



The Ohio
Department
of Commerce

Spring 2005

Division of

Real Estate and Professional Licensing

◆ N E W S L E T T E R ◆

Bob Taft
GOVERNOR

Doug White
DIRECTOR

Kelly Davids
SUPERINTENDENT

◆ New Appraiser Experience Rule

The Division of Real Estate & Professional Licensing has received many questions on the new appraiser experience rule, O.A.C. 1301:11-3-04, which went into effect on March 1, 2005.

The Division recognizes the questions and concerns raised by applicants, appraisers, and educators, and will be closely examining the experience rule. It is anticipated that the new rule will be amended.

The Division amended the experience requirements because the National Appraiser Qualifications Board recently adopted substantial changes to the Real Property Appraiser Qualification Criteria. Those changes will become effective January 1, 2008. The expressed purpose of the changes is to require those apprentices that are acquiring experience to enter the profession with an appropriate threshold level of competence.

In an effort to be compliant with the new requirements by 2008, the Division is implementing those changes in segments so that our regulations are compliant with the Real Property Appraiser Qualification Criteria. One section of the new criteria relates to the experience hours required to obtain licensure or certification. The Division implemented most of the new criteria relating to experience requirements by amending the experience rule, O.A.C. 1301:11-3-04.

In the interim, the experience rule provides the Real Estate Appraiser Board the discretion to waive certain requirements upon a finding that an applicant has achieved equivalent experience acceptable to the board.

Updates on proposed changes and the status of the rule will be provided in upcoming newsletters and posted on our website.

Division of Real Estate & Professional Licensing Newsletter Going Electronic



As the Division of Real Estate continues to move ahead with E-Commerce capabilities and in an effort to streamline production costs, the Division of Real Estate will be changing the distribution process of the *Division of Real Estate & Professional Licensing Newsletter*, beginning with the Summer 2005 issue. All future newsletter issues will be published online only.

You may request to receive the newsletter electronically by sending your email address information to **webreal@com.state.oh.us**. For those who do not have access to the Internet or do not have an email account, please contact Liz Exline at 614-644-9734 so we can provide assistance on how to continue to receive our newsletter.

As with our past issues, you may also obtain the newsletter directly from our web page. Future issues will be published on the REPL web site at www.com.state.oh.us/real/realpub.htm on a quarterly basis as follows:

Summer issue - late July

Winter issue - late January

Fall issue - late October

Spring issue - late April

Dauids Appointed As New Superintendent for the Division of Real Estate & Professional Licensing

Director of Commerce Doug White has appointed Kelly Davids as Superintendent of the Ohio Department of Commerce’s Division of Real Estate and Professional Licensing. She began serving as Superintendent on Monday, April 4.

“Kelly brings to the Superintendent’s position more than 20 years of experience in public administration and public policy, which will enable her to effectively lead the Division of Real Estate and Professional Licensing,” Director White said.

The Division licenses real estate brokers and salespersons in addition to licensing and certifying general and residential appraisers. It also registers cemeteries and foreign real estate property.

“It is an honor to join the Real Estate and Professional Licensing Division of the Department of Commerce,” said Davids. “The staff is knowledgeable and focused, and we will work together to maintain a balanced, customer-oriented approach.”



Ms. Davids has served in state government since 1999, most recently as Director of the Office of Reading Improvement and Executive Administrator of the OhioReads program. In these roles, she administered a budget of nearly \$80 million in managing Governor Bob Taft’s education initiative to improve the reading skills of Ohio’s students. Ms. Davids previously served as Director of Constituent Inquiries for Governor Taft.

Prior to joining state government, Ms. Davids served as Clerk of the Marion County Court of Common Pleas, Deputy Clerk for the Marion Municipal Court’s Civil Division, and Mayor of the Village of LaRue.

She holds a public administration degree from Franklin University.

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New Subpoena Procedure In Ohio Revised Code Section 4735.04

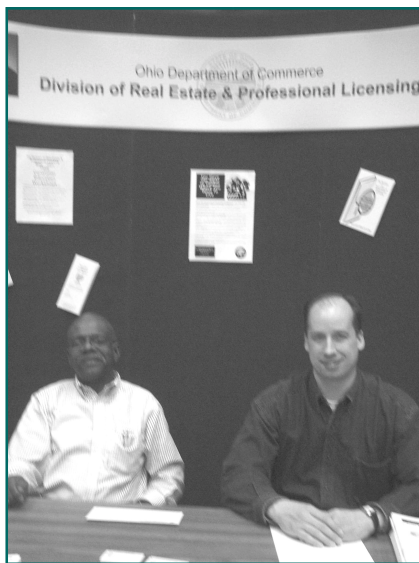
When is a letter more than a letter? When a certified mail letter includes a subpoena from the Division of Real Estate and Professional Licensing.

The procedures for the issuance of subpoenas by the Ohio Real Estate Commission and the Superintendent of Real Estate were substantially changed by recent amendments to Revised Code Section 4735.04. Amended Substitute Senate Bill 106 in the 125th General Assembly made subpoena power more accessible to the Commission and the Superintendent in conjunction with the investigation of matters within their jurisdiction.

The General Assembly made a substantial one sentence amendment to the first paragraph of the section. Language requiring that subpoenas issued under R.C. 4735.04 be served by a sheriff or constable has been removed. The statute has been amended to provide that service of a subpoena may now be made by certified mail, return receipt requested. Service may still be effected by a sheriff or constable. However, the additional option of certified mail is more economical and more efficient.

R.C. 4735.04 provides that a subpoena sent by certified mail, return receipt requested, “shall be deemed served on the date delivery is made or the date the person refused to accept delivery.” That presents the option of a much more economical procedure, requiring the postage for certified mail rather than the process serving costs for personal service by a deputy sheriff or constable. The Division also anticipates that the new procedure will be more efficient by providing for completion of service when the potential witness either accepts delivery or refuses acceptance.

The Division expects that the new statutory procedure will prove to be a useful tool in expediting the processing of complaints and investigations. For licensees and potential witnesses, it will be important to keep the prospect in mind that a certified mail letter from the Division may represent more than a letter. It may have the impact of a subpoena delivered by a deputy sheriff.



Dennis Broadnax (left) and Dana Smith (right), of the Real Estate Enforcement Section, represented the Division at the March 19th Springfield Homebuyer's Fair.

Both reported a busy morning, answering many real estate related questions and distributed many of the consumer-related brochures the Division offers.

When to Return a Sales License

The only time a license does not have to be returned is when the licensee is doing a transfer (changing brokers). The licensee, by signing the Sales Transfer/Reactivation Application, is declaring they have notified their Broker in writing they are moving to a different brokerage.

If the circumstances do not fit this simple rule, the sales license must be returned to the Division.

Appraiser Disciplinary Actions

SUSPENSION

Maurice Richard Skiffey – State-licensed residential real estate appraiser -Niles, OH. Maurice Richard Skiffey was found to have violated, as to count one, Ohio Revised Code (ORC) Section 4763.11(G)(5) as that section incorporates ORC 4763.13(A) and the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules 1-1(c), 2-1(a). Mr. Skiffey committed a series of errors that resulted in the issuance of an inaccurate and/or misleading appraisal report. He failed to accurately reflect the square footage of the subject property; failed to accurately reflect the number of bedrooms in the subject property; failed to accurately reflect a prior sale date. As to count two, was found to have violated ORC 4763.11(G)(5) as it incorporates ORC 4763.13(A) and USPAP Standards Rule 2-1(c). Mr. Skiffey failed to properly denote and analyze that the appraised property was subject to an existing lease or land contract. As to count three, was found to have violated ORC 4763.11(G)(5) as it incorporates ORC 4763.14. Mr. Skiffey failed to retain a true and original copy of the appraisal report. As to count four, was found to have violated ORC Section 4763.11(G)(6) and (7). Mr. Skiffey failed to exercise reasonable care and diligence in the preparation and issuance of the appraisal report. Mr. Skiffey was found to have violated counts one through four as charged in this matter. For these violations, the Appraiser Board ordered: As to count one, Mr. Skiffey is issued a written reprimand and admonished to use reasonable care and diligence in the preparation and development of appraisal reports. Additionally, he must complete a fifteen (15) hour course in USPAP within ninety (90) days of the date of the Appraiser Board order and successfully pass the course examination. Completion of the USPAP course and a written

reprimand shall satisfy the requirements for counts #1, #2, and #3. As to count four must complete a fifteen (15) hour course in Valuation Procedures or a course that covers any or all of the three Approaches to Value within one hundred twenty (120) days of the date of the Appraiser Board's order and successfully pass the course examination. Credit for the education courses ordered herein will not count to satisfy the annual fourteen (14) hours of required appraisal continuing education.

Kevin Lynch – State-certified residential real estate appraiser – Rocky River, OH. Kevin Lynch was found to have violated as to count one, ORC 4763.11(G)(5) as it incorporates USPAP Standards Rules 1-4(a) and 2-2(b)(ix). Mr. Lynch failed to collect and analyze the data for the comparable properties used in the appraisal report. As to count two was found to have violated ORC 4763.11 (G (5) as it incorporates USPAP Standards Rule 2-3. Mr. Lynch failed to disclose the significant professional assistance of an associate that obtained the comparable property data used in the appraisal report. Mr. Lynch was found to have violated counts one and two as charged in this matter. For these violations, the Appraiser Board ordered: As to count one, the state-certified residential appraiser certificate of Mr. Lynch is suspended for thirty (30) days. As to count two, Mr. Lynch must complete a fifteen (15) hour course in USPAP within one hundred twenty (120) days of the date of the Appraiser Board's order and successfully pass the course examination. Credit for the education courses ordered herein will not count to satisfy the annual fourteen (14) hours of required appraisal continuing education.

Brian Roy Owens – State-licensed residential real estate appraiser – Middletown, OH. Brian Roy Owens was found to have violated as to count one, ORC 4763.11(G)(5) as it incorporates USPAP Standards Rule 1-1(c). Mr. Owens rendered an appraisal

service in a careless and negligent manner that did affect the credibility of the results. As to count four, was found to have violated ORC 4763.11 (G)(5) as it incorporates USPAP Standards Rule 2-1(c). Mr. Owens failed to clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment. Mr. Owens was found to have violated counts one and four as charged in this matter. For these violations, the Appraiser Board ordered: As to count one, the state-residential appraiser license of Mr. Owens is suspended for thirty (30) days. As to count four, Mr. Owens must complete a fifteen (15) hour course in USPAP within one hundred twenty (120) days of the date of the Appraiser Board's order and successfully pass the course examination. Credit for the education courses ordered herein will not count to satisfy the annual fourteen (14) hours of required appraisal continuing education.

REPRIMAND

Dawn Marcia Fines – State-licensed residential real estate appraiser – Chillicothe, OH. Dawn Marcia Fines was found to have violated as to count six, ORC 4763.11(G)(5) as it incorporates USPAP Standards Rule 1-1(a). Ms. Fines failed to explain in the reconciliation of the appraisal report how the cost approach supported the final value. For this violation, the Appraiser Board ordered: As to count six, Ms. Fines is issued a written reprimand and admonished to use caution in the development and reporting of appraisal reports. Additionally, she must complete a thirty (30) hour course, which covers

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Appraiser Disciplinary Actions continued

Continued from Page 4...

any or all of the three valuation procedures (Cost), (Income) or (Sales Comparison). Such courses may be taken in fifteen (15) hour increments, within one hundred twenty (120) days of the date of the Appraiser Board's order and successfully pass the course examination.

William J. McCullough – State-licensed residential real estate appraiser – Youngtown, OH.

William J. McCullough was found to have violated ORC 4763.11(G)(5) as it incorporates USPAP Standards Rules 1-2(e), 2-2(b)(iii). Mr. McCullough incorrectly noted the lot size of the subject property. As to count two was found to have committed a series of errors that in the aggregate affected the credibility of the appraisal report in violation of ORC 4763.11(G)(5) as it incorporates USPAP Standards Rules 1-1(c) and

2-1(a). Mr. McCullough made six errors as to the comparable properties; incorrectly indicated a prior sale; incorrectly indicated a lot size on three properties; and incorrectly noted the gross living area on two properties. As to count three, was found to have violated ORC 4763.11(G)(5) as that section incorporates USPAP, Standards Rules 2-2 (b)(ix). Mr. McCullough failed to summarize why he reported a low effective age of the subject property when he described the property as being in average condition with a considerably higher actual age. As to count four, was found to have violated ORC 4763.11(G)(5) as it incorporates USPAP Standards Rules 2-2(b)(ix). Mr. McCullough failed to summarize why the opinion of value was higher than the amount paid for the property over a year prior to the appraisal report. Mr. McCullough was

found to have violated counts one through four as charged in this matter. For these violations, the Appraiser Board ordered: Mr. McCullough as to count one, two, and three a written reprimand and admonished him to use caution and to verify facts in the preparation of appraisal reports. Additionally, as to count two, he must complete a fifteen (15) hour course in USPAP within ninety (90) days of the date of the Appraiser Board's order and successfully pass the course examination. Also as to counts three, and four he must complete a fifteen (15) hour course which covers any or all of the three valuation procedures, (Cost), (Income) or (Sales Comparison) within one hundred and twenty (120) days of the date of the Appraiser Board's order and successfully pass the course examination.

****Disciplinary Action Reversal****

Raymond Dayle Peters – State Certified General Real Estate Appraiser License Number 398623 – Smithville, Ohio - The Wayne County Court of Common Pleas reversed the decision of the Division of Real Estate and Professional Licensing in a disciplinary action arising out of three appraisals completed by Raymond Dayle Peters of Smithville. The court found that a decision by the Ohio Real Estate Appraiser Board that the appraiser had rendered appraisal services in a careless and negligent manner was contrary to law. Regarding a second violation, that the appraiser had failed to exercise reasonable diligence in preparing an appraisal report, the court found that the Appraiser Board's decision was not supported by substantial, reliable and probative evidence. Additionally, in considering a third violation charged against the appraiser, that he had committed a substantial error in documenting a comparable property, the court found that the Appraiser Board's decision was not supported by substantial, reliable and probative evidence, and was contrary to law. Accordingly, the disciplinary action reported against the appraiser in the Summer 2004 Real Estate and Professional Licensing Newsletter is reversed, and the penalties reported there will not be imposed.

Real Estate Disciplinary Actions

REVOCATIONS

CHRISTOPHER R. WAMSLEY, salesperson, West Carrollton, Ohio, had his license revoked for violating Ohio Revised Code (ORC) Sections 4735.18(A) and 4735.18(A)(6) as that section incorporates ORC 4735.13(C), after he was convicted of 5 counts of passing bad checks, felonies in the 4th degree, 7 counts of passing bad checks, felonies in the 5th degree and he failed to notify the Superintendent of these convictions. In addition, he was fined a total of \$2,000.00 and required to complete and to submit proof of completion of 12 hours of continuing education for violating 4 counts of ORC 4735.18(A)(8) when he filed transfer/reactivation applications with the Division where he represented that he had not been convicted of any unlawful conduct, except minor traffic violations, when, in fact, he had.

SUSPENSIONS, FINES, EDUCATION

MARK C. ZERVOS, salesperson, Willoughby, Ohio, as the result of an investigation of a formal complaint, had his license suspended for a period of fourteen (14) days, which commenced on December 27, 2004. He also was fined \$1,000.00, and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course for violating ORC 4735.18(A)(6) when he failed to enter into a purchase agreement for a seller's property, in a timely manner, as set forth in the exclusive right to sell agreement.

STEPHANIE J. GRAY, salesperson, Cambridge, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.73 and Ohio Administrative Code (OAC) 1301:5-6-11, when she failed to use the proper agency disclosure form with the required wording.

JONATHAN K. LEE, broker, Chicago, Illinois, was fined \$1,000.00 and was required to complete and to

submit proof of completion of the ten (10) hour brokerage post-licensure course for violating ORC 4735.18(A)(6) as that section incorporates Article 3 of the Canons of Ethics for the Real Estate Industry. The Commission found that he failed to immediately return the license of a real estate salesperson to the Superintendent after the Division suspended the license and requested Mr. Lee to return the license to the Division.

RICHARD C. MOTTS, II, broker, Canton, Ohio, was fined \$1,000.00 and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating ORC 4735.18(A)(6) as that section incorporates Article 3 of the Canons of Ethics for the Real Estate Industry. The Commission found that he failed to immediately return the licenses of two real estate salespersons to the Superintendent, after the Division requested Mr. Motts to return the licenses or remit lost license fees to the Division.

KATHLEEN A. SHULL-MANSFIELD, salesperson, Wadsworth, Ohio, as the result of an investigation of a formal complaint, was fined \$100.00 for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.58(B), when she failed to properly complete or cause to be completed the agency disclosure form. In addition, she was fined \$500.00 and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course, for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.62(A) when she incorrectly completed and transmitted an addendum that indicated her client would pay \$3,000.00 in buyer closing costs.

KATHY E. SPROTT, salesperson, Temperance, Michigan, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course for violating ORC Sections 4735.18(A)(6) and 4735.18(A)(22). The Commission found that

she had a buyer sign off on an earnest money certification in a contract offer, indicating she had placed a deposit with the brokerage, giving the impression there was a substitution of the deposit, which was actually not made until later. **DANA K. PHILLIPS**, salesperson, North Canton, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency and the ten (10) hour sales post-licensure course for violating ORC 4735.18(A)(6) as that section incorporates ORC 4735.62(A). The Commission found that she failed to exercise reasonable skill and care in representing her client and she also failed to carry out the responsibilities of the agency relationship, when she failed to provide her client, the buyer, with the required property disclosure form and she incorrectly advised her client that the form was not required.

PHILIP L. HERMAN, broker, Dayton, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating ORC 4735.18(A)(21) when he published advertising that was misleading or inaccurate. The Commission found that he indicated that the property had a full basement when it did not. In addition, he was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.71(A) when he failed to obtain the seller's written consent to dual agency representation on the dual agency disclosure statement.

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Real Estate Disciplinary Actions Continued...

NEIL J. QUINN, broker, Cincinnati, Ohio, was fined \$1,000.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating ORC 4735.18(A)(6) as that section incorporates Article 3 of the Canons of Ethics for the Real Estate Industry. The Commission found that he failed to immediately return the license of a real estate salesperson to the Superintendent after the Division suspended the license and requested Mr. Quinn to return the license to the Division.

BARBARA S. SOEDER, salesperson, Eastlake, Ohio, was fined \$300.00 and was required to complete and to submit proof of completion of the ten (10) hour sales post-licensure course and a three (3) hour course on agency for violating ORC 4735.18(A)(6) as that section incorporates ORC 4735.13(C) when she failed to notify the Division of a 2002 felony conviction. In addition, her license was suspended for a period of 6 months, which commenced on January 29, 2005, for violating ORC 4735.18(A) for her conviction of a 2002 felony for Aggravated Vehicular Assault.

MICHAEL R. HOELTER, salesperson, Bowling Green, Ohio, as the result of an investigation of a formal complaint, was fined \$200.00 for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.56(A) when he failed to provide the buyer with a copy of the company policy on agency relationships for the brokerage with which he was associated. In addition, he was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course on agency for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.71, when he failed to provide a properly executed agency disclosure form to the buyer and seller.

ROGER A. SEE, broker, Springfield, Ohio, was fined \$300.00 and was required to complete and to submit proof of completion of the ten (10) hour brokerage post-licensure course for violating ORC 4735.13(B) when he

failed to return the license of a real estate salesperson to the Superintendent or arrange for a replacement license within three days of receipt of notice to Mr. See.

KENNETH G. JORDAN, broker, Cincinnati, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of three (3) hours of continuing education for violating ORC 4735.18(A)(20) and 4735.18(A)(21) when he offered property for sale via the Multiple Listing Service without the consent of an owner of the property and without the consent of any authorized agent of the owner.

DEREK P. SIMPSON, salesperson, Cincinnati, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of three (3) hours of continuing education for violating ORC Sections 4735.18(A)(20) and 4735.18(A)(21) when he offered property for sale via the Multiple Listing Service without the consent of an owner of the property and without the consent of any authorized agent of the owner.

MARY J. HOCKRAN, broker, Andover, Ohio, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour fair housing course for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.55(A)(2) when she utilized a listing contract form that did not contain the required fair housing language.

EARNEST C. WILLIAMS, salesperson, Independence, Ohio, as the result of an investigation of a formal complaint, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour course relating to fair housing for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.55(A)(2) when he utilized a listing contract form that did not contain the required fair housing language. In addition, he was fined \$500.00 and was required to complete and to submit proof of completion of a

three (3) hour course relating to agency for violating ORC 4735.18(A)(6) as that section incorporates ORC 4735.58(B)(1) for failing to obtain a signed buyer agency disclosure statement prior to obtaining financial information regarding the buyer.

PAUL E. BAIER, broker, Seven Hills, Ohio, was fined \$500.00 and was required to complete and to submit proof of completion of a three (3) hour fair housing course for violating ORC 4735.18(A)(9) as that section incorporates ORC 4735.55 for using an agency agreement that did not contain the required fair housing language.

DENE A. SHIELS, salesperson, Cincinnati, Ohio, had his license suspended for a period of one year, which commenced on March 5, 2005, was fined \$2,500.00, and was required to complete and to submit proof of completion of three (3) hours of continuing education and six (6) hours of education from the Ohio Ethics Commission, approved by the Superintendent, for violating ORC 4735.18(A)(6). The Commission found that he fabricated a letter containing the name and purported signature of an attorney which he addressed to himself and which was purported to be a letter communicating to Mr. Shiels, among other things, the attorney's legal analysis of a lease for property in Ohio and the wishes of the owners of the leased property. He was found to have used this letter in an attempt to influence the conduct of the person whose business occupied a portion of the leased property.

SHAWN A. BLAIN, salesperson, Aurora, Ohio, was fined \$300.00 and was required to pay \$19.00, for violating ORC 4735.18(A)(6) as that section incorporates OAC Rule 1301:5-1-10. Ms. Blain issued the Division a personal check for the reactivation of her license. The check was returned to the Division "unpaid." Despite notice to her of the return of this check, the fees remained unpaid.

REMINDER!

Cleveland Office Available for Help

Paperwork can be hand-delivered to the Cleveland Office located at 615 W. Superior Avenue. All items will be accepted and forwarded to the Columbus Office for processing. **Sales transfer applications** will be given an immediate review and determination of effective date. All other items will be effective following receipt and review by our Columbus staff.

To contact the Cleveland Office, call 216-787-3100. The Columbus office can be reached at 614-466-4100.



**The Ohio
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State of Ohio
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