

# RISKY BUSINESS

A Publication of the

**M**iami **V**alley **R**isk **M**anagement **A**ssociation

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<b>OFFICE MANAGER</b>	<b>SANDY CAUDILL</b>

## FYI- Time Flies

*By Tom Judy*

*How did it get so late so soon?  
It's night before it's afternoon.  
December is here before it's June.  
My goodness how the time has flown.  
How did it get so late so soon?  
-Dr. Seuss*

As I write my last Risky Business article, I am reflecting upon my time at MVRMA and how time flies.

First, I would like to wish my successor, Mark Wendling, great success with MVRMA. Mark brings a unique perspective to the position and will, no doubt, take the organization to new heights.

I have had the good fortune of being affiliated with this great organization for 25 years, first as a trustee and then as Executive Director. I recall my first MVRMA Board meeting in September 1998, which was held in the basement of an office building on the corner of E. David Road and Presidential Way in Kettering. My first impression, other than it being awfully dark in there, was that it was clear the member cities took this venture very seriously, as they had sent their best people to sit around that board table. This investment of the members' talent, time, and resources, which continues to this day, has been the critical factor in the overwhelming success of this collaboration. While I like to think I may have played a very small role in this success, the reality is that MVRMA is an admirable model of local government cooperation because of the quality and commitment of its member cities.

It really is a surreal moment to realize I have arrived at this station in life. Dr. Seuss' verse on the fleeting nature of time may be whimsical but it captures the sensation that we all inevitably experience – that time is a valuable, but transitory, commodity. Rather than lamenting the time lost, however, let's use these times of transition as a reminder to live every moment to its fullest by loving our families, loving our neighbors, and seeking God's unique purpose for our lives. This is my prayer for each of you.

Thank you for permitting me to serve your cities these past few years. It has been a privilege.

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## FYI- Welcome

*By Mark Wendling*

Welcome to the latest edition of Risky Business. I am excited to introduce myself as MVRMA's new Executive Director. It is a privilege to lead Ohio's premier public risk management agency. I would like to provide a brief overview of my background for readers who are unfamiliar with me. I am a double graduate of Northern Kentucky University with Bachelor of Arts and Master of Public Administration degrees. Professionally, I have served local governments in Southwest Ohio for more than 30 years, including service as Assistant Administrator with Delhi Township, City Manager of Silverton, and City Manager of Fairfield, with a brief stint south of the Ohio River as the City Administrator of Independence, Kentucky. Most recently I served as Assistant City Director with Troy. One of my proudest achievements during my tenure in Fairfield was the City's admission into MVRMA as the first new member in 15 years. Gaining MVRMA membership was a goal that I had set when I was appointed as City Manager.

On the personal front, my wife (Mindy) and I reside in Troy. She is a Licensed Social Worker currently serving as the Director of Case Management with Kindred Hospital – Dayton. We are the proud parents of two sons. Kyle is a Firefighter/Paramedic with the City of Hamilton and Zach is a sophomore at the University of Dayton.

Over the next several months I look forward to developing my relationship with the MVRMA Board of Trustees, staff, and advisors. I plan to visit each member jurisdiction and its key stakeholders with a goal of learning about their operations and how MVRMA can best serve them. Finally, I hope to build upon Mr. Judy's exemplary tenure as MVRMA Executive Director.

Please do not hesitate to reach out to me with any needs or concerns. I can be reached at [mwendling@mvrma.com](mailto:mwendling@mvrma.com) or in the office at (937) 438-8878.

## Counselor's Comments

By: *Dinsmore & Shohl*

### The First Amendment

The First Amendment, which protects a person's right to speak freely and practice his or her own chosen religion, has become a hot-topic, not just in politics, but also in the Courts. From 2022-2023 alone, the Supreme Court interpreted the First Amendment no less than 10 times (in some of the most public and controversial cases), notwithstanding the fact that the First Amendment is over 230 years old. Unfortunately, the ambiguity with the First Amendment also interferes with a local government's ability to be efficient and orderly, which means the First Amendment must be considered before a local government takes action to even arguably interfere with a First Amendment right.

The First Amendment is worthy of a book of its own – so this article only addresses one small, but very important aspect: how local governments restrict the public's ability to participate at meetings. Many local governments provide opportunities for citizen participation during meetings of their public bodies, whether that be during with school board, city council, or zoning meetings. Allowing citizens to attend – and actively participate in – these meetings generates goodwill toward local government, making citizens feel heard and increasing the transparency of government actions. Public participation also instills confidence in government, and it ensures public officials who make decisions that affect others' lives consider the public's views on issues before that decision-making takes place. While most participate in this process in good faith, the occasional unruly, disruptive or outright threatening participant detracts from productivity and may even discourage others from attending and/or participating. The question, then, is what can government do while still respecting the person's First Amendment rights?

Most local governments respond with rules outlining how the public may participate during meetings. Many of these rules are understandable – those that restrict how long a person may speak, where a person may speak from, or what portion of the meeting is open to that participation. Some governments, however, also have rules that suggest limitations on *what* the public might say and how it is said – and those rules have come under fire. Recent case law from the Sixth Circuit put such rules directly in the First Amendment's cross hairs and requires government bodies to rethink the rules they have in place.

In *Ison v. Madison Local School Board*, the local school board enacted a public participation policy, intended to ensure its meetings ran smoothly and allowed time for the public to provide input on relevant issues. The policy set limits on who could speak at meetings and for how long, and it authorized the presiding officer to "interrupt, warn, or terminate a participant's statement when the statement is too lengthy, personally directed, abusive, off-topic, antagonistic, obscene, or irrelevant." Participants risked removal from the meeting for "failing to observe reasonable decorum," or interfering "with the orderly progress of the meeting."

Counselor's Comments—Continued

These rules were tested after a school shooting in 2016. In response to that shooting, the school board passed a policy allowing teachers to carry concealed weapons despite opposition within the district. In response, public participation at board meetings grew, with some speaking out against the policy. While invoking the participation policy, the board eventually removed one person who became quite antagonistic and accused the board of, among other things, “threatening” people who spoke out against the board. That person sued the board for violating his First Amendment rights, largely premised on the idea that the policy restricted *what* he could say, and in effect, prohibited him from taking a stance adverse to that of the board.

The Sixth Circuit found violations of the First Amendment, largely because the board’s restrictions on “abusive,” “personally directed” and “antagonist” statements naturally prevented participants from using language that ran contrary to the board’s beliefs. As the Sixth Circuit put it, these types of restrictions, by definition, invite the government to restrict speech the government finds contrary to the government’s position (i.e., it is “antagonistic”). The Court explained that these restrictions are unconstitutional because they allow the government to pick and choose what speech is allowed, which runs contrary to the First Amendment.

Because of the court’s ruling in *Ison*, local governments who open their meetings to citizen participants should review and revise any rules or policies governing those meetings with their legal counsel. Although it is reasonable to pass rules ensuring decorum and respect, *Ison* should be a warning to local governments that any rules that might arguably limit the content of one’s speech must be viewed with skepticism. To the extent EXISTING rules prohibit speech personally directed to a member of the governing body, restrain or prohibit abusive or antagonistic speech, or are otherwise based on the content of the speech itself, such rules would likely violate *Ison* and similarly be found unconstitutional.

## Loss Control Lowdown...

*Starr Markworth*

### Winter Creates Unique Risks for Property Claims



Winter in Southwest Ohio brings a unique set of challenges for cities, particularly concerning building and property claims. As temperatures drop, the risk of weather-related incidents such as freezing, flooding, and structural failures increases. It is important for cities in Ohio to focus on effective winter risk management practices to mitigate the frequency and severity of claims, focusing on weather-related incidents, flooding, and the importance of proactive maintenance.

#### Weather-Related Claims

- 1. Snow and Ice Management:** Efficient snow and ice management are essential for reducing slip and fall incidents and minimizing damage to structures. Cities should invest in well-maintained snow removal equipment and employ trained personnel to promptly address icy conditions on sidewalks, parking lots, and public spaces. Regular monitoring of weather forecasts can also help cities proactively respond to impending winter storms.
- 2. Roof Maintenance:** Heavy snowfall can place a significant load on roofs, leading to potential structural damage. Regular inspections of public buildings and facilities, especially those with flat roofs, can help identify weaknesses and potential hazards. Proactive measures, such as clearing accumulated snow and ice, can prevent roof collapses and subsequent property damage.  
Flooding Prevention.
- 3. Drainage System Maintenance:** Heavy winter precipitation, including rain and melting snow, can overwhelm drainage systems, leading to flooding. Regular inspection and maintenance of stormwater drains, culverts, and other drainage infrastructure are critical. Clearing debris and ensuring proper functioning can prevent water buildup and subsequent flooding risks.
- 4. Floodplain Management:** Identifying and understanding flood-prone areas within the city is crucial for effective risk management. Implementing and enforcing zoning regulations that restrict construction in flood-prone zones can significantly reduce property damage. Additionally, investing in flood control infrastructure, such as levees and dams, can provide long-term protection.

Loss Control Lowdown...Continued

## Failure to Maintain

5. **Building Inspections and Code Compliance:** Regular building inspections are paramount in identifying potential issues before they escalate. Enforce strict adherence to building codes and regulations, especially those related to structural integrity and safety. This proactive approach can prevent failures due to negligence and ensure the overall safety of residents and structures.

6. **Emergency Response Plans:** Develop comprehensive emergency response plans that specifically address winter-related incidents. Conduct drills to ensure that employees are well-prepared to respond promptly and effectively to emergencies. Establishing clear communication channels with emergency services and residents is crucial for a coordinated response to minimize property damage and ensure public safety.

## Conclusion

As winter poses specific challenges to cities in Southwest Ohio, adopting proactive risk management practices is crucial to reducing the frequency and severity of building and property claims. Addressing weather-related incidents, implementing flood prevention measures, and prioritizing proactive maintenance are key components of a comprehensive risk management strategy. By investing in these practices, cities can safeguard their communities, infrastructure, and finances during the winter months.



## Broker's Beat

### WATER: THE NEW TARGET OF CYBER CRIMINALS

Municipal Water Authorities and Water Districts across the country have caught the eye of *CyberAv3ngers*, an Iran-linked hacking group. U.S. Cybersecurity officials say the hacking group is "actively targeting and compromising" multiple U.S. Facilities primarily for their use of Israeli-made computer systems. The equipment in question, "*Unitronics Vision Series programmable logic controllers*," and is predominately used in water and wastewater systems.

It has been reported that when a systems infiltrated by the hacking group, the owner of the water authority will receive a video stating, "You have been hacked, down with Israel. Every equipment 'made in Israel' is CyberAv3ngers legal target."

## Broker's Beat—Continued

In November, the hacking group seized partial control of a booster station operated by the Municipal Water Authority of Aliquippa, Pennsylvania. The Water Authority used programmable logic controllers from Unitronics and the hackers were able to access their system because the Water Authority didn't reset the default password for logging into its system and used the out-of-the-box password instead.

Other organizations across the United States were also reportedly attacked by the same group and while it did not cause any major disruptions this time, the incident revealed how vulnerable the nation's critical infrastructure is to cyberattacks and the need for all public entities to have proper cyber security controls in place.

Focusing on your organization's cyber hygiene is an important step in combatting this risk and others in the evolving world of cyber security. Some of the recommended proactive steps your organization can take:

- ⇒ Implement MFA
- ⇒ Use strong, unique passwords that are routinely updated
- ⇒ Do not use default passwords
- ⇒ Ensure the access capabilities for employees who leave the organization are disabled
- ⇒ Annual phishing training
- ⇒ Check if redundancies are built into your system

There are nearly 150,000 water systems in the United States, varying drastically in size, budget and resources. While there are best practices to follow and some governmental resources available, neighboring municipalities and water districts can benefit from sharing their action plans and current resources. To learn more about how to better protect your entities, you can reach out to MVRMA and Alliant for additional resources.

## Calendar of Events

### Upcoming Training Events

To Be Determined

### Upcoming Board Events

#### **Committee Meetings - Via Zoom:**

Risk Management - February 22nd 10:00 AM

Finance - February 22nd 1:30 PM

### Board Meeting

March 18th, 9:30 AM Home2Suites, Centerville, Ohio

## *From The Board Room*

### *December 18, 2023*

- Accepted Praxis Claims Audit Report
- Approved 2024 Loss Funding Study
- Approved 2024 MVRMA Liability Coverage Document
- Approved 2024 Liability Renewal with GEM and Genesis
- Approved 2024 Crime Renewal
- Approved 2024 Budget, PCF and Member Contributions
- Approved Defense Counsel Rates
- Approved Partial Refund from Loss Year 28
- Approved 2024 Board And Committee Meeting Schedule