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Equipment Sharing - Are You Aware of the Liability and Legal Issues?

By Bob Gehring, Esq.

The State of Ohio and its agencies have developed and proposed a number of initiatives designed to encourage local governments to share services. The shared services concept is not new. Local governments have long "shared" services, personnel and equipment. But informal and formal shared services programs often do not take into account potential liability issues. Coverage for liability or property damage may not even be discussed in the context of a shared services arrangement.

In 2016, the Ohio legislature enacted R.C. §2711.44 and §2743.31. R.C. §2743.31 provides that if a state agency enters into a "shared equipment service agreement" with a political subdivision, the borrowing state agency may assume potential liability for personal injury or property damage arising out of the use of lender's equipment. Similarly, R.C. §2744.11 provides that a borrowing political subdivision may assume liability while using the equipment of a state agency or political subdivision.

Example: Township A has a fire department and one of its fire engines will be out of service for repairs for three months. Fire District B has an extra fire engine that is not being used and is agreeable to lending it to Township A. Township A and Fire District B may agree that Township A assumes all liability for personal injury and property damage arising out of the use of Fire District B's fire engine for those three months.

Using the above example, what if neither Township A nor Fire District B provided notice to liability or property coverage carriers that they had entered into an agreement for the fire engine to be used on a temporary basis by Township A? What if the fire

engine, while being operated by Township A, is damaged? What if the fire engine is in an accident causing injuries? Which entity's coverage will apply?

Liability and Property Coverage Issues Raised by a Shared Services Agreement

As should be clear from the questions posed above, entering into an agreement that contains an assumption of liability does not necessarily

resolve the issue of who pays if there is a damage or personal injury claim arising out of the use of borrowed equipment. Liability and property coverage must also be addressed when entering into an equipment sharing agreement.

Below are suggested steps that OTARMA Members should take when entering into an equipment sharing agreement:

1. When acting as a borrower in the shared services context, contact your OTARMA Representative and inform him/her that your entity has entered into a shared services agreement.

2. If acting as a lender, confirm that the borrowing entity has notified its liability carrier. The borrower may not have the same type or level of coverages that you may have through OTARMA. Some political subdivisions have no liability coverages at all or may have only limited self-insured coverages.

3. A lending entity should request that it be listed as an "additional insured" on the borrower's liability and property damage coverage. In that event, the lending entity should obtain evidence that the liability carrier has issued the supplemental coverage.

Agreement Should Be in Writing

Under the legislation described above, it is anticipated that when entering into a shared services agreement, that the agreement will be in writing. There may be times during an emergency when there is no opportunity to enter into a formal written agreement. However, it is recommended that there be some

memorialization, perhaps by email. An example might be:

Dear Chief,

Because of the pending emergency, we have agreed that Township A will borrow the Fire District's fire engine. Township A agrees to assume any potential liability for damages, injuries and/or death or loss to personal property that occurs while the fire engine is in Township A's possession.

Fire Chief, Township A.

Conclusion

Recent legislation encourages political subdivisions to enter into equipment sharing agreements. The statutes provide that a governmental entity that borrows equipment may agree to assume liability arising out of the use of the borrowed equipment. When acting as a lender or borrower of equipment, notify your OTARMA Representative and confirm liability coverage with the other entity to the equipment sharing arrangement. When entering into an equipment sharing agreement, put it in writing.

Robert J. Gehring is a lawyer with Buechner Haffer Meyers & Koenig and practices in the areas of governmental law, torts, insurance, professional responsibility and business litigation. A past president of the Cincinnati Bar Association, he is board certified as a civil trial advocate by the National Board of Trial Advocacy. He may be contacted at 105 East Fourth Street, Suite 300, Cincinnati, Ohio 45202; 513-579-1500; or rgehring@bhmklaw.com.

Member Profile: Pike Township, Fulton County

Pike Township is a primarily rural, agricultural area located in northern Ohio, just 30 minutes west of Toledo, and is home to approximately 1,900 residents.

Mr. Carl Buehrer has a long history with Pike Township, reaching back to when he and his wife built their home in Pike Township. Mr. Buehrer has served as a township trustee since 1991. His additional leadership roles include President of the Fulton County Historical Society, and he recently retired from his service with the Fulton County Fair Board.

"Things have changed in the years since I was first elected trustee," Mr. Buehrer observed. "One of the most significant changes is our costs have more than doubled. Increasing costs are a big challenge. We have lost income due to cuts in state and federal funding. Despite the challenges, we have remained financially sound with no tax levies, except for fire. We contract with three fire departments."

Mr. Buehrer continued, "One thing that has helped to manage costs and keep us fiscally sound is our OTARMA Membership. The advice we receive is always helpful. It does not matter whether your township is rural or urban, large or small; each member township is treated with the same respect. Year after year, when we gather bids for our insurance – OTARMA continues to win."

"Also, the commitment and teamwork demonstrated by our trustees and fiscal officer helps our township continue to succeed," Mr. Buehrer commented. "We have always had a very good working relationship with all of the trustees that have served our township.

With 28 miles of roads, two cemeteries, and one employee, we receive many compliments from our citizens about the services that they receive. This past year, we added 1,500 square feet onto the township building for additional office space and storage."

Thank you, Pike Township, for choosing OTARMA Membership. It has been an honor to serve alongside you for the past 30 years, and we look forward to many more years working together.

If your township is not yet an OTARMA Member and you would like to learn more about OTARMA, please call (800) 748-0554 and ask to speak with an OTARMA Representative.

OTARMA Board Election Results

The OTARMA Board election results were announced at the OTARMA Annual Meeting on Friday, January 27, during the Ohio Township Association (OTA) Winter Conference and Trade Show in Columbus, Ohio, at which time Ms. Marsha Funk and Mr. Nick Schwab retained their positions on the Board of Directors. Thank you, OTARMA Members, for voting and making this important leadership decision.

Ms. Marsha Funk

Ms. Funk is the Fiscal Officer for Brownhelm Township, Lorain County, an elected position she has held for 20 years. Additionally, Ms. Funk has served on the OTARMA Board of Directors for the past 13 years. "It has been my sincere pleasure to serve on the Board. OTARMA has been successful because of the expertise of our administrator and the conservative directives of the OTARMA Board of Directors. I want OTARMA to continue providing the broadest of coverages, professional claims experiences, and an active loss control program. I will continue the Board's conservative investment policies and to keep OTARMA financially strong," commented Ms. Funk.

Mr. Nick Schwab

For more than 30 years, Mr. Schwab has served as a Reily Township Trustee in Butler County. In addition to his trustee responsibilities and working as a full-time farmer, Mr. Schwab has been an active member on the OTARMA Board of Directors for the past eight years. "As an OTARMA Board Member, my first priority is to ensure financial security with broad property and liability coverage specifically designed for Ohio Townships. We need to maintain enough resources to retain our AAA financial stability rating with Demotech. Additionally, I will continue to encourage coverage enhancements designed to benefit small, as well as large, townships," stated Mr. Schwab.

MORE Grant Program

The MORE Grant Program offers up to $500 per township, for the purpose of assisting OTARMA Members in eliminating or preventing risk exposures that can lead to liability and property claims. Expenses eligible for the MORE Grant Program include risk management or loss control non-consumable goods or services acquired for the primary purpose of reducing or preventing liability claims and property losses. Townships may consider safety equipment, including Automatic Electronic Defibrillators (AEDs) or Personal Protective Equipment (PPE) such as reflective vests, turnout gear or respiratory devices. Registration fees for risk management, safety training, workshops and seminars – Certified

Playground Safety Inspectors (CPSI) and Cardiopulmonary Resuscitation (CPR) – also meet the grant requirements. Examples of approved application requests include:

- Barricades and cones
- Snowplow lights
- Flashlights for police vehicles
- Reflective raingear
- Handheld radios for road workers
- New security doors for township buildings
- Ohio Township Association (OTA) Conference registration fees.

Applications for the 2017 MORE Grant may be submitted January 1 through December 31, 2017. All members who previously participated are welcomed and encouraged to participate again in 2017. The one-page grant application is easy to complete and available on the OTARMA Website at www.OTARMA.org. Submit the completed application with supporting documentation via mail, fax or email to:

Wendy French, OTARMA Customer Service Representative

OTARMA MORE Program
315 South Kalamazoo Mall
Kalamazoo, MI 49007
Fax: (269) 276-4095
Email:
wfrench@bfgroup.com

"Our township applied the $500 grant monies towards the purchase of new safety work boots for our road department employees and the purchase of 'children at play' and 'mowing ahead' safety signs. By upgrading footwear for our road department employees, we hope to reduce the potential for occupational safety-related occurrences such as slipping, back/leg fatigue, burns, and exposure to weather, or injury. Through the purchase of the safety signs, we hope to improve the safety of the traveling public. Thank you for offering this program and please express our gratitude and appreciation to the OTARMA Board Members who approved this grant. We truly appreciate the opportunity to participate in this valuable program."

Andrea M. Lynch, Fiscal Officer, Licking Township, Licking County

"We wish to express our appreciation for the MORE Grant, which we received for a laptop to be used for disaster preparedness and law enforcement training. As a small agency, this grant was truly helpful in helping us to protect and serve our township. Thank you for your help during our application process. Please express our sincere appreciation and thanks to the OTARMA Board of Directors for this grant."

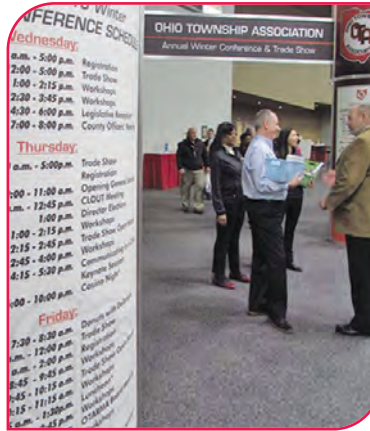Joseph A. Andzik, Chief of Police,
German Township, Montgomery County

"Sending a BIG thank you to you and the OTARMA Board for the $500 check to use to purchase road signs. Mainly, we needed high water signs as ours were almost unusable. The grant is a great help to our township. It allows us to make our community safer when traveling the roads in inclement weather. Again, thank you very much!"

Ruth Ann Crabaugh, Fiscal Officer,
Liberty Township, Crawford County

2017 Ohio Township Association Winter Conference and Trade Show

By Jim DeLucas, OTARMA Representative

More than 3,000 attendees gathered at the Greater Columbus Convention Center, January 25-27, 2017, for the annual Ohio Township Association (OTA) Winter Conference and Trade Show. The conference welcomed township trustees, fiscal officers, employees, administrators, road and cemetery superintendents, zoning officials and legal counsel, as well as companies and organizations serving townships.

Highlights of the conference included more than 90 educational workshops, a trade show with more than 150 vendors, and events for networking. Wednesday's schedule included a public records training from the Auditor of State's office.

On Thursday morning, the general session welcomed remarks by Matt DeTemple, OTA Executive Director. The session featured a presentation on overcoming challenges by Todd Huston, who survived a boating accident at age 14 which resulted in a leg amputation. Mr. Huston went on to become the first disabled person to break an able-body world record in sports by climbing to the highest elevations of all 50 U.S. states with a single leg.

That evening, guests were invited by Burnham & Flower Insurance Group, OTARMA Marketer, to enjoy a casino night and try their hand at blackjack or poker.

The luncheon on Friday welcomed keynote speaker Judson Laipply, whose presentation included his personal narrative, crowd participation, and laughter, which invited conference attendees to recognize how to let go of things beyond their control, and focus on the things they can change. The conference concluded with the general session on Saturday morning.

We extend our gratitude to Matt DeTemple, OTA Executive Director, Heidi Fought, Director of Governmental Affairs, Elizabeth Antjas, Meetings & Events Coordinator, Heather Whisman, Administrative Assistant, and Angela Stevenson, Bookkeeper, for organizing another exceptional conference. We recognize and appreciate the amount of work it takes to successfully host a statewide gathering of this magnitude.

Thank you to those who were able to attend the conference. If you were not able to join us this year, we hope you can make plans to attend January 31-February 3, 2018, in Columbus. We look forward to seeing everyone next year.

"Sincere thanks for the $500 MORE Grant! We will use the funds to pay registration fees for the OTA Annual Conference. We consistently look for outside funding to cover some of our expenses and appreciate this award. We find the OTA Annual Conference an outstanding learning experience, not only for our trustees and fiscal officer, but for others on our staff who have gained useful knowledge and made contacts that have provided the hands-on lessons that are critical in small operations. We are delighted to be a part of the OTARMA Family."

Traci Dietrich, Administrative Assistant, Olmstead Township, Cuyahoga County

"On behalf of Sutton Township, we would like to thank OTARMA for making the MORE Grant funds available to member townships. We purchased a fireproof file cabinet with the MORE Grant money and it is a great enhancement to the office area of Sutton Township."

Trustees Larry C. Smith, Jerry Hayman, and Charles I. Mugrage; and Jo Ann Crisp, Fiscal Officer, Sutton Township, Meigs County

"We would like to thank you and OTARMA for this excellent program that helps township communities address major safety and security concerns."

Frederick Hanley, Trustee Chairman, Hubbard Township, Trumbull County

Painesville Township Fire Department Celebrates 50th Anniversary

The Painesville Township Fire Department, a 15-year OTARMA Member, hosted a 50th anniversary dinner at Hellriegals Inn. The event celebrated the department's history, and recognized firefighters, EMTs and paramedics who have faithfully served Painesville Township. Over 100 current and former firefighters were in attendance. Fire Chief Frank Whittaker shared highlights from the department's history and several retired members related personal stories from their time in service. Board of Trustee Chairman Chuck Hillier presented a resolution from the Trustees recognizing the achievements of the department. Chairman Hillier also presented resolutions to the seven firefighters – Richard H. Ramsey, Robert L. Sutch, Charles D. Digman, Kenneth Myllykoski, Fred A. Armstrong, Leslie Naughton, and Will Cook – who started with the original fire department and were in attendance at the dinner.

The Painesville Township Fire Department was founded on February 1, 1966. Prior to that date, fire protection in the township was provided by the City of Painesville. The Painesville Township Board of Trustees decided at that time that the township had grown to the point that it could provide its own fire protection. This was a controversial decision at the time and was opposed by the City of Painesville and several large manufacturing companies in the Township. Additionally, one of the trustees at the time opposed it. Nevertheless, the trustees moved forward and created the fire department.
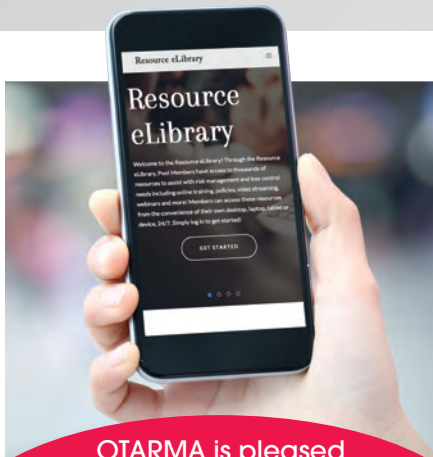
The fire department began with used fire trucks and equipment. The original department started with 45 volunteer firefighters. The township constructed two fire stations; one at 55 Nye Road, and a second one at 141 Bowhall Road. The first fire chief was Fred Guthleben, who was hired from Grand River. Chief Guthleben was the first full-time employee of the department.

Over the past 50 years, the department has grown to employ 46 full- and part-time firefighters, EMTs, and paramedics. The department added a third fire station at 550 Hardy Road in 2008. The department also has the region's only arson investigative dog. Over the past five decades, the Painesville Township Fire Department has matured into a modern firefighting and emergency medical responder. Painesville Township is deeply grateful to the men who formed the first fire department in 1966, overcoming numerous obstacles to grow into the first-class community asset they are today.

OTARMA's Online Resource Library is Now Called the eLibrary!

OTARMA is pleased to announce that the Online Resource Library will officially become the Resource eLibrary! With the new name comes new content.

The new and expanded content will focus on streamed content and online training. Further, the Resource eLibrary is on a new, more engaging platform and offers a more interactive way to navigate each resource area while providing the exclusive content to which you are accustomed. Resources are continuously updated so you have the most current training material and resources at your fingertips!

New features include:

- Content centered around your feedback

- You can search within each resource (e.g., video streaming), as well as perform a site search
- The Resource eLibrary is mobile-friendly
- A visible shopping cart makes DVD ordering easier
- Any many more…

As an OTARMA Member, you will continue to login to the Resource eLibrary through the OTARMA Website, using the same username and password at www.OTARMA.org.

30-Year Anniversary: OTARMA Leading the Way for Ohio Townships

By Jim DeLucas

CELEBRATING 30 YEARS 1987 2017

The Ohio Township Association Risk Management Authority (OTARMA) is celebrating 30 years of service to Ohio Townships.

OTARMA is a self-insurance pool endorsed by the Ohio Township Association (OTA) and was originally formed in 1987 for the primary purpose of providing townships throughout the state of Ohio with an alternative to traditional property and casualty insurance. The 1980s were a time when liability insurance coverage for public entities was virtually unattainable from the traditional insurance marketplace. If coverage was available, it was cost prohibitive for many townships.

The following are OTARMA's significant milestones on the way to becoming one of largest local government risk pools in the state of Ohio:

1986 In response to the insurance crisis, Ohio enacts legislation that allowed municipalities to join local government risk pools. The Ohio Township Association and County Commissioners' Association of Ohio (CCAO) cooperated to help get needed legislation passed.

1987 The Ohio Township Association endorses the OTARMA Program.
– OTARMA welcomes its first member in February.
– In October, OTARMA welcomes its 100th member.

1997 OTARMA provides a FREE Resource Library with sample documents and videotapes to its members.

2006 OTARMA welcomes a dedicated claims service provider, Public Entity Risk Services of Ohio (PERSO), with a local claims office.

2008 Motor Vehicle Report (MVR) reimbursement is introduced to OTARMA Members.

2009 Budget Relief Credit is offered to OTARMA Members in the amount of $2,000,000 in returns.

2012 Three-year rate guarantee is offered to small OTARMA Member townships.

2013 A one-million-dollar Capital Reserve Fund Distribution is implemented for qualifying OTARMA Members.
– MORE Grant Program is introduced to OTARMA Members and $1,150,000 in MORE grant funds is awarded to members through 2016.

2016 Demotech rates OTARMA AAA (Unsurpassed) for the 27th consecutive year.
– OTARMA reaches 1,000 members.

Through the cooperation of Ohio's townships and with professional partners like: Burnham & Flower Insurance Group, York Risk Pooling, Public Entity Risk Services of Ohio, and KLA Risk Consulting and because Ohio townships began joining in 1987 and over 99% have stayed committed to the program every year for the past 30 years:

- OTARMA is the largest program in Ohio and one of the largest in the country

- OTARMA rates have **never** increased, giving OTARMA Members the advantage of stability

- 100% of the townships in 20 Ohio counties are OTARMA Members

- Coverage is the most comprehensive in Ohio

- Claims and Risk Management companies are both dedicated to Ohio's Townships

- Tens of millions of dollars have been returned to OTARMA Members

- Lowest prices available. It is estimated that OTARMA has saved Ohio Townships in excess of $40,000,000 over the 30 years.

- Members own the program.

OTARMA's first 30 years have seen tremendous growth and success, resulting in OTARMA becoming one of the safest, most financially sound property and liability coverage arrangement, and among the largest local government risk pools in the state of Ohio. Over 1,000 Ohio Townships are OTARMA Members. Thank you, Members, for your ongoing participation and we look forward to continuing to lead the way together for Ohio Townships.

OTARMA Upcoming Events

Look for details in the July/August issue of the *Ohio Township News*.

OTARMA Board Meeting
July 28 - 30, 2017

OTA Annual Golf Outing
The Golf Club of Dublin
Friday, August 4, 2017

CELEBRATING **30** YEARS
1987   2017

If your contact information needs to be updated or if you want to receive newsletters electronically, please contact the OTARMA Service Center at (800) 748-0554, ext. 3136.

OTARMA Welcomes New Member

Pierce Township, Clermont County

"In January, we welcomed Pierce Township to OTARMA. The township selected OTARMA for service, coverage and cost savings," commented Ed Barber, OTARMA Representative.

Founded in 1853, Pierce Township encompasses 23.5 square miles located in the southwest corner of Clermont County, Ohio. Located just 20 minutes from downtown Cincinnati, Ohio, Pierce's 13,000+ residents enjoy countryside charm comfortably blended within neighborhoods.

Pierce residents and visitors can choose from a variety of family-oriented recreational options; from boating on the Ohio River, playing golf on one of three highly respected courses, to hiking in our Nature Park and much more. Families who live in Pierce value its rural atmosphere, schools, and professional public services with easy access to shopping, arts, entertainment, and professional sports.

Government services are provided by a three-person board of trustees and a fiscal officer, each elected by Pierce residents to staggered four-year terms. Pierce Township provides professional full-time Police, Fire, Office of Planning, Zoning, and Community Development, Development Facilitation and Service Department services.

Reminder for OTARMA Member Fire Departments: List Your Turnout Gear

Did you know that OTARMA Member fire departments are covered under the township's general liability coverage as owned premises, subject to agreement terms, conditions, and exclusions?

What About Property Coverage? What is Included?

Most often, we think about structures – buildings. Other items to consider are Personal Protective Equipment (PPE), including turnout gear. Be sure that adequate and accurate values have been properly listed on your property schedule in order that coverage to replace or repair this critical equipment is available should a loss occur.

Example: 20 sets of turnout gear at $5,000 each equals $100,000 total.

If you are not sure that these items are listed or if you would like to add coverage, call Wendy French, OTARMA Customer Service Representative, at (888) 748-7966, ext. 3136.

Please Submit Photos for the 2018 OTARMA Calendar

We are now accepting photos to be considered for publication in the 2018 OTARMA Calendar. This is a great opportunity to showcase your scenic township. Photos of people enjoying activities in your township are desired.

Please remember that high-resolution photos work best.

Please visit the OTARMA Website, www.OTARMA.org, and click on Photo Submission on the Home Page for submission guidelines. A signed release must accompany your photo submission. Submit photos to otarma@bfgroup.com no later than September 15, 2017, to be considered for the 2018 OTARMA Calendar!