



## TAKING THE "STRICT" OUT OF TREASURER LIABILITY

Jan 2, 2019

Treasurers of Ohio school districts and educational service centers have operated for decades under a "strict liability" standard for the loss of public funds. Strict liability is a harsh legal penalty that holds treasurers accountable for damages or losses, even when caused by a subordinate or other person in the district. Until now, with the passage of House Bill 491, public officials were held liable for any loss of public funds, even when blameworthy acts on their part were not the primary cause for the loss of public funds. See *State v. Herbert*, 49 Ohio St.2d 88, 96 (1976).

However, with the recent passage of House Bill 491, signed into law by the Governor on December 19, 2018, strict liability is no more. Instead, a treasurer will only be liable for the loss of public funds when *the treasurer* is negligent or engages in other wrongful acts. Further, unless the treasurer is negligent or engages in other wrongful acts, House Bill 491 also exempts them from liability if they relied upon (1) the accuracy of nonfinancial information or data of the school district; (2) pupil transportation reports; or (3) licensure or other credentialing information for educators. House Bill 491 also makes this new legal standard applicable to superintendents, or their designees, with regard to the wrongful payment of teachers due to inaccurate licensure or credentialing information.

A treasurer must still post a bond with the president of the board of education. However, pursuant to House Bill 291, also recently signed into law, the board of education may elect to purchase an insurance policy to cover losses caused by fraudulent or dishonest actions of public employees, and the failure to perform a duty prescribed by law, in lieu of requiring a bond. Under either scenario, where public funds are lost and a treasurer is not negligent or engaged in other wrongdoing such as fraud, these monies may not be recoverable by the board of education, as they have been in the past.

Please contact any of the listed attorneys regarding the impact of House Bills 491 and 291 on school districts and treasurer liability. We welcome any questions.

