

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

IN RE: Removal of Miami Township : **CASE NO. 2025 CV 05367**
Fiscal Officer Robert Matthews :
: **Jonathan P. Hein,**
: **Judge by Assignment**

**DECISION AND JUDGMENT ENTRY – Granting
Motion to Restrain Fiscal Officer from Performing
Duties and from Entering Township Office**

This matter came before the Court on review of the motion filed October 16, 2025 by Ohio Attorney General David Yost (hereafter “Movant”) which asks to the Court to impose an interlocutory order which prohibits Miami Township Fiscal Officer Robert Matthews (hereafter “Respondent”) from entering the Township Offices of the Fiscal Officer and from conducting the affairs of the fiscal officer. Respondent filed his responsive pleading on October 21, 2025. Pursuant to the Notice filed herein, the matter is ripe for adjudication.

Movant is represented by Bryan B. Lee, Esq., Mark D. Tucker, Esq. and Thomas J. Gillen, Esq., all Assistant Attorneys General. Respondent appears *pro se*.

Applicable Legal Principles

This action is brought pursuant to R.C. 507.13, which provides as follows:

507.13 Proceedings against fiscal officer

(A)(1) If a township fiscal officer purposely, knowingly, or recklessly fails to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office of township fiscal officer or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of that office, four residents of the township may submit sworn affidavits alleging the violation, together with evidence supporting the allegations, to the auditor of state. The sworn affidavits and evidence shall

be submitted in the format prescribed by rule of the auditor of state under section 117.45 of the Revised Code. A person who makes a false statement in a sworn affidavit, for purposes of this section, is guilty of falsification under section 2921.13 of the Revised Code.

(2) The auditor of state shall review the sworn affidavits and the evidence. Within thirty calendar days after receiving the sworn affidavits, unless, for good cause, additional time is required, the auditor of state shall determine whether clear and convincing evidence supports the allegations. If the auditor of state finds that no allegation is supported by clear and convincing evidence, the auditor of state shall submit those findings in writing to the township fiscal officer and the persons who initiated the sworn affidavits. If the auditor of state finds by clear and convincing evidence that an allegation is supported by the evidence, the auditor of state shall submit those findings in writing to the attorney general, the township fiscal officer, and the persons who initiated the sworn affidavits. The findings shall include a copy of the sworn affidavits and the evidence submitted under division (A)(1) of this section.

(3)(a) The attorney general shall review the auditor of state's findings and the sworn affidavits and evidence. Within ten business days after receiving the sworn affidavits and evidence, unless, for good cause, additional time is required, the attorney general shall determine whether clear and convincing evidence supports the allegations. If the attorney general finds that no allegation is supported by clear and convincing evidence, the attorney general, by certified mail, shall notify the auditor of state, the township fiscal officer, and the persons who initiated the sworn affidavits, that no complaint for the removal of the township fiscal officer from public office will be filed.

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

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

(B)(1)(a) The attorney general has a cause of action for removal of a township fiscal officer who purposely, knowingly, or recklessly fails to perform a fiscal duty expressly imposed by law with respect to the office of township fiscal officer or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of the office of township fiscal officer. Not later than forty-five days after sending a notice under division (A)(3)(b) of this section, the attorney general shall cause an action to be commenced against the township fiscal officer by filing a complaint for the removal of the township fiscal officer from public office. If any money is due, the attorney general shall join the sureties on the township fiscal officer's bond as parties.

The court of common pleas of the county in which the township fiscal officer holds office has exclusive original jurisdiction of the action. The action shall proceed de novo as in the trial of a civil action. The court is not restricted to the evidence that was presented to the auditor of state and the attorney general before the action was filed. The action is governed by the Rules of Civil Procedure.

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

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

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

(4) The board of township trustees shall be responsible for the payment of reasonable attorney's fees for counsel for the township fiscal officer. If judgment is entered against the township fiscal officer, the court shall order the township fiscal officer to reimburse the board for attorney's fees and costs up to a reasonable amount, as determined by the court. Expenses incurred by the board in a removal action shall be paid out of the township general fund.

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

(D) If a final judgment for removal from public office is entered against the township fiscal officer, the office shall be deemed vacated, and the vacancy shall be filled as provided in section 503.24 of the Revised Code. Except as otherwise provided by law, an individual removed from public office under this section is not entitled to hold any public office for four years following the date of the final judgment, and is not entitled to hold any public office until any repayment or restitution required by the court is satisfied.

(E) For the purposes of this section:

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

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

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

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

Frequently, the Court studies case law to better understand statutes and to gain a greater subject matter expertise. However, consideration of this statute appears to not have occurred in any reported case decisions. Thus, citation to related authority is omitted.

Summary of Facts

Based on the pleadings herein, including extensive exhibits accompanying Movant's motion, and by taking judicial notice of pleadings and evidentiary matters in Case No. 2025 CV 02185, the Court provides the following summary of the facts in this case.

Respondent has served as Fiscal Officer for Miami Township, Montgomery County, Ohio, since April, 2024. His statutory duties are primarily defined in Chapter 507 of the Ohio Revised Code. Based on this Chapter, Movant describes the duties of the Township Fiscal Officer as follows: “to keep an accurate record of the proceedings of the board of township trustees at all of its meetings, and of all its accounts and transactions, including the acceptance of the bonds of township officers.” The Court finds this description accurate.

In 2015, Miami Township adopted an Investment Policy [found in Exhibit A] which established a five-member Investment Oversight Committee. Relevant portions of the policy provide as follows:

6. Standards of Care

- A. No person may engage in an investment transaction except as provided under the terms of this policy and under the guidance of the Investment Oversight Committee.

11. Authorized Investments.

The Investment Oversight Committee may invest on behalf of and in the name of the Township in the following instruments at a price not exceeding their fair market value at the time of selection:

- A. U.S. Government Securities
- B. U.S. Government Agency Securities and Instrumentalities of Government Sponsored Agencies
- C. Interest-Bearing Certificates of Deposit
- D. Commercial paper
- E. Mutual Funds
- F. State Treasury Asset Reserve of Ohio & State Treasury Asset Reserve of Ohio Plus

12. Derivatives

Investment in derivatives is strictly forbidden. A derivative is a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract or obligation itself. * * *

Movant alleges that on March 26, 2025, Respondent withdrew \$9,700,000 from Miami Township's authorized investment account with the Treasurer of State and caused the funds to be deposited in the Township's bank account at 5th / 3rd Bank. Movant further alleges that the withdrawal and transfer were not authorized by the Investment Oversight Committee of action by the Board of Trustees.

Movant further alleges that Respondent was in the process of purchasing gold coins from two dealers which would have incurred \$382,036.50 in transaction fees and \$32,612.87 in annual storage fees. Movant further alleges this conduct was not authorized by the Board of Trustees, was contrary to the adopted Investment Policy and was contrary to law.

Respondent's Answer

Generally stated, Respondent does not challenge these facts in his Answer filed October 21, 2025. Instead, he raises various affirmative defenses to his conduct. The Court discusses his perspectives and defenses, as follows:

1. Respondent claims the complaint fails to identify specific statutes, regulations or common law duties which he violated. The Court disagrees. The Complaint alleges (v) violation of Chapter 135 of the Revised Code which limits investment options; and (2) violation of the Township's Investment Policy. While Respondent may disagree with the allegations, the statutory bases for removal are cited.

2. Respondent claims that the four residents who brought the allegations misused public funds by bringing the action. Respondent also claims that the four residents are disqualified from bringing the allegations since three are Trustees and the fourth is an employee who were assisted by the Township's legal counsel. The legal basis cited by Respondent to support his conclusion was R.C. 102.03(D) which defines misuse of public office for private gain. However,

the Court finds that the errors in Respondent's logic are numerous: (1) the only statutory requirement for the four complainants is that each reside in Miami Township which has been conceded; (2) there is no prohibition against Township officers and employees undertaking the process; (3) the use of Township legal counsel for a matter directly affecting the Township is clearly not an unlawful act; (4) Respondent's unfounded conclusions and erroneous reliance on Advisory Opinion 2019-05 is obvious; and (5) Respondent has not demonstrated any personal gain accruing to the four complainants. Except for his own (erroneous) legal conclusion, Respondent has offered no relevant statutory or case law decision to support his position.

3. Respondent claims there has been no actual injury and no irreparable harm such that the four individuals are without standing to bring the complaint. The unfortunate reality is that Respondent has misapplied the legal standard of Civil Rule 65 (Temporary Restraining Orders) since this Rule was not invoked by Movant and the Legislature did not require proof of actual injury and/or irreparable harm. Instead, R.C. 507.13(A) may be invoked when the Fiscal Officer "purposely, knowingly, or recklessly fails to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office of township fiscal officer or purposely, knowingly, or recklessly commits any act expressly prohibited by law with respect to the fiscal duties of that office..."

4. Respondent claims the four individuals' foreknowledge of Respondent's financial transactions should be construed as implicit consent to the unlawful transactions in spite of the violation of the Township's Investment Policy. The error here is that there is no statutory defense for consent as a defense; thus, respondent reads into the law a principle which does not exist. Also, Respondent has not provided any common law interpretations to support his conclusion. Whether the Investment Oversight Committee was active or inactive is immaterial

in the context of unilateral actions of the Fiscal Officer in contravention of the Investment Policy and other laws.

5. Further, Respondent claims that this action against him is an abuse of process since the four individuals have ulterior motives for the complaint. While the four individuals do hold public employment and were assisted by the Township's law director, there are no facts which demonstrate any personal gain to the four individuals or any ulterior motive(s). To the contrary, given their foreknowledge and public office, a more probable conclusion is that the four are motivated to fulfill a statutory duty to ferret out Respondent's repeated violations of the Revised Code and the Investment Policy.

This analysis provides a perspective of Respondent's pleadings; however, affirmative defenses are ultimately to be decided at trial. Nonetheless, they have been discussed in order for the Court to understand the extent of Respondent's knowledge of the duties of a Fiscal Officer and to discern whether the interlocutory remedies sought by Movant are necessary. [See comment below.]

Next, the Court considers how Respondent answered the allegations in the complaint. He admits the following facts: enactment of the Investment Policy; that there exists a five-member Investment Oversight Committee; that the Investment Policy applies to all Township funds; and that all investments must conform with requirements of R.C. 135.14.

Next, how does Respondent answer the allegations about his investment actions regarding the transfer of public funds and entering contracts to purchase and store gold? He admits: that the funds were already appropriated for Township purposes; that he caused the withdrawal and transfers; and that the purpose of the fund transfer was to purchase gold from two dealers. He concludes that his actions were not expressly prohibited by law.

Analysis

The duties of the Court in considering the pending request are guided by R.C.

5007.13(B)(1)(b), which provides as follows:

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

1.

Did Robert Matthews either fail to perform a fiscal duty expressly imposed on him or did he commit an act expressly prohibited by law with regard to a fiscal duty? On this question, the Court finds Robert Matthews committed acts expressly prohibited by law. The Court relies on the following evidence: (1) in his Answer to paragraphs 26 and 31, Matthews admitted withdrawing \$9,700,000 of Township funds from the State Treasurer's STAR Program without approval of the Investment Oversight Committee and/or Board of Trustees; (2) in his Answer to paragraphs 28 and 31, Matthews admitted to directing 5th / 3rd Bank to transfer \$9,700,000 to two vendors for purchase of physical gold; (3) in his Answer to paragraphs 20 and 21, Matthews admitted that all financial transactions must be under guidance of the Investment Oversight Committee and in compliance with R.C. 135 and R.C. 135.14(B); (4) in his Answer to paragraph 25, Matthews admitted the \$9,700,000 he withdrew and transferred were funds already encumbered for Township purposes; (5) the three prior admissions were also made in Case No. 2025 CV 02185ⁱ; (6) Respondent's admissions to his withdrawal and transfer conduct in emails found in Exhibit A; and (7) Respondent's knowledge of the terms of the Investment Policy by voting its adoption on September 8, 2015 as shown in Exhibit A.

2.

Second, were the acts of Robert Matthews done purposely, knowingly or recklessly? On this question, based on the definitions contained in R.C. 507.13(E), the Court finds that Robert Matthews did act in a purposeful and knowing manner. The Court relies on the same evidence described above and emphasizes that the actions were undertaken by Matthews himself – not through a proxy or some third party.

3.

Is the quantum of proof against Robert Matthews clear and convincing? Since this standard is not defined in R.C. 507.13, the Court applies the commonly applied definition from 1 Ohio Jury Instruction CV 303.07:

“Clear and convincing” means that the evidence must produce in your minds a firm belief or conviction about (the facts to be proved) or (the truth of the matter). It must be more than evidence that simply outweighs or overbalances the evidence opposed to it.

The Court finds that the weight of the evidence against Robert Matthews is clear and convincing. The following reasons are offered: (1) Matthews admitted much of the conduct; (2) there is no evidence favoring Matthews’ position; (3) Matthews did not offer any inferences that the meaning of the evidence is contrary to that suggested by the Movant; and (4) both the Auditor of State and the Attorney General, when considering the Respondent’s conduct, applied a similar standard of proof when administratively determining Respondent violated state law and the Township Investment Policy. See Exhibits C and E.

Conclusion

In considering Movant’s request for an interlocutory order, R.C. 507.13 mandates the Court to take action against the Township Fiscal Officer when all statutory requirements have been proven. Here, by clear and convincing evidence, the Court finds that Movant has

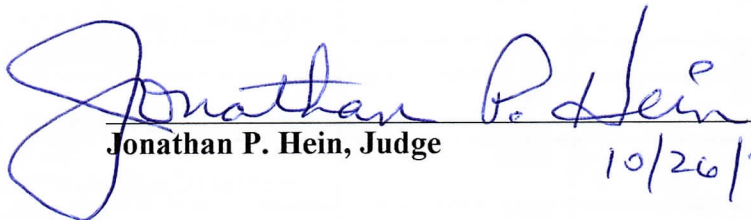
demonstrated that Robert Matthews, in a purposeful and knowing manner, committed an act expressly prohibited by law with regard to a fiscal duty. Therefore, the law mandates that he be temporarily removed from the public office of Township Fiscal Officer and be temporarily barred from performing the duties of the Township Fiscal Officer.

Note: While the record in this case is still being developed, the above conclusions are definitively supported by the record. Further, taking judicial notice of the record in Case No. 2025 CV 02185 provides a more compelling understanding of the necessity of this case and the requested relief. From both cases, two options seem apparent: (1) either Respondent chooses to selectively read statutes and policies to further his personal preferences for township governance, or (2) Respondent's capacity to understand clearly written restrictions on permitted investments is significantly limited. In either case, the remedy herein is clearly necessary.

IT IS, THEREFORE, ORDERED AND DECREED as follows: (1) Miami Township Fiscal Officer Robert Matthews is prohibited from performing any duties of the Township Fiscal Officer; (2) Robert Matthews is barred from entering the public offices of Miami Township, except for attendance at recognized public meetings; (3) Robert Matthews shall perform no further actions pertaining to duties of the Township Fiscal Office, including conducting any financial transactions or financial reporting; (4) the Office of the Miami Township Fiscal Officer shall be treated as if it were vacant, except no steps shall be undertaken to replace the Fiscal Officer until later Order of the Court; and (5) Robert Matthews' performance bond as Fiscal Officer shall remain in effect and a copy of this Order shall be provided by Movant's counsel to the issuer of the bond.

This Order is effective immediately and shall remain in effect pending the final disposition of this case.

Further scheduling will occur following later Notice issued by the Court. All issues not having been decided, this Entry is not a final and appealable order.


Jonathan P. Hein, Judge 10/26/2025

cc: Bryan B. Lee, Assistant Attorney General for Movant
Robert Matthews, Respondent, 2230 Cross Village Drive, Miamisburg, OH 45342

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ⁱ The Court agrees with Movant's citation to *State es rel Rojas v. Page*, 2022-Ohio-2226 (10th Dist.) that a Court may take judicial notice of pleadings from other cases on the Court's docket. The trial court's decision filed June 23, 2025 is instructive.