



OHIO ETHICS LAW OUTLINE

I. SUBSTANTIVE PROVISIONS OF THE ETHICS LAW AND RELATED STATUTES

General Rule – Whenever the personal financial or fiduciary interests of a public official or employee, his family, or his business associates are involved in a situation before the official or employee, there is an ethics issue.

A. Conflict of Interest [R.C. 102.03(D), (E), (F)]:

1. No public official or employee shall **use authority or influence of office to secure** a thing of value if the thing of value has a substantial and improper influence upon the public official or employee in the performance of his duties [R.C. 102.03(D)].
 - a) Prohibits active use of authority:
 - (1) Comparable Rules of Professional Conduct provision for public officials and employees who are lawyers [Rules 1.7, 1.8, and 1.11]
 - b) Does not require a quid pro quo—*Adams v. Northeastern Local School Dist. Bd. of Edn.* (Dec. 4, 1998), Clark App. No. 98 CA 46.
 - c) "**Anything of value**" defined to include money, goods, chattels, future **employment**, interest in realty, and "every other thing of value" [R.C. 102.01(G); 1.03]
 - d) Prohibits taking any action (including voting, discussing, deliberating, and formally or informally lobbying), or participating in any fashion, on any matter where something of value is definitely and directly at issue for the public official or employee, his family, his business associates, or others with whom he has a relationship that would affect his objectivity [OEC Adv. Ops. No. 2009-02 and 2009-04]
2. No public official or employee shall **solicit or accept** anything of value if the thing of value has a substantial and improper influence upon the public official or employee in the performance of his duties [R.C. 102.03(E)].
 - a) "**Substantial**" influence: Determined based on the value of the thing of value.
 - (1) Depends upon facts and circumstances.
 - (2) Something of substance, real or considerable value, not nominal or de minimis [OEC Adv. Op. No. 95-001 (season tickets); OEC Adv. Op. No. 2001-03 (golf outings); OEC Adv. Op. No. 2001-04 (travel and gifts)]

- b) "**Improper**" influence: Determined by the source of the thing of value. "Improper" sources of things of value include parties doing or seeking to do business with, regulated by, or interested in matters before the public agency [Adv. Op. No. 2003-03]
- c) Enforcement example former Mahoning County Commissioner [*State v. Lordi* (2000), 140 Ohio App. 3d 561, appeal denied (2001), 91 Ohio St. 3d 523, 91 Ohio St. 3d 1526, 91 Ohio St. 3d 1536, motions for reconsideration denied (2002), 92 Ohio St. 3d 1422].
- 3. No person shall **promise or give** a public official or employee anything of value if the thing of value has a substantial and improper influence upon the public official or employee in the performance of his duties [R.C. 102.03(F)].
 - a) Applies to private parties [OEC Adv. Op. No. 2001-03]
 - b) Discounts provided to a large class of public servants not prohibited under certain circumstances [OEC Adv. Op. No. 2001-08, 2011-08]
- 4. Application to issues of employment:
 - a) A public official or employee is prohibited from soliciting, accepting, or using his position to seek employment (anything of value) from 'improper' sources [OEC Adv. Op. No. 2004-03]
 - b) **Exception:** Official is not prohibited from soliciting or accepting employment from an improper source if official can abstain from participating in any actions that affect the interests of the prospective employer and provides notice to his employer where required. Official must abstain from participation as soon as he attempts to secure employment, or is approached about employment [OEC Adv. Op. No. 2008-02]
- 5. Application to **Travel, Meals, and Lodging:**
 - a) Cannot accept anything of value, including travel, meals, and lodging, from any improper source, including parties that are doing or seeking to do business with, regulated by, or interested in matters before the public agency [OEC Adv. Op. No. 2001-04 and 2011-04]
 - b) Remember companion statute of R.C. 102.03(F) that applies to private parties [OEC Adv. Op. No. 90-001]
- 6. Application to **Gifts:**
 - a) 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 Adv. Op. No. 2003-03]
 - b) Private parties prohibited from offering or giving gifts:
 - (1) See also Supplemental Compensation [R.C. 2921.43 (A) OEC Adv. Op. No. 2008-01]
 - (2) Golf outings [OEC Adv. Op. No. 2001-03]
 - c) Cannot accept supplemental compensation from any party for the performance of public duties [R.C. 2921.43(A)]

7. Other issues:

- a) In-term increases in compensation [OEC Adv. Op. Nos. 91-007, 91-008, 92-016, and 93-006]:
 - (1) Post-election, pre-term pay increases, see *Coleman v. Canton* (May 4, 1998), Stark App. No. 1997 CA 00303, discretionary appeals not allowed (1998), 83 Ohio St. 3d 1436
- b) Relationship with law associates [OEC Adv. Op. No. 92-003] - Legislative amendment for chief legal officers of counties, municipalities, and townships
- c) Outside Consulting [OEC Adv. Op. No. 96-004; *State v. Kapper* (Oct. 31, 2001), N.D. Ohio No. 5:01 CR 330]
- d) Campaign contributions where bribery, another offense under the Revised Code or a purpose to defraud is present [OEC Adv. Op. No. 2002-03]

B. **Public Contract Restraints** [R.C. 2921.42; R.C. 102.04]:

1. Five different prohibitions in R.C. 2921.42; three most common are:

- a) Public official shall not authorize or use authority to secure a public contract for himself, a family member, or a business associate [R.C. 2921.42(A)(1)]
- b) Public official shall not have an interest in profits or benefits of a public contract entered into by a public agency with which he is "connected" [R.C. 2921.42(A)(4)]
 - (1) "Connected" with is defined as being related to or associated with the public agency [OEC Adv. Op. Nos. 87-002, 89-004, 90-007; *State v. Rousseau* (2004), 159 Ohio App. 3d 34]
- c) Public official shall not 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 [R.C. 2921.42(A)(3)]
 - (1) A public official occupies a "position of profit" when he or she receives some financial gain or benefit that is definitely and directly related to the carrying out and completion of the contract [OEC Adv. Op. No. 2009-05].
 - (2) Restriction applies to a member of a board that has authorized a contract, even if he or she does not vote on the authorization [OEC Adv. Op. No. 2009-05].
 - (3) A stockholder does not occupy a position of profit in the prosecution of a public contract awarded to the corporation provided that:
 - (a) The official owns less than one percent of the corporation's stock;
 - (b) The official has no financial or fiduciary relationship to the corporation other than stockholding; and
 - (c) The corporation is not a closely held corporation with a limited number of stockholders [OEC Adv. Op. No. 2009-05].

- d) All five prohibitions require the action to be taken knowingly:
 - (1) Does not mean that official has to know action was a violation of the law [State v. Pinkney (1998), 36 Ohio St. 3d 190]
- 2. Statutory definitions of terms in restriction:
 - a) "**Public contract**" - Purchase or acquisition of any property or services, including employment, and any design, construction, alteration, repair, or maintenance of any public property [R.C. 2921.42(I)(1)]
 - (1) Property includes both personal property (goods) and real property [OEC Adv. Op. No. 87-002]
 - (2) Public contract includes casual, as needed purchases [OEC Adv. Op. No. 87-002]
 - b) "**Public official**" - Any elected or appointed officer, or employee, or agent of the state or any political subdivision [R.C. 2921.01(A)]
- 3. Non-statutorily defined terms:
 - a) "**Interest**" in a public contract must be definite and direct, may be either pecuniary or fiduciary [OEC Adv. Op. No. 2009-06]
 - b) "**Family member**" includes two separate groups: (1) spouse, parent, grandparent, child, grandchild, sibling, step-child; and (2) any other person related by blood or marriage to the public official and residing in the same household [OEC Adv. Op. Nos. 80-001, 2008-03, 2010-03; Walsh v. Bollas (1992), 82 Ohio App. 3d 588]
 - c) "**Business associate**" is a person with whom a public official is acting to purpose a common business purpose [OEC Adv. Op. No. 2009-06]
- 4. **Exemptions:**
 - a) Stockholding below 5%; affidavit [OEC Adv. Op. No. 89-011]
 - b) Four-part exemption – R.C. 2921.42(C) – All four must exist and burden on official to demonstrate:
 - (1) Necessary supplies or services [OEC Adv. Op. No. 87-003]
 - (2) Unobtainable elsewhere for the same or lower cost or continuing course of dealing established before public service [OEC Adv. Op. Nos. 82-007, 88-008, and 95-004]
 - (3) Equal or preferential treatment given agency [Adv. Op. No. 2000-02]
 - (4) Arm's length, full disclosure, no participation [Adv. Op. No. 2000-02]
 - c) Housing exemption [R.C. 2921.42(D)]: [Exception does not apply to elected officials] A public **employee** is not prohibited from participating in any housing program funded by public moneys if:
 - (1) Employee otherwise qualifies for the program
 - (2) Employee does not use the authority or influence of his office or employment to secure benefits from the program
 - (3) Moneys are to be used on the primary residence of the public employee.

- d) Township trustee exemption [R.C. 2921.42(G)]: In a township with fewer than 5,000 people, the prohibition does not apply to a contract in which a trustee, his family members, or his business associates have an interest if all four exist:
 - (1) Necessary supplies or services, and contract less than \$5,000
 - (2) Furnished in a continuing course of dealing
 - (3) Equal or preferential treatment given township
 - (4) Full knowledge of township
- e) Legal officer exception [R.C. 2921.421]: A county prosecutor, or the chief legal officer of a municipality or township, may appoint or employ his private business associates, except family members, to certain positions with his public agency, if all of the following exist:
 - (1) The services are necessary
 - (2) The treatment is preferential to or the same as that given other clients or the legislative authority determines that the terms of the appointment are fair and reasonable
 - (3) The appointment is made after prior written disclosure to the legislative authority
 - (4) The prosecutor or chief legal officer does not receive any part of the earnings of his business associate from the public agency
- 5. **Nepotism** [R.C. 2921.42(A)(1)]:
 - a) Public official is prohibited from authorizing employment, or using authority to secure employment, or employment benefits, for any member of his family
 - b) "**Family member**" includes two separate groups:
 - (1) Spouse, parent, grandparent, child, grandchild, sibling, step-child (regardless of whether they reside in the official's household); and
 - (2) Any other person related by blood or marriage to the public official and residing in the official's household [OEC Adv. Op. Nos. 80-001, 2008-03, 2010-03; *Walsh v. Bollas* (1992), 82 Ohio App. 3d 588]
- 6. **Investing Public Funds** [R.C. 2921.42(A)(2)]:
 - a) Public official is prohibited from authorizing investments, or employing authority to secure investments of public funds in any 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.
 - b) "Family member" as defined above:
 - (1) Enforcement example of former Columbiana County Treasurer [*State v. Strabala* (Mar. 21, 1994), Columbiana C.P. No. 93-C-212, affirmed (Aug. 30, 1994), Columbiana App. No. 94-C-22]
- 7. Civil litigation ramifications:
 - a) Contract entered into in violation is void and unenforceable [R.C. 2921.42(H)]
 - b) Official removed for hiring spouse [*In re: Steed* (July 27, 1989), Lawrence App. No. 1909]

8. Corollary statute of [R.C. 102.04(B)]:
 - a) Applies only to state officials and employees
 - b) Flat prohibition against selling any goods or services, except where competitively bid, to any state entity, including own, excluding courts [OEC Adv. Op. No. 89-010]
 - c) Exemption [R.C. 102.04(D)]:
 - (1) Applies to non-elected officials and employees
 - (2) Applies to sales to state agencies other than agency served
 - (3) Applies when official or employee files a statement before entering into sale with:
 - (a) Public agency official or employee serves
 - (b) Public agency to which official or employee is selling goods or services
 - (c) Ethics Commission
 - (4) Statement includes a two-year disqualification, as a public official or employee, from matters affecting officials or employees of the agency to which goods and services are sold

C. Post-Employment/Representation Restrictions [R.C. 102.03(A), (B); 102.04(A),(C)]:

1. General Revolving Door [R.C. 102.03(A)(1)]:
 - a) Public official is prohibited, during public service and for one year thereafter, from representing anyone on any matter in which he personally participated while he was a public official [Adv. Op. No. 2011-03]
 - (1) [State v. Nipps]; and, former vocational school employee [State v. Davidson (Sept. 15, 2000), Warren C.P. No. 00-CR-18807]
 - b) Immaterial whether person is compensated for representation
 - c) Definitions:
 - (1) **Matter** - Any case, proceeding, application, determination, issue, or question [R.C. 102.03(A)(5); OEC Adv. Op. No. 99-001]
 - (2) **Personal participation** - Decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion [R.C. 102.03(A)(1)]
 - (a) Supervision can be, but is not always, personal participation [OEC Adv. Op. No. 91-009]
 - (3) **Representation** [R.C. 102.03(A)(5)—Formal or informal appearance before, or any written or oral communication with, *any* public agency:
 - (a) Includes preparing documents, regardless of who signs them [OEC Adv. Op. No. 86-001]
 - (b) Applies even if represented party is a public agency [OEC Adv. Op. No. 93-011]
 - (c) Does not include behind-the-scenes consultation [OEC Adv. Op. No. 92-005]

- d) **Exceptions:**
 - (1) Not prohibited from representing public agency the official or employee formerly served [102.03(A)(6); OEC Adv. Op. No. 91-005]
 - (2) New matters and matters in which public official or employee did not participate: Prohibition is tied to personal participation
 - (3) Proposal, consideration, or enactment of legislation, rules, ordinances, etc. [OEC Adv. Op. No. 2004-04]
 - (4) Ministerial functions - not prohibited from performing ministerial functions like filing or amending tax returns, applications, incorporation papers, and similar documents
 - e) **Constitutionality:**
 - (1) State has a compelling interest to protect against conflicts of interest through revolving Door restrictions [State v. Nipps]
 - (2) Compare to Brinkman v. Budish (2010), 692 F.Supp.2d 855
 - f) Special **Revolving Door** provisions:
 - (1) PUCO commissioners and attorney examiners are prohibited, for two years, from representing any public utility before any state board, commission, or agency
 - (2) Officials and employees who personally participated in matters under Chapter 343. or 3734. (solid and/or hazardous waste regulation) are prohibited, for two years, from representing any person who is an owner or operator of a solid or hazardous waste facility, or an applicant to become an owner or operator of a facility, on any matter in which he personally participated
 - (3) Members and employees of the General Assembly – Contact the Joint Legislative Ethics Committee
 - (4) Comparable Rules of Professional Conduct provisions for public lawyers: Rules 1.11 and 1.12
2. Confidentiality [R.C. 102.03(B)]:
- a) Lifetime prohibition on disclosure of confidential information both during and after leaving public position [OEC Adv. Op. No. 93-012]
 - b) Comparable Rules of Professional Conduct provision: Rule 1.6
 - c) No financial gain required
 - d) Exception for appropriate authorization
 - e) Material is protected if it is:
 - (1) Statutorily confidential
 - (2) Clearly designated as confidential where designation is warranted because of the status of the proceedings under which received and preservation is necessary to proper conduct of government business (difficult to demonstrate)

3. Representation/Influence peddling:

- a) State prohibition [R.C. 102.04(A)] *and* local prohibition [R.C. 102.04(C)]
- b) Prohibition on receipt of compensation directly or indirectly other than from public agency for any service rendered personally on any case, application, or other matter before any public agency:
- c) Exemption [R.C. 102.04(D)] – set forth above in Related Public contract provisions [OEC Adv. Op. No. 2007-03]
- d) Ministerial activities like tax preparation and filing incorporation papers are permitted [OEC Adv. Op. No. 89-016]

D. Other Restrictions:

1. Supplemental Compensation [R.C. 2921.43(A)]:

- a) Cannot accept supplemental compensation from any party for the performance of public duties
 - (1) OEC Adv. Op. No. 97-001 and 2008-01 (coaches)
- b) Cannot solicit or accept for personal or business use anything of value for hire, retention, promotion of any person [R.C. 2921.43(B)]:
 - (1) Sanction: Misdemeanor with an additional 7-year ban from holding public position
- c) Cannot coerce any political contributions [R.C. 2921.43(C)]:
 - (1) Exemption for voluntary contributions
 - (2) Sanction: Misdemeanor with an additional 7-year ban from holding public position
 - (3) Definition of “coerce” for purposes of R.C. 2921.43(C): Threatening a person who has a legal freedom of choice to either take action or refrain from taking action. The threat need not cause or prohibit any action from actually occurring. [*State v. Conese* (2004), 102 Ohio St.3d 435]

2. Honoraria [R.C. 102.03(H)]:

- a) Public officials and employees who file financial disclosure statements are generally prohibited from receiving "honoraria" (defined 102.01(H)):
- b) Exemptions:
 - (1) An official who files financial disclosure cannot accept honoraria, but can accept travel expenses when given in connection with a meeting at which the official is a speaker or for a meeting or convention of a national or state organization to which any state agency, state institution of higher education, political subdivision, or office or agency of a political subdivision, pays membership dues
 - (2) A non-filer can accept honoraria and travel expenses for speaking engagements that are not connected with his official duties, if paid by parties that are not doing or seeking to do business with, or regulated by, his public employer

(3) Officials and employees cannot accept expenses from parties that are doing or seeking to do business with, regulated by, or interested in matters pending before their public agencies

(4) Comparable Rules of Professional Conduct provision for public lawyers: Rule 1.8

3. **Rate-Making** [R.C. 102.03(C)]:

a) No public official or employee shall participate in any license or rate-making proceeding that affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his immediate family owns or controls more than five per cent
No public official or employee shall participate in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or his immediate family, or a partnership, trust, business trust, corporation, or association of which he or his immediate family owns or controls more than five per cent, has sold goods or services totaling more than \$1000 during the preceding year, unless the public official or employee has filed a statement about the sale with the public agency and the statement is entered in any public record of the agency's proceedings:

(1) Does not require disclosure of clients of attorneys or persons licensed under certain sections of the Revised Code, or patients of persons certified under certain sections of the Revised Code

(2) Ministerial functions - not prohibited from performing ministerial functions like filing or amending tax returns, applications, incorporation papers, and similar documents

4. Ordinary campaign contributions allowable [R.C. 102.03(G); Adv. Op. No. 2002-03]

E. Additional considerations:

1. All public officials and employees must receive a copy of the Ethics Law within fifteen days of hire, election, or appointment, and sign for the copy [R.C. 102.09(D)]

2. Contract entered into in violation of R.C. 2921.42 is void and unenforceable [R.C. 2921.42(H)]

II. COMMON SENSE WRAP-UP:

A. Cannot authorize a contract or use authority to secure authorization of a contract for self, family, business associates

B. Cannot solicit or accept things of value

C. Cannot disclose or use confidential information

D. Cannot receive additional compensation for performance of official duties

E. Cannot represent parties on matters in which public servant involved

- F. Cannot participate in matters where public servant has a conflict of interest – i.e., where something of value will result for self, family members, others
- G. **WHEN IN DOUBT, CALL THE ETHICS COMMISSION -- (614) 466-7090**
Check us out on the Web at www.ethics.ohio.gov

This Outline was prepared by the Ohio Ethics Commission for informational guidance only. For more information on any topic discussed, or an advisory opinion on a specific situation, please contact:

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