Ohio Ethics Commission

Ohio’s Ethics Laws – Can I Do That?

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Ohio Ethics Law

ASPIRE – to a higher standard of professional conduct

Ohio Ethics Law: The Foundation

Ohio Ethics Law: What?

- Created New Ethics Laws
  - Personal financial disclosure
  - Conflicts of interest laws
- Created Ohio Ethics Commission
  - Provide Assistance
- Uniform review within three government branches
Ohio Ethics Law: Who?

- All public officials and employees at every level of government
  - elected office holders
  - public employees
- Those who:
  - are doing/seeking to do business with public officials and employees
  - are regulated by government
  - have specific interests before agency

Ohio Ethics Law: Do I Have a Conflict?

- Who is affected or involved?
  - You?
  - Your family?
  - Your outside business?
  - Your volunteer activities?
- If yes, you have a potential conflict of interest

Conflict of Interest
Conflict of Interest:

Public Employees

☐ R.C. 102.03(D) and (E) prohibit:
  - Use of authority or influence to secure something of value
  - Soliciting or accepting something of value

☐ In both cases:
  - If it could pose a substantial and improper influence in performance of duties

Conflict of Interest:

Use of Position to Secure

☐ Voting
☐ Discussing
☐ Deliberating
☐ Recommending
☐ Reviewing
☐ Inspecting
☐ Investigating
☐ Deciding
☐ Any other action

Possible Conflicts

☐ Regulatory examples:
  - Inspecting brother’s business
  - Investigating private employer on behalf of agency

☐ Licensing examples:
  - Reviewing daughter’s permit application
  - Issuing license to business associate
Other Possible Conflicts?

- Consulting/Outside Employment
  - For Official or Family
- Business with an Official’s Employer

It’s okay as long as I don’t benefit, right?

- Cannot solicit or use position to secure the thing of value for:
  - Self
  - Others who have a direct connection to you:
    - Family members
    - Outside Employer (public or private)
    - Business partners
    - Clients (sometimes)
    - Organizations served

Conflict of Interest Mall Example

- Spouse’s family owns one of the anchor stores
- An employee of the law firm representing the developer
- Owns 5,000 shares of one of the anchor stores
Conflict of Interest: Anything of Value

- Money, checks, warrants, promissory notes
- Goods
- Promise of future employment
- Every other thing of value

*Can include:*
- Contracts, grants, other tangible benefits
- Payment for employment, services, consulting
- Government services
- Financial impact of regulatory decisions and licenses
- Gifts, entertainment, discounts

Conflict of Interest: Private Parties

- R.C. 102.03(F) prohibits:
  - Promising or giving something of value to a public employee

- Again...
  - If it could pose a *substantial* and *improper* influence in performance of the public employee’s duties

Substantial and Improper

- Substantial: Look to the *value* of the thing
- Improper: Look to the *source* of the thing
Conflicts of Interest:
Types of Things of Value

- Entertainment
- Home Remodeling
- Gifts of Substantial Value
- Travel, meals, lodging

Supplemental Compensation
R.C. 2129.43

- Public employee: cannot be compensated from anyone other than my employer for doing job duties
- Private sector parties: cannot compensate public employee for doing job duties

True or False?
True or False?
A member of a state board, who is also an architect, can participate in the board’s consideration of a matter affecting a client of her firm, as long as she did not perform any services on the matter.

False

True or False?
A county official can take her family for a week-long spring break vacation in Mexico and stay in a condo owned by a grantee of her county department if she pays him $500. The grantee tells her that $500 is ‘fair market value’ for the use of the condo (and the deep-sea fishing boat he also owns).
True or False?

A city building inspector is prohibited from seeking a job from a company with building permits pending before the city.

False
True or False?

An employee of a city licensing board can be a licensee subject to the board’s regulation.

True

True or False?

A manager in a city building department, who is getting married, is prohibited from accepting a resort beach package from Vinny, a representative of an industry his agency regulates, even if Vinny has been his friend since elementary school.
True or False?

A city inspector who is a member of a limited liability company can conduct an inspection of another member of the company provided that the company’s interests are not involved.

False
True or False?

A public employee, whose agency is a member of a national organization, has been invited to speak at the organization’s annual conference. She can accept complimentary admission to the conference and the lunch provided at her speech.

True

True or False?

A member of a state commission can discuss a regulatory matter involving her parent’s business provided that she abstains from the commission’s vote on the matter.
Because a county agency is co-sponsoring an event, and underwriting part of the event’s cost, some of the agency’s employees can attend the event without paying the registration fee.

True
True or False?

A local elected official is prohibited from accepting contributions from contractors and vendors to a fund created for her defense in a criminal case.

True

True or False?

A member of a public regulatory board is attending a conference in San Diego. He can attend a behind-the-scenes tour of the San Diego Zoo, paid for by a corporation regulated by the board, because the event is "part of" the conference.
False

True or False?

A township employee attending a retreat for township personnel is prohibited from accepting a trip to Paris that was donated to the agency by a vendor even if the winner is selected in a random drawing.

True
True or False?

A public servant with authority to manage deposits for the his/her agency is prohibited from having a checking account in a bank that holds the agency’s deposits.

False

True or False?

A public employee wakes up from a sound sleep behind the wheel of this car. He doesn’t know how he got there, but the title in the glove box lists him as the owner. He can accept it because he has no idea who gave it to him.
The Red Flag Test!

- Personal financial interests
  - Fiduciary interests, as well
- Family members’ financial interests
- Business associates’ financial interests
- Exceptions

Public Contracts
Public Contract Restrictions: 2921.42(A)

Ohio Ethics Law prohibits:
(3 most common of 5 restrictions)
- Authorization or use of authority to secure public contract for official, family member or business associate
- Having an interest in profits/benefits of public contract with "connected" agency
- Profiting from approval of contract

"Authorization" or "Use of Authority to Secure Authorization"

- Recommending a vendor
- Reviewing applications
- Writing bid specifications
- Filling out a purchase order
- Completing a travel expense report
- Purchasing directly, use of petty cash
- Signing a contract

Public Contracts -- Examples

- Can I vote to award a road maintenance contract to a company my father owns?
- Can I lobby my employer to award a contract to a company that will use that money to buy property I will own?
- Can I accept a job from a company that created the position with money from a contract I awarded them?
Public Contract

Exceptions: R.C. 2921.42(C)&(B)

- Four-Part Exception:
  - Necessary supplies/services
  - Supplies unobtainable elsewhere for the same or lower cost or “continuous course of dealing”
  - Preferential or same treatment as other customers
  - Arm’s length transaction
- Stockholding under 5%

“All I did was get my brother a job in my office!”

- Employment is a public contract
- Hiring family is a felony
- Public officials cannot approve public contracts with family members
- Officials cannot use their authority to secure any employment for family

Public Contract Restrictions on Investments

- R.C. 2921.42 (A)(2) prohibits any public official from securing or authorizing investments of public funds in a:
  - Share
  - Bond
  - Mortgage
  - Other Security
- When the official, member of his family, or business associate:
  - Has interest
  - Is underwriter
  - Receives brokerage, origination or servicing fees
Post Employment and Representation

Representation Before State Agencies: R.C.102.04(A)
- Compensation from entity other than own public agency
- Personal services
- Prohibition on representation before state agency served
- Exemption for representation before other state agency
  - Requires disclosure to agencies and removal from specific matters

Post Employment: R.C. 102.03 (A)
- Prohibits Representation
- Any matter
- Personal participation
- During public service
- One year after
  - Two years for some positions
- No compensation required
- Limited exceptions
Ask yourself...

- Am I within the restricted time period?
- Is this a matter?
- Did I personally participate?
- Is this representation?

Confidentiality:
R.C. 102.03(B)

- Disclosure and use of confidential information:
  - LIFETIME PROHIBITION!
  - During and after leaving office
  - No compensation required

Hmmm...where do you find the Ethics Law?

- Copy of Ethics Law
- All public officials and employees
- Within 15 days of:
  - Hire
  - Election
  - Appointment
Ohio Ethics Commission: Roles and Responsibilities

- Six commission members
- Bipartisan commission
- Members appointed by governor; confirmed by Senate
- Six-year staggered terms
- Advice
- Education
- Financial Disclosure
- Investigation
- Legislation

General Rule

Personal financial interests?
My family member’s financial interests?
My business associate’s financial interests?

ETHICS ISSUE!

Call us before you act!

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THE OHIO ETHICS LAW AND OHIO ETHICS COMMISSION

Ohio’s Ethics Law: The Ohio General Assembly created the Ohio Ethics Law and the Ohio Ethics Commission, as the administrator of the Ethics Law for most in public service, effective January 1, 1974. The Law can be found in R.C. Chapter 102 and related sections, R.C. 2921.42 and 2921.43.

The Ethics Law enacted new laws, since enhanced, that govern all public officials and employees by:

- Requiring personal Financial Disclosure to identify and protect against conflicting interests;
- Mandating legal restrictions on unethical conduct that have criminal sanctions;
- Establishing uniform review of ethics issues by statewide ethics commissions within each of the three branches of government.*

The Ethics Law also oversees and prohibits those in the private sector from giving improper compensation or substantial things of value to public officials and employees with whom they do business.

Protection to the Public: Ethics Laws promote the general public interest and support confidence by prohibiting biased public expenditures and decision-making conflicts of interest in public officials.

Among other restrictions, the Ethics Law generally prohibits every public official and employee from:

- Participating in their public role in any action that involves the direct interests of the official, or those of a family member, or another with whom the official has an ongoing private business relationship;
- Authorizing, or using a public position to secure, a public contract or the investment of public funds in any security that benefits the official, a family member, or a business associate;
- Improperly profiting from a public contract;
- Soliciting or accepting substantial and improper things of value, including, outside employment or consultation fees, gifts, or travel, meals and lodging, from those dealing with the public agency;
- Unauthorized disclosure or use of information deemed confidential by law;
- Representing others before any public agency in a matter in which the official or employee was involved, both during, and for a period of time (at least one year) after, leaving public service.

The Ohio Ethics Commission
Ethics Commission members are citizens from throughout the state, with significant private and public sector experience, who are appointed by the Governor to 6-year, staggered terms, and subject to Senate confirmation:

- The Commission is a bipartisan state panel, required to have 3 Democratic and 3 Republican members;
- Commission members elect the Chairman and Vice-Chairman;
- The Commission hires an Executive Director who administers a staff of 23, including attorneys, investigators, disclosure and education staff, to carry out 5 distinct state-wide statutory duties;
- The Commission was created in 1974; Ohio is one of 40 states with a State Ethics Commission.

Commission Members:
Merom Brachman, Bexley
Angelita Cruz Bridges, Toledo
Betty Davis, Mason
Shirley Mays, Vice Chair, Delaware
Ben Rose, Chair, Lima
Diana Swoope, Akron

Promoting Ethics in Public Service for Ohio since 1974
By Law, the Ohio Ethics Commission Performs Five Statutory Duties:

**Renders Advice** and guides public officials to protect against personal, family and business conflicts:
- Issues written advisory opinions that provide legal immunity if advice is followed in future actions
- In 2008, closed 255 requests for advice and provided ethics guidance in response to 3,006 telephone calls from officials, agencies, counsel, and the general public
- Assists public entities and private businesses and non-profits in observing ethical decision-making in public processes through direct interaction and responses to questions
- Guides Financial Disclosure filers through questions involving disclosure and recognizing potential conflicts of interest

**Provides Education and Information** on Ethics Law prohibitions against conflicts of interest:
- Annually conducts educational and informational sessions
- In 2008, the Commission presented 241 separate sessions to more than 18,000 public and private sector attendees; conducts Ethics Education to all cabinet agency leadership
- Creates and distributes clear and concise informational materials on the Ethics Law
- Provides and updates a web site at www.ethics.ohio.gov that offers easy access to useful information and dynamic search capabilities

**Administers Financial Disclosure** for more than 11,000 annual filers from more than 1,300 different public entities:
- Receives disclosures from all state, county, and city elected officeholders and candidates and tracks timely compliance for the public prior to election
- Oversees these filings, and an additional 4,000 filed by state officials and board members, each year; a 25% increase in filings since 1994
- Reviews and makes available for public inspection the vast majority (80%) of statements
- Reviews all interests contained in confidential filings required of uncompensated board members and school officials (2,200 each year) to identify potential conflicts of interest
- Secures a 99% compliance rate in annual disclosure filings to assure uniform public disclosure

**Conducts confidential Investigation** into allegations of unethical activity and secures remedial response:
- Reviews an increasing number of allegations each year, now averaging almost 500, from prosecutors, auditors, agencies and the general public
- Prioritizes the most serious charges and complaints for confidential factual investigation and possible criminal prosecution; in 2008, processed 544 investigative requests and conducted 168 active investigations
- Conducts witness interviews, issues subpoenas, and works jointly with other law enforcement
- Recent examples of the Commission’s efforts include criminal investigations relating to the Attorney General’s Office and prosecutions of local and county officials
- Resolves less-serious, non-continuing questions of conduct through alternative dispute remedies

**Assists the General Assembly** in the consideration of ethics-related legislation:
- S.B. 133 enacting reform in the public retirement systems
- H.B. 162 strengthening governance in Community Based Corrections Facilities
- S.B. 286 enabling public university faculty to participate in technology entrepreneurship, while protecting the public against personal and business conflicts of interest in using public resources
- S.B. 219 extending the statute of limitations for those offering improper compensation and gratuities

For more information about the Ethics Commission and its duties, searches of more than 300 formal Advisory Opinions, and common sense guidance regarding Ohio’s Ethics Law, please go to www.ethics.ohio.gov, or contact the Ohio Ethics Commission at the number above.

(* The Ohio Ethics Commission is one of three state ethics agencies, within the three branches of government that oversee and administer the Ethics Law:
- The Joint Legislative Ethics Commission (JLEC) for members and employees of the General Assembly;
- The Board of Commissioners on Grievances and Discipline for judges and court employees, and;
- The Ethics Commission for the entire Executive branch and all other state and local public officials and employees.)