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**INFORMATION SHEET: ADVISORY OPINION NO. 2021-01**  
**CITY OFFICIAL'S SERVICE AS AN EXECUTIVE DIRECTOR OF AN ORGANIZATION OF WHICH**  
**THE CITY IS A DUES-PAYING MEMBER**

**What is the question in the opinion?**

Can a city official serve as executive director of an organization (such as a local chamber of commerce, regional planning commission, municipal league, state library council, municipal clerk's association, state government finance officers' association, etc.) if the city pays membership dues to the organization?

**What is the brief answer?**

Yes, provided that the official can meet the applicable requirements and exceptions to the public contract law and withdraw from matters before the city that definitely and directly affect the membership organization.

**What is the general restriction?**

When a city pays membership dues to join an organization, the organization provides a "service" to the city that meets the statutory definition of a "public contract." R.C. 2921.42(A)(3) and (A)(4) prohibit a city official from serving as a director of a membership organization, unless the official is able to meet the requirements of and exceptions to the public contract restrictions.

Even if the city official is able to meet the requirements of and the exceptions to the public contract law restrictions, such that he or she is not prohibited from serving with the organization, R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) prohibit the official from using his or her position by voting, discussing, deliberating, formally or informally lobbying, or otherwise participating, as a city official, on matters that affect the interests of the organization he or she serves.

**To whom do the conclusions in this opinion apply?**

While the opinion specifically involves a city official, including a city mayor or city council member, the conclusions apply to any similarly situated local officials, including county commissioners and village and township mayors, council members, and trustees.

**When did the conclusions in this opinion become effective?**

The opinion became effective upon acceptance by the Commission.

**For More Information, Please Contact:**

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**ADVISORY OPINION NO. 2021-01 IS ATTACHED.**

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Advisory Opinion  
Number 2021-01  
March 12, 2021  
**City Official's Service with  
a Membership  
Organization**

Syllabus by the Commission:

- (1) The term “public contract” is defined in R.C. 2921.42(I)(1)(a) to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of a city. When a city pays membership dues to join an organization, the organization provides a “service” to the city that meets the statutory definition of a “public contract.”
- (2) R.C. 2921.42(A)(3) prohibits a city official from also being the executive director of a membership organization if the official would profit from a public contract that was authorized by the official or the city board or commission on which he or she sits. However, where the establishment or operations of the membership organization is not dependent upon receipt of the city contract and the city official would not otherwise profit from the award of the contract, R.C. 2921.42(A)(3) does not prohibit the official from serving as the executive director of the membership organization.
- (3) R.C. 2921.42(A)(4) prohibits a city official from also being the executive director of a membership organization unless each of the four requirements of R.C. 2921.42(C) are met. This statutory exception can be met, in part, where the city official abstains from matters involving the city’s contract with the membership organization and the organization provides unique services to the city that the city could not obtain from another source.
- (4) R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) prohibit a city official who also serves as the director of a membership organization from participating in matters before the city that definitely and directly affect the membership organization.

\* \* \*

In Advisory Opinion No. 2016-01, the Ethics Commission addressed the issue of whether the public contract restriction in R.C. 2921.42(A)(3) prohibits a public official from being employed by a for-profit or non-profit corporation, company, or other entity that receives financial assistance from the public official's agency.

This opinion specifically addresses whether a city official, such as a city mayor or city council member, can serve as the director of a membership organization. A membership organization, for purposes of this opinion, is an organization to which a city pays membership fees or dues to join. In return for the city's membership fees or dues, the city is granted access to and receives the benefits of the goods and/or services provided to the organization's members. Membership organizations typically have a specific purpose, which involves connecting people together around a particular profession, industry, activity, interest, mission or geographical location. This might simply be to encourage or facilitate interaction and collaboration, but it also often involves promoting and enhancing the purpose itself. Types of membership organizations include professional associations, trade associations, and other "collaborative organizations" as defined in Ohio Ethics Commission Advisory Opinion No. 2008-02. Examples of membership organizations that a city may join include, but are not limited to, a local chamber of commerce, regional planning commission, municipal league, state library council, municipal clerk's association, state government finance officers' association, etc.

### **Profiting from a Public Contract—R.C. 2921.42(A)(3)**

R.C. 2921.42(A)(3) states that no "public official"<sup>1</sup> shall knowingly:

During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

A public contract includes any purchase or acquisition of goods, property, or services by or for the use of a public agency.<sup>2</sup> The term "public contract" includes the purchase or acquisition, or a contract for the purchase or acquisition of goods or services by or for the use of a city. When a city pays membership dues to join an organization, the organization provides goods and/or services to the city that meet the statutory definition of a "public contract."

A public contract is authorized by an official or board if the contract could not have been awarded without the approval or action of the official, the public position in which he or she serves, or the public board of which he or she is a member.<sup>3</sup> The restriction in R.C. 2921.42(A)(3) applies to public contracts that are authorized by a legislative body or other public board or commission, of which the official is a member at the time of authorization, regardless of whether the official participated in the board's authorization of the contract.<sup>4</sup> For example, during and for one year after his or her term in office, a city council member is prohibited from profiting from a public contract authorized by city council while he or she was a member, even if the council member abstained from deliberating, voting upon, or otherwise participating in council's authorization of the contract.<sup>5</sup>

The prohibition of R.C. 2921.42(A)(3) will apply whenever a public official “occupies a position of profit” or otherwise realizes a financial advantage, gain, or benefit that is a definite and direct result of a public contract authorized by the official *or* by a board of which he or she is a member, if the contract was not competitively bid and awarded to the lowest and best bidder.<sup>6</sup> In the absence of competitive bidding, there is no exception to R.C. 2921.42(A)(3).<sup>7</sup>

A public official will be deemed to occupy “a position of profit” in a public contract awarded to the organization he or she serves if any one of the conditions below apply:

- (1) His or her organization’s establishment or operation is dependent upon receipt of the contract;
- (2) The creation or continuation of his or her position with the organization is dependent upon the award of the contract;
- (3) The official’s compensation is dependent upon the award of the contract because his or her organization uses the contract’s proceeds to compensate him or her or as a basis for his or her compensation; or
- (4) The official would otherwise profit from the contract.<sup>8</sup>

Whether the establishment or operation of the organization is “dependent” on a public agency’s contract is determined by the totality of the situation’s facts and circumstances including, but not limited to: (i) the amount and nature of the contract that the organization receives from the public agency; and (ii) the proportional effect that the contract has upon its operation.<sup>9</sup>

As explained in Advisory Opinion No. 2016-01, absent a showing to the contrary, if an organization receives a cumulative value of twenty-five percent or more of its funding during either a calendar or fiscal year from its contract with the public agency, there is a rebuttable presumption that it is “dependent” on the public agency’s contract.<sup>10</sup>

Even if an organization is not dependent on a public agency for its funding, an official of the agency who is also employed in an executive position with the organization could occupy a position of profit in the prosecution of contracts between the organization and the public agency in one of the other ways described above. If the creation or continuation of the public official’s position with the organization is dependent on the contract with the public agency he or she serves, the official occupies a position of profit in the contract. Also, an employee of an organization occupies a definite and direct position of profit in a contract of the organization when, for example, he or she receives a fee or commission from the contract, or some portion of the funds is earmarked to support his or her salary. The prohibitions of R.C. 2921.42(A)(3) do not apply to a city official who serves with an organization in an uncompensated position regardless of the amount of financial assistance that the organization receives from the city.<sup>12</sup>

Therefore, R.C. 2921.42(A)(3) prohibits a city official who serves as the executive director of a membership organization from profiting from any non-competitively bid contract, including the membership contract, provided by the city to the organization in any of the ways described above.<sup>13</sup> This prohibition will remain in effect for one year after the official leaves his or her position with the city.<sup>14</sup> If the official cannot satisfy the requirements of R.C. 2921.42(A)(3), then no other Ethics Law provision would need to be addressed, because the official could not

simultaneously serve as the executive director of the membership organization and serve as a city official who authorizes or serves on a board that authorizes contracts to the organization. However, if the public official can meet the requirements of R.C. 2921.42(A)(3), then other Ethics Law restrictions will also apply.

#### **Having an Interest in a Public Contract—R.C. 2921.42(A)(4)**

A city official is also subject to R.C. 2921.42(A)(4), which states that no public official shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected.

As indicated above, when a city pays membership dues to join an organization, the organization provides goods and/or services to the city that meets the statutory definition of a “public contract.” A city official who serves as an executive director of a membership organization and is compensated for his or her service, has a prohibited financial and/or fiduciary interest in the contract between the city and the organization.<sup>15</sup> The prohibitions of R.C. 2921.42(A)(4) apply to a public official who serves as the executive director of an organization as a compensated employee or in an uncompensated fiduciary position.<sup>16</sup>

Therefore, R.C. 2921.42(A)(4) would prohibit a city official from also serving as the executive director of a membership organization unless the official can objectively demonstrate that he or she meets the exception to this restriction contained in R.C. 2921.42(C).<sup>17</sup>

#### **Exception to R.C. 2921.42(A)(4)—R.C. 2921.42(C)**

The applicable exception is in R.C. 2921.42(C). In order to meet the exception, a public official must demonstrate that he or she meets four requirements.<sup>18</sup> The application of each of the four requirements depends on all of the facts and circumstances of the public official’s role and the nature of the public contracts.<sup>19</sup>

**Requirement 1:** The subject of the public contract is necessary supplies or services for the political subdivision or instrumentality involved.<sup>20</sup>

The goods or services that the membership organization provides to the city in return for the membership dues must be necessary. This exception can be met if the appropriate city officials have decided that the services are necessary, and the public official serving as the executive director of the membership organization has not taken any part in the city’s decision.

**Requirement 2:** The supplies or services are unobtainable elsewhere for the same or lower cost or are being furnished to the political subdivision or instrumentality as part of “a continuing course of dealing” established prior to the public official’s becoming associated with the political subdivision or instrumentality involved.<sup>21</sup>

The goods or services that the membership organization provides to the city must be: (1) “unobtainable elsewhere for the same or lower cost” or (2) provided pursuant to a “continuing course of dealing” that began prior to the official’s service with the city.

A “continuing course of dealing” is a contractual agreement between the city and the membership organization that existed prior to the time that the official assumed his or her public office.<sup>22</sup> However, if the contract is modified, renewed, extended, or otherwise changed after the official takes public office, he or she would no longer be able to meet the exception.<sup>23</sup> If the original contract terms between the city and the membership organization provide for automatic renewal, without any action by the city or any changes to the terms or conditions of the contract after the current term expires, then the automatic renewal would also be considered part of a “continuing course of dealing.”<sup>24</sup>

If, however, a renewal requires the city to act, there is any revision or change in the contract terms, or a new contract is authorized by the city, then the resulting contractual agreement is considered a new public contract, and accordingly it is not considered part of a “continuing course of dealing” for purposes of R.C. 2921.42(C)(2).<sup>25</sup>

If the contract cannot be deemed part of a “continuing course of dealing,” then the city must be able to show that the services that the membership organization provides to the city are “unobtainable elsewhere for the same or lower cost.”<sup>26</sup> The underlying principle of the “unobtainable elsewhere for the same or lower cost” requirement is that a public official should not have an interest in a public contract with his or her governmental agency unless the contract is the best or only alternative available to that agency.<sup>27</sup> This requirement could be met by a showing that there are a limited number of organizations available in the area that provide the same services and that the membership organization is uniquely suited to provide the services the city needs.<sup>28</sup>

**Requirement 3:** The treatment accorded the political subdivision or governmental agency, or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions.<sup>29</sup>

The treatment the membership organization provides to the city must be either preferential to or the same as that accorded to others in similar situations.<sup>30</sup>

**Requirement 4:** The entire transaction is conducted at arm’s length, with full knowledge by the political subdivision or instrumentality involved of the interest of the public official and the public official takes no part in the deliberations or decision of the political subdivision or instrumentality with respect to the contract.<sup>31</sup>

The city must have full knowledge of the public official’s interest in the contract between the city and the membership organization and the public official is prohibited from taking any part in the deliberations or decisions of the city with respect to any contract awarded to the organization.<sup>32</sup>

Provided that the city official can demonstrate that he or she meets all four parts of the exception in R.C. 2921.42(C), R.C. 2921.42(A)(4) would not prohibit the official from also serving as the executive director of a membership organization.

**Authorizing Contracts—R.C. 2921.42(A)(1) and Conflicts of Interests—R.C. 102.03**

Even if a public official can meet the requirements of R.C. 2921.42(A)(3) and the exception in R.C. 2921.42(C), the official must also comply with several other restrictions. Specifically, the prohibition against authorizing certain public contracts (R.C. 2921.42(A)(1)) and the conflict of interest prohibitions (R.C. 102.03(D) and (E)) will prohibit the public official from participating, as a city official, in matters or actions that affect the membership organization that he or she serves.

A city official is subject to R.C. 2921.42(A)(1), which states that no public official shall knowingly:

Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

R.C. 2921.42(A)(1) prohibits a city official from authorizing or securing any contracts, including membership contracts and other financial support and funding, between the city and the membership organization with which the official serves as executive director.<sup>33</sup> This law prohibits the city official from participating, in any manner, formally or informally, in the consideration, recommendation, or administration of any contract the city provides to the organization.

A city official is also subject to R.C. 102.03(D) and (E), which state:<sup>34</sup>

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

R.C. 102.03(D) and (E) require a city official who also serves as the executive director of a membership organization to withdraw from matters before the city that definitely and directly affect the interests of the organization.<sup>35</sup> He or she is prohibited, as a city official, from voting, discussing, deliberating, formally or informally lobbying, or taking any other action, in matters before the city that affect the organization. The conflict of interest prohibitions in R.C. 102.03(D) and (E) that apply to public officials engaging in private outside employment or business activities are discussed more fully in Ohio Ethics Commission Advisory Opinion No. 96-004.<sup>36</sup>

### **Additional Restrictions**

R.C. 102.04(C) prohibits a city official from receiving compensation from any party for any service rendered by the official personally on any matter that is before any agency, department, board, bureau, commission, or other instrumentality of the city, excluding the courts.<sup>37</sup> There is an exception to this prohibition; however, it does not apply to elected officials.<sup>38</sup> A matter is “before” a governmental entity “when it is being considered by, decided by, or in the presence of or under the official purview of” any agency, department, board, or commission of the governmental entity.<sup>39</sup> Personally rendering services includes, but is not limited to, representing, advising, preparing documents for, or consulting with, any person.<sup>40</sup> Examples are: (1) negotiating or discussing matters with agency personnel; (2) appearing at an agency meeting or hearing; and (3) preparing pleadings or documents to be filed with or submitted to a public agency for the agency’s approval.<sup>41</sup> Therefore, a city official is prohibited from receiving compensation from a membership organization for any services that the official would perform on a matter that is before the city.<sup>42</sup>

R.C. 102.03(B) prohibits a city official from disclosing or using, without appropriate authorization, any confidential information that the official would acquire in the course of his or her public duties.<sup>43</sup> There is no time limit for this prohibition.<sup>44</sup> Because of this restriction on disclosure of confidential information, the official may want to leave any portion of an executive session if matters in which the membership organization has a definite and direct interest will be discussed.<sup>45</sup>

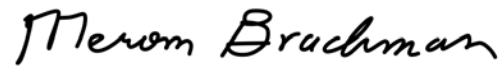
Finally, a public official may be prohibited from holding other positions by laws that are not within the Ethics Commission’s jurisdiction. City officials should seek guidance from the legal advisor for the city to determine whether there are other laws or rules, outside of the Ethics Law, that may apply to the official in these situations.

### **Conclusion**

Therefore, it is the opinion of the Commission and the Commission advises that: (1) The term “public contract” is defined in R.C. 2921.42(I)(1)(a) to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of a city. When a city pays membership dues to join an organization, the organization provides a “service” to the city that meets the statutory definition of a “public contract.” (2) R.C. 2921.42(A)(3) prohibits a city official from also being the executive director of a membership organization if the official would profit from a public contract that was authorized by the official or the city board or commission on which he or she sits. However, where the establishment or operations of the membership organization is not dependent upon receipt of the city contract and the city official would not otherwise profit from the award of the contract, R.C. 2921.42(A)(3) does not prohibit the official from serving as the executive director of the membership organization. (3) R.C. 2921.42(A)(4) prohibits a city official from also being the executive director of a membership organization unless each of the four requirements of R.C. 2921.42(C) are met. This statutory exception can be met, in part, where the city official abstains from matters involving the city’s contract with the membership organization and the organization provides unique services to the city that the city could not obtain from another source. (4) R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) prohibit a city official who also serves as the director of a membership organization from



participating in matters before the city that definitely and directly affect the membership organization.



Merom Brachman, Chairman  
Ohio Ethics Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov)

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<sup>1</sup> See R.C. 2921.01(A).

<sup>2</sup> See R.C. 2921.42(I)(1)(a). A "public contract" is defined to include the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, or any of its political subdivisions. R.C. 2921.42(I)(1)(a). Competitively bid formal written contracts and casual as-needed purchases are all public contracts. Ohio Ethics Commission Advisory Opinion No. 90-005. The allocation of community and economic development services, or urban revitalization services, through the use of loans, grants, tax exemptions, land reutilization programs, revenue bonds, or other similar programs or incentives, constitutes a "public contract" regardless of whether services are funded through local or federal money. Adv. Ops. No. 84-011, 85-002, and 89-008. See *State v. Lordi*, 140 Ohio App.3d 561, 569 (2000), *discretionary appeal not allowed*, 91 Ohio St.3d 1523, 91 Ohio St.3d 1526, 91 Ohio St.3d 1536, *motion for reconsideration denied*, 92 Ohio St.3d 1422 (2001). Also, a subcontract under a public contract is a public contract because it, like the primary contract, is for the purchase or acquisition of goods or services by or for the use of the governmental agency involved. Adv. Ops. No. 85-002, 86-002, 86-009, and 88-001.

<sup>3</sup> Adv. Ops. No. 87-004 and 87-008.

<sup>4</sup> Adv. Op. No. 87-008.

<sup>5</sup> *Id.*

<sup>6</sup> Adv. Op. No. 89-006.

<sup>7</sup> While an RFP and other quality-based selection processes have some competitive aspects, they are not competitive bids, as required by R.C. 2921.42(A)(3). See *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Management District* (1994), 73 Ohio St. 3d 590, 600 ("The RFP method of procurement is not competitive bidding.") Adv. Op. No. 90-003. See also Adv. Op. No. 92-014 and Adv. Op. No. 88-006 (distinguishing between 'competitive bidding' and a political subdivision's 'selection process' for purposes of the public contract provisions of the Ethics Law).

<sup>8</sup> Adv. Op. No. 2016-01.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (Other factors may also be used to determine that an organization is "dependent" on the city's of financial assistance even if the city provides less than twenty-five percent of the organization's funding, such as the amount of funding the organization has received from the city in previous years, the size of the organization's budget and number of other funding sources, and the regularity of the funding from the city). See also Informal Opinion 2010-INF-0812-1 (Ronayne) (a public official employed by an organization that receives funding from the public agency he serves should consult with the agency to determine whether the organization is dependent on the agency's funding).

<sup>12</sup> Adv. Op. No. 2016-01.

<sup>13</sup> See also R.C. 2921.42(A)(4).

<sup>14</sup> See generally Adv. Op. No. 91-005.

<sup>15</sup> Adv. Op. No. 2016-01. R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by or for the use of the political subdivision with which the public official is "connected." A city official is connected to the city as a whole, including all departments, agencies, offices, and boards of the city. Adv. Op. No. 85-010 and 99-002.

<sup>16</sup> Adv. Op. No. 2016-01.

<sup>17</sup> R.C. 2921.42(B) and (D), which apply specifically to limited stockholdings and residential property loans, also provide exceptions to the prohibition of R.C. 2921.42(A)(4). Additionally, the Ethics Commission has recognized that, in some cases, a public official can serve as a member of the board of a private entity with which his or her public agency has a contract in his or her "official capacity" as an appointed representative of the public agency. See Adv. Ops. No. 94-001, 99-004, and 2001-05. See also Sup. Ct. Brd. of Prof. Cond. Adv. Op. No. 2021-01. The

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Commission has explained that the following four requirements must be met in order for a public official to be deemed to serve on the board of an organization in his or her official capacity: (1) the governmental entity must create or be a participant in the non-profit corporation; (2) any public official or employee connected with the jurisdiction . . . may be designated to serve on the non-profit corporation, but the elected legislative authority or the appointing governing body must formally designate the office or position to represent the governmental entity; (3) the public official or employee must be formally instructed to represent the governmental entity and its interests; and (4) there must be no other conflict of interest on the part of the designated representative. *Id.* This exception does not apply to a public official who serves in a paid position with an organization.

<sup>18</sup> Adv. Op. No. 84-011.

<sup>19</sup> Adv. Ops. No. 80-003 and 82-007.

<sup>20</sup> R.C. 2921.42(C)(1).

<sup>21</sup> R.C. 2921.42(C)(2).

<sup>22</sup> Adv. Ops. No. 82-007 and 84-006.

<sup>23</sup> Adv. Ops. No. 82-007 and 88-008

<sup>24</sup> Adv. Op. No. 88-008.

<sup>25</sup> *Id.* Adv. Op. No. 90-003 (a pattern of sales is not a continuing course of dealing).

<sup>26</sup> Adv. Op. No. 92-008.

<sup>27</sup> Adv. Op. No. 84-011. *See* Adv. Ops. No. 88-001, 88-003, and 99-002 (the Commission has stated that, in some rare instances, a public official may be uniquely qualified to provide services to his own, or a connected, public agency). *See also* R.C. 2921.42(A)(3).

<sup>28</sup> Adv. Op. No. 2016-01. *See also* Informal Opinion 2010-INF-0812-3 (Joseph).

<sup>29</sup> R.C. 2921.42(C)(3).

<sup>30</sup> Adv. Ops. No. 84-011 and 2001-02.

<sup>31</sup> R.C. 2921.42(C)(4).

<sup>32</sup> In an arm's length transaction: (1) both parties act voluntarily, without compulsion or duress; (2) the transaction occurs in an open market; and (3) both parties act in their own self-interest. *Walters v. Knox Cty. Bd. of Rev.* (1989), 47 Ohio St.3d 23, 25. An "open market" is a market in which any buyer or seller can trade, and the prices and product availability are determined by free competition. *Mildred Hine Trust v. Buster*, Franklin App. No. 07AP-277, 2007-Ohio-6999, ¶ 21.

<sup>33</sup> Adv. Op. No. 92-002.

<sup>34</sup> R.C. 102.01(B) and (C).

<sup>35</sup> Adv. Op. No. 91-006.

<sup>36</sup> *See also* Adv. Op. No. 2008-02.

<sup>37</sup> *See* Adv. Ops. No. 2007-03 and 2008-02.

<sup>38</sup> *See* R.C. 102.04(D) (the exemption to the R.C. 102.04(C) prohibition does not apply to elected officials).

<sup>39</sup> Adv. Op. No. 76-009.

<sup>40</sup> Adv. Op. No. 2007-03.

<sup>41</sup> *Id.*

<sup>42</sup> *See also* R.C. 102.03(A)(1), which provides that no public official or employee, during or for one year after leaving public service, shall: "represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee." "Represent" includes any formal or informal appearance before or written or oral communication with any "public agency." Adv. Op. No. 86-001. "Matter" includes "any case, proceeding, application, determination, issue, or question." R.C. 102.01(C). A "matter" also includes underlying departmental policies and procedures and contracts and other agreements. However, "matter" is not so broadly applied as to include a general subject matter. R.C. 102.03(A)(5); Adv. Ops. No. 99-001 and 2004-04. "Personal participation" includes "decision, approval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion," and includes the direct supervision of agency personnel. R.C. 102.03(A)(1); Adv. Op. No. 91-009. For example, R.C. 102.03(A)(1) would prohibit a city official who serves as the executive director of a membership organization from having any communication with the city or any other public agency on behalf of the membership organization on a matter in which he or she personally participated at any time as a city official. *See also* Adv. Op. No. 2008-02.

<sup>43</sup> Adv. Op. No. 88-009.

<sup>44</sup> Adv. Op. No. 89-006.

<sup>45</sup> Adv. Op. No. 2008-02.