



OHIO ETHICS COMMISSION

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OHIO ETHICS LAW MEMORANDA FOR BOARD AND COMMISSION MEMBERS

I. INTRODUCTION TO THE ETHICS LAW AND RELATED STATUTES

This handout contains general information about the Ohio Ethics Law and related statutes (Chapter 102, and Sections 2921.42, 2921.421, and 2921.43) as they apply to individuals serving as state board and commission members. To assist you, this handout outlines, in general terms, your responsibilities under the Ethics Law and related statutes.

The prohibitions of the Ethics Law and related statutes protect both individuals who serve in public positions and the general public. The law includes requirements for financial disclosure by many state board and commission members, as well as general provisions that condition the conduct of public officials and employees to help protect against conflicts of interest.

- A. Intent:
 - To prevent public officials and employees with conflicts of interest from acting on those conflicts
 - To provide remedies of education, advice, and enforcement
- B. Application:
 - All public officials and employees at every level of government in Ohio, and those who do business with them
 - All state board and commission members are public officials and are, therefore, subject to Ohio's Ethics Law.
- C. Ohio's Ethics Law:
 - Found in Chapter 102 of the Revised Code
 - Related statutes are R.C. 2921.42 and R.C. 2921.43

II. THE OHIO ETHICS COMMISSION

- A. History
 - Post-Watergate enactment in 1973 [H.B. 55, effective 1/1/74]
- B. Purpose
 - Requiring personal financial disclosure
 - Imposing **criminal** penalties for unethical conduct
 - Establishing uniform review of questions by statewide commissions of the three branches of government

- C. Composition of the Ethics Commission
 - Six **bi-partisan** members
 - Appointed by Governor, confirmed by Senate
 - Staggered, 6-year terms
 - Compensated \$75 per meeting, up to \$1800 per year

- D. Authority of the Ethics Commission
 - Administers Ethics Law (R.C. 102) and related statutes (R.C. 2921.42 and 2921.43) for all public officials and employees at the state, county, municipal, township, and other levels of government *except*:
 - a. Judges and judicial employees [Contact the Board of Commissioners on Grievances and Discipline of the Supreme Court at (614) 644-5800]
 - b. State legislators and legislative employees [Contact the Joint Legislative Ethics Committee at (614) 728-5100]

III. RESPONSIBILITIES AND PROCESSES OF THE COMMISSION

- A. General Duties - Five Major Responsibilities
 - 1. Public Information
 - 2. Advice
 - 3. Investigation and Referral for Prosecution
 - 4. Financial Disclosure
 - 5. Legislation

- B. Public Information – R.C. 102.08.
 - 1. Organize and provide training and information sessions regarding conflicts of interest and financial disclosure
 - Present approximately 200 annual educational sessions throughout the state
 - Sessions given by the Commission are free of charge
 - 2. Create and distribute informational materials regarding Ohio’s Ethics Law
 - 3. Maintain website of electronic information [<http://www.ethics.state.oh.us>]

- C. Advice – Render Advisory Opinions – R.C. 102.08.
 - 1. The Ethics Law provides assistance to public officials through written advisory guidance
 - 2. Answers questions about the specific application of the Ethics Law to future actions

- D. Investigation – R.C. 102.06.
 - 1. Authority – Analogous to specialized grand jury
 - 2. **Confidential process** – Commission is prohibited by law from disclosing any information about investigations *except*:
 - a. Commission may publicly comment that a complaint has been referred to a prosecutor if no action has been taken within 90 days of the referral
 - Commission cannot comment regarding the merits of its findings
 - b. Accused can request disclosure of a complaint, if the accused has successfully defended the complaint

3. Resolution Authority – After consultation with the accused, the person filing the complaint, and any other person the Commission considers necessary, the Commission or a prosecutor may agree to settle a charge with the accused.
 4. Demand exceeds resources:
 - a. An estimated 18,000 elected office holders and 500,000 public employees subject to authority
 - b. As a result, commission must weigh the relative severity of allegations in order to prioritize which will be investigated
- E. Financial Disclosure – R.C. 102.02.
1. Many state board and commission members are required to file individual financial disclosure statements with the Ethics Commission by April 15th of each year.
 2. These statements aid board and commission members in identifying financial interests they hold that may present conflicts of interest for them in the performance of their public duties.
 3. The Ethics Commission provides blank financial disclosure statements on its web site at www.ethics.ohio.gov
 4. Financial disclosure statements reflect the entire preceding year's financial interests held by the filer, even if the board or commission member did not serve during the preceding year.
 5. Many financial disclosure filers are required to disclose:
 - Sources of income;
 - Sources of gifts of over \$75;
 - Investments;
 - Debtors and creditors;
 - Most ownership and leasehold interests in real property, located in Ohio.
 6. Statements filed by some board and commission members (such as those who are uncompensated) are confidential except for any part of the disclosure that reveals a potential conflict of interest. Each confidential statement is individually reviewed by the Ethics Commission to identify sources of potential conflict. These may include a filer's financial interests, because a public official may not use his authority to affect his own interests if they have business or regulative relationships with the board or commission.
 7. The General Assembly has mandated timely compliance with the deadline. As a result, the Ethics Commission will assess a late filing fee of \$10 per day, up to a total of \$250, against individuals who fail to file statements by the deadline.
- F. Legislation – R.C. 102.08: Recommend legislation relating to ethics, conflicts of interest, and financial disclosure

IV. 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.

In addition to financial disclosure requirements, the Ohio Ethics Law contains provisions regarding the private activities of public officials. These provisions deal with four general areas: conflicts of interest; public contracts (including nepotism) and public investments; post-employment, confidentiality, and representation; and, supplemental compensation. These general restrictions are summarized below.

A. Conflict of Interest – R.C. 102.03 (D), (E), (F).

1. A state board or commission member is prohibited from taking any action, including voting, discussing, deliberating, and formally or informally lobbying, on any matter where the official, his family, his business associates, or others with whom he has a relationship that would affect his objectivity, would receive anything of substantial value [102.03 (D)].
 - a. R.C. 102.03 (D) prohibits a public official from using his authority to secure anything of value that could have a substantial and improper influence upon the official in the performance of his duties. This section prohibits any formal or informal action in a matter where a substantial thing of value may benefit the official, his family, or his business associates.
 - b. The law defines “**anything of value**” to include money, goods, chattels, future employment, interests in realty, and "every other thing of value."
2. A state board or commission member is prohibited from accepting or soliciting anything of substantial value, including gifts, travel, meals, and lodging payments, and consulting fees, from improper sources including parties that are doing or seeking to do business with, regulated by, or interested in matters before the board or commission she serves [R.C. 102.03 (D) and (E)].
 - a. R.C. 102.03 (E) prohibits a public official from merely soliciting or accepting anything of value if the thing of value could have a substantial and improper influence upon the public official in the performance of his duties.
 - b. “Anything of value” could have a **substantial** influence upon a public official if the thing has a substantial value. The Ethics Commission has stated, for example, that season tickets for a professional sports team have a substantial value and cannot be provided to a public official by a party doing business with or regulated by the public agency [[OEC Adv. Op. No. 95-001](#)].
 - c. A thing of value could have an **improper** influence upon a public official if it is provided by a source that has a direct relationship with the public agency served by the official. Those sources, which are “improper” because of their relationships with a public agency, include parties doing or seeking to do business with, regulated by, or interested in matters before the public agency. Those “interested in” matters might include an association of parties doing business with the public agency.
3. The law also **prohibits a private party, or any person**, from promising or giving anything of value to a state board or commission member if the thing of value could have a substantial and improper influence upon the public official or

employee in the performance of his duties [R.C. 102.03 (E); [OEC Adv. Op. No. 90-001](#)].

B. Public Contract Restraints - R.C. 2921.42; R.C. 102.04.

1. A state board or commission member is prohibited from authorizing or using his position to secure authorization of a public contract for himself, a member of his family, or a business associate [R.C. 2921.42 (A)(1)].
 - a. A “**public contract**” is any purchase or acquisition of any property or services, including employment, and casual, as needed purchases, and any design, construction, alteration, repair, or maintenance of any public property [2921.42 (G)(1)].
 - b. The Commission has stated that a prohibited “**interest**” in a public contract must be definite and direct, and may be either pecuniary or fiduciary [[OEC Adv. Op. No. 78-005](#)].
 - c. The term “**a member of his family**” includes, but is not limited to, a spouse, parent, grandparent, child, grandchild, or sibling. It also includes any other person related by blood or marriage to the public official and residing in the same household with the official [[OEC Adv. Op. No. 80-001](#); *Walsh v. Bollas*, 82 Ohio App. 3d 588 (Lake County 1992)].
 - d. A “**business associate**” is a person with whom a public official is engaged in an on-going business enterprise, such as a partner in a partnership, a co-owner of a business, or an outside, private employer [[OEC Adv. Op. No. 92-003](#)].
2. A state board or commission member is **prohibited from profiting from** a public contract he approved, or that was approved by the board or commission of which he is a member, even if he abstains from the approval, unless the contract was competitively bid and awarded to the lowest and best bidder [R.C. 2921.42 (A)(3)]. This restriction applies while the official is connected with the board or commission, and for one year after he leaves his position.
 - a. This section prohibits a member of a governing board, for one year from the time he leaves his position, from accepting employment with his public agency, if the employment was authorized or the position was created during his service. R.C. 102.03 (D) (discussed above) also prohibits a member of a governing board from using his position to secure employment from the public agency he serves [[OEC Adv. Op. No. 87-008](#)]. These restrictions do not mean that a former state board or commission member is prohibited from securing employment with the board or commission he had served, so long as the board or commission did not create the position or authorize the employment during his service, and the former board or commission member did not seek the employment opportunity until after he left the board or commission.
3. **Nepotism**
 - a. A state board or commission member is prohibited from authorizing the hire of, or using his authority to secure the hire of, or employment benefits for, any member of his family (parents, grandparents, children, grandchildren, spouse, siblings, or any person related by blood or marriage and residing in the same household) [R.C. 2921.42 (A)(1)].

4. **Improper Interest in Public Contracts**

- a. A state board or commission member is prohibited from having an interest in the profits or benefits of a public contract entered into by the institution with which he is connected [R.C. 2921.42 (A)(4)]. The term "connected with" has been defined by the Commission as being related to or associated with the institution [[OEC Adv. Op. No. 87-002](#), [89-004](#), [90-007](#)].
- i. **EXEMPTION:** A state board or commission member is not considered to have an interest in a public contract entered into by his board or commission with a private corporation if his interest in the corporation is limited to being a stockholder of less than five percent or a creditor of **less than five percent** [R.C. 2921.42 (B)].
- ii. **EXEMPTION:** A state board or commission member is not prohibited from having an interest in a public contract entered into by the board or commission he serves so long as: (1) the purchase is a necessary purchase; (2) the goods or services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of dealing started prior to the member's connection with the board or commission; (3) the service provided is the same as or better than the service provided to other clients or customers; and (4) the public official does not participate, the contract is at arm's length, and the board or commission has full knowledge of the board member's interest [R.C. 2921.42 (C)].
- iii. The application of these two exemptions is dependent upon the facts.
Please contact the Ethics Commission for further information.
- b. A state board or commission member 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 [R.C. 2921.42 (A)(2); [State v. Strabala](#) (1993)].

5. **Sale of Goods**

- a. A state board or commission member is prohibited from selling any goods or services to any state entity, except through competitive bidding or as provided by exemption [R.C. 102.04 (B)].
- i. **EXEMPTION:** Sales to state agencies other than the board or commission served are exempted when the board or commission member completes and files a disclosure of the sale of goods or services, as described in R.C. 102.04 (D), before entering into the sale. The board or commission member must file the disclosure with the board or commission he serves, the state entity to which the sale will be made, and the Ethics Commission [R.C. 102.04 (D)].

C. **Post-Employment Restrictions – R.C. 102.03(A), (B); 102.04(A),(C).**

1. **General Revolving Door – R.C. 102.03(A):**

A state board or commission member is prohibited, during public service and for **one year** thereafter, from representing anyone, before any public agency, on any matter in which he personally participated while he was a member of the board or

commission. For some matters, the prohibition remains in effect for two years [R.C. 102.03 (A)].

- a. A “**matter**” is any case, proceeding, application, determination, issue, or question [R.C. 102.03 (A)(5)].
 - b. “**Personal participation**” is any decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion [R.C. 120.03 (A)(1)]. Supervision of another public official or employee can be, but is not always, personal participation [[OEC Adv. Op. No. 91-009](#)].
 - c. “**Representation**” is defined as any formal or informal appearance before, or any written or oral communication with, any public agency [102.03 (A)(5)]. “Representation” includes preparing documents, regardless of whether the individual himself signs them, or they are signed by someone else [[OEC Adv. Op. No. 86-001](#)]. The restriction applies even if the represented party is another public agency [[OEC Adv. Op. No. 93-011](#)]. The restriction does not apply to behind-the-scenes consultation with a client or new employer [[OEC Adv. Op. No. 92-005](#)].
2. **Representation** – R.C. 102.04 (A).
 - a. A state board or commission member is prohibited from receiving compensation except from the public entity he serves for any service **rendered personally** on any case, application, or other matter before any state entity, except as provided by exemption [R.C. 102.04 (A)]. Ministerial matters like tax preparation and filing incorporation papers are removed from the restriction [R.C. 102.04 (F); [OEC Adv. Op. No. 89-016](#)].
 - i. **EXEMPTION:** Receiving compensation for providing services on matters pending before state agencies other than the public entity served is exempted when the official completes and files a disclosure, as described in R.C. 102.04 (D), before performing the personal services. The board or commission member must file the disclosure with the public entity he serves, the state entity to which the sale will be made, and the Ethics Commission [R.C. 102.04 (D)].
 3. **Confidentiality** – R.C. 102.03 (B).
 - a. A state board or commission member is prohibited from disclosing or using confidential information acquired in his state position, without appropriate authorization. There is no time limit on this restriction [R.C. 102.03 (B)].
 4. Representation - Influence peddling – R.C. 102.04 (A)(C).
- D. Other Restrictions.
1. Supplemental Compensation – R.C. 2921.43 (A).
 - a. A state board or commission member is prohibited from accepting compensation, other than from the public entity he serves, for the performance of his public duties [R.C. 2921.43 (A)]. Private parties are also prohibited from offering or giving supplemental compensation to board or commission members [102.03 (F); 2921.43 (A)].
 2. Honoraria – R.C. 102.03 (H)
 - a. The Legislature enacted a restriction in 1994 that prohibits a public official who files a disclosure statement from receiving an honorarium. Contact the Ethics Commission for specific guidance.
 3. Rate-Making – R.C. 102.03 (C).

V. SUMMARY-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

This memorandum was prepared by the Ohio Ethics Commission for informational purposes only. It is not intended as a substitute for the laws referenced or Ethics Commission advisory opinions construing those provisions.

WHEN IN DOUBT, CALL THE ETHICS COMMISSION--(614) 466-7090
Check us out on the Web at <http://www.ethics.state.oh.us>