ETHICS
AND THOSE FINANCIAL DISCLOSURE FORMS . . .

Presented by
Warren I. Grody
for the
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Ethics Seminar - Treasurers
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Columbus · Cleveland · Cincinnati-Dayton · Marietta

www.bricker.com Twitter@BrickerEdLaw

100 South Third Street
Columbus, Ohio 43215
(614) 227-2300

1001 Lakeside Avenue
East
Suite 1350
Cleveland, Ohio 44114-
1142 (216) 523-5405

9277 Centre Pointe Drive
Suite 100
West Chester, Ohio 45069
(513) 870-6700

258 Front Street
Marietta, Ohio 45750
(740) 374-2248
I. Some Key Thoughts to Begin

There is no getting around it. Dealing with Ohio’s ethics laws is very complicated.

First of all, there are many sources of ethics rules and laws. Among these laws and rules, there is considerable overlap, but many differences in specifics—who the laws apply to, what they require, what they prohibit, and what exceptions they permit. Different bodies interpret them—the Ohio Ethics Commission, the Attorney General, and the courts. Usually, more than one law applies to a given situation. The rulings which result are not always consistent with one another one to another.

Even for those of us who deal with these laws on a regular basis, they aren’t easy to apply. If there is one thing that can be said about all ethics matters generally, it is that the application of the law is very fact-specific—meaning that the outcome can vary greatly depending upon what might seem to be minor details.

Consequences can, of course, be very significant: contracts can become void; positions can be lost; criminal penalties can be applied; and (last but hardly least) reputations can be ruined.

These materials will try to identify for you some general principles that can be drawn from the Ohio ethics laws. We will also look at some applications of these principles.

Our primary goal in discussing the ethics laws should not, however, be to memorize specific laws or rulings. Our “best bet,” rather, in dealing with the Ohio ethics laws is to sensitize ourselves to the general principles so that we will be able to recognize ethics law issues when they arise.
II. Overview: Source of Law

Four Primary Sources of Law:

1. Ohio Revised Code §3313.33 (the school board member statute) — Specifically applicable to school boards (barring ANY school board contract in which a school board member has a pecuniary interest (direct or indirect). VERY BROAD – more limiting than the others.

2. Ohio Revised Code Chapter 102 (“Ohio Ethics Law”) – especially:

   ORC 102.03 – major source of ethics rules: confidentiality, honoraria and travel expenses; employment conflicts, and use of authority of influence of position to secure anything of value that may have an improper influence – GIFTS

   NOTE: 102.03 does not apply to teachers unless they perform any supervisory or administrative functions.

   ORC 102.04 – bars compensation from outside sources for performance of public duties – this DOES apply to teachers

3. Ohio Revised Code Chapter 2921 (criminal conflicts of interest) – especially:

   ORC 2921.42 – prohibits certain unlawful interests in a public contract – specifically a contract which the public official or employee has influenced or from which he or she will derive profit or benefit. (applies to all public employees and officials)

   ORC 2921.43 – like 102.04, concerns supplemental compensation for the performance of public duties

4. Common Law (court decisions and other legal precedents) – especially concept of “compatibility of public offices” as developed by Ohio Attorney General: when is it OK for a person to hold two different public positions?
III. General Principles

(Recognizing ... that the devil is in the details!)

Overall purpose: avoid abuse of power and perception of abuse of power. For those in position of public trust, it is not enough to be fair—must be perceived to be fair.

1. ABUSE OF INFLUENCE – Contracts (primarily ORC 2921.42)

- Cannot use your position for personal benefit
- Cannot use your position to benefit close family members.
- Cannot use your position to benefit business associates

*Note different degrees of “strictness:”*

- ORC Chapter 2921 – interest must be “definite and direct”
- ORC 3313.33 (school board members) interest can be “direct or indirect”

Two different aspects of this general principle in context of contracts:

(a) **Can’t use your authority or influence** to help bring about a contract that will profit you, your family or your business associates. NEVER OK.

   Who is a “family member”? A spouse, child (whether or not dependent), parents, grandparents, grandchildren, siblings, and any other person related by blood or marriage and who resides in the same household with you.

   (Ohio Ethics Commn. Opinion. 80-001)

   **Question:** What if you avoid exercising influence: for example, abstaining from voting on contract of relative? MAY be OK.

(b) **Can’t have a “direct interest”** in a public contract, whether you use any influence or not. (That is, even abstaining won’t help if you have a “direct interest.”)

“ARM’S LENGTH” OR “NECESSARIES” EXCEPTION:

The law is “practical” enough to recognize that sometimes it is best for the public entity to deal with an employee or officer. This exception applies in limited circumstances when ALL the following are true:

1. The subject of the public contract is **necessary supplies or services**;

2. ...unobtainable elsewhere for the same or lower cost, or are ... part of a **continuing course of dealing** established prior to the public official’s becoming associated with the agency ...;
(3) The treatment ... is either preferential to or the same as that accorded other customers ...;

(4) The entire transaction is ... arm’s length, with full knowledge ... of the interest of the public official... and the public official takes no part in the deliberations or decision ....

2. GIFTS (ORC 102.03 [D], [E], [F])

- Cannot take a gift that might influence the way you do your job – golf, meals, travel.

- General rule – can’t solicit or even accept anything of value if could have substantial AND improper influence on how you do job:
  - substantial influence: refers to WHAT is given (could be anything – includes promise of future employment – but doesn’t include nominal or trivial items, unless cumulative)
  - improper influence: refers to WHO gives it – improper if from someone “interested in, regulated by, or doing or seeking to do business” with the public entity

3. SUPPLEMENTAL COMPENSATION (ORC 102.04, 2921.43)

- Cannot be compensated by someone else for doing your public job. Concept: public servants must never have “two masters”

Examples:
- payment by Chamber of Commerce of moving expenses for Columbus Board of Education new Operations Officer
- school trip vendors
- travel to see buildings or products of vendor
- coaches paid by booster group
- tuition reimbursement for teachers who supervise student teachers

4. CONFLICTING POSITIONS (ORC 102.03 [A], Ohio Attorney General, case law)

- You cannot hold two positions if they are such that one would improperly influence your judgment in the other. Concern here is not with dollars so much as with divided loyalties. (“Incompatibility of Public Offices” concept.)

- “Revolving door” – prohibits public employee from representing anyone who is interested in a matter before the public agency in which the employee has had some involvement – during the employee’s term of employment or for 12 months afterward. (ORC 102.03 [A].)
5. CONFIDENTIALITY  ( ORC 102.03 [B] )

“No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official’s or employee’s official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business."

Note that the ban has no time limit, and applies to the disclosure or use of the designated confidential information

(See sample “Designation of Confidentiality,” attached.)

6. FINANCIAL DISCLOSURE

What is a financial disclosure statement? - Statement required to be filed by many public officials and employees listing sources of income, investments, real estate dealings and other financial interests.

Purpose- The disclosure requirement (1) reminds public officials of those financial interests that might impair their judgment on behalf of the public, (2) informs the public of those interests, and (3) assists in instilling confidence in the actions of public officials.

Who is required to file a disclosure statement - The requirements for financial disclosure in R.C. 102.02 apply to elected officials and candidates for elective office generally, including any person elected to or a candidate for the board of education in any school district with an average daily membership of 12,000 or more as most recently certified to the state board of education under R.C. 3317.03(A). In addition, all school district superintendents, treasurers, and business managers are specifically included in the filing requirement regardless of the size of the district.

What must be disclosed? - All sources of income of any amount; all sources of gifts over $75.00 (excluding gifts from most family members) – nature and value of gift not required; the source and amount of every payment of travel expenses incurred in connection with official duties; sources of payment of meals, food and beverage expenses paid in connection with the filer’s official duties that exceeds $100. (Different rules apply for those earning less than $16,000 (i.e., school board members—more limited disclosure.)

When?  By April 15 each year.
DESIGNATION OF CONFIDENTIALITY
(O.R.C. 102.03)

Information to be discussed during this executive session is confidential for one or more of the following reasons as indicated:

☐ the information includes personally identifiable information relating to a student.

☐ the information is protected by the attorney-client privilege.

☐ the information concerns a dispute which is or may become subject to a grievance, litigation, or other legal proceeding, and would be harmful to the interests of the School District if disclosed to any opposing party or parties.

☐ the information concerns a proposed negotiation and/or contractual agreement with a person, firm, labor organization, or governmental entity, and would impair the School District's position with respect to such negotiations or agreement(s) if such information were to be disclosed publicly.

As such, preserving confidentiality is necessary for the conduct of the School District’s business and is therefore subject to the non-disclosure requirements of the Ohio Ethics Law, Section 102.03 (B) of the Ohio Revised Code.

__________________, Superintendent

and/or

__________________, Board President

__________________, Schools

__________________, 20___
Notes on
SELECTED ETHICS OPINIONS
OF INTEREST TO SCHOOL OFFICIALS
1978 – 2015
Kimball H. Carey, Esq.
BRICKER & ECKLER LLP

Full opinions available at http://ethics.ohio.gov/advice/archive.shtml

78-002 School Dist. Transp. Dir. can’t be officer of transportation co. having contract with B/E

78-006 Bd. member "parts counterman" with auto dealer (no involvement or commission)
Bus bid OK if NO VOTING and NO DIRECT BENEFIT from sale
*BUT ORC 3313.33 not considered* (prohibits even indirect pecuniary interest by board member)

80-001 "Family member" = husband, wife, son, daughter, brother, sister, parents, grandparents, or others related by blood or marriage and residing in the home (for 2921.42 "interest in public contract")

80-003 Bd. member salesman for auto dealer in family business (son)
Due to family nature of business, deemed to have "interest" in all sales, so bus bids NOT OK UNLESS "arm's length" exceptions of 2921.42 (C) applicable
*BUT 3313.33 not considered* (prohibits even indirect pecuniary interest by board member)

82-003 Bd. member spouse in barg. unit: OK to vote on CBA, but not individual contract

85-009 Bd. member in fund-raising business; rep already working in district
Has "interest" in sales to school or school groups: CANNOT CONTRACT with B/E Services to PTA, booster clubs OK (not "public contracts")

87-008 Bd. member seeking employment with district
Can't be hired for 1 yr. in any position board authorized while he was a member (regardless of whether he voted)
Must strictly avoid any lobbying or even discussion with other school officials prior to resignation
Must resign before making application, etc.

88-007 Bd. member spouse in law firm
Wife not presumed to have "interest" in husband's earnings, so not per se improper
Can't participate in decision to renew contract with firm
*BUT can't 3313.33 be a problem for board member?* YES says Attorney General in OAG 89-030 (if funds used to pay shared financial obligations, spouse has "interest" in other's earnings)

89-005 Bd. member spouse in barg. unit; bd. member also an OEA member in neighboring district
OK to vote on CBA unless spouse an officer or on negotiating team
OEA membership does not prevent vote on CBA ratification, but serving on board's negotiating team should be avoided due to "appearance of impropriety"
*More than "appearance": 4117.20 prohibits participation in bargaining by same-union member*
Vendor travel: NO travel, meal, lodging from vendors doing business or seeking to do business with public entity
 Doesn't matter if purpose is to see vendor's product or installation, etc.
 Doesn't matter that only essential travel costs paid
 Doesn't matter that project to be let by competitive bidding
 Doesn't matter if vendor payment is to govt. agency (instead of individual) as reimbursement

Bd. member music store owner (instrument sales, rentals, music lessons)
 Can't sell to district unless 2921.42 (C) exceptions met
 Can't sell to music boosters, if music boosters purchase for donation to school district
 CAN rent instruments to parents
 Can't use position to influence board, parents, or boosters to use services of store
 CAN make donations to district but CANNOT use this fact in advertising or promotions
 *BUT 3313.33 not considered* (prohibits even indirect pecuniary interest by board member)

Bd. member less than 5% stockholder in family lumber business; not involved in business in any way; district has made "casual" purchases from lumberyard for many years; district expenditures are approved in summary fashion in "Treasurer's Report" Can't vote to approve expenditures at lumber company (family members have direct "interest") (voting can be avoided through appropriations measure procedure of 3313.18) *BUT 3313.33 not considered* (prohibits even indirect pecuniary interest by board member)

Principal is also city council member
 Voting on "uniform" city ordinances that have equal application to all is OK
 Voting on ordinances having special benefit to employer (B/E) NOT OK
 Voting on development issues OK (increased tax revenues to district, thus creating more "job security," deemed speculative, and thus not a direct "interest"
 CANNOT vote on tax abatements, which would have direct financial impact on his employer

"Frequent flyer miles" earned on govt. business may not be used by individual employee
 Use of miles by employee violates both vendor gift and "additional compensation" rules

Discounts to policemen (10%) from local TV and appliance retailer prohibited as "additional compensation" for performance of official duties (2921.43)

Bd. member spouse a teacher, gets health benefits through spouse's insurance
 OK for bd. member to receive benefits (not "direct" benefit—fiction of spousal independence)
 Would be OK to vote on ratification of CBA under 2921.42 (spouse does not have "direct" interest where all in unit benefit, even if spouse an officer, etc.), but 102.03 prohibits voting, discussing, etc.
 CAN vote on selection of carrier and similar decisions affecting all employees in plan

Board member-to-board member business transactions are OK

Employment of bd. member's child as summer lifeguard is prohibited
 Bd. member/parent always has "interest" in child's earnings by law (unless child has been "emancipated")

Bd. member's company sells annuities to teachers in district; bd. member does not solicit sales, but does "service" accounts
 CANNOT service accounts or share in any commissions/fees generated by sales in district
 CANNOT vote on procedures, rules, which would affect sale of annuities to teachers
**Ethics Law** must be distributed to all new employees, but not teachers, unless they are performing “administrative” or “supervisory” functions. However, advisable to give Ethics Law to teachers, since 2921.42, .43 DO apply to them.

**Teacher runs driver training school**
Can’t take state reimbursement payment to district UNLESS 2921.42(C) exceptions apply
Can’t solicit students

**Honorariums:** “teaching” is OK, but one-time presentations at seminar or continuing ed program is NOT considered “teaching” and public employee cannot be paid for (l)

**Season tickets** to sporting events, from vendor: NO WAY; value far too great

**ODE staffers get travel/food/lodging from nonprofit corp to attend Council of Chief State School Officers functions (“collaboratives” to develop school curricula)
OK to accept where ODE a substantial dues-paying member of organization (“dues” totaling approx. $200,000 to participate in collaboratives)

**Outside consulting:** rules and parameters set out by Commission

**Superintendent: daughter in bargaining unit**
OK for supt. to negotiate, advise, etc. regarding CBA, as long as daughter not officer, etc.
OK to act on any CBA matter, as long as issue not particularized to daughter
[But note: NOT OK to recommend employment or re-employment of family member, or directly approve other benefits. See Opinion 2010-03.]

**Honorariums:** “bona fide pre-existing business” OK to continue for pay

**ESC board member** sits on JVS board; contracts exist between two boards.
“Official capacity exception” makes it OK to vote on contracts, etc. (unless he is employee of JVS). Board member is serving original board in representative capacity—therefore not “serving two masters.” Board member’s “interest” in JVS is fiduciary, not financial. Original board must specifically designate individual to represent it on second board, and individual must be formally instructed to act in representative capacity.

**School trips** for teachers and other employees
NO gifts from tour operators
NO compensation from tour operators
**Employees** can be provided travel/food/lodging for services as chaperones on theory that this is essentially a cost reduction for school district (must be “essential” number of chaperones only, and number must be indicated in contract)
**Spouses** serving as chaperones cannot receive travel/food/lodging from tour operator

**Golf outings:** NO greens fees or cart fees paid by vendor; food and beverages OK

**Gifts/ travel, etc.** for school employees, from vendors
Examples: Construction management firm: NO travel to site for administrators
Class ring vendor: NO free merchandise for teachers/class advisors

**Supt assigned to DA site board:** OK to vote on contracts between district and DA site per “official capacity exception” (see 99-004)
2001-08  General merchandise discounts to large public employers in communities having branch stores generally NOT a violation of ethics laws
OK as long as uniformly offered to a large group and the public employees involved do not provide services having a special benefit to the retailer (contrast police officer discounts in 92-015)

2002-02  OK for vendors/private parties to provide meal, reception, or open house for attendees at conference of public officials IF (1) meal, etc. is of "ordinary, routine character," (2) event is educational or informational, (3) event is open to all conference attendees, and (4) public official has not used his/her official influence to obtain donation of meal, reception or open house.

2003-01  Officers and employees of community school are subject to Ohio Ethics Laws.

2004-01  Financial reporting must itemize conference travel expenses even though paid by public employer (but not tuition or fee for conference itself). Financial reporting must also include automobile expenses for public employer-owned vehicles.

2004-02  Treasurer of public entity may not serve as director of a depository bank.

2005-02  Members of financial planning and supervision commission (for school district in fiscal emergency) are subject to Ohio ethics laws.

2006-01  Booster group cannot pay coach's salary; outside groups may make donations to district for athletic programs which do not stipulate use for specific position or individual.

2006-04  Teachers may not provide NCLB-funded tutoring services in same district where they teach unless cost lower than all other providers and other conditions met.

2005-01  Gifts from spouse who works for vendor or other person or firm that is doing or seeking to do business with public entity may not be accepted by public official if all the surrounding circumstances indicate that the vendor initially gave the gift to the spouse with the intention or expectation that the gift would be given to the public official. A bona fide employee benefit received by the spouse (such as a vacation trip for outstanding performance or length of service) may be given or shared in by the public official.

2009-02  "Generic opinion" that restates concept expressed in numerous other rulings—i.e., public official cannot participate in authorization of contract if a family member's employer has a contract with the public entity, and the family member has some specific interest in the contract. If family member is just "regular employee" with no special interest in the contract, not a problem. Caution: Board of education members could be subject to closer scrutiny per ORC 3313.33 (not included in OEC analysis). Even "indirect" interest of board member will invalidate contract.

2008-03  Free ticket to charitable fundraising dinner, given by vendor/contractor, may be accepted by public official as long as the meal provided is of "ordinary and routine character."

2010-01  Community school officers and employees subject to Ohio Ethics Laws in same manner as traditional public school personnel (i.e., teachers not subject to conflict of interest provisions).

2010-03  Public officials cannot recommend employment or re-employment of family members. Does not matter if law requires recommendation—as with the hiring of teachers, for which the nomination of the superintendent is required by statute (ORC 3319.07). Likewise, public official cannot approve benefits for family member that are specific to them as employee (such as approve sick leave, vacation days, etc.). May take employment actions that affect all employees in same way.
Teachers may not accept **tuition waivers** from college or university in exchange for mentoring of **student teachers**. College may provide compensation to school district.

Generally OK for vendor to provide employees with "**agency price**" **discounts** when buying vendor’s products for personal use (such as office software products). Discounts **NOT** available, however, to employees who are involved in negotiating vendor’s contract with the public agency.

Director of public agency who teaches college classes attended by employees for their continuing education **may not** "**sign off**" on employee tuition payments made by the agency.

**Disclaimer**

Ethics law issues can be very complex and fact-intensive. Special difficulties also arise in applying the ethics laws to school personnel, since different laws can apply to different people in a given situation. Of special concern for school board members is the fact that the Ohio Ethics Commission does not consider ORC 3313.33 in its analysis of any given question (it leaves that to the Attorney General and the courts). That statute is generally more restrictive on conflict-of-interest issues. As a result, some OEC Opinions may be unintentionally misleading with respect to school board members, who may be subject to a stricter standard than is reflected in the OEC Opinion. For all of these reasons, it is generally advisable to seek the assistance of legal counsel before attempting to apply these rulings in any particular fact situation.
I. INTRODUCTION

Public officials and employees at all levels of state and local government ask the Ethics Commission for guidance about what they can and cannot accept as gifts and entertainment from family, friends, acquaintances, and other persons. This bulletin provides guidance and explains the law prohibiting acceptance of gifts in many circumstances.

What does the law prohibit?

Ohio’s Ethics Law prohibits all public officials and all public employees from soliciting or accepting a gift of a substantial value, including entertainment, from any “prohibited source.” A “prohibited source” is any person, company, organization, or other entity that has any of these relationships with the public agency an official or employee serves:

- Doing or seeking to do business with the agency;
- Regulated by the agency; or
- Interested in matters before the agency.

A public official or employee also cannot accept compensation for the performance of his or her public job duties from any source other than their public employer.

Who is a “public official”?

A public official is any person, paid or unpaid, and regardless of how much money he or she is paid, who is elected or appointed to a full time or part time position.

Who is a “public employee”?

A public employee is any person, paid or unpaid, and regardless of how much money he or she is paid, who is employed by a public agency in a full time or part time public job.

II. ACCEPTING GIFTS/ENTERTAINMENT

To know whether you can accept a gift, meal, or entertainment, you need to determine both:

- The value of the item; and
- The source of the item.

If the gift is substantial in value and is from one of the prohibited sources described earlier, you must return it to the giver.

However, you can accept a gift of nominal value from any giver. Gifts of nominal
value include promotional items, such as a t-shirt, mouse pad, or a coffee mug.

**Personal Friendship**

You can also accept a gift of any value if the giver is not a “prohibited source.” For example, you can accept a gift if it is clear that the gift is motivated by the giver’s family relationship or a personal friendship with you, rather than by your public position. Relevant factors to consider include:

- The duration and nature of the pre-existing private relationship;
- Whether it has been common for you to exchange gifts with the giver before you became a public official or employee;
- Whether the giver personally paid for the gift or identified it for business reimbursement; and
- Whether, to your knowledge, the giver also gave the same or similar gifts to other officials or employees of your agency.

**Gifts from Vendors**

You are prohibited from accepting a gift or entertainment, of a substantial value, from a vendor to your agency. However:

- The Ethics Law does not prohibit you from socializing with anyone.
- If you are going to a restaurant with a vendor to your agency, and the cost of the meal will be substantial, you should pay your own way.
- If you are invited to attend an open house hosted by one of your agency’s vendors, in most cases, you would be able to accept the invitation because the per-person value of an open house is unlikely to be substantial.
- If you are invited to attend an expensive event hosted by a vendor, or an event that includes expensive tickets (such as a sporting event, concert, theater performance, or any similarly valued event), you should either: (a) decline the invitation; or (b) pay the per-person cost to attend the event and the greater of the face value of, or the amount the giver paid for, the tickets.
- The Commission has said in prior advisory opinions that meals at expensive restaurants, exclusive golf outings, season tickets to games of a sports team, and travel, meal and lodging expenses are also of a substantial value.³

Remember that you cannot accept compensation from anyone other than the agency you serve. This means that if a vendor gives you cash or a cash-equivalent (such as a gift card) as a “thank you” for your public duties, you must return it.

**III. FINANCIAL DISCLOSURE**

If you are required to file a financial disclosure statement with the Ethics Commission, then you may have to disclose sources of gifts you have received:

- Most filers must disclose gifts over $75.⁴
- You need to disclose all sources of gifts over the threshold amount -- even if the person who gave it to you is a personal friend or does not have any connection with your public agency.
- You do not need to disclose the amount or nature of the gift.
- You do not need to disclose the source of a gift if it was given to
you by any of the following family members:

- Spouse, parents, siblings, or children;
- Grandparents or grandchildren;
- Nephews, nieces, uncles, or aunts;
- Brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, fathers-in-law or mothers-in-law; or
- Any person to whom you stand in loco parentis (that is, you serve as their parent).

You also don’t have to disclose any gift you received by distribution from any trust established by your spouse or other relative.

IV. ASSISTANCE AND QUESTIONS

If you have any questions, please contact the Ethics Commission:

- Telephone: 614.466.7090
  [Ask for an advisory attorney.]
- Monday to Friday, 8:00 AM to 5:00 PM
- Website: www.ethics.ohio.gov [Use the search term “gifts”]

¹ See Ethics Commission Information Sheet #7, "Accepting Gifts, Meals, Entertainment, or Other Things of Value"
² See generally 5 C.F.R. 2635.204(b), concerning similar standards applicable to employees of the federal government.
³ See, e.g., Adv. Ops. No. 89-014 (travel, meals and lodging); 95-001 (professional sports tickets); and 2001-03 (golf outings).
⁴ Some filers are only required by the General Assembly to disclose sources of gifts over $500, such as college or university trustees, or officials or employees of a city, school district, educational service center, or sanitary district if their public position is paid less than $16,000. For guidance on whether this threshold applies to you, please contact the Ethics Commission.
RESTRICTIONS ON NEPOTISM OR HIRING FAMILY MEMBERS:
Ethics Commission Information Sheet # 1

I. Introduction

The Ohio Ethics Law and related statutes are found in Ohio Revised Code (R.C.) Chapter 102. and Sections 2921.42 and 2921.43. These laws generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates.

The Ethics Law applies to all people who serve as officials and employees for public agencies in Ohio. “Public agencies” include state departments, boards, and commissions, counties, cities, villages, townships, school districts, public colleges and universities, public libraries, port authorities, and all other public entities.

The Ohio Ethics Commission was created to administer, interpret, and assist in the enforcement of the Ethics Law for all officials in the state, except members and employees of the General Assembly and judicial officers and employees. In this information sheet, the word “official” indicates any person who serves a public agency, whether elected, appointed, or employed.

II. Purpose of this Information Sheet

The Commission prepared this information sheet to explain the Law as it applies to situations where a relative of an official seeks a job with the public agency she serves.

III. Summary of the Law

The Ohio Ethics Law and related statutes prohibit an official from:

- Authorizing the employment of a family member; and
- Using the authority or influence of her public position to secure authorization of the employment of a family member.

An official is prohibited from hiring a family member in any employment position, including a full-time, part-time, temporary or permanent position, a position in the classified or unclassified civil service, or a non-civil service position.

In most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency, as long as no official has secured a job, or job-related benefits, for her family member.
IV. Prohibition Against Authorizing a Family Member’s Employment

R.C. 2921.42 (A)(1) prohibits a public official from authorizing the employment of a family member. A “public official” is any elected or appointed officer, or employee, of the state or any political subdivision of the state.

A “member of [an official’s] family” includes the following relatives, regardless of where they reside: (1) spouse; (2) children (whether dependent or not); (3) siblings; (4) parents; (5) grandparents; and (6) grandchildren. It also includes any other person related by blood or by marriage and living in the same household.

An official has “authorized” the employment of a family member when the employment could not have been awarded without the approval of the official. In other words, under this section, an official is prohibited from making the final decision about whether a family member should be hired. For example, an official is prohibited from voting to hire a family member.

If the official makes the final hiring decisions for the public agency she serves, her family members cannot be employed by the public agency. For example, a county office holder cannot hire a family member and cannot delegate the authority to hire her family members to a subordinate employee, which means that her family members cannot be hired by her office. However, a person who worked in the office before her relative is elected is not prohibited from continuing to work for the office, as long as the terms and conditions of her employment are not changed through promotion or other actions described below.

V. Using Position to Secure Job

An official is also prohibited, by R.C. 2921.42(A)(1) from using the “authority or influence of” her public position to secure a job for a family member. Even if an official abstains from decisions, the law prohibits the official from discussing, recommending, or otherwise using the prestige of her office, formally or informally, to get a family member a job.

R.C. 102.03(D) also prohibits an official from using her position to secure a job for a family member. R.C. 102.03(D) and (E) prohibit an official from using her influence with other public officers or employees, especially subordinates, to persuade them to hire her family member.

VI. Using Position After Employment

The prohibitions in R.C. 2921.42(A)(1) and 102.03(D) continue after an official’s family member has been employed.

R.C. 2921.42(A)(1) prohibits an official from participating in any decision, or using her position to secure any decision, that affects the continuation, implementation, or terms and conditions of a family member’s employment. For example, an official is prohibited from participating in matters related to the renewal, modification, or termination of a family member’s public employment.

R.C. 102.03(D) prohibits an official from participating, formally or informally, in
any matter that directly affects a family member’s employment. For example, R.C. 102.03(D) prohibits an official from securing any employment-related benefits for a family member.

For example, a public official is prohibited from participating in matters affecting her family member’s employment including: (1) changes in compensation or benefits; (2) assignment of duties; (3) evaluations; and (4) actions involving promotions, disciplinary actions, lay-offs, and removal. R.C. 102.03(D) also prohibits an official from influencing the decisions or actions of other officials or employees, particularly subordinates, regarding a family member’s job with the public agency or any job-related benefits.

VII. Actions That Are Not Prohibited

R.C. 2921.42(A)(1) and 102.03(D) do not prohibit an official from participating in certain matters in which a family member has an indirect interest or from which a family member may indirectly benefit.

A. Approval of Union Contract: An official is not prohibited from approving a union contract when her relative is a member of the union, unless the relative serves as a union officer, board member, or on the union negotiating team or the official is covered by health insurance under the contract.

B. Matters Affecting a Class: The law generally does not prohibit a public official from voting on an ordinance or resolution to fix the compensation of a class of employees, one of whom is a relative of the official. However, an official is prohibited from voting on an ordinance setting compensation for employees if the ordinance: (a) establishes compensation on a basis other than membership in the class of employees; (b) affects the family member’s compensation in a differential manner than other members of the class; or (c) secures, renews, modifies, or renegotiates the terms of the family member’s job.

C. General Appropriations: The law also does not prohibit an official from participating in a general budgetary appropriation that includes money to fund a family member’s compensation and benefits, or from participating in budgetary appropriations to a department that employs a family member. However, the appropriation cannot provide the official or employee with the authority or discretion to alter the compensation and benefits for her family member, and must provide compensation and benefits that are identical for all members in the class.

VIII. Other Considerations

Where an official’s spouse is employed by the public agency she serves, and the official is covered under health insurance provided by the agency to her spouse, there is an additional restriction. In that case, the official is receiving a thing of value, for purposes of R.C. 102.03(D) and (E). While the official is not prohibited from receiving the health insurance coverage, she is prohibited from taking any action to approve the union contract if it includes health insurance benefits and she is covered under those benefits.

Any official whose family member has applied for a job with her public agency
Restrictions on Hiring Family Members
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should ask her supervisors, or legal counsel for the public agency, whether the public agency has a policy or rule regarding employment of family members. (A public agency cannot create a policy or rule that is less restrictive than the prohibitions described above. However, a governmental entity can have a policy or rule that is more restrictive than the Ethics Law.) Finally, while the Ethics Law does not absolutely prohibit relatives from working for the same public agency, questions of fairness and impartiality may arise in such situations. Further, such hires may present the appearance of impropriety to the public, even where the public official fully and completely removes herself from participating in the hiring process, as described above. A public agency may be able to minimize these concerns if the agency conducts all hiring activity in a fair, open, and impartial manner.

IX. Penalties

The Ethics Law and related statutes are criminal laws. If a person is convicted of violating an ethics law, that person may receive a jail sentence and/or have a fine levied against her.

R.C. 2921.42(A)(1) is a fourth-degree felony with a maximum penalty of eighteen months in prison and/or a $5000 fine. R.C. 102.03(D) is a first-degree misdemeanor with a maximum penalty of six months in prison and/or a $1000 fine.

X. Conclusion

Please contact the Ethics Commission if you have questions about this information sheet or the Ohio Ethics Laws. This information sheet is not an advisory opinion, and is not intended to provide advice on specific facts. Copies of the Commission’s formal advisory opinions can be obtained from: Ohio Ethics Commission, William Green Building, 30 West Spring Street, L3, Columbus Ohio, 432315-2256; telephone (614) 466-7090, and on the Commission’s Web site: www.ethics.ohio.gov.

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Endnotes:

1 The ethics agency with jurisdiction over ethics issues related to members and employees of the General Assembly is the Joint Legislative Ethics Committee. The ethics agency with jurisdiction over ethics issues related to judicial officers and employees is the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

2 Ohio Ethics Commission Advisory Opinion No. 80-001.


2 R.C. 102.01(B) and (C); A “public official or employee” includes any person who is elected or appointed to an office or is an employee of any public agency.


2 See Adv. Ops. No. 82-003, 89-005, and 92-012.


2 Adv. Ops. No. 89-003, 92-017, and 98-003.

