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## PROPERTY MATTER AFFECTING A PUBLIC OFFICIAL OR EMPLOYEE: Ethics Commission Information Sheet # 8

### 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.<sup>i</sup> 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 Commission prepared this information sheet to explain how the Law applies when an official serves a public agency that is considering a matter that

definitely and directly affects property in which the official has an interest.

### III. Summary of the Law

The Ethics Law does not prohibit a person from serving in a public position simply because he owns or has an interest in property that will be affected by an action of the public agency he serves. However, in order to protect the public by making sure that an official is not improperly influenced by his private property interests, the Ethics Law generally prohibits the official from participating in a property matter in which the official has an interest.

### IV. Participating in a Property Matter—R.C. 102.03(D) and (E)

R.C. 102.03(D) prohibits an official from using the authority or influence of his public position, formally or informally, in any issue or question or other matter that would render a definite and direct financial benefit or detriment to the value of property in which he has an interest.<sup>ii</sup> R.C. 102.03(E) prohibits the official from soliciting a particular and definite benefit to the value of property he owns.

R.C. 102.03(D) prohibits an official from taking any formal or informal action on any matter that would provide a definite, pecuniary benefit or detriment to property he owns. The official is prohibited from:

- voting;

- participating in discussions;
- participating in deliberations;
- making recommendations;
- providing advice; and
- formally or informally lobbying.

For example, if a city planning commission member has requested a zoning variance that, if granted, will increase or decrease the value of his property, the commission member is prohibited from voting on the variance. The commission member is also prohibited from taking any other action, formally or informally, to secure approval of the variance by the planning commission.

R.C. 102.03(D) also prohibits an official from using the authority or influence of his public position over any other officials or employees of the agency, with respect to an issue that affects property he owns. For example, an official cannot recommend, to a subordinate, an action that would increase, or avoid a decrease to, the value of the official's own property. R.C. 102.03(E) prohibits an official from improperly soliciting any benefit to the value of property he owns.

Finally, R.C. 102.03(D) prohibits the official from participating with respect to land use, zoning, or other property matters before the public agency that affect land adjacent to or near his property, if the matters will result in a definite and direct benefit or detriment to the value of his property.

For example, if the neighbor of a city planning commission member has requested a zoning variance that, if granted, will increase or decrease the value of the commission member's property, the planning commission member is prohibited from voting on the variance. The planning commission member is also prohibited from

taking any other action, formally or informally, including deliberation, discussion, recommendation, or lobbying, to secure an outcome regarding the variance.

## V. Actions that are not Prohibited

There are some actions that an official is not prohibited from taking even though they may, in some manner, affect the value of property he owns.

- An official is not prohibited from participating or voting on general legislation (such as the adoption of a new zoning code) that provides a uniform benefit to all or most property within the community, including his property.<sup>iii</sup>
- An official is not prohibited from applying to the public agency, in the same manner available to any other citizen, for a variance or other regulatory change involving his property, as long as he does not use his authority to secure the change.
- An official is not prohibited from appearing before the public agency he serves as a citizen, in the same manner available to other citizens, and testifying about his views on a matter affecting his property.<sup>iv</sup> (The official cannot, however, testify as the representative of others.)

For example, if the planning commission is considering a change to the city's setback requirement that will affect all property owners in the city, including the planning commission members, in the same way, the Ethics Law does not prohibit the commission members from participating in the adoption of the change.

However, if the setback change will affect a fraction of properties in the community, and a commission member owns one of them, the commission member is prohibited from participating in the matter. Also, if the setback change will affect a planning commission member's property in a manner that is unique, or different from the impact of the change on other property owners, the planning commission member is prohibited from participating.

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, 8 East Long Street, 10<sup>th</sup> Floor, Columbus Ohio, 43215-2940; telephone (614) 466-7090, and on the Commission's Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov).

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## **VI. Other Considerations**

Any official who has an interest in a property matter before the public agency he serves should ask his supervisors, or legal counsel for the public agency he serves, whether the agency has any additional policies or rules regarding these situations. (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.)

Endnotes:

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<sup>i</sup> 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.

<sup>ii</sup> See Ohio Ethics Commission Advisory Opinions No. 88-004, 92-013, and 92-019.

<sup>iii</sup> Adv. Op. No. 88-004.

<sup>iv</sup> Adv. Op. No. 92-019.

## **VII. 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.

The laws discussed in this information sheet (R.C. Sections 102.03(D) and (E)) are first-degree misdemeanors. The maximum penalty upon conviction of a violation of a first-degree misdemeanor is six months in prison and/or a \$1000 fine.

## **VIII. Conclusion**

Please contact the Ethics Commission if you have questions about this