

February 18, 2014

The Honorable Josh Mandel  
Treasurer of State  
9th Floor, Rhodes State Office Tower  
30 East Broad Street  
Columbus, Ohio 43215

SYLLABUS:

2014-005

1. The Treasurer of State may use public moneys to contract with a private company to organize and conduct a telephone town hall meeting at which he speaks to constituents and answers questions about his office and its activities and operations, provided the public moneys are not required to be used for another purpose and the expenditure is not prohibited by law.
2. The Treasurer of State may discuss at a telephone town hall meeting a subject that is not related to his office and its activities and operations when he deems the subject a matter of general interest to the citizens of Ohio or when a constituent specifically asks him to address the subject.
3. When determining whether a subject to be addressed at a telephone town hall meeting relates to the Treasurer of State's office and its activities and operations or is a matter of general interest to the citizens of Ohio, the Treasurer of State must exercise reasonable discretion, and his determination will not be set aside by a court unless it finds an abuse of discretion.
4. The Treasurer of State may invite certain constituents to participate in a telephone town hall meeting via a telephone conference call, provided a person who is not invited to participate in the conference call is afforded the opportunity to participate in the conference call.



**MIKE DEWINE**

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February 18, 2014

OPINION NO. 2014-005

The Honorable Josh Mandel  
Treasurer of State  
9th Floor, Rhodes State Office Tower  
30 East Broad Street  
Columbus, Ohio 43215

Dear Treasurer Mandel:

You have requested an opinion about your authority to hold a telephone town hall meeting. The purpose of the meeting is to provide the citizens of Ohio an opportunity to learn about governmental policies and activities that affect them and their families and afford them the opportunity to ask you questions about those policies and activities. You also recognize such meetings cannot be used to promote your candidacy or another person's candidacy for public office; urge passage of, or opposition to, any issue on an election ballot; or discuss partisan or electoral politics. *See generally United Auto Workers, Local Union 1112 v. Philomena*, 121 Ohio App. 3d 760, 778, 700 N.E.2d 936 (Franklin County 1998) (the state of Ohio has an "important interest in disassociating governmental operations from partisan politics"); 1999 Op. Att'y Gen. No. 99-030 at 2-200 ("public entities are not permitted to expend public funds to promote the approval of a tax levy by the voters").

You have explained that a person may participate in a telephone town hall meeting by calling a specific telephone number that will patch the person into the telephone conference call of the meeting. Also, on occasion, you may have a town hall meeting at which members of the public will be present in person.

In addition, to increase public participation at the meeting, you would like to have a private company invite certain persons to participate in the meeting via a telephone conference call. As explained in your letter:

Telephone town hall meetings are often arranged by private third-party firms that specialize in simultaneously placing automated phone calls to thousands of constituents, who are then offered the opportunity to join a telephone conference call with the elected official. At the federal level, elected officials are permitted to use

funds from their official government offices to pay private third-party firms to organize and conduct these telephone town hall meetings.<sup>1</sup>

.... Furthermore, the private third-party firm organizing and conducting the telephone town hall meeting would be instructed to invite potential participants without regard to their political party affiliation, ideology or voter status. (Footnote added.)

Given the recent advent and use of telephone town hall meetings around the country, you wish to know whether you may use public moneys to contract with a private company to organize and conduct a telephone town hall meeting at which you speak to constituents and answer questions on subjects related to official government purposes and policy issues, and, if so, whether certain constituents may be invited to participate in the meeting via a telephone conference call on the basis of their age, sex, or geographic location.

### **Authority of the Treasurer of State to Expend Public Moneys**

The Treasurer of State, as a constitutional officer, “has only such powers as are expressly conferred by the [Ohio] Constitution and statutes and such implied or incidental powers as may be necessary to carry into effect those expressly conferred.” 1982 Op. Att’y Gen. No. 82-082 at 2-232; *see* 1927 Op. Att’y Gen. No. 285, vol. I, p. 503, at 505. *See generally* Ohio Const. art. III, § 1 (“[t]he executive department shall consist of a ... treasurer of state”). Moreover, public moneys held by the Treasurer of State for use in operating his office are held in trust for the benefit of the public and may be expended only by clear authority of law and for a public purpose “reasonably related to the operation” of his office.<sup>2</sup> *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 324, 98 N.E.2d 835 (1951); *see Crane Twp. ex rel. Stalter v. Secoy*, 103 Ohio St. 258, 259-60, 132 N.E. 851 (1921); *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1); 2003 Op. Att’y Gen. No. 2003-029 at 2-248. Any doubt as to the authority of the Treasurer of State to expend

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<sup>1</sup> As support for your proposition that certain elected officials at the federal level may use public moneys to pay private companies to organize and conduct telephone town hall meetings, you refer us to the *House Ethics Manual*, Comm. on Standards of Official Conduct, 110th United States Congress, 2d Session, 340-44 (2008 ed.).

<sup>2</sup> An expenditure of public moneys by the Treasurer of State must be made in conformity with the general statutory procedures used when expending public moneys. *See, e.g.*, R.C. 127.16 (generally requiring state agencies to use competitive selection or obtain the approval of the Controlling Board for any contracts which would result in a single supplier receiving orders of \$50,000 dollars or more within a single fiscal year); 1989 Op. Att’y Gen. No. 89-094 at 2-457 n.7 (“[t]he office of the Treasurer of State is established by the Ohio Constitution, and its powers are provided for under R.C. Chapter 113. The Treasurer of State thus constitutes a state agency for purposes of R.C. 127.16” (citation omitted)). For the purpose of this opinion, it is assumed that the Treasurer of State will comply with those procedures when contracting with a private company to organize and conduct a telephone town hall meeting.

public moneys for a particular purpose must be resolved in favor of the preservation of the moneys and against the grant of authority to make the expenditure. See *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916). This means that you may not expend public moneys for a particular purpose unless the law authorizes you to do so and the purpose for which the moneys are to be used is reasonably related to the operation of your office.

### **Authority to Conduct Telephone Town Hall Meetings**

The first part of your question asks whether you may use public moneys to contract with a private company to organize and conduct a telephone town hall meeting at which you speak to constituents and answer questions on subjects related to official government purposes and policy issues. There is no prohibition in the Ohio Constitution or Ohio Revised Code that prevents you from using public money to conduct a telephone town hall meeting. Also, no constitutional provision or statute authorizes you to use public moneys to contract with a private company to organize and conduct a telephone town hall meeting.

The Ohio Supreme Court, however, has determined that a public office has the implied power to disseminate information about its activities, operations, programs, and policies to the public, and the use of public moneys to disseminate the information serves a valid public purpose:

The third issue raised ... is whether a public agency has the implied authority to expend public funds for dissemination of information to the public, or those with which it may be dealing, by means of a newspaper advertisement, in the absence of either an express statutory authorization or prohibition for expenditure of public funds for that purpose.

....

The advertisement in question is entitled, "An Open Letter to All Teachers and Parents of the Mentally Retarded in Cuyahoga County." It could not be seriously contended that the board of mental retardation has no implied authority to address a letter to teachers and parents of the mentally retarded with respect to a matter directly affecting the performance of the duties imposed upon the board by law. This would involve the expenditure of public funds for the dissemination of information, albeit in the form of preparation of letters and postage. What plaintiff challenges is the means utilized to accomplish the same purpose. Even assuming that this court would agree that the means utilized are not the best or most appropriate, nevertheless, *it is within the implied power of a public agency to disseminate information both to those who are directly affected by its operation and the general public. Such a function may be fairly implied where it is reasonably related to the duties of the public agency.* (Emphasis added.)

*State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 468-70, 423 N.E.2d 105 (1981).

The Ohio Supreme Court elaborated further that

[i]n numerous instances, public funds are expended for dissemination of information to the general public. Many agencies prepare reports or brochures concerning the functions of the agency to distribute to those who are concerned with obtaining that information. Many agencies employ persons to respond to inquiries from the public as to the functioning of the agency or as to other information available from the agency. *In most instances, there is no express statutory authority for such expenditures of public funds, but it is extremely doubtful that anyone would contend that the dissemination of information to the general public is not a proper expenditure of public monies.* The wisdom of the nature of the publication and the means utilized for dissemination may be brought into question, but the public purpose involved cannot properly be questioned. (Emphasis added.)

*Id.* at 469 n.8.

Thus, in carrying out the functions of your office, you have the implied power to expend public moneys to disseminate information to the public about your office and its activities and operations. *See id.* (syllabus, paragraph 4) (“[u]nless prohibited by statute, utilization of newspaper advertisement for dissemination of information to the general public and to those directly affected by agency action is an implied power of a public agency authorized to perform specific functions and to expend monies therefor, so long as money for such purposes has been appropriated by the proper authority”); 1999 Op. Att’y Gen. No. 99-030 at 2-202 n.5 (“[i]t is generally accepted that the dissemination of information is a proper function of a public body and that public money may be expended for that purpose. Accordingly, even without express statutory authority, public officials and public offices may be permitted to inform the public of the consequences that are expected to follow from the passage or defeat of a particular tax levy” (citations omitted)); 1992 Op. Att’y Gen. No. 92-029 at 2-110 n.3 (a county children services agency is not prohibited from using “public funds to disseminate information about the activities of the agency”); 1986 Op. Att’y Gen. No. 86-086 at 2-489 (“[s]ince, as set forth in Seminatore, a public agency has the implied authority to expend funds to disseminate information to the general public about the agency’s activities, where such dissemination is reasonably related to the duties of the agency, I conclude that the Lottery Commission possesses the implied power to expend public funds for activities designed to promote the state lottery”); *see also* 2002 Op. Att’y Gen. No. 2002-001 (indicating that a township may use public moneys to operate a township website that communicates information about the plans, policies, and operations of the township to members of the public and other persons who may be affected by township matters).

The use of town hall meetings or other types of meetings to disseminate information to the public about governmental activities, operations, programs, and policies is a well-established hallmark of a representative democracy and such meetings can promote openness in government and foster good relations with the public. *See generally* 1988 Op. Att’y Gen. No. 88-087 at 2-417 (“the public’s right to know and its right to expect institutions of government to be accountable are to be safeguarded”). Statutes provide for the use of public moneys to build town halls for public meetings and require public bodies to conduct meetings that are open to the public. *See, e.g.*, R.C. 121.22; R.C. 505.26; R.C. 511.01-.04. Also, under the United States and Ohio Constitutions, the people have a right to assemble together for all lawful purposes, including discussing governmental operations,

activities, and policies. United States Const. amend. I; Ohio Const. art. I, § 3; *see also Smith v. City of Cleveland*, 94 Ohio App. 3d 780, 787, 641 N.E.2d 828 (Cuyahoga County 1994) (The First Amendment of the United States Constitution “gives the public the right to receive ideas and information”). *See generally United States v. Cruikshank*, 92 U.S. 542, 552 (1876) (“[t]he right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government is an attribute of national citizenship and, as such, under the protection of and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances”). Accordingly, insofar as it has long been recognized that town hall meetings are an appropriate manner by which a public office may disseminate information about its activities and operations, you have the implied authority to use public moneys to contract with a private company to organize and conduct a telephone town hall meeting at which you speak to constituents and answer questions about your office and its activities and operations. *See State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d at 468-70; 1999 Op. Att’y Gen. No. 99-030 at 2-202 n.5; 1992 Op. Att’y Gen. No. 92-029 at 2-110 n.3; 1986 Op. Att’y Gen. No. 86-086 at 2-489.

### **Limitations on the Authority to Conduct Telephone Town Hall Meetings**

Your authority in this regard is not unlimited, however. First, you may not use public moneys that are required to be used for another purpose to contract with a private company to organize and conduct a telephone town hall meeting. *See* 1982 Op. Att’y Gen. No. 82-082 at 2-232 and 2-233 (“[w]hether charges may be made against any particular custodial accounts [maintained by the Treasurer of State] depends upon the statutes controlling those accounts”). *See generally* 2013 Op. Att’y Gen. No. 2013-035, slip op. at 2 (“[m]oneys in the county’s general fund may be used for any proper county purpose, unless the law requires them to be used for a specific purpose”); 2006 Op. Att’y Gen. No. 2006-009 at 2-79 (“when particular moneys in the county general fund are collected for specified purposes, their expenditure is restricted to those purposes”); 1984 Op. Att’y Gen. No. 84-024 at 2-76 n.3 (“[m]oneys paid into the general fund which are not derived from the general levy or otherwise similarly restricted as to use may be used for any proper purpose of the subdivision”); 1981 Op. Att’y Gen. No. 81-035 at 2-135 (“where the use of money paid into the [county] general fund is not restricted to a specific use, the use is limited only to a proper county purpose”). In addition, the primary reason or purpose for holding the meeting must be to impart information to the public about your office and its activities and operations. *See State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d at 468-70; 1999 Op. Att’y Gen. No. 99-030 at 2-202 n.5; 1992 Op. Att’y Gen. No. 92-029 at 2-110 n.3; 1986 Op. Att’y Gen. No. 86-086 at 2-489.

This does not mean, however, that you may not address other matters that are of general interest to the citizens of Ohio at a town hall meeting. As a state executive officeholder, you are “empowered to act in the interest of the state and in ways not specified, so long as [your] actions do not contravene the Constitution or violate laws passed by the legislature within its constitutional authority.” *State ex rel. AFSCME v. Taft*, 156 Ohio App. 3d 37, 2004-Ohio-493, 804 N.E.2d 88, at ¶49 (Allen County); *see State ex rel. S. Monroe & Sons Co. v. Baker*, 112 Ohio St. 356, 371, 147 N.E. 501 (1925). *See generally* Ohio Const. art. III, § 1 (the office of Treasurer of State is in the executive

branch of state government); *State ex rel. Merrill v. Ohio Dep't of Natural Res.*, 130 Ohio St. 3d 30, 2011-Ohio-4612, 955 N.E.2d 935, at ¶36 (“nothing in R.C. Chapter 109 appears to abrogate the attorney general’s common-law power to appeal on behalf of the state from an adverse judgment”); *State ex rel. Cordray v. Marshall*, 123 Ohio St. 3d 229, 2009-Ohio-4986, 915 N.E.2d 633, at ¶¶18 and 23 (“[n]othing in R.C. Chapter 109 appears to abrogate the attorney general’s common-law powers” to commence a prohibition action that sought to compel a common pleas judge to vacate an entry issued in a criminal case. “Given the unique, limited nature of the attorney general’s exercise of authority in this matter and the important statewide interests in reinstating a murder conviction vacated by a court without jurisdiction to do so, we hold that the attorney general had the requisite common-law standing to commence the prohibition action against Judge Marshall”).

Moreover, as a state executive officeholder, you are authorized to exercise a portion of the sovereignty of the state of Ohio. *See State ex rel. Newman v. Skinner*, 128 Ohio St. 325, 191 N.E. 127 (1934) (syllabus, paragraph 1). To do this effectively, you may engage with the people of this State in order to formulate or execute public policies that affect your constituents. *See generally State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967) (syllabus, paragraph 1) (“[a] public official has a fiduciary duty to the citizens of the state”); *Oliver v. Brill*, 14 Ohio App. 312, 319 (Guernsey County 1921) (“every public official is, in a way, an agent and as such owes his first duty to his constituents”). You are afforded the opportunity to engage in public debates or discussions on a myriad of issues facing your constituents and are permitted to express your views on those issues. *See generally Keller v. State Bar of Cal.*, 496 U.S. 1, 12 (1990) (“[g]overnment officials are expected as a part of the democratic process to represent and to espouse the views of a majority of their constituents. With countless advocates outside of the government seeking to influence its policy, it would be ironic if those charged with making governmental decisions were not free to speak for themselves in the process”); *Bond v. Floyd*, 385 U.S. 116, 136-37 (1966) (“[t]he interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators. Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them”); *Wood v. Georgia*, 370 U.S. 375, 395 (1962) (“[t]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance”); *Rangra v. Brown*, 566 F.3d 515, 523-24 (5th Cir. 2009) (“[n]one of the Supreme Court’s public employee speech decisions qualifies or limits the First Amendment’s protections of elected government officials’ speech.... Indeed, the Supreme Court’s decisions demonstrate that the First Amendment’s protection of elected officials’ speech is robust and no less strenuous than that afforded to the speech of citizens in general”).

This means that you may discuss at a telephone town hall meeting a subject that is not related to your office and its activities and operations when you deem the subject a matter of general interest to the citizens of Ohio or when a constituent specifically asks you to address the subject. A person does not relinquish his constitutional right to freely express himself about governmental activities, operations, programs, and policies under the First Amendment of the United States Constitution and Article I, § 11 of the Ohio Constitution when he is elected to statewide office. *See Bond v. Floyd* (supporting the idea that elected officials enjoy the same protection under the Free Speech Clause of

the First Amendment as private citizens and that such officials may perhaps enjoy even greater latitude); *Wood v. Georgia* (same as the previous parenthetical). See generally United States Const. amend. I (“Congress shall make no law ... abridging the freedom of speech”); Ohio Const. art. I, § 11 (“[e]very citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech”); 1988 Op. Att’y Gen. No. 88-087 at 2-418 (“[t]hrough the Fourteenth Amendment, the First Amendment rights of freedom of speech and freedom of the press apply to the states”). Rather, a state officeholder has a fundamental right under these constitutional provisions to participate in a general discussion about governmental activities, operations, programs, and policies, and may freely express his views during the discussion even though the subject of the discussion does not relate to his office and its activities and operations. See 1991 Op. Att’y Gen. No. 91-064 at 2-309 (“[t]he officials and employees of a board of education ... have a constitutionally granted right of free speech”); Christopher J. Diehl, Note, *Open Meetings and Closed Mouths: Elected Officials’ Free Speech Rights after Garcetti v. Ceballos*, 61 Case W. Res. L. Rev. 551, 582 (2010) (“elected representatives, even when acting in their official capacity, should enjoy First Amendment protections equal to private citizens”). See generally 1988 Op. Att’y Gen. No. 88-087 at 2-419 (“[t]he Ohio Supreme Court has held that both the First Amendment to the federal constitution and Article I, Section 11 of the Ohio Constitution have the same ideal: ‘that debate on public issues should be uninhibited, robust, and wide open...’” (quoting *Scott v. News-Herald*, 25 Ohio St. 3d 243, 245, 496 N.E.2d 699 (1986))).

Whether the subjects to be addressed at a telephone town hall meeting relate to your office and its activities and operations or are of general interest to the citizens of Ohio is a determination you must make.<sup>3</sup> See *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d at 471 (“[w]hether or not it is appropriate to disseminate the information, the means to be utilized therefor, including advertising in newspapers, lies in the first instance within the sound discretion of the public agency involved”); 1986 Op. Att’y Gen. No. 86-086 (syllabus, paragraph 1) (“[t]he State Lottery Commission has the implied authority to promote the state lottery and may, therefore, expend public funds for those activities which the Commission determines serve the function of promoting the lottery”); see also 2003 Op. Att’y Gen. No. 2003-029 at 2-248 (“[t]he determination of whether an expenditure constitutes a proper public purpose lies in the first instance with the agency adopting the policy and undertaking the expenditure”). See generally *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”). Any exercise of discretion

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<sup>3</sup> When a public officer has been given the discretion to determine whether a particular public expenditure is for a purpose reasonably related to the activities and operations of his office, the Attorney General may not use the opinion-rendering function to exercise that discretion for the public officer. See generally 2009 Op. Att’y Gen. No. 2009-048 at 2-357 (“the Attorney General is not authorized to use the opinion-rendering function to exercise on behalf of a public official discretion that has been reposed in that official”); 1986 Op. Att’y Gen. No. 86-076 at 2-422 (the Attorney General is “not authorized to exercise on behalf of another officer or entity of the government discretion that has been bestowed by statute on that officer or entity”).



in this regard must, however, be reasonable, and will not be set aside by a court unless it finds an abuse of discretion. *See State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d at 471 (“[o]nly where an abuse of discretion is shown either as to the nature of the information, the means of dissemination or the amount of money expended are the courts authorized to interfere with the exercise of such implied power”); 1986 Op. Att’y Gen. No. 86-086 (syllabus, paragraph 1) (when determining whether an activity promotes the lottery, the State Lottery Commission must not abuse its discretion); *see also* 2003 Op. Att’y Gen. No. 2003-029 at 2-248 (when determining whether an expenditure constitutes a public purpose, a public agency may not abuse its discretion). *See generally State ex rel. McClure v. Hagerman*, 155 Ohio St. at 326 (“[i]t has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a specific purpose constitutes a ‘public purpose’ for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter’s exercise of judgment or discretion is shown to have been unquestionably abused” (quoting 64 C.J.S. 334-35, § 1835b)); *City of Shaker Heights v. DeFranco*, Case No. CV 11 753323, 2012 WL 1379468 (C.P. Cuyahoga County Feb. 7, 2012) (city officials did not abuse their discretion when expending public moneys to lobby for the retention of the Ohio estate tax nor does such expenditure contradict Ohio law).

Therefore, in response to the first part of your question, you may use public moneys to contract with a private company to organize and conduct a telephone town hall meeting at which you speak to constituents and answer questions about your office and its activities and operations, provided the public moneys are not required to be used for another purpose and the expenditure is not prohibited by law. You also may discuss at the meeting a subject that is not related to your office and its activities and operations when you deem the subject a matter of general interest to the citizens of Ohio or when a constituent specifically asks you to address the subject. Finally, when determining whether a subject to be addressed at the meeting relates to your office and its activities and operations or is a matter of general interest to the citizens of Ohio, you must exercise reasonable discretion, and your determination will not be set aside by a court unless it finds an abuse of discretion.

### **Authority to Issue Invitations to a Telephone Town Hall Meeting**

The second part of your first question asks whether you may invite certain constituents on the basis of their age, sex, or geographic location to participate in a telephone town hall meeting via a telephone conference call. You state that any person may participate in the discussion of the issues presented and ask you questions via a telephone conference call, including persons who are not specifically invited to participate in the telephone conference call. Also, if the public is invited to attend the meeting in person, attendees will be given the opportunity to participate in the meeting’s discussions and ask you questions.

From the information you have provided to us, the telephone town hall meeting will be open to public participation.<sup>4</sup> When a public officer opens a public meeting to public participation, the officer is prohibited by the United States and Ohio Constitutions from selectively allowing certain persons to participate in the meeting's discussions while at the same time preventing others from participating. *See* United States Const. amend. I; Ohio Const. art. I, § 11; *see also* *City of Madison Joint Sch. Dist. No. 8 v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175-76 (1976) (the First Amendment of the United States Constitution prohibits a governmental entity from selectively allowing certain portions of the public to participate while at the same time preventing others from participating); *Pesek v. City of Brunswick*, 794 F. Supp. 768, 783 (N.D. Ohio 1992) ("where the government has intentionally created a public forum out of an otherwise nonpublic forum by allowing certain members of the public to address it as to certain matters, it is a violation of the first amendment to selectively prohibit others from similarly addressing it as to the same matters based upon the content of their speech or their status in the community" (emphasis omitted)); 2009 Op. Att'y Gen. No. 2009-034 at 2-233 ("[a] public body may not expressly limit public attendance at its meetings"); 1992 Op. Att'y Gen. No. 92-032 at 2-124 ("if a public body chooses to provide for public participation in its meetings, such participation would generally be subject to first and fourteenth amendment protections"); 1988 Op. Att'y Gen. No. 88-087 (syllabus, paragraph 2) ("[a] rule of a board of township trustees for the conduct of its meetings may regulate the audio and video recording of its proceedings but must not violate the public's right of access to governmental proceedings found in the First Amendment of the Constitution of the United States of America and Article I, Section 11 of the Constitution of Ohio").

As you indicate that you are not seeking or attempting to limit the participation of members of the public on the basis of their age, sex, or geographic location through the invitation process, there does not appear to be a concern with violation of the First Amendment of the United States Constitution or Article I, § 11 of the Ohio Constitution. No person is being denied the opportunity to participate in the meeting's discussions or to ask you questions. In other words, the right of a person to participate in the meeting's discussions or ask you questions is not contingent upon the person having been invited to participate in the meeting via a telephone conference call. Therefore, you may invite certain constituents to participate in a telephone town hall meeting via a telephone conference call, provided a person who is not invited to participate in the conference call is afforded the opportunity to participate in the conference call.

### **Conclusions**

On the basis of the foregoing, it is my opinion, and you are hereby advised as follows:

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<sup>4</sup> Absent a statute providing otherwise, a public officer who conducts a public meeting is not required to grant the public a right to participate in the meeting. *See Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 283 (1984) ("[t]he Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy"); 2009 Op. Att'y Gen. No. 2009-034 at 2-233 ("[w]hile the public has a right to be present at meetings of a public body, the public is not guaranteed a right to participate in meetings of public bodies").

1. The Treasurer of State may use public moneys to contract with a private company to organize and conduct a telephone town hall meeting at which he speaks to constituents and answers questions about his office and its activities and operations, provided the public moneys are not required to be used for another purpose and the expenditure is not prohibited by law.
2. The Treasurer of State may discuss at a telephone town hall meeting a subject that is not related to his office and its activities and operations when he deems the subject a matter of general interest to the citizens of Ohio or when a constituent specifically asks him to address the subject.
3. When determining whether a subject to be addressed at a telephone town hall meeting relates to the Treasurer of State's office and its activities and operations or is a matter of general interest to the citizens of Ohio, the Treasurer of State must exercise reasonable discretion, and his determination will not be set aside by a court unless it finds an abuse of discretion.
4. The Treasurer of State may invite certain constituents to participate in a telephone town hall meeting via a telephone conference call, provided a person who is not invited to participate in the conference call is afforded the opportunity to participate in the conference call.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General