



OHIO ETHICS COMMISSION
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

www.ethics.ohio.gov

BOARD MEMBER SEEKING EMPLOYMENT WITH THE BOARD: Ethics Commission Information Sheet # 6

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.¹ In this information sheet, the word "official" includes any person who serves a public agency, whether elected, appointed, or employed.

II. Purpose of this Information Sheet

The Ethics Commission prepared this information sheet to explain how the Law applies when members of a public board is interested in seeking or being considered for employment by the public agency they serve as a board member.

III. Summary of the Law

The Ethics Law and related statutes prohibit members of a board from:

- Authorizing a contract for their own employment with a public agency while a member of the agency's board;
- Seeking or soliciting employment from the public agency while they are members of the agency's board;
- Using the position as a board member, in any way, to create or secure an employment opportunity for themselves; and
- Profiting from an employment position that was authorized by the board while a member.

The law does not prohibit former board members from competing for an employment position with the public agency they formerly served in an open and fair employment process if it is clear that they did not use the position, while on the board, to secure the job, and that the best and most qualified candidate is selected for the job.

IV. Authorizing Employment

R.C. 2921.42(A)(1) prohibits public officials from authorizing, or using a public position to secure, a public contract for themselves.² A "public contract" is defined to include employment.³ Therefore, R.C. 2921.42(A)(1) prohibits board members from authorizing, or using the public position to secure authorization of, employment with the public agency they serve.⁴ R.C. 2921.42(A)(1) prohibits

board members from voting on their own employment contract, recommending themselves for employment the board, or using the position of authority in any manner as a board member to secure the contract.

V. Soliciting or Using Position to Secure a Contract for Employment

R.C. 102.03(E) prohibits an official who serves as a board or commission member from soliciting anything of value if the thing of value could have a substantial and improper influence upon the board member with respect to public duties. R.C. 102.03(D) prohibits officials who serves as board members from using public positions to secure anything of value if the thing of value could have a substantial and improper influence upon the board member with respect to public duties.

“Anything of value” is defined to include money, which would include payment for employment, and any promise of future employment.⁵ Therefore, R.C. 102.03(E) prohibits board members from soliciting employment from the agency they serve as board members.⁶ R.C. 102.03(D) prohibits board members from using a public position to secure employment from the agency. The board members are prohibited from voting, discussing, deliberating, lobbying, or taking any other action to secure employment with the board while a member.

VI. Profiting from Public Contract

R.C. 2921.42(A)(3) prohibits public officials from profiting from a public contract authorized by themselves or by a board of which they are a member at the time of authorization, unless the contract is competitively bid and awarded to the lowest and best bidder. “Public contract” includes employment, and employment contracts are not competitively bid. Therefore, board members cannot accept any benefit, including compensation, from an employment contract authorized by themselves, or by the board of which they are members, even if they do not participate in the authorization of the contract.

VII. Creating New Position

If a public agency is creating a new employment position, R.C. 102.03(D) prohibits any board members from participating in that matter if they intend to apply for the job. If a board member wishes to apply for a job that the board is considering creating, that board member should resign from the board as soon as possible, before any official action regarding the position is taken.⁷ That member is also prohibited from lobbying other board members about the position.

VIII. Example of Restrictions

If the public agency has an open employment position, the members of the governing board of the agency are prohibited from applying for the job. A board member is also prohibited from using his authority to persuade other board members, or employees of the public agency, to hire him.⁸

A board member who wants to apply for an open job with the board must resign from the board before submitting an application or taking any other action to secure the job or benefits related to holding the job. The member must resign before discussing the employment opportunity with any board members or board employees. The member is prohibited from seeking the job while a board member, and then resigning to accept the employment.

For example, if a state board is hiring a new executive director, a member of the board is prohibited from applying for the job. The board member would also be prohibited from discussing the employment opportunity with the current Director and with other board members.

If the board member is thinking of applying for the position of executive director, the member would be prohibited from acting to increase the salary or benefits for the position or modifying the duties or authority of the position. If the board member wants to apply for the position, the member must resign from the position on the board before submitting an application. In order to apply, it must be clear that

the member did not use the position as a board member, in any way, to solicit or secure the job.

In some situations, the board can consider employment of a former member who has not applied for a position with the board.⁹ There is an exception in the revolving door law that permits such employment situations. For more guidance in that situation, please read the Commission's revolving door memorandum and contact the Commission.

IX. Other Considerations

Any board member official who is considering seeking employment with that board should ask legal counsel for the board whether the board has any additional policies or rules regarding this matter. (A public agency cannot create a policy or rule that is less restrictive than the prohibitions described above. However, an agency may have a policy or rule that is more restrictive than the Ethics Law.)

X. 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 him.

Most of the ethics laws discussed in this information sheet (R.C. 102.03(D) and (E)) are first-degree misdemeanors, with a maximum penalty of six months in prison and/or a \$1000 fine. One of the laws discussed (R.C. 2921.42(A)(1)) is a fourth-degree felony. The maximum penalty is 18 months in prison and/or a \$5000 fine.

XI. 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 [Adv. Op. No. 87-008](#)

³ R.C. 2921.42(G)(1)(a); [Adv. Op. No. 97-004](#)

⁴ [Adv. Op. No. 87-008](#).

⁵ [Adv. Op. No. 96-004](#)

⁶ [Adv. Op. No. 87-008](#).

⁷ Id.

⁸ Id.

⁹ Id.