

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).

False

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

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.

False

True or False?

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.

False



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



General Rule

- Personal financial interests?
- My family member's financial interests?
- My business associate's financial interests?



Call us before you act!



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THE OHIO ETHICS LAW OUTLINE

I. INTRODUCTION TO OHIO'S ETHICS LAW

A. Purposes of the Ethics Law:

- Protect the public from the financial, family, or business conflicts of its public servants
- Encourage impartiality in governmental decisions by restricting public actions on matters in which public officials and employees have direct and definite conflicts of interest
- Promote citizen confidence in the actions of public agencies

B. Ethics Law History:

- Created by the General Assembly in 1973
- Found in Ohio Revised Code Chapter 102 and R.C. 2921.42, 2921.421, and 2921.43
- Established the Ohio Ethics Commission, and two similar state ethics agencies in the Legislature and Judiciary, to oversee all within the three branches of government
- Ethics Commission is one of nearly 40 similar state ethics boards and commissions

C. The Ethics Commission Oversees:

- All state and local public officials and employees (except legislative and judicial members)
- Private parties and corporations who do business with public offices

D. The Ethics Law:

- Requires personal financial disclosure to identify and protect against conflicts;
- Restricts unethical conduct through laws that have criminal sanctions; and
- Allows uniform review and guidance regarding ethics issues.

II. THE OHIO ETHICS LAW – A WORKING UNDERSTANDING

General Rule: Whenever the interests of the public official or the public official's family or business associates are present in an issue before the public official, there is an ethics question.

A. General Public Protections – The Ethics Law contains *criminal* restrictions to:

- Restrict participation in public matters involving direct and definite personal, family and business interests of a public official or employee;
- Limit compensation for public duties to their public employer;
- Restrict personal, family, and business interests in public contracts;
- Prohibit nepotism in public hires and services;
- Condition former officials and employees' post-employment activity;
- Control the disclosure of confidential information, and;
- Provide protections against influence peddling in public agencies for personal benefit.

B. Conflict of Interest and Supplemental Compensation – R.C. 102.03(D), (E), (F), 2921.43

- **Core of Ethics Law restrictions that often appear together in analysis and violations. Ethics Law does not replace, but supplements, bribery and theft prohibitions. No quid pro quo required.**

1. R.C. 102.03(D):

- a. Prohibits a public official's *active use of authority to secure* anything of value that could have a substantial and improper influence on the official. Includes voting, discussing, deliberating, or formally or informally lobbying on matters of conflict [OEC 2007-01].
- b. Not necessary that thing of value is received by the official—could be received by family member or business associate.

2. R.C. 102.03(E):

- a. Prohibits a public official's *acceptance or solicitation* of anything of value that could have a substantial and improper influence on the official [OEC 2001-03]. A thing of substantial value from an improper source would have a substantial and improper influence.
- b. Anything of value includes money, goods, *future employment*, interest in realty, and every other thing of value [R.C. 1.03].
- c. Improper sources include parties doing or seeking to do business with, regulated by, or interested in matters before a public agency [OEC 2003-03].
- d. Receipt or acceptance alone creates potential violation [OEC 2001-03].

3. R.C. 102.03(F):

- a. Prohibits a private party from *giving or promising* anything of value. [OEC 2008-01]
- b. Prohibited regardless of whether official solicits the item.

4. Application to issues of:

- a. Employment: A public official is prohibited from soliciting, accepting, or using his position to seek employment from “improper” sources unless the official can withdraw from participating in any actions that affect the prospective employer and his abstention is approved by supervisors, where required. Official must withdraw from participation in official matters if attempting to secure, or approached about, employment [OEC 2008-02]
- b. Travel, meals, and lodging: A public official cannot accept anything of value, including travel, meals, and lodging, from an improper source. [OEC 2001-03]
- c. Gifts: Cannot accept gifts from any party that is doing or seeking to do business with, regulated by, or interested in matters before the public agency [OEC 2001-04].

5. Other Governance:

- a. Executive Order 2007-01S – State officials and employees under Governor
- b. Other Agency Specific Restrictions – i.e. PUCO, public investment systems

6. R.C. 102.03(G): Campaign Contributions not ordinarily governed under Ethics Law, unless another violation of law. [OEC 2002-03; see also R.C. 2921.43 below].

7. R.C. 102.01 (H)(1) – Honoraria: Most public officials and employees who file financial disclosure are prohibited from receiving honoraria [OEC 99-003].

8. R.C. 2921.43 - Supplemental Compensation:

- a. Prohibits the acceptance or giving of any compensation, other than allowed by law, for the performance of any public duty or responsibility. Separate notion of conflict; attempt to prohibit the conflict inherent in being compensated by dual employers. Public and private sectors *both* subject to supplemental compensation prohibitions [OEC 2008-01]
- b. Prohibits the coercion of a campaign contribution [State v. Conese (2004), 102 Ohio State 3d 435]

9. R.C. 102.03(C) - Licensing Conflicts: Bars participation in license or rate-making where public official or immediate family members (spouse residing with official and any dependent children) own more than 5 percent.

C. Public Contract Restraints - R.C. 2921.42 and R.C. 102.04(B)

1. R.C. 2921.42: Five restrictions; The three most common are:

- a. Public officials cannot secure public contracts for himself, family member, or a business associate (includes hiring a family member into public employment) [OEC79-005; 98-004].
- b. Public officials cannot have an interest in profits or benefits of a public contract entered into by a public agency with which he is “connected” [OEC 2008-04].
- c. Public official cannot profit from a public contract he approved or that was authorized by a body of which he was a member unless the contract was competitively bid and awarded to the lowest and best bidder [OEC 88-008].

2. R.C. 2921.42(A)(2) - Investing Public Funds: Public officials cannot secure the investment of public funds in any share, bond, mortgage, or other security, if he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

3. Public contract includes public purchases or acquisitions of any property or service, including employment, grants, or improvement or maintenance of public property [OEC 87-002; 89-006].

4. Exceptions:

- Stockholding below 5 percent; with an affidavit.
- Four-part exception—*All four must exist* and the burden is upon official to demonstrate:
 - Necessary supplies or services;
 - Unobtainable elsewhere for the same or lower cost or continuing course of dealing;
 - Equal or preferential treatment given agency; and
 - Arm’s length, full disclosure, no participation [OEC 2000-02].

5. R.C. 102.04(B): Restricts state employees from conducting business with any state agencies except through competitive bidding. (See F(5)(b) below for R.C. 102.04(D) exception) [OEC 2004-04].

D. Post-Employment and Representation Restrictions – R.C. 102.03(A), (B), and 102.04

1. R.C. 102.03(A)(1): Revolving door prohibitions on a public official, during public service and for one year afterwards, from representing anyone on any matter in which he personally participated while he was a public official [OEC 2004-04].

2. Statutory Definitions:

- a. Matter includes any case, proceeding, application, determination, issue, or question [OEC 99-001].
- b. Personal participation includes decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion, including supervision [OEC 91-009].
- c. Representation is formal or informal appearance before, or any written or oral communication with, *any* public agency [OEC 86-001].

3. Exceptions:

- Not prohibited from representing public agency the official formerly served.
- New matters and matters in which public official did not participate; prohibition is tied to personal participation.
- Ministerial functions - Not prohibited from performing functions like filing or amending tax returns, incorporation papers, and similar documents.
- Proposal, consideration, or enactment of statutes, rules [OEC2004-04].

4. R.C. 102.03(B) – Confidentiality: Lifetime prohibition on disclosure of confidential information both during and after leaving public position [OEC93-012].

5. R.C. 102.04(A) - Representation and Influence Peddling

- a. Prohibits state officials from receiving compensation directly or indirectly, other than from own public agency, for any service rendered personally on any case, application, or other matter before any public agency [OEC 93-010].

