public Records Act, February 18, 2011
- Public- and Private-Sector Partnership Guidelines Issued by Ohio Ethics Commission, January 13, 2011

Presentations & Published Works - continued

- Public Procurement Law, An International Overview; USA-Ohio; 2011 Edition, West Publishing

Awards & Recognitions

- Listed, *Best Lawyers in America* (energy regulatory law) 2014-2015

Bar Admissions & Activities

- Member, Ohio State Bar Association
- Member, Columbus Bar Association (Green Initiative Committee)
- Ohio Supreme Court, Lawyer to Lawyer Mentor
- Member, National Council on Governmental Ethics Laws

Education

- The Ohio State University College of Law (J.D., 1987)
- The Ohio State University (B.A., 1984)



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Services

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 Eminent Domain
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 Ethics Law Compliance
 Government Contracting & Procurement
 Lobbying Compliance & Support
 Professional Responsibility/Attorney Discipline
 Real Estate Acquisition & Development
 Zoning & Land Development

William D. Mason

Bill Mason is a partner in Bricker & Eckler's Public Finance group. He focuses on assisting the Firm's public sector clients – including municipalities, counties, school districts and other governmental agencies. Bill specializes in resolving issues on behalf of public law clients through creative and innovative thinking and has assisted municipalities with economic development projects. Additionally, Bill continues to serve as Receiver and Receiver's Counsel in foreclosure and receivership actions.

Bill served as Cuyahoga County Prosecuting Attorney from 1999 to 2012. Before taking office, he was the Law Director for the City of Parma in northeast Ohio. He was previously an Assistant Prosecuting Attorney in the Cuyahoga County Prosecutor's Office. During his tenure as County Prosecutor, Bill served as President of the Ohio Prosecuting Attorneys Association.

While at Cuyahoga County, Bill created the Community Based Prosecution (CBP) Unit, which is a partnership between the Prosecutor's Office and local residents. He also created and serves as chairman of the statewide Internet Crimes Against Children Task Force.

Bill created a mortgage fraud unit and helped establish the Cuyahoga County Mortgage Fraud Task Force in response to the foreclosure crisis. He also worked with leaders to reform Cuyahoga County's criminal justice system, created the Cuyahoga County Forensic Crime Lab, and was a main proponent in getting the new charter on the ballot that led to the restructuring of Cuyahoga County's government. During his tenure, Bill streamlined his office's operations and instituted electronic records and a state-of-the-art case management system in the 320-person office.

Professional & Community Activities

- Chairman, Great Lakes Energy Development Task Force
- Former Chairman, Internet Crimes Against Children Task Force
- Former President, Ohio Prosecuting Attorneys Association
- Member, Parma Area Chamber of Commerce

Presentations & Published Works

- Co-author, *Dr. Sam Sheppard on Trial: Case Closed* (2003), Kent State University Press, a book based on his experience as prosecutor in the 2000 wrongful imprisonment lawsuit

Awards & Recognitions

- Parma Area Chamber of Commerce, 2013 Parma Pride Award
- U.S. Department of Justice first Internet Crimes Against Children Leadership Award

Education

- Cleveland-Marshall College of Law (J.D.)

Education - continued

- Kent State University (B.A.)



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Services

Public Finance
Public Sector
School Finance & Tax Levies
Education

Rebecca C. Princehorn

Becky Princehorn is a partner and chair of Bricker & Eckler's Public Finance group. Her practice emphasizes school and local government law. She served as bond counsel for the first Ohio income tax-backed school district bonds; the first publicly offered PLF-backed library notes; the first school district in the Extreme Environmental Contamination Program of the Ohio School Facilities Commission; the first Ohio general obligation bond issue with a local government fund pledge; the first Ohio municipal general obligation bond issue for housing; and the first Ohio school district minibond issue.

She also served as counsel on the formation of the first limited home rule township in central Ohio and has structured collaborations between local governments, particularly those involving school districts, and gifts to local governments. Becky is a frequent lecturer on public finance for several organizations, including the Buckeye Association of School Administrators, the Ohio School Boards Association, the Ohio Library Council, the Ohio Association of School Business Officials, the Ohio Township Association and the Ohio Prosecuting Attorneys Association. She serves as Editor of *Baldwin's Ohio Practice, Local Government Law-Township*, published by Thomson/Reuters Publishing.

Becky has led many local education organizations, including serving as co-chair of the 2009 and 2000 Operating Levy Campaigns for the Worthington City Schools.

Representative Experience

- \$92,285,000 Columbus Metropolitan Library, Library Fund Facilities Notes, Series 2012
- \$36,600,000 Canton Local School District, School Facilities Construction and Improvement Bonds, Series 2014
- \$53,975,000 Findlay City School District, School Facilities Construction and Improvement Bonds, Series 2010

Professional & Community Activities

- Board Member, Worthington Community Improvement Corporation
- Board of Trustees, Otterbein University
- Board Member, Support Ohio Schools
- Fundraising Chair, City of Worthington Income Tax Campaign, 2010
- Co-Chair, 2009 and 2000 Operating Levy Campaigns, Worthington City Schools
- Thomas Worthington High School: Activity Club (Baccalaureate Chair, 2006 - 2008), Cards, Inc., Girls Lacrosse Parents Club (President, 2006 - 2008)
- Former Chair, Board of Trustees, Worthington Educational Foundation
- Former President, Worthington City Schools PTA Council
- Former President, Thomas Worthington High School PTSO
- Former President, Kilbourne Middle School PTSA

Professional & Community Activities - continued

- Former President, Wilson Hill Elementary PTO
- Former Member, Franklin County Alcohol, Drug Addiction and Mental Health Services Board (Chair 1992 - 1994)
- Former Member, Ohio Historic Site Preservation Advisory Board
- Former Member, Board of Zoning Adjustment, City of Columbus, Ohio
- Member, Ohio Council of School Board Attorneys
- Member, Council of Educational Facility Planners International
- Member, National Association of Bond Lawyers
- Member, St. Peter's Catholic Church
- Member, Worthington McConnell Arts Center

Awards & Recognitions

- Listed, *Best Lawyers in America* (education law; public finance law) 2010-2015; Columbus Lawyer of the Year in Education Law, 2014
- Ranked as AV Preeminent by Martindale-Hubbell
- Meritorious Service Award, Worthington Board of Education, 2001
- Recipient, *Business First* "Forty Under 40" award, 1993
- Community Service Award for 1987, Columbus Bar Association
- Ohio "Young Career Woman of 1983," Ohio Federation of Business and Professional Women

Bar Admissions & Activities

- Member, Columbus Bar Association

Education

- Otterbein College (now Otterbein University) (B.A., with honors, 1978)
- University of Kansas (J.D., 1981)
- University of Kansas (Master of Public Administration, 1982)



Jack Rosati, Jr.

Jack Rosati is a partner and chair of Bricker & Eckler's Construction group. His practice emphasizes counseling and litigation related to public works, including bid disputes, construction defects and insurance coverage issues as well as project delivery systems, construction contracts and specifications. He represents a wide variety of public and private owners in Ohio on claims against construction design professionals, contractors and sureties. He has served as construction counsel on design-build projects ranging in value from \$40 million to \$320 million. He has also served as construction counsel on various "construction manager at-risk projects."

Examples of other matters include serving as construction counsel on municipal courthouse projects; representing public and private hospitals as their construction counsel; litigating claims for public libraries against contractors and bonding companies for defective work and project delays; negotiating and litigating construction claims for school districts; pursuing claims for public owners on their water and wastewater treatment plant projects; and representing county commissioners in construction claims against contractors and architects for construction delays, defective work and design defects on county jail projects. He has also conducted internal audits of construction practices for various public and private clients and advised on process improvement and cost saving best practices.

Jack has numerous reported cases. For example, he represented a consortium of public owners as amici before the Supreme Court of Ohio in the case of *Dugan & Meyers Constr. Co. v. Dept. of Admin. Serv.* (2007), 113 Ohio St.3d 226, arguing that public owners in Ohio should not be liable for additional construction costs when contractors fail to follow contractual procedures for obtaining additional time and money. He also defended a public school district in a bid dispute in the reported case of *Monarch Constr. Co. v. Ohio Sch. Facilities Commission* (2002), 150 Ohio App.3d 134, successfully arguing that public school districts have broad discretion in the bidding process to determine the responsibility of a bidder.

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Services

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Water & Wastewater
LEED Certified Resources
Public Records & Open Meetings Act
Health Care
Public Owner Representation
Mediation & Arbitration
Defective Design or Construction
Delay Claims
Implementing Energy Conservation Measures

Professional & Community Activities

- Member, Bricker & Eckler's Southeast Ohio team
- Participant, Governor's Advantage Ohio Initiative, Ohio School Facilities Commission Working Group

Presentations & Published Works

- Bricker Construction Best Ideas Series: Broken Promises, Bad Buildings
- Bidding for Public Construction Contracts: Getting Good Contractors
- County Construction & Finance Seminar
- Top Gun Construction Claims Seminar
- Buckeye Association of School Administrators School Facilities Conference

Awards & Recognitions

- Listed, *Best Lawyers in America* (construction law, construction litigation) 2007-2015; Columbus Lawyer of the Year in Litigation – Construction (2015)
- Recognized by *ChambersUSA* in Construction Law with a Band 1 ranking, 2012-2014; Band 2 ranking 2008-2011
- Listed, *Ohio Super Lawyers* 2004, 2006-2014
- Listed, Legal 500
- Member, Million Dollar Advocates Forum
- Listed, *The International Who's Who of Construction Lawyers* 2008

Bar Admissions & Activities

- Member, Columbus, Ohio State and American Bar Associations

Education

- The Ohio State University (J.D., 1989); Order of the Coif; Articles Editor, *Ohio State Law Journal*
- The Ohio State University College of Pharmacy (B.S., 1981)



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Services

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Professional Services
Zoning & Land Development
Lobbying Compliance & Support
Consumer Financial Services

Christopher N. Slagle

Partner In Charge of the firm's Marietta office, Chris Slagle is chair of Bricker & Eckler's Government Relations group and a partner in the Regulated Industries group. He practices in the areas of government relations; real estate, including land use, development and zoning; banking law and financial services; transportation and logistics; consumer finance and mortgage banking. Chris is also a member of the Firm's Shale, Oil and Gas practice as well as the Southeast Ohio Initiative.

His government relations work includes representation of political parties, candidates, statewide ballot committees, corporations and businesses, and political action committees in all aspects of election law issues and campaign finance compliance and as an advocate for them before the Ohio Election Commission, boards of elections, and in litigation in state and federal courts. Chris also represents and acts as a lobbyist for various trade associations, businesses, and corporate entities before the Ohio General Assembly.

In the real estate area, Chris represents businesses, developers, and political subdivisions in complex zoning, land use, annexation, and land development issues and appears before planning, development, and zoning commissions in zoning, variance, annexation, and related public service matters. He also represents wireless communications carriers in zoning matters and public hearings, including negotiations with law directors, city attorneys, and county prosecutors and other public officials.

Chris provides representation to banks, credit unions, and other financial institutions in various regulatory and compliance matters and to mortgage banks, lenders, and consumer finance organizations in licensure, regulatory, and compliance issues. He also provides representation to transportation and trucking companies and logistics operators in regulatory and compliance issues.

Chris is a former spokesman, speechwriter, and federal policy liaison for the former Ohio Attorney General and Ohio Auditor of State Betty D. Montgomery; a senior staff member and Director of Communications for Ohio Congressman Paul E. Gillmor; a legislative aide for former Ohio State Senator Karen L. Gillmor; and a district representative for former Ohio Congressman Frank A. Cremeans.

Professional & Community Activities

- The Breathing Association – Board of Trustees, Executive Committee
- Children's Hunger Alliance, Board of Trustees and Chair, Public Policy Committee
- Transportation Lawyers Association
- Ohio Lobbying Association, Ethics Committee
- Republican National Lawyers Association, Ohio Chapter

Presentations & Published Works

- "Government Affairs Quick Hits," Bricker & Eckler LLP CLE seminar, July 22, 2014

Awards & Recognitions

- Listed, *Ohio Super Lawyers*®—Rising Stars Edition, 2009, 2012, 2013

Bar Admissions & Activities

- Member, American, Ohio State and Columbus Bar Associations
- Bar Admissions: State of Ohio; United States Sixth Circuit Court of Appeals; United States District Court, Southern District of Ohio; United States District Court, Northern District of Ohio

Education

- Miami University (B.A., 1995)
- Capital University Law School (J.D., *magna cum laude*, 2004); Order of the Curia; Order of the Barristers; Associate Editor, *Capital University Law Review*; Moot Court Board; Winner of the 2002 Tulane University Law School National Moot Court Competition



Matthew L. Stout

Matt Stout is a partner and chair of Bricker & Eckler's Public Sector group. Matt is also a member of the Public Finance group and practices in the areas of public finance and public law, emphasizing school and local government law. He assists and advises with the documentation and issuance of general obligation and revenue bond transactions for municipalities, school districts, and other political subdivisions; assists and advises municipalities, school districts, and other political subdivisions with tax-exempt lease purchase financings; and provides general counsel assistance to political subdivisions.

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Services

Public Finance
Public Sector
Project Finance
School Finance & Tax Levies
Tax Abatement /Valuation &
School Districts

Professional & Community Activities

- Vice President, Upper Arlington Education Foundation, 2013
- Trustee, Ohio Government & Finance Officers Association, 2012-Present
- Member, Education Committee, Ohio Government & Finance Officers Association, 2007-Present
- Member, National Association of Bond Lawyers
- Head Wrestling Coach, Upper Arlington High School, 2011-Present
- President, University of Michigan Alumni Club of Central Ohio, 2000-Present
- Youth Football Coach, Upper Arlington Athletic Association Youth Football
- Graduate, City of Upper Arlington Leadership Program
- Public Address Announcer, University of Michigan Wrestling, The Ohio State University Wrestling, Westerville Central High School Football
- Internal Press Box Announcer, University of Michigan Football
- Board Member, Upper Arlington City Schools Business Advisory Council
- Director, Upper Arlington Mat Cubs Wrestling Program for youths grades one through six, 1999-2011
- Co-Chair, Columbus Bar Association Rebuilding Columbus Together Project, 2002 -2003

Bar Admissions & Activities

- Member, Columbus Bar Association

Education

- The Ohio State University (J.D., 1999)
- The Ohio State University Fisher College of Business (M.B.A., 1999)
- University of Michigan Business School (B.B.A. with distinction, 1995); Wrestling Captain and three-time letter winner



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Services

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False Claims, Qui Tam & White Collar Crimes

Jennifer A. Flint

Jennifer Flint is a member of Bricker & Eckler's Education group and participates in the firm's appellate practice group. In 2009, she became certified as an Appellate Law Specialist by the Ohio State Bar Association.

- Represents boards of education and county boards of developmental disabilities in general litigation matters, employment-related matters, including labor grievances and arbitration and employee disciplinary, contract non-renewal, and employee termination proceedings.
- Advises boards of education on matters relating to Ohio High School Athletic Association matters, including OHSAA compliance.
- Represents boards of education and other political subdivisions in eminent domain proceedings and advises local governments on other land-use issues, including school territory transfers and municipal annexation.
- Represents various clients in R.C. 2505/2506 and 119 administrative appeals, original actions (mandamus), and election law matters.
- Prepares school board policies and administrative guidelines.
- Advises school districts on matters relating to school enrollment and attendance, custody, and tuition.
- Advises school districts on public records and student records laws.
- Drafts vendor contracts and RFPs/RFQs for boards of education and other political subdivisions.
- Former Judicial Law Clerk at the 10th District Court of Appeals, drafted appellate opinions regarding civil, administrative, domestic relations and criminal law.
- Former Assistant Director of Common Cause/Ohio, drafted memoranda and supporting documents for Ohio campaign finance reform legislation; advised governing board of legal issues relating to pending legislation; and prepared testimony before legislative committees.

Professional & Community Activities

- Pro Bono guardian *ad litem*, CBA / Moritz College of Law Justice for Children Project
- Trustee, Worthington Educational Foundation
- Pro Bono Clinic for YWCA Family Center
- Member, Evening Street Elementary School PTA
- Member, Ohio Council of School Board Attorneys
- Member, National School Boards Association
- Member, Sponsorship Committee of the YWCA's 10th Anniversary Woman to Woman

Awards & Recognitions

- Listed, *Best Lawyers in America* (education law), 2010-2015

Awards & Recognitions - continued

- Listed, *Ohio Super Lawyers* - Rising Stars Edition, 2005

Bar Admissions & Activities

- Member, Ohio State Bar Association, Litigation Section
- Ohio State Bar Association Certified Specialist – Appellate Law
- Member, Ohio State and Columbus Bar Associations; Member, CBA Common Pleas, governmental agencies, admissions and employment law committees
- Fellow, Ohio State Bar Foundation
- Admitted, Ohio Supreme Court, United States District Court, Southern and Northern District of Ohio

Education

- Capital University Law School (J.D., *cum laude*, 1992); Order of the Curia
- The Ohio State University (B.A., 1988)



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Services

Public Finance
Public Sector
Economic Development
Bond & Structured Finance
Project Finance
Economic Development
Compliance Services
Shale, Oil & Gas

Christiane W. Schmenk

Chris Schmenk serves as of counsel with Bricker & Eckler's Public Finance group. She has vast public sector service having most recently been Director of the Ohio Development Services Agency. In this position she restructured the department after the launch of JobsOhio and was a member of Governor Kasich's cabinet. Before becoming director, she was chief legal counsel for the department and assisted in the formation and launch of JobsOhio.

Among her many accomplishments in these positions, she served as chair for the high-profile Third Frontier Commission, coordinating staff support while facilitating communications and consensus among an 11 member board consisting of business executives, Governor Kasich's Science and Technology Advisor and the JobsOhio CIO; led Kaizen events, achieving significant progress in the business loan incentive program, the Home Energy Assistance Program, the Home Weatherization Assistance Program and the Supportive Housing Program; and forged the overhaul of Ohio's legislation governing 166 Direct Loan Program and the Jobs Creation Tax Credit Program to streamline the approval process and improve Ohio's competitive position. From 2008 to 2011 she was the elected mayor of Marysville, Ohio.

She has also served as in-house legal counsel for Wendy's International and as Vice President for External Affairs for The Scotts Miracle-Gro Company. While at Scotts, she worked on complex legal matters including mergers and acquisitions, local and state permitting, governmental licensing and labeling, environmental health and safety issues, and employment matters. She also headed Scotts' Government Affairs team.

Professional & Community Activities

- Member, Foundation for Appalachian Ohio Board of Trustees
- Board Member, Women's Small Business Accelerator, Inc., 2013 to present
- Member, Ohio Northern University Board of Trustees, 2012-present
- Member, The Hope Center Marysville Board of Trustees, 2012-present
- President, Union County Chamber of Commerce, 2004, 2006
- Member, Memorial Hospital of Union County Board of Trustees, 2005-2007
- Member, Marysville Public Library Board of Trustees, 1995-2002

Awards & Recognitions

- Ranked as AV Preeminent by Martindale-Hubbell
- Ohio Republican Woman of the Year 2012

Education

- The Ohio State University (J.D. 1984)
- Ohio Northern University (B.A. 1981)



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Services

Bond & Structured Finance
Public Finance
Project Finance
Economic Development
Public Sector
Green Strategies
Higher Education Services
Economic Development
Compliance Services

John Caleb Bell

Caleb Bell is a member of Bricker & Eckler's Public Finance group with a practice that emphasizes structured and public finance. He has served as bond counsel, issuers' counsel, underwriters' counsel, and borrowers' counsel in a wide variety of municipal bond transactions. His clients include Ohio municipalities, counties, townships, libraries and public universities, and he regularly serves as bond and underwriters' counsel to the State of Ohio and its agencies.

He represents several Ohio port authorities, serving as bond and underwriters' counsel on taxable and tax-exempt port authority conduit and cooperative financings. He has diverse economic development experience, including service as counsel to both local governments and developers utilizing development tools such as tax increment financing (TIF), special assessments, community redevelopment area (CRA) abatements, joint economic development districts (JEDD) and zones (JEDZ), job creation tax credits, special improvement districts (SID), and new community authorities.

Caleb also practices in energy finance. He served as special energy counsel and underwriters' counsel in over \$4 billion of natural gas and electricity prepayment bonds issued during the past four years. Caleb has served as bond counsel for multiple qualified energy conservation bond (QECB) transactions. In addition, along with several other Bricker attorneys, Caleb authored Ohio's PACE financing statute and served as bond counsel for Ohio's first three issuances of PACE Bonds.

Professional & Community Activities

- Trustee, Otterbein College Board of Trustees, 2002 – 2004
- White House Intern, 2001

Presentations & Published Works

- Speaker, Ohio Treasurer of State Center for Public Investment Management (CPIM) (2011-Present)
- Author, PACE Financing Emerges As Project Financing Tool, January 10, 2012
- Contributor, *Property Assessed Clean Energy (PACE) Financing: The Ohio Story*, The Electricity Journal, January/February 2011
- Contributor, *Ohio Municipal Service*, West Publishing, 2006-Present
- Contributor, *Local Government Law – County*, West Publishing, 2007-Present
- Contributor, *Local Government Law – Township*, West Publishing, 2006-Present

Awards & Recognitions

- Listed, *Ohio Super Lawyers - Rising Stars Edition*, 2014
- Best Negotiator, *Georgetown Law*, 2005

Bar Admissions & Activities

- Member, National Association of Bond Lawyers

Bar Admissions & Activities - continued

- Member, CDFA Ohio Financing Roundtable
- Associate Member, Ohio Association of College and University Business Officers
- Member, Ohio Economic Development Association

Education

- Georgetown University Law Center (J.D., *cum laude* 2007)
- Otterbein College (B.S., economics and political science, *magna cum laude with honors*, 2004)



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Services

Energy & Public Utilities
Green Strategies
Advanced Energy
Energy Efficiency
Energy Policy & Regulatory
Ohio Power Siting Board
Shale, Oil & Gas

Dylan F. Borchers

Dylan Borchers is a member of the Bricker & Eckler Regulated Industries group with a practice focusing on energy and green strategies.

He was formerly employed in management consulting with the technology and business consulting firm Accenture where, among other things, he engaged in the lead effort for the configuration and migration of the Enterprise Project Management tool and the development of accompanying project management processes for a Department of Defense intelligence agency. Dylan was also commissioned as an Army officer and received his honorable discharge in 2008.

While in law school, Dylan worked as a legal intern with the Public Utilities Commission of Ohio and as a legal extern for the U.S. District Court, Southern District of Ohio.

Professional & Community Activities

- Recognized by the White House for community service with the Yellow Ribbon Fund, an organization supporting wounded veterans and their families
- YWCA Family Center Pro Bono Legal Clinic
- Pro Bono work through the Columbus Bar Association's Military Task Force

Presentations & Published Works

- Volatile Energy Prices and Regulatory Upheaval: Why Every Municipality Should Consider Aggregation as a Service to Residents (2013)
- Electric Aggregation and Ohio's Move to Competitive Retail Electric Markets, Ohio State Bar Association Environment, Energy and Resources Law (2013)
- Implementing State-Level Feed-In Tariffs Without Federal Preemption – How Ohio Can Use a Revitalized PURPA to Drive Renewable Energy Development, Ohio State Bar Association Environment, Energy and Resources Law Conference (2012)
- New Opportunities for State-Level Feed-In Tariffs: Using a Revitalized PURPA to Encourage Renewable Energy Development Through State Level Feed-In Tariffs, American Bar Association Section on Public Utility Communications and Transportation Law (2012)

Awards & Recognitions

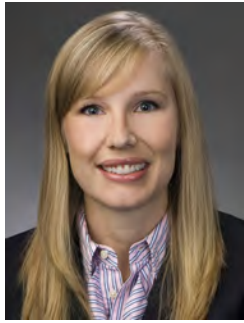
- Recipient, 2013 Environmental Law Award from the Ohio State Bar Association for his winning paper titled, "Electric Aggregation and the Story of Ohio's Move to Competitive Retail Electric Markets"
- 2012 Winner, K. William Kolbe Writing Competition, ABA Section of Public Utility, Communications and Transportation Law

Bar Admissions & Activities

- Admitted to practice in Ohio and West Virginia

Education

- Michigan State University - Institute of Public Utilities' Regulatory Studies Program for utility regulators emphasizing economic, accounting, finance and policy theories related to utility regulation (2012)
- The Ohio State University (J.D., 2013), Managing Editor, *Ohio State Journal on Dispute Resolution*; Winner, K. William Kolbe Law Student Writing Competition; Moritz Merit Scholar
- Wright State University (B.A., Political Science, *summa cum laude*, 2007) Army ROTC Distinguished Military Graduate; Senior Honors Fellow



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Services

Construction
Mechanics' Liens
Public Owner Representation
Health Care Construction
Construction Services for Higher Education
K-12 School Construction

Laura J. Bowman

Laura Bowman is a member of Bricker & Eckler's Construction Group. Her practice emphasizes construction law, competitive bidding, public sector procurement and contract issues, including the preparation of agreements with architects, construction managers, design-builders, contractors and other contract documents. She has worked on design/build and construction manager at-risk projects.

Laura works with both private and public sector clients on construction projects of all sizes. She works with clients on the initial planning for the project, selection of the project delivery system and throughout the construction project, providing guidance on compliance with Ohio statutory requirements and other laws as well as issues that may arise.

Examples of Laura's experience include representing public and private hospitals; addressing mechanics' lien claims for K-12 school projects; school and county procurement; school bus warranty issues; county courthouse projects; and municipal design-build projects.

Laura has served as an extern in the U.S. District Court for the Southern District of Ohio and as an assistant account executive for the PBS television show *American Experience*.

Professional & Community Activities

- Alumnae Admissions Representative, Columbus Wellesley Club Board

Presentations & Published Works

- "Selecting a Design-Builder and Construction Manager at-Risk," Selecting Project Delivery Models and Bidding for Public Construction Contracts in Ohio, May 2014
- "Construction Basics: Contract Documents and Statutory Requirements for School Construction," Buckeye Association of School Administrators School Facilities Conference, March 2014
- "Sole Source," Top Gun Construction Claims Seminar, November 2013
- "Design-Builder Selection Process," Selecting Project Delivery Models and Bidding for Public Construction Contracts in Ohio, May 2013

Bar Admissions & Activities

- Admitted, State of Ohio
- Admitted, U.S. District Court, Southern District of Ohio and U.S. Court of Appeals, Sixth Circuit

Education

- The Ohio State University (J.D., *cum laude*, 2012); served as Technology Editor, *Ohio State Law Journal*; earned Dean's Innovative Leadership Award; Program for Law & Leadership Student Advisory Committee

Education - continued

- Wellesley College (B.A., *cum laude*, 2006); served as Editor, *Wellesley International Relations Council Journal*



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Services

Construction

Bid Disputes

Water & Wastewater

Construction Services for Higher Education

Defective Design or Construction

Delay Claims

Public Owner Representation

Public Sector

Zoning & Land Development

Benjamin B. Hyden

Ben Hyden is a member of Bricker & Eckler's Construction group, and his office is located in the Cincinnati-Dayton office. A civil engineering graduate, Ben worked with major construction firms before entering law school and brings that experience to his law practice. His practice focuses on representing public works clients such as K-12 school districts, sewer districts, higher education, municipalities, townships and counties drafting contract documents, addressing bid disputes, construction defects, surety and delay claims. Ben also represents businesses and political subdivisions in complex zoning, land use and land development issues and appears before planning, development and zoning commissions in zoning, variance and related public service matters.

Examples of matters in which Ben has assisted clients include serving as construction counsel on a municipal wastewater treatment plant; litigation/mediation counsel for a municipal water treatment facility; training, bid dispute litigation and contract revisions for an urban sewer district; litigation/mediation counsel for a university medical building in a claim against an architect/engineer for defective design; litigation/mediation counsel for an urban school district on several of its buildings related to either defective construction, design or both; and litigation/mediation counsel for a township fire station.

Presentations & Published Works

- "Comparison of Single Prime, CMAR and Design-Build Delivery Models," Bricker & Eckler LLP Educational Lunch Program, July 2013
- "Addressing Defective Work," Tenth Annual "Top Gun," November 2012
- "Overview of bidding for public construction contracts," 4th Annual Bidding Program, March 2012
- "Changes to Prevailing Wage Laws," Ninth Annual "Top Gun," November 2011
- "Addressing Defective Work," Ninth Annual "Top Gun," November 2011
- "Common Mistakes in the Bidding and Administration of Ohio Public Construction Projects," June 2011
- February 2011, "Bidding for Public Construction Contracts"
- November 2010, Eighth Annual "Top Gun"
- "Selecting Good Contract Documents," Bricker & Eckler LLP Educational Lunch Program, October 2010
- "Construction Claims Lunch Program," Bricker & Eckler LLP Educational Lunch Program, May 2010
- "Roof and Wall Systems," Bricker & Eckler LLP Educational Lunch Program, June 2010
- April 2010, "Bidding for Public Construction Contracts"
- "Getting Good Contractors on Public Construction Projects," Bricker & Eckler LLP, February 2010

Presentations & Published Works - continued

- November 2009, Seventh Annual "Top Gun"
- "Starting Your Own Firm," AIA Ohio Valley Regional Convention, October 2009
- Surety bonds lunch presentation, May 2009
- BASA School Facilities Conference, "Broken Promises Bad Buildings," March 2009
- BASA School Facilities Conference, "Construction Project Documentation and Closeout Best Practices," March 2009
- February 2009, "Public Bidding Seminar"
- November 2008, Sixth Annual "Top Gun"
- August 2008, Rejecting Bad Bidders
- February 2008, Design Professionals' Best Ideas – Roundtable
- November 2007, Fifth Annual "Top Gun"
- October 2007, Project Documentation
- April 2007, Roundtable Wrap-Up
- March 2007, Contractors' Best Ideas – Roundtable
- January 2007, Owners' Best Ideas - Roundtable

Bar Admissions & Activities

- Member, Ohio State, Cincinnati, and Northern Kentucky Bar Associations
- Admitted, State of Ohio; State of Kentucky

Education

- Salmon P. Chase College of Law (J.D. cum laude 2008)
- University of Kentucky (B.S. civil engineering, 2000)



Robert F. McCarthy

Rob McCarthy is a member of Bricker & Eckler's Public Finance group. He represents governmental entities, nonprofit organizations and financial institutions in connection with municipal bond transactions. Rob also provides general counsel representation with respect to various issues of public law, drawing upon his prior experience as a law clerk to Justice Yvette McGee Brown on the Supreme Court of Ohio and as an assistant attorney general and legal advisor to Ohio Attorney General Richard Cordray.

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Services

Public Finance
Economic Development
Bond & Structured Finance
Economic Development
Compliance Services
Public Sector

Bar Admissions & Activities

- Member, Ohio State Bar Association
- Member, National Association of Bond Lawyers

Education

- The Ohio State University (J.D. 2008) Articles Editor, *Ohio State Law Journal*; recipient of Moritz Merit Scholarship
- Harvard University (B.A. with honors 2002) President, Institute of Politics, a student center and memorial to President John F. Kennedy



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Services

Real Estate

Nicklaus J. Reis

Nick joins Bricker & Eckler with a solid background in real estate law having practiced at a boutique firm specializing in real estate and development transactions. Nick counsels business owners, entrepreneurs, residential and commercial real estate developers, financial institutions, and commercial landlords and tenants. His practice focuses on real property sales and acquisitions, commercial leasing, zoning and annexation, commercial and residential development, purchase and sale of company interests and assets, and borrower and lender representation in construction financing.

Professional & Community Activities

- Member, Dominican Sisters of Peace Economic Council

Bar Admissions & Activities

- Member, American Bar Association
- Member, Columbus Bar Association
- Member, Ohio State Bar Association

Education

- The Ohio State University (J.D., 2011) Senior Editor, *I/S: A Journal of Law and Policy for the Information Society*
- University of Notre Dame (B.S., Science Preprofessional Studies, 2005)



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Services

Government Relations
Campaign Finance Compliance
Elections & Ballot Issues
Compliance
Ethics Law Compliance
Lobbying Compliance & Support
Public Records & Open Meetings
Act
Government Contracting &
Procurement

Marjorie J. Yano

Marjorie Yano is a member of Bricker & Eckler's Regulated Industries group. Prior to joining the firm, she worked for the Ohio House of Representatives providing legal counsel to several committees including the House Judiciary, House Commerce, Labor & Technology, and House Finance Sub-Committee on Higher Education. Her knowledge of public policy and Ohio law stems back to posts as a fellow with the Ohio Legislative Service Commission.

A two-time graduate of The Ohio State University, Marjorie earned her law degree from the Moritz College of Law and her Master of Arts in Public Policy and Management from the John Glenn School of Public Affairs. During law school, she spent a year as the editor-in-chief of *I/S: A Journal of Law and Policy for the Information Society*. Marjorie also holds a Bachelor's degree in History and Political Science from Amherst College in Massachusetts.

Outside of work, Marjorie volunteers for Local Matters, a not-for-profit organization in central Ohio working to ensure access to healthful, affordable, and sustainably grown food. She enjoys running and participates in marathons and triathlons.

Professional & Community Activities

- Volunteer, Reading Buddies Program of Columbus Metropolitan Library
- Volunteer, Nationwide Better Health Columbus Marathon
- Graduate, YWCA Chase Gen-Y Leadership, 2013
- Volunteer, Local Matters
- Member and Elder, Broad Street Presbyterian Church in Columbus

Presentations & Published Works

- "Government Affairs Quick Hits," Bricker & Eckler LLP CLE seminar, July 22, 2014
- *Come Fly The (Unfriendly?) Skies: Negotiating Passenger Name Record Agreements Between the United States and European Union*, 5 ISJLP 479, 2010
- "Religion and the Women's Suffrage Movement," Honors These for Amherst College History Department, Mosely Prize for Writing in Religion 2007
- "Rwanda Genocide," *The Concord Review* 13:4, Summer 2003

Bar Admissions & Activities

- Member, Columbus Bar Association

Education

- The Ohio State University College of Law (J.D., 2010); Editor-in-Chief, *I/S: A Journal of Law and Policy for the Information Society*

Education - continued

- The Ohio State University John Glenn School of Public Affairs (M.A. in Public Policy Management, 2010)
- Amherst College (B.A., *cum laude*, in History and Political Science, 2007)
- University of St. Andrews, (Semester Abroad in Scotland, 2006)



Village of Yellow Springs

RFQ for Legal Services

The information contained herein is considered confidential and proprietary to Frost Brown Todd LLC. These materials have been prepared by Frost Brown Todd to provide information about the services we offer to our clients. Please consider these materials to be confidential and proprietary, subject, of course, to Ohio Public Record Laws. Readers should not act or refrain from acting based upon this information without consulting an attorney. These materials are not legal advice and transmission or receipt of this information does not create an attorney-client relationship.

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October 24, 2014

Patti Bates, Village Manager
Village of Yellow Springs, Ohio
100 Dayton Street
Yellow Springs, OH 45387

Re: Request for Qualifications

Dear Ms. Bates:

Frost Brown Todd LLC ("FBT") is pleased to present this proposal to the Village of Yellow Springs ("Village") in response to your RFQ. FBT considers itself to be the ideal candidate to serve as Village Solicitor based on our attorneys' extensive experience and depth of knowledge not only within our Government Services practice group, but also in such other practice groups as Public Finance, Labor and Employment, Environmental, etc. which puts us in a unique position to be able to address virtually any legal issues that the Village may encounter. As noted in our response, our Government Service practice group, which has Ohio offices in Columbus, West Chester, and Cincinnati, currently provides legal services to villages, cities, townships, school districts and a host of quasi-governmental entities throughout the state.

Specifically, we serve as Solicitor/Law Director/City Attorney to a variety of home rule charter and statutory municipalities in Central and Southern Ohio. The hallmark of our representation is to work closely with the Mayor, Manager, Staff and Council to foster a seamless working relationship which brings to the table all the resources of a large firm, as well as fostering a close working relationship as would be typical with an in-house counsel. In doing so, our focus is always on having a clear understanding of the needs and desires of the municipality, while providing state-of-the art legal counsel, with a constant focus on risk management and most importantly, the ability to recommend creative solutions in order to get the job done.

In doing so, we hold ourselves to the highest standards of integrity, both as to the public and the City, with the understanding that the governmental process should be open and transparent, in an environment that welcomes and encourages citizen input and participation.

We are also very sensitive as to legal fees and costs and utilize technology to the utmost extent in order to not only work efficiently, but also to provide the highest level of service in a cost-effective manner. Hourly rates for our partners, associates, and legal assistants are based on expertise and experience. However, for public sector clients, we typically utilize lower blended rates, or flat fee retainers. The bottom line is that we can offer a flexible fee structure to meet the Village needs.

Accordingly, we have submitted the attached RFQ for your consideration and very much look forward to the opportunity to meet with you, the Mayor and Council as this process moves forward. Thank you on behalf of myself and FBT for this opportunity.

Sincerely,

A handwritten signature in blue ink that reads "M H Banchevsky".

Mitchell H. Banchevsky, Member

Frost Brown Todd LLC

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Facsimile: (614) 464-1737

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Mitchell H. Banchefsky



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PRACTICE AREAS

Government Services

CONCENTRATIONS

Municipal Law
School Law
Real Estate

BAR MEMBERSHIPS

Ohio

COURTS

United States District Court -
Northern District of Ohio
United States District Court -
Southern District of Ohio

EDUCATION

Capital University Law School, J.D.,
1983
The Ohio State University, B.A., 1977

Mitch's practice focuses on Government Services including such areas as municipal and school law, annexation, administrative appeals, public infrastructure, contract issues and disputes, real estate taxation, advancement from village to city status, economic development, litigation and civil rights complaints, unemployment compensation, zoning and land use, public records and open meetings, real estate, drafting and advice related to proposed legislation, intergovernmental relationships, and public-private partnerships, eminent domain, competitive bidding, public sector construction, risk management, litigation, election issues, drafting home rule charters, environmental matters, telecommunications (fiber networks, right-of-way, cellular towers), law enforcement and municipal prosecution, code enforcement and nuisance abatement, software licensing agreements, peddlers and solicitors regulation, form based zoning codes, development agreements, sale and lease of public property, professional service agreements, and compliance with Federal Laws such as the Affordable Health Care Act.

Mitch currently serves as Law Director for the City of New Albany (City), the Village of Marble Cliff and assistant Law Director for the City of Pickerington, as well as counsel to the Circleville Charter Commission.

Representative Matters

Successfully represented the Village of New Albany in municipal election law litigation brought by an unsuccessful candidate for Village Counsel.

State ex rel. Richard Justman v. Nancy Ferguson, et al. Franklin County Common Pleas Court Case Number 05 CV 014643 (2005) Judge Reece

Participated in defending the City regarding this 1983 civil rights case in Federal District Court alleging excessive use of force. (agreed settlement).

Duggan v. Village of New Albany 2:2008cv00814 SD Ohio (August 25, 2008)

Represented the City of Athens in the successful defense of Zoning and Development regulations regarding a major residential/golf community development.

The Villas of High Pointe Village, LLC v. City of Athens, Case No. 2:06-cv-966 (S.D.Ohio December 27, 2006)

Participated in the representation of the City of Dublin regarding a series of eminent domain cases related to the completion of a missing link in Muirfield Drive.

Holding Corporation of Ohio v. City of Dublin, et al. 93APE10-1503 (May 12, 1994)

Participated in representing the City of Dublin in a case ultimately decided by the Ohio Supreme Court which allowed townships to expand across county lines, which in this case enabled the city to provide a uniform level of Emergency Medical Service.

The State, ex rel. City of Dublin v. Delaware County Board of Commissioners, et al. No. 90-2394 submitted June 4, 1991, decided October 9, 1991

Represented the Reynoldsburg City School District Board of Education in numerous real estate tax valuation matters at the Boards of Revision, Board of Tax Appeals and Ohio Supreme Court and the acquisition of new school sites via eminent domain.

Represented American Township in litigation involving the conversion of a private fire department to a Township Fire Department.

Elida Community Fire Co. v Bassinger as Trustee of American Township, Paul, et al. CV 2007 0560 Allan County Common Pleas Court (2007)

Served as counsel to the New Albany, Dublin, Johnstown, Newark and currently, the Circleville Charter Commissions.

Successfully defended the Reynoldsburg City School District Board of Education in a case involving selection of water and sewer service provider.

Southwest Licking Community Water & Sewer District v. Board of Education, Reynoldsburg City School District, et al. 2010 C.A. 00006 Fifth Dist. Ct. of Appeals, Licking County

Successfully represented the City of New Albany as co-counsel to resolve building, zoning and sanitary code violations.

The City of New Albany, Ohio, et al. v. Lawrence & Rowena Wickline, et al. 2013 EVH 1060097 Franklin County Municipal Court, Environmental Division

Successfully represented the City of New Albany as co-counsel by having the City dismissed from this school-related litigation.

Watkins v. New Albany Plain Local Schools, et al. 2:2008cv00134 (SD Ohio February 11, 2008)

Highlights & Recognitions

In 2011, Mitch was named "Columbus, Ohio Municipal Lawyer of the year" by *Best Lawyers*"

The Best Lawyers in America®, 2012-2015

Memberships & Affiliations

Columbus Bar Association

Ohio Municipal Attorneys Association

International Municipal Attorneys Association

Vice President, Hannah Neil Development Foundation Board

Volunteer New Albany Habitat for Humanity

State of Ohio Victims of Crime Compensation Board

FBT Publications

October 10, 2014

Ohio Supreme Court upholds ability to challenge breath-analyzer results
Legal update

October 22, 2013

Ohio Legislature Creates Additional Exception to the Open Meeting Law
Under R.C. 121.22

Non-FBT Publications And Events

Frequent speaker on public sector issues such as Municipal Liability, Land Use and Zoning, Home Rule, Construction Law, Township/City Transition, Mayors Court Magistrate Training, Seminars for Newly Elected Officials, Law Enforcement Training and Case Law Updates, Municipal Board and Commission Training, Concealed Carry Amendments before the Ohio Senate

Philip K. Hartmann



Member

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PRACTICE AREAS

Government Services
Land Use and Zoning
Litigation
Real Estate

BAR MEMBERSHIPS

Ohio

COURTS

United States Court of Appeals for the Sixth Circuit
United States District Court - Southern District of Ohio

EDUCATION

The Ohio State University Moritz College of Law, J.D., 1992
Capital University, Cum Laude, B.A., 1989

Phil serves his clients in the areas of land use and zoning, eminent domain, real estate acquisition, annexation, home rule charter drafting, economic development and administrative appeals. He counsels a wide-variety of clients from Cities and Villages, traditional and charter school districts, to private sector clients. Phil also serves as Law Director for the City of Pickerington counseling the City on day to day matters.

Prior to joining the firm, Phil was the co-chair of the Public Law Practice Group at a large law firm in Columbus.

Highlights & Recognitions

AV Peer Review Rated, *Martindale-Hubbell*®

Nonprofit Excellence Award, Ohio House of Representatives, 2012

Ohio Super Lawyers Rising Stars® 2005, 2006

Memberships & Affiliations

Ohio Municipal Attorneys Association, Vice President 2013

International Municipal Lawyer Association

American Bar Association

American Planning Association

Ohio State Bar Association

Ohio Municipal League

Ohio Planning Association

Ohio City Manager Association

Columbus Bar Association

FBT Publications

June 17, 2014

Ohio Supreme Court Upholds City Curfews in Public Parks

June 4, 2014

New Ohio Senate Bill seeks to severely limit the use of traffic cameras
Legal Update

February 26, 2014

Proposed Ohio Legislation Expands the Power to Issue Investigative
Subpoenas to City Law Departments
Legal Update

Civic & Charitable Organizations

Cancer Support Community, Board of Trustees

Pickerington Chamber of Commerce, Member

Parkview at Goodale Park Condominiums, President Board of Trustees

Parkview at Goodale Park Condominiums, Former Board of Trustees

Columbus Bar Association Mentoring Program, Former Mentor

Firstlink, Inc., Former Board of Trustees

Ronald McDonald House Charities, Former Young Professional Board

The Wellness Community of Greater Columbus, Former Board of Trustees

Bexley Architectural Review Board, Former Member

Bexley Board of Zoning Appeals, Former Member

Non-FBT Publications And Events

"Liability of Municipalities and Municipal Officials," Ohio Municipal League,
Newly Elected Council Seminar, March 2014.

Moderator for the Ohio Municipal Attorney Association Winter Law Seminar,
Dublin, Ohio, December 13, 2013.

"Case Law Update" Ohio Municipal Attorney Association Winter Law
Seminar, Dublin, Ohio, December 13, 2013.

"Public Private Partnerships" International Municipal Lawyers Association -
IMLA Annual Conference, San Francisco, California, September 30, 2013.

"Social Networking: Challenges for Municipalities," Ohio Municipal League -
OML Annual Conference, Columbus, Ohio, September 26, 2013.

"Social Media Issues for City Officials," The Mayor's Association of Ohio Annual Conference, Canton Ohio, June 5, 2013.

"Eminent Domain: Strategies and Tactics in Right-of-way Acquisition and Eminent Domain Litigation," Presenter, International Right of Way Association, Plain City, Ohio, October 26, 2012.

"Open Meetings and Public Records Law," OML Newly Elected Council Members Seminar, March 2012.

"Eminent Domain: Processes and Pitfalls," Co-Presenter, Ohio State Bar Association, Columbus, Ohio, March 9, 2011.

Response to Evaluation Criteria

4.0 Demonstrate that respondent is a current member in good standing of the State Bar of Ohio and maintains a local office in proximity to the Village to allow appropriate responsiveness.

FBT confirms that all attorneys who would work on matters related to the Village of Yellow Springs are current members in good standing of the State Bar of Ohio. Mitch Banchefsky was admitted to the Ohio Bar on 5/9/83, and Phil Hartmann was admitted to the Ohio Bar on 11/9/92. Our team members are located in our West Chester, OH and Columbus, OH offices and are within a one hour drive of Yellow Springs.

4.1 Possess at least 15 years of legal experience with at least 5 years of experience representing a government entity similar to Yellow Springs, Ohio (a chartered municipal village) in a manner that demonstrates the respondents' trustworthiness and adherence to high ethical standards.

Mitch has been practicing law for 31 years and has represented the following public entities for more than five years:

- City of Dublin, Assistant Law Director, 20 years
- City of New Albany, Law Director, 16 years
- Village of Marble Cliff, Law Director, 16 years
- City of Pickerington, Assistant Law Director, 10 years

Phil has been practicing law for 22 years and has represented the following public entities for more than five years:

- City of Dublin, Assistant Law Director, 16 years
- City of Pickerington, Law Director, 10 years
- City of Grove City, Special Counsel on all Eminent Domain and real estate acquisitions, 6 years

References of clients of each of these individuals are available in the references section of this proposal.

4.2 Possess a proven track record for delivering project requirements on time.

FBT's Yellow Springs team would commit to being available on an as-needed basis and making every effort to return correspondence within one business day. While we propose that Mitch and Phil serve as lead counsel for the Village, we have a group of approximately 40 individuals in our Government Services Practice Group who are available to assist as necessary. Having the resources of one of the premier public sector legal teams in our region at our fingertips allows us to provide project requirements in a timely manner. More information about this group can be found at <http://www.frostbrowntodd.com/services-practices-government-services.html>.

At the onset of a project, we will determine likely needs, including staffing and timelines. This approach will allow us to communicate with the Village and establish an understanding of the project requirements. We favor a lean staffing model in which many projects are handled by a single lawyer who becomes intimately familiar with the facts and laws relevant to the project. This

approach reduces costs and creates a close working relationship with the Village Manager, Council and staff. In some projects, a staffing assessment indicates that more than one attorney will be needed, and a team of lawyers must be assembled. Our team includes qualified associates, paralegals and project assistants who can capably handle work requiring different levels of expertise in a cost-efficient manner. All matters are handled by or overseen by the Village solicitor.

4.3 Possess experience and an ability to effectively represent a publicly elected board.

Please see response under section 4.4 below.

4.4 Possess experience responding to legal inquiries on behalf of government officials and local government personnel.

In response to items 4.3 and 4.4, FBT and its attorneys represent numerous governmental entities in Ohio. In fact, we have extensive experience representing municipalities of all sizes and demographics including the following:

- Villages
- Cities
- Townships
- Counties
- Public Officials
- School Districts and School Corporations
- Private and Public Colleges and Universities
- Water Districts and Fire Districts
- Governmental Entity Risk Pools and Insurers
- Community Improvement Corporations
- Charter Commissions

In addition to serving as special counsel to numerous villages, cities and public entities throughout the State, we serve as solicitor, law director or city attorney for the following communities:

- Village of Marble Cliff (Statutory)
- Village of Minerva Park (Statutory)
- Village of Indian Hill (Charter)
- City of New Albany (Charter)
- City of Dublin (Charter)
- City of Powell (Charter)
- City of Pickerington (Charter)
- City of New Albany (Charter)
- City of Canal Winchester (Charter)
- Grove City (Charter)

4.5 Possess experience preparing and proposing legislation, and representing the Village before legislative committees and other government agencies.

We provide a full level of service as would be provided by an in-house village solicitor. This includes a broad array of services in the area of licensing, regulatory and legislative drafting. We

assist with planning, drafting of forms, legislation, resolutions, and ordinances, investigations, prosecution of violations, and defense of claims, whether in litigation or in the administrative process. We also offer routine advice and guidance before, during and after the process, in all areas of municipal law.

4.6 Possess experience providing counsel and advice to local government on issues including sovereign immunity, official immunity, open meetings and open records.

As solicitor, law director and city attorney for numerous communities, FBT's team of government services attorneys deals with all of these issues on a daily basis. We have extensive experience in defending municipalities as public officials in litigation involving the defense of sovereign immunity pursuant to RC 2744. However, we would much rather avoid litigation via a constant emphasis on risk management in all aspects of municipal government from annexation to zoning and everything in between.

4.7 Possess experience in real estate law that directly involves government entities, including experience in right of way acquisition and eminent domain.

FBT's team of government services attorneys routinely handle real estate acquisition, annexation, as well as economic development matters which can involve negotiation and acquisition of real estate, rights-of-way and if necessary eminent domain. Mitch Banchefsky and Phil Hartmann have extensive experience in guiding municipalities and their consultants through the project planning stage, negotiations, retaining and working with appraisers, and if necessary eminent domain legislation and litigation.

The firm's eminent domain and inverse condemnation attorneys comprise some of the most experienced practice groups in Ohio. FBT is uniquely situated in that it represents, as general and special counsel, numerous cities and villages across Ohio. As a result of these engagements, we have had the privilege of representing public entities within the eminent domain space for decades.

Our attorneys, in the past five years alone, have successfully managed over one hundred eminent domain lawsuits. More important than case volume, though, is the quality of work and the results produced by our firm. FBT has a diverse pool of talented lawyers and staff that work within the practice and the firm has the resources and fee structures to ensure that its public sector clients are receiving the same aggressive and thoughtful advocacy that its private sector client base would.

FBT recently finished settling the final lawsuit in the Interstate 71/State Route 665 project in Grove City, Ohio. We achieved very favorable settlements in all of these cases. Our eminent domain team took cases to the brink of trial in order to force opposing parties and their legal counsel to lower demands by hundreds of thousands of dollars. As an example, in *Grove City v. David Masters et. al*, Grove City appraised the property appropriated from the Masters at \$1,193,072. The Masters property received the highest appraised value by Grove City's appraiser during the project. After intense negotiations, the parties settled for \$1,200,000. Based upon what was initially asked for by the Masters and their legal counsel, this was a substantial victory for Grove City.

In May 2013, FBT was hired by Ohio Attorney General Mike DeWine as special counsel to represent the Ohio Department of Natural Resources ("ODNR"). ONDR owns and operates Grand Lake/St. Marys, which is the largest man-made lake in the U.S. The lake is located in Mercer County, Ohio. In 1997, ODNR modified the major "spillway" which controlled lake water levels. This modification was done in response to Congress passing the Dam Safety Act. This engagement consists of representing ODNR in over 85 individual inverse condemnation cases.

FBT's Eminent Domain Practice understands the process from the inception of a project and can provide great insight during the planning process reviewing the preliminary plans in an effort to mitigate possible eminent domain cost. This has proved, over the years, to be some of the most valued counseling provided by our eminent domain attorneys who have helped save possibly thousands of dollars with minor adjustments to engineering plans to avoid damages to properties.

The Uniform Eminent Domain Act, memorialized under Chapter 163 of the Ohio Revised Code, the associated relocation regulations set forth in the Ohio Administrative Code, and the practice and procedures promulgated by the Ohio Department of Transportation must all be adhered to prior to initiating an appropriation lawsuit. Oftentimes these statutes, regulations and procedures require careful interpretation and analysis. Our lawyers are fully equipped to attack this statutory, regulatory and ODOT procedural compliance work. Our lawyers have guided public entities through the gauntlet of eminent domain compliance on major projects such as the development of Muirfield Village in Dublin, Ohio; the 33/161/Industrial Parkway interchange improvement project in Dublin, Ohio; the Central College/Johnstown Road project in New Albany; and most recently, the 71/665 interchange improvement project in Grove City, Ohio.

4.8 Possess experience in developmental land use planning and environmental laws, rules and regulations, including experience in wetland mitigation, solid waste management and economic development law.

The economic development environment is extremely competitive, and that competition seems to increase every day. Accordingly, the ability to continually streamline the development review and approval process, without compromising municipal standards or the public process, presents an ongoing challenge. The Zoning and Land Use Group at FBT has defended hundreds of zoning commission and board of zoning appeals' decisions as well as defended many constitutional challenges to zoning ordinances. Our government services attorneys' experience and expertise in the areas of land use, economic development and the zoning process enables our attorneys to work as an integral part of a team consisting of the municipal staff, the administration and the legislative authority to foster an environment of professionalism, competence and predictability, all of which translates to overall success, both in terms of good development as well as successful economic development.

Our team also serves as environmental litigation counsel, defends civil and criminal enforcement actions, counsels clients on regulatory matters, conducts audits and internal investigations and provides environmental representation on real estate and corporate transactions. Many of our lawyers hail from the very industries they now represent. With varied engineering, science and technical backgrounds, including environmental chemistry, civil and environmental engineering, chemical engineering, biology, physiology, occupational nursing and environmental health, we provide clients with an advantage in solving even the most demanding environmental issues. Our environmental team includes former legal counsel to state environmental agencies. Their federal and state connections, along with a strong knowledge of regulatory nuance and process, have helped to counsel and guide clients through numerous compliance and regulatory battles.

In short, we provide "soup to nuts" legal service to assist our municipal clients in every aspect of land use, zoning and economic development including the following:

- Drafting and/or revising and implementing zoning codes, as well as comprehensive plans.
- Working with neighboring public entities and stakeholders in order to facilitate buy-in, which in turn results in a streamlined process which fosters an environment of success.

- Assisting staff in drafting new innovative zoning codes including planned unit development zoning, form based codes, etc.
- Handling variances, conditional uses and special permits.
- Counseling municipalities as to zoning administration, best practices and risk management.
- Handling administrative appeals and zoning-related litigation, including constitutional claims.
- Assisting with subdivision approvals.
- Assisting with rezoning process.
- Handling zoning-related litigation, including administrative appeals and constitutional claims.
- Advising and defending governmental entities.
- Monitoring current issues and trends in land use law and updating clients accordingly.
- Drafting and implementing updates and modifications to comprehensive plans and zoning codes.
- Drafting comprehensive memorandum regarding food truck legislative options.
- Defense of challenged permits and alleged regulatory violations.
- Defense of government civil and criminal enforcement actions, citizen suits and toxic tort claims in federal and state court.
- Appeals of unilateral government orders and unfavorable permit decisions or denials.
- Administrative appeals before environmental agencies and boards.
- Prosecution and defense of environmental liability claims.
- Guidance through the complex maze of federal, state and local regulations.
- Environmental, health and safety auditing.
- Environmental permitting and reporting.
- Developing environmental management programs.
- Negotiations with regulatory authorities.
- Commenting on and challenging legislative and rulemaking actions.
- Overseeing and structuring site investigations and cleanups.

Specific examples of our experience in zoning and land use include the following:

- Researched and drafted zoning code revisions and complete overhauls for numerous local governments, both in urban and rural settings.
- Successfully defended multiple local government clients against highly publicized zoning permit denials involving alleged violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Represented a village in numerous zoning and land use disputes, including a publicized action brought by the ACLU over an ordinance that restricted the display of political signs. FBT serves as environmental litigation counsel, defends civil and criminal enforcement actions, counsels clients on regulatory matters, conducts audits and internal investigations and provides environmental representation on real estate and corporate transactions.

4.9 Possess experience with construction contracts for building public facilities.

FBT has negotiated on behalf of and counseled clients on a wide range of multi-million dollar construction matters, which include municipal/township projects and school related projects throughout the firm's footprint. In addition, this group has advised public clients on numerous disputes related to construction matters and related litigation.

4.10 Possess employment law experience that includes representing the government during administrative personnel actions, adverse actions, grievances and employee appeals.

We advise our public sector clients on all aspects of labor and employment law. In light of our experience working in the public sector, our attorneys know the special circumstances faced by public entities when dealing with labor and employment issues. We work to develop proactive and cost-effective solutions to the labor and employment issues public entities face on a daily basis. Our services in this area include advising in a number of areas:

- ADA, FMLA, FLSA, discrimination, harassment and whistleblower claims
- Wrongful discharge
- Civil service hearings
- EEOC and state agency proceedings
- Grievances and arbitrations
- Discipline and discharge
- Workers' compensation and unemployment compensation defense
- Due process claims
- Consultation and training

4.11 Possess experience appearing before administrative personnel boards, such as Department of Labor, Equal Employment Opportunity Commission, Bureau of Workers Compensation.

Our team has handled the defense of numerous administrative appeals under RC 2506, and both the State and Federal EEOCs as well as unemployment and worker's compensation.

4.12 Possess experience in representing municipal governments before State and Federal agencies (ex., Environmental Protection Agency, Department of Transportation, Army Corps of Engineers).

Please see responses to Section 4.8 above.

4.13 Be proactive in recognizing potential conflicts arising from emerging issues and averting negative results.

Risk management is one of the hallmarks of our municipal representation. This includes proactive training/seminars regarding ethics, public records, open meetings, land use/zoning, criminal law, case law updates and police training to name a few.

Mitchell H Banchefsky

Member

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October 24, 2014

LIABILITY ISSUES FOR MUNICIPAL OFFICIALS

Mitchell H. Banchefsky

THIS SUMMARY OF LIABILITY ISSUES FOR MUNICIPAL OFFICIALS IS PROVIDED AS A “BEST PRACTICES” GUIDE AND IS DESIGNED TO ASSIST MUNICIPAL OFFICIALS WITH IDENTIFYING AND UNDERSTANDING LIABILITY ISSUES. MUNICIPAL OFFICIALS ARE ENCOURAGED TO CONSULT WITH THEIR LAW DIRECTOR ON SPECIFIC ISSUES AS THEY ARISE.

I. OHIO REVISED CODE CHAPTER 2744

A. General Rule of Immunity. A political subdivision, generally, is not liable for damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.¹

1. A “governmental function” is a function that is imposed upon a political subdivision as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement, a function that is for the common good of all citizens of the state, or a function that promotes or preserves the public peace, health, safety, or welfare and involves activities that are not engaged in or not customarily engaged in by nongovernmental persons and not defined as a “proprietary function” by the Ohio General Assembly.²

a) Examples of governmental functions include the provision or nonprovision of police, fire, emergency medical, and ambulance services, the regulation of the use of, and the maintenance a

¹ Ohio Revised Code §2744.02(A)(1).

² Ohio Revised Code §2744.01(C)(1)(a)-(c).

n
d repair of roads, highways, streets, and sidewalks, and the design,
construction, repair, and maintenance of a recreational area or
facility.³

2. A “proprietary function” is a function that is not defined as a
“governmental function” by the Ohio General Assembly and “is one that
promotes or preserves the public peace, health, safety, or welfare and that
involves activities that are customarily engaged in by nongovernmental
persons.”⁴

a) Examples of proprietary functions include the operation of
a hospital by a political subdivision, the establishment,
maintenance, and operation of a utility, and the operation and
control of a public stadium, auditorium, civic or social center, or
off-street parking facility.⁵

B. Exceptions to the General Rule of Immunity.

1. A political subdivision is liable for injury, death, or loss to person
or property caused by the negligent operation of any motor vehicle
by its employees when the employees are engaged within the scope
of their employment and authority. If, however, the motor vehicle
was responding to an emergency call and the operation of the
motor vehicle did not constitute willful or wanton misconduct,
there is no liability as such circumstances are a full defense to
liability.⁶

2. A political subdivision is liable for injury, death, or loss to person
or property caused by the negligent performance of acts by its
employees with respect to proprietary functions of the political
subdivision.⁷

3. A political subdivision is liable for injury, death, or loss to person
or property caused by the political subdivision’s failure to keep
public roads in repair and other negligent failure to remove
obstructions from public records, except that it is a full defense to
that liability, when a bridge within a municipal corporation is
involved, that the municipal corporation does not have the
responsibility of maintaining or inspection the bridge.⁸

³ Ohio Revised Code §2744.01(C)(2).

⁴ Ohio Revised Code §2744.01(G)(1)(a) and (b).

⁵ Ohio Revised Code §2744.01(G)(2).

⁶ Ohio Revised Code §2744.02(B)(1)(a)-(c).

⁷ Ohio Revised Code §2744.02(B)(2).

⁸ Ohio Revised Code §2744.02(B)(3).

a) The term “public roads” is defined as “public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. “Public roads” does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.”⁹

4. A political subdivision is liable for injury, death, or loss to person or property caused by the negligence of the political subdivision’s employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function.¹⁰
5. A political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by the Ohio Revised Code.¹¹

C. When one of the Exceptions to the General Rule of Immunity Applies, Immunity Can Be Reinstated By One of the Following Defenses.

In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

1. The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.¹²
2. The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.¹³
3. The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the

⁹ Ohio Revised Code § 2744.01(H).

¹⁰ Ohio Revised Code §2744.02(B)(4).

¹¹ Ohio Revised Code §2744.02(B)(5).

¹² Ohio Revised Code §2744.03(A)(1).

¹³ Ohio Revised Code §2744.03(A)(2).

duties and responsibilities of the office or position of the employee.¹⁴

4. The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123 of the Ohio Revised Code in connection with the community service or community work for or in the political subdivision.¹⁵
5. The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.¹⁶
6. In addition to any immunity or defense referred to above, the employee is immune from liability unless one of the following applies:
 - (1) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;
 - (2) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;
 - (3) Liability is expressly imposed upon the employee by a section of the Revised Code.¹⁷

D. Statute of Limitations.

¹⁴ Ohio Revised Code §2744.03(A)(3).

¹⁵ Ohio Revised Code §2744.03(A)(4).

¹⁶ Ohio Revised Code §2744.03(A)(5).

¹⁷ Ohio Revised Code §2744.03(A)(6)(a)-(c).

An action against a political subdivision must be brought within two years after the cause of action accrues, or within any applicable shorter period of time for bringing the action provided by the Ohio Revised Code. The statute of limitations does not begin to run on a minor who has a claim against a political subdivision until the minor reaches the age of 18.¹⁸

E. Damages.

1. Punitive or exemplary damages shall not be awarded.
2. Damage rewards against political subdivisions are reduced by the amount of benefits received by the plaintiff from insurance or other sources.¹⁹

F. Political Subdivision Defense of Employees.

1. A political subdivision shall provide for the defense of an employee when an employee is sued for an act or omission of the employee in connection with a governmental or proprietary function if the act or omission occurred while the employee was acting in good faith and not manifestly outside the scope of their employment.
2. A political subdivision, generally, shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee for damages for injury, death, or loss to persons or property caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of their employment or official responsibilities.
3. A political subdivision may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death, or loss to persons or property caused by an act or omission in connection with a governmental or proprietary function.²⁰

G. Sovereign Immunity Law Does Not Apply To:

1. Civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability;

¹⁸ Ohio Revised Code § 2744.04.

¹⁹ Ohio Revised Code § 2744.05.

²⁰ Ohio Revised Code § 2744.07.

2. Civil actions by an employee, or the collective bargaining representative of an employee, against their political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;
3. Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of their employment;
4. Civil actions by sureties, and the rights of sureties, under fidelity or surety bonds;
5. Civil claims based upon alleged violations of the constitution or statutes of the United States, except that the provisions of Ohio Revised Code § 2744.07, relating to political subdivision defense of employees, shall apply to such federal claims or related civil actions.

II. SECTION 1983 CLAIMS

- A. Essential Elements of a Section 1983 Claim. Under 42 U.S.C.A. Section 1983, a plaintiff must prove that: (1) he or she was deprived of a right secured by the federal Constitution or law of the United States; (2) the deprivation was caused by a person acting under color of state law; and (3) the deprivation occurred without due process.
- B. Causes of Action; Generally.
 1. Claims brought pursuant to Section 1983 sound in tort and create a species of tort liability in favor of persons who are deprived of rights, privileges, or immunities secured to them by the Constitution.²¹ Section 1983 does not confer subject matter jurisdiction; rather, it simply provides a means through which a claimant may seek a remedy in the federal court for a constitutional tort when one is aggrieved by the act of a person acting under the color of state law.²²
 2. In a civil rights action, the plaintiff must specifically plead the right that was or is being violated. For example, if the plaintiff is alleging violations of procedural due process, the plaintiff must plead the inadequacy of state remedies and indicate specifically what process he or she has been denied.²³

²¹ *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 689 (1999).

²² *Baker v. McCollan*, 443 U.S. 137 (1979).

²³ *Brown v. Texas A & M University*, 804 F.2d 327 (U.S. Ct. of App. 5th Cir. 1986).

3. In a civil rights action alleging substantive due process violations, the plaintiff must specifically state the protected liberty or property interest that is being denied.²⁴

C. Causes of Actions Against Municipalities.

1. A municipality is liable under Section 1983 only if the municipality itself caused the constitutional deprivation. A governmental body is not liable under Section 1983 for injury inflicted solely by its employees or agents, and the doctrines of *respondeat superior* and vicarious liability are inapplicable. A municipality is liable only where the violation of constitutional rights stems from a governmental policy or custom.²⁵
2. A plaintiff bringing a Section 1983 claim against a municipality, therefore, must demonstrate a municipal practice, custom, or policy which is the moving force of the constitutional violation.²⁶ A policy includes “a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.”²⁷ The plaintiff bears the burden of proving the existence of an unconstitutional policy or custom of the municipality before the municipality can be held liable under Section 1983.²⁸
3. A plaintiff must “identify the policy, connect the policy to the city itself and show that the particular injury was incurred because of the execution of that policy.”²⁹
4. For custom or usage to come within the provisions of Section 1983, it must have the force of law by virtue of persistent practices of state officials. Custom or usage is not simply a practice

²⁴ *Ino Ino, Inc. v. City of Bellevue*, 132 Wash. 2d 103, 937 P.2d 154 (1997)(where the Supreme Court of Washington held that a plaintiff who makes a substantive due process claim must plead and prove that the challenged government action is wholly arbitrary and capricious or irrational, or utterly fails to serve a legitimate purpose).

²⁵ See *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658, 694-95 (1978)(where the Supreme Court held that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents). Instead, it is when the execution of a government’s policy or custom inflicts the injury that the government as an entity is responsible under § 1983); see also *City of Canton v. Harris*, 489 U.S. 378 (1989).

²⁶ See *Polk County v. Dodson*, 454 U.S. 312, 326 (1981). See *Barnier v. Szentmiklosi*, 810 F.2d 594 (U.S. Ct. of App. 6th Cir. 1987); *Monell*, 436 U.S. at 690.

²⁷ *Id.*

²⁸ *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988).

²⁹ *Garner v. Memphis Police Dep’t*, 8 F.3d, 358, 364 (U.S. Ct. of App. 6th Cir. 1993). See also *Gedrich v. Fairfax County Dept. of Family Services*, 282 F. Supp. 2d 439 (E.D. Va. 2003)(where the Court held that the three part test to a Section 1983 claim against a municipality is pleading and ultimately proving: (1) the existence of an official policy or custom, (2) that policy is fairly attributable to the municipality, (3) and the policy proximately caused the underlying constitutional violation).

reflecting longstanding social habits, generally observed by the people in a locality.³⁰

D. State Action Under Color of Law.

1. To bring a Section 1983 claim, there must be a state or local government actor who violated the plaintiff's rights under the Constitution or federal law.
2. Factors that the courts have looked at to determine if there is state action are: (1) whether the challenged activity resulted from the State's exercise of "coercive power," (2) whether the State provided "significant encouragement, either overt or covert," (3) whether a private actor operates as a "willful participant in joint activity with the State or its agents," (4) or whether a nominally private entity is controlled by an "agency of the State" or whether it has been delegated a public function by the State.³¹

E. Causation.

1. The plaintiff must also show causation on the part of the government actor.³² In other words, the plaintiff must prove that the violation of rights was proximately caused by the conduct of a "person" who acted under the color of any statute, ordinance, regulation, custom, or usage. Causation may be the result of an act or omission, or the reckless or intentional conduct of the person acting under the color of law.³³
2. For an action to be considered under color of state law, there must be a misuse of power possessed by virtue of state law and made possible only because the defendant is clothed with the authority of state law.³⁴ A defendant acts under color of state law when he or she abuses the position given to them by the state and uses state granted authority to deprive another of his or her rights. Color of law means that the alleged wrong-doer must be acting under state authority, or is using a power of the sort commonly attached to the state.³⁵

F. Intent Requirement.

³⁰ *Adickes v. S. H. Kress & Co.* 398 U.S. 144, 166-167 (1970).

³¹ *Benn v. Universal Health System, Inc.*, 371 F.3d 165, 171 (U.S. Ct. of App. 3rd Cir. 2004).

³² *Mosley v. Yaletsko*, 275 F. Supp. 2d 608 (E.D. Pa. 2003).

³³ *Zatler v. Wainwright*, 802 F.2d 397 (U.S. Ct. of App. 11th Cir. 1986).

³⁴ *West v. Atkins*, 487 U.S. 42 (1988).

³⁵ *Boykin v. Bloomsburg University of Pennsylvania*, 893 F. Supp. 378 (M.D. Pa. 1995).

1. Under Section 1983, the plaintiff must prove that there was intentional deprivation of a right. A state actor is liable only if he or she subjectively realized, knew or should have known, or was deliberately indifferent to the risk that his or her acts or conduct created.³⁶
2. Public officials that perform discretionary functions are shielded from liability in a civil rights action for civil damages unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known.³⁷ When a claim is based on the Fourteenth Amendment, a violation of Section 1983 can be based on reckless conduct, callous indifference, or gross negligence.³⁸

G. Qualified Immunity.

1. Qualified or good-faith immunity is an affirmative defense which must be pleaded by the defendant. A defendant official raising this defense must plead facts which, if true, would establish that he or she was acting within the scope of his or her discretionary authority when the challenged conduct occurred.³⁹

³⁶ *School Bd. of City of Portsmouth v. Colander*, 258 Va. 417, 519 S.E.2d 374 (1999)(where the Supreme Court of Virginia stated that deliberate indifference is a stringent standard of fault, requiring proof that a government actor disregarded a known or obvious consequence of his or her action).

³⁷ *Huskey v. City of San Jose*, 204 F.3d 893 (U.S. Ct. of App. 9th Cir. 2000).

³⁸ *E.J. v. Hamilton County, Ohio*, 707 F. Supp. 314 (S.D. Ohio 1989)(where the United States District Court, Southern District of Ohio, stated that the facts alleged in support of a legal conclusion of gross negligence must be sufficient to charge the government officials with outrageous conduct or arbitrary use of government power to state a civil rights claim).

³⁹ *Poe v. Haydon*, 853 F.2d 418 (U.S. Ct. of App. 6th Cir. 1988).

References

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October 24, 2014

Patti Bates, Village Manager
Village of Yellow Springs
100 Dayton St.
Yellow Springs, Ohio 45387

Dear Patti:

Thank you for the opportunity to participate in the Request for Qualification. I am pleased to provide a response to the Village of Yellow Springs (the "Village") on behalf of Coolidge Wall. Our firm views its relationships with its clients as partnerships. We strive to understand our clients' needs and we work hard to provide real solutions to help our clients overcome challenges. For this reason, I am excited by the opportunity to provide the Village with a proposal that I believe demonstrates how the firm embraces the principles of client partnership and understanding given the fiscal challenges facing the Village.

While the RFQ does not directly ask for a financial proposal, attached to the end of the Proposal is an outline of the terms and scope of the legal services Coolidge Wall can provide under a fixed fee retainer arrangement. This arrangement will accomplish three important goals that will immediately benefit the Village:

- 1) Enhance the depth and overall quality of legal services the Village receives;
- 2) Create better budget control; and
- 3) Cause the Village to realize a potential cost savings in excess of 33% of historical annual legal fees expense.

We look forward to the opportunity to continue to serve the Village of Yellow Springs. If you have any questions, please don't hesitate to contact me.

Sincerely,

Christopher R. Conard
Chair, Municipal Law Department

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STATEMENT OF INTEREST (Requirement 5.0 of the RFQ)

Coolidge Wall is one the oldest firms in Ohio, tracing its roots back to 1853. The firm has a long history of serving municipalities and other public entities in the region. Coolidge Wall's Municipal Department currently provides legal services to the following municipalities: the Village of Yellow Springs (the "Village") as well as the chartered cities of Beavercreek, Oxford and Trotwood. Our firm also handles labor negotiations and matters involving conflicts of interest for other municipalities in the region. In addition, Coolidge Wall serves as General Counsel to The Miami Conservancy District and the Downtown Dayton Special Improvement District. As a full service firm, Coolidge Wall is uniquely qualified to provide the depth of legal services that will meet all the needs of the Village's elected officials, appointed officials and staff.

For over fourteen years, I have worked under the guidance of John Chambers, your former Solicitor, and our firm has a depth of legal talent second to none in the region. Our Municipal Law Department, of which I am the Chair, also includes Steve McHugh and our associate Amy Blankenship. Among the four members of the department there is almost 100 years of legal experience covering almost every matter pertaining to the representation of municipalities. I have been a practicing lawyer for over 26 years. Before joining the firm, I worked as a staff attorney for the Montgomery County Public Defender and later managed that office as its Deputy Director. I have also run for elected office. These experiences have led to my profound appreciation for the joy of public service and a keen understanding of the challenges facing elected officials and municipal staff.

In the last three years while serving the Village as its Solicitor, I have developed a deep understanding and appreciation of the Village, its affairs and its Villagers. I have helped guide the Village through changes in personnel and sensitive public matters. The firm's representation over the years has helped the Village avoid potential litigation. I am also very sensitive to the financial pressures facing the Village and for that reason I have designed a fixed fee model for legal services that will save the Village as much as one third of its current legal fees.

My ties to the Village are strong. My sister lives in the Village with her husband and two children. My parents recently purchased a piece of property with the intention of building a new home in the Village. Professionally and personally, it has been my profound privilege working for the Council and its Manager. I hope to be given the opportunity to continue serving Yellow Springs and its citizens.

RESUME (Requirement 5.1 of the RFQ):

Christopher R. Conard

Education:

- University of Dayton, B.A. (History) – 1984
- University of Dayton, J.D. (Law) – 1987

Professional:

- Coolidge Wall Co., L.P.A. (2000 – Present)
 - Joined Coolidge Wall Co., L.P.A., in 2000
 - Chair of the Municipal Law Department since the department was formed in 2012
 - Practice areas include municipal law, land use and zoning litigation, public records and sunshine law, construction and employment matters including administrative proceedings and criminal prosecution and defense
 - Elevated to Shareholder/Member in 2006
 - Elected to the firm's Executive Committee from 2009 through present
 - Serves as Village Solicitor for the Village of Yellow Springs
 - Serves as General Counsel for the Downtown Dayton Special Improvement District
 - Serves on the Certified Grievance and Ethics Committee
- Montgomery County Public Defender's Office (1989 – 2000)
 - 1997 – 2000, Deputy Director, responsibilities included: HR matters, labor contracts, liaison between office and the courts, served on interagency committees with municipal and county representatives
 - 1989-1997, Assistant Public Defender, Montgomery County Public Defender's Office, practicing before and working with every court in Montgomery County, handling felony, criminal, and traffic cases
- Allbery, Cross & Turner (1987 – 1989)
 - Associate Attorney, handled a variety of matters including representing real estate developers, business litigation, and appointed work in courts throughout Montgomery County

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- Dayton Chamber of Commerce Leadership Dayton Program in 2009
- Ohio State Bar Association Fellow Class of 2015
- Adjunct Professor – University of Dayton, School of Law
 - Taught trial practice and evidence for three years, 2005-2008
 - Taught pre-law students for the National Mock Trial Competition, 1990-2000

Community Service:

- President, board of trustees, Community Blood Center/Community Tissue.
- General Counsel and board member, Patterson Park Youth Baseball.
- Board member & general counsel, Dayton Visual Arts Center (2002 – 2010).

Family: Married to Kara Jackson Conard for 23 years. Children: Hugh (15), Ella (11) and Kate (9).

RESPONSE TO EVALUATION CRITERIA (Requirement 5.2 of the RFQ):

A. The Coolidge Wall Municipal Team

Coolidge Wall is a full service firm¹ that includes specialists in all the areas identified in the RFQ Evaluation Criteria. In addition to Chris Conard, the Village has already worked with each of the lawyers in the Municipal Law Department: Steve McHugh, Amy Blankenship and John Chambers. While John is no longer practicing law full time, he is always available to consult on client matters. The firm has proven experience in the effective representation of municipalities and its elected officials in the services outlined in Requirement 3.0 of the RFQ.

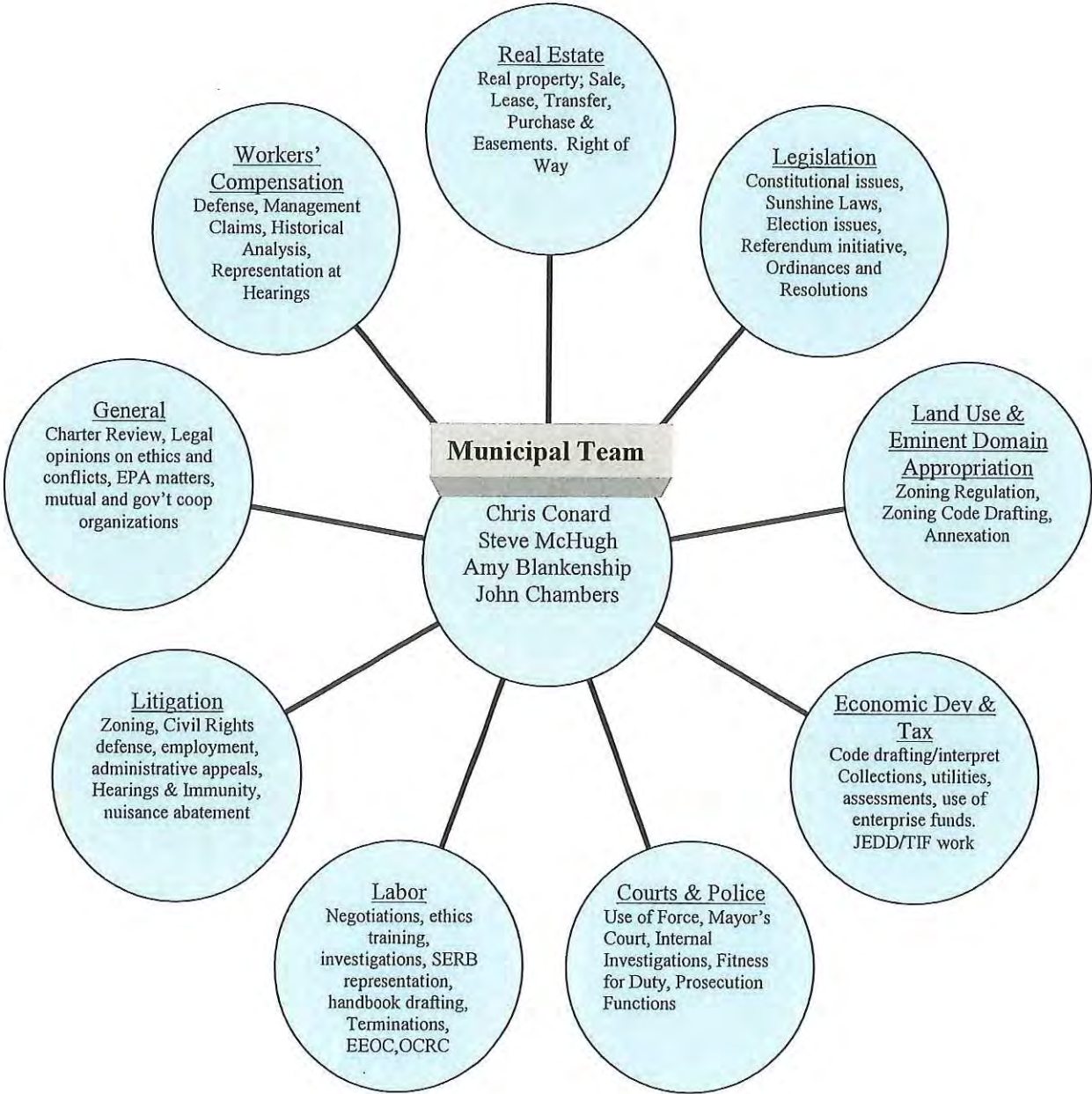
Our municipal team assisted the Village in employment matters pertaining to the severance and hiring of new public officials. Our relationships helped identify a pool of candidates for the interim chief position. The firm has handled the Village's real estate matters for the past decade including issues such as the transfer of the Forest Glen Cemetery to the Township and extraterritorial access to Village Utilities. Coolidge Wall managed the pool herbicide investigation and handled the EPA issues that have developed involving Vernay. In addition, the firm demonstrated its experience and knowledge of zoning and land use in recent matters before the Planning Commission and Council. The firm also has a depth of experience in both public and privately funded construction projects. Lawyers in the firm have handled large municipal development projects such as The Greene and have drafted Joint Economic Development Agreements and created tax increment financing for clients. The firm has unique knowledge of wetland mitigation and land use laws. The firm has handled workers' compensation matters for the Village and wrote the current Village Employee Handbook and has consulted on human resource matters.

The value of appointing a Solicitor from Coolidge Wall is the depth of experience the entire firm brings to the legal services it performs for the Village. I intend to have Amy Blankenship serve as the Village's Assistant Solicitor if the firm is awarded the contract.

Attached to this Proposal are the profiles of the Coolidge Wall lawyers who have served the Village along with a matrix showing the areas of service the firm is able provide its municipal clients that demonstrates that the firm meets each aspect of the evaluation criteria.

¹ All Coolidge Wall attorneys are licensed to practice law in Ohio and are in good standing with the Supreme Court of Ohio. Proof of active licensure for any Coolidge Wall attorney is available upon request.

B. Our Experience by Practice Area and Function



C. Overview of Services and Financial Proposal

The general terms of the Coolidge Wall fixed fee arrangement are as follows:

The Village would pay a monthly fixed fee of \$4,750, annualized at \$57,000.

Under the fixed fee arrangement, Coolidge Wall will attend all council meetings, including planning commission and board of zoning appeals meetings as needed. In addition, the Solicitor would participate in agenda setting meetings and staff meetings as requested by the Manager, Council or Department Heads. Currently, the Solicitor only attends Village meetings upon request. Such arrangements are less desirable because your legal counsel is not present when matters of potential significance develop. Regular attendance at the various meetings further enhances the Solicitor's overall knowledge and understanding of matters of public concern. Proactive client representation is universally preferred over reactive representation when it can be avoided.

Under the fixed fee arrangement, Coolidge Wall would also provide legal services in the following general areas as set forth in the Request for Qualifications:

- Response to legal inquiries on behalf of Village officials and local government personnel
- Prepare, review and propose legislation
- Represent the Village publicly as needed
- Work, as needed, with appropriate department heads to train, interpret, implement and ensure compliance with applicable ordinances, state laws and regulations, including Sunshine Laws
- Assist with acquisition, disposal, transfer and management of real estate and property, including preparation of legal documents
- Assist in the human relations function, i.e. related, labor and personnel matters
- Real estate transactions, including the preparation of easements, deeds, etc.
- Public records requests
- Ethics and legal opinions
- Drafting and contract review
- General zoning and utilities questions and matters

Lastly, since a Charter Review is scheduled for the upcoming contract term, the retainer agreement would include Charter Review. The inclusion of Charter Review services will help the Village realize a substantial cost savings given the complexity of the process.

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The primary exception to services that would be performed under the fixed fee would apply to threatened or actual litigation and appearances before Courts and/or Boards in cases where the Village is a party or interested personnel are parties. Generally, the definition of "litigation" would mean any action that would qualify to be discussed in an executive session by the Council as "pending or imminent" under R.C. 121.22. Work shall be performed at a rate reduced from the current \$165 hourly rate to a rate of \$155 per hour.

D. Municipal Team

Stephen M. McHugh

Steve is a veteran attorney with decades of experience in local government representation. His diverse governmental practice involves representation in real estate and zoning matters, municipal litigation, and state and federal employment law representation and compliance. He also deals with matters involving appropriations, annexation, and eminent domain, as well as labor and employment issues and contracts. Steve currently serves as Law Director for the City of Beavercreek, City of Oxford and City of Trotwood. He also serves a legal counsel for The Miami Conservancy District and as Labor Counsel for the City of Riverside.

Amy N. Blankenship

Amy focuses her practice primarily in the area of local government representation. She provides general counsel to local governments on a variety of topics, such as employment matters, annexation, land use and zoning. Amy has represented local municipalities in state and federal court, as well as in administrative proceedings. She also practices in general litigation.

John C. Chambers

John divides his time between commercial real estate matters and local government representation. John has acted as general counsel to the Village of Yellow Springs, City of Huber Heights, and the Miami Valley Regional Transit Authority, among others, and has served as special counsel to many other local governments in the region on selected matters. He has represented a wide variety of clients in commercial real estate matters with special expertise in zoning and land use matters. He has served as Chairman of the Dayton Bar Association Real Property Committee. John also has served as Secretary of the Ohio Chapter of National Association of Industrial and Office Properties ("NAIOP") and as Public Affairs Chairman for the Dayton Chapter of NAIOP.

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Michelle D. Bach

Michelle concentrates her practice in the area of Workers' Compensation defense. She has been recognized as a Certified Specialist in Workers' Compensation Law by the Ohio State Bar Association. She represents state funded and self-insured businesses and public entities. She routinely attends hearings before the Industrial Commission of Ohio. She is also a skilled and experienced litigator. She has handled many bench and jury trials in various Courts of Common Pleas throughout Ohio. She also handles actions pending in the Court of Appeals and before the Supreme Court of Ohio. Michelle routinely advises clients regarding how to control Workers' Compensation costs.

Allison D. Michael

Allison focuses her practice in the area of labor and employment law. She assists clients in resolving issues arising out of the Family Medical Leave Act, the Americans with Disabilities Act, the Fair Labor Standards Act and Federal and Ohio laws on age, sex, race, national origin and retaliation discrimination. Allison also has a solid litigation background. She has defended employers in Ohio state and federal courts, as well as in administrative proceedings before the Equal Employment Opportunity Commission (EEOC), the Ohio Civil Rights Commission (OCRC), and the Department of Labor.

SAMPLE CORRESPONDENCE (Requirement 5.3 of the RFQ):

MEMORANDUM

TO: VILLAGE MANAGER
FROM: VILLAGE SOLICITOR
DATE: APRIL 25, 2013
RE: VILLAGE OF YELLOW SPRINGS – COMPETITIVE BIDDING RESEARCH

ANALYSIS

The Village of Yellow Springs (the “Village”) would like to purchase water meters from a supplier from which they have previously purchased the same goods. It appears that the Village will be installing the meters rather than contracting for that service, thus the contract will be one for goods, not services. The Village would like to know under what circumstances it is required to competitively bid (i.e., “formally bid”) this contract and whether there are any applicable exceptions.

I. The Village Has Exercised the Power of Home Rule With Respect to Competitive Bidding; Therefore, the Codified Ordinances Provide the Competitive Bidding Procedures and Exceptions, Which Are Supplemented By the Ohio Revised Code.

Although competitive bidding procedures and requirements are contained in various state statutes, Article XVIII, Section 3 of the Ohio Constitution allows municipalities to establish their own bidding procedures by charter, stating:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.²

² Ohio Constitution, Article XVIII, Section 3; *see State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22, 27, 268 N.E.2d 581 (1971) (holding that “[i]f a city charter provision pertaining to the procedure for limiting the amount of money which a city may contract to expend conflicts with a state law, the charter provision prevails as a valid exercise of the home rule power”); *see also Great Plains Exploration v. City of Willoughby*, 11th Dist. No. 2006-L-022, 2006-Ohio-7009, ¶ 23 (stating that a municipality supersedes a state statute by its home rule power when it “has through its charter set forth a reservation of intent to exercise home rule power and . . . properly exercised that power”).

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The Village has indicated its intent to exercise the power of home rule with respect to competitive bidding through Section 49 of its Charter, which provides:

Before the Village Manager makes any purchase of, or contract for supplies, materials, services or equipment costing more than the amount determined by Council, the Village Manager shall take competitive bids or contract for supplies, materials, services or equipment under such rules and regulations as the Council may prescribe by ordinance. The Council may change the dollar limit on bid requirements by ordinance.³

The Codified Ordinances of the Village of Yellow Springs (“Codified Ordinances”) provides the controlling procedures and exceptions for competitive bidding of public contracts.⁴

II. Competitive Bidding Procedures and Exceptions.

- A. If an exception to competitive bidding applies, or if the aggregate probable cost of the purchase of water meters will be less than \$15,000, competitive bidding will not be required.**

Section 206.02 of the Codified Ordinances provides the procedures and exceptions for competitive bidding. If the probable cost of a purchase of goods will be fifteen thousand dollars (\$15,000) or more, the Purchasing Agent (i.e., the Village Manager) must resort to formal bidding, unless an exception applies.⁵ But “[i]f the probable cost will be less than fifteen thousand dollars (\$15,000), the Purchasing Agent may award the purchase to the supplier offering the lowest and best bid among the informal bidders, provided that if the cost will be five thousand dollars (\$5,000) or more, at least two informal bids, or a statement as to why two bids are not available, shall be secured in writing.”⁶

Ohio courts have prohibited the practice of splitting up a contract to avoid the competitive bidding cap, so the Village cannot enter into numerous contracts that each fall under fifteen thousand dollars (\$15,000) to avoid competitive bidding.⁷ Therefore, if the probable cost to purchase the water meters is will be fifteen thousand dollars (\$15,000) or more, then the contract will likely need to be bid, unless an exception applies as discussed below in Part III.

³ Charter of the Village of Yellow Springs, Section 49.

⁴ Codified Ordinances of the Village of Yellow Springs (“Codified Ordinances”) § 206.01.

⁵ *Id.* § 206.01(a), (f).

⁶ *Id.* § 206.01(a).

⁷ *Wing v. City of Cleveland*, 1885 Ohio Misc. LEXIS 147, 9 Ohio Dec.Reprint 551 (C.P. Cuyahoga Cty. 1885); 1997 Ohio Atty.Gen.Ops. No. 97-006, at 8-9; *State ex rel. Kuhn v. Smith*, 194 N.E.2d 186. (C.P. Monroe Cty. 1963).

B. Exceptions to the competitive bidding requirement.

The Codified Ordinances enumerates the following exceptions to the competitive bidding requirement for contracts for goods over fifteen thousand dollars (\$15,000):

1. The purchase of supplies, materials, or equipment to protect the public health, safety and welfare in the event of an emergency when the opportunity to follow the competitive bidding procedures does not exist;⁸
2. The purchase of goods or services, or a combination of goods and services, that, after reasonable inquiry, are only reasonably available from a sole source;⁹
3. Provided the following services have been competitively bid in the last three (3) years: the renewal or renegotiation of a lease or license for telecommunications or electronic data processing equipment, services or systems; the upgrade of such equipment, services or systems; and the maintenance of such equipment or systems as supplied by the original source or its successors or assigns;¹⁰
4. The purchase of goods or services from another political subdivision, public agency, the State, the federal government, or as a third party beneficiary under estate or federal procurement contract;¹¹
5. The purchase substantially involves services of a personal, professional, highly technical or scientific nature, or involves the special skills or proprietary knowledge required for the servicing of specialized equipment owned by the City;¹²
6. The purchase involves services or supplies available from a qualified nonprofit agency under R.C. 4115.31 through 4115.35;¹³ and
7. The purchase consists of goods or services of a public utility.¹⁴

Many of these exceptions track statutory exceptions under the Revised Code. If an exception applies, the Village Manager “shall determine appropriate procurement processes to follow and shall advise Council of such purchases at the earliest available

⁸ Codified Ordinances § 206.01(f).

⁹ *Id.* § 206.01(f)(1).

¹⁰ *Id.* § 206.01(f)(2).

¹¹ *Id.* § 206.01(f)(3).

¹² *Id.* § 206.01(f)(4).

¹³ *Id.* § 206.01(f)(5).

¹⁴ Codified Ordinances § 206.01(f)(6).

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time.”¹⁵ Contracts for services are subject to the same competitive bidding procedures and exceptions and contracts for goods.¹⁶

Because there is nothing in the Charter or Codified Ordinances that states the exceptions enumerated in the Codified Ordinances are the exclusive exceptions to competitive bidding, statutory exceptions are not superseded under the Village’s exercise of home rule. The Revised Code provides an exception for emergency “work to be done concerning the water works of the municipal corporation”:

In case of emergency the legislative authority of the municipal corporation may, by a two-thirds vote of all members elected thereto, authorize the director to enter into such contract without formal bidding or advertising.¹⁷

There is also a statutory exception for purchase of “used equipment or supplies at an auction open to the public, or at a sale at which such used equipment or supplies are to be sold upon submission of written bids to the vendor thereof where the vendor has invited the public to submit written bids or when more than one bid is submitted.”¹⁸

Other statutory exceptions to competitive bidding include purchases: relating to a real and present emergency arising in connection with the operation and maintenance of a municipal department;¹⁹ of personal property from the federal government;²⁰ of goods or services from other political subdivisions;²¹ of services, products or commodities of a public utility (as discussed more fully in Part II.C. below);²² of goods or services from a qualified nonprofit agency for persons with severe disabilities;²³ and purchases of goods or services under the State Term Contract program administered by the Ohio Department of Administrative Services.²⁴

In addition to statutory exceptions, the Ohio Supreme Court has recognized the common law “sole-source doctrine.”²⁵ In *Doria v. Ferguson*, the Ohio Supreme Court stated that “a well recognized exception exists where the contract is for personal services of a specialized nature requiring the exercise of peculiar skill and aptitude.”²⁶ The Second District has refused to apply the sole-source doctrine to excuse a county’s unlawful bidding invitation that “effectively stifled competitive bidding for the incinerators, their

¹⁵ *Id.* § 206.01(f).

¹⁶ *Id.* § 206.01(g).

¹⁷ R.C. § 743.11.

¹⁸ *Id.* § 735.052.

¹⁹ *Id.* § 735.051.

²⁰ *Id.* § 9.25.

²¹ *Id.* § 735.053.

²² *Id.* § 9.30.

²³ R.C. § 4115.34.

²⁴ *Id.* § 735.05.

²⁵ *State ex rel. Doria v. Ferguson*, 145 Ohio St. 12, 17, 60 N.E.2d 476 (1945).

²⁶ *Id.*

complementary equipment and their installation.”²⁷ In *Schaefer v. Board of County Commissioners of Montgomery County*, the Second District held:

A bidding invitation for the construction of a county incinerator building under specifications **which limit each general or prime contractor bidder's discretion as to the subcontractor whose services or material he would use to a single firm** (i.e., by designating one firm as the only acceptable subcontractor for the manufacture and installation of the incinerator facilities in such building) does not conform to the statutes requiring competitive bidding on county contracts.²⁸

Thus, although a political subdivision may include qualifications in the specifications of a bid invitation, it cannot subvert competitive bidding requirements by structuring the bid invitation to limit contracts to a specified single firm.²⁹ Although *Schaefer* involved a county's failed attempt to competitively bid a contract, as opposed to a village determining beforehand that competitive bidding does not apply, *Schaefer* is a cautionary tale of how courts treat “clear[] effort[s] to avoid . . . competitive bidding on public contracts”³⁰

C. Applicability of exceptions to competitive bidding to a contract to purchase water meters.

As a general rule, contracts must be competitively bid; however, possible exceptions to the competitive bidding process may exist depending on the facts. If the goods are only reasonable available from a sole source, then the purchase would fall under the sole-source exception in the Codified Ordinances (Section 206.01(f)(1)) and competitive bidding would not apply. The sole-source exception under the Codified Ordinances is broader than the common law equivalent, which primarily concerns personal services of a specialized nature and associated goods, because it applies to the purchase of goods even if not paired with a service such as installation.³¹ To avoid a result similar to *Schaefer*, the Village should carefully consider and articulate to Council why the sole-source exception under the Codified Ordinances applies.

The other exceptions arising under the Codified Ordinances or state statutes probably do not apply. There is no emergency or exigent circumstance warranting the purchase of the goods that would be needed to protect the public health, safety and welfare of Village citizens. Similarly, the statutory exception for emergency work on municipal waterworks likely does not apply because it pertains only to services, not goods or equipment like water meters.

²⁷ *State ex rel. Schaefer v. Bd. of Cty. Commrs. of Montgomery Cty.*, 11 Ohio App.2d 132, 141, 229 N.E.2d 88 (2d Dist. 1967).

²⁸ *Id.* at paragraph 5 of the syllabus.

²⁹ *Id.* at 141.

³⁰ *Id.* at 140.

³¹ Compare Codified Ordinances § 206.01(f)(1) with *Doria*, 145 Ohio St. at 17.

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It is unlikely that the “goods or services of a public utility” exception applies to the purchase of water meters. The Revised Code provides a similar exception:

[A municipal corporation] may acquire the service, product, or commodity of a public utility **at the schedule of rates and charges applicable to such** service, **product**, or commodity on file with the public utilities commission, or the applicable charge established by a utility operating its property not for profit, at any location where such public utility service, product, or commodity is not available, from alternate public utilities, without the necessity of advertising to obtain bids, and without notice, irrespective of the amount of money involved.³²

The statute’s inclusion of the “at the schedule of rates and charges” language indicates that the exception only applies to public utility products themselves (e.g., gas or electric), not meters designed to measure public utility products. Although the Village’s “goods or services of a public utility” exception does not contain that same language, a court would likely interpret that exception analogously to its statutory counterpart and find it inapplicable to the purchase of water meters.

Because the Village is considering purchasing the water meters pursuant to a contract, the exception for used equipment purchased at a public auction is also not applicable.

Conclusion

For the reasons set forth above, the contract for the purchase goods relating to Village water meters should be publicly bid.

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³² (Emphasis added.) R.C. § 9.30.

REFERENCES (Requirement 5.4 of the RFQ)

Michael J. Lucking
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