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## ***POST-EMPLOYMENT RESTRICTIONS***

### **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>1</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 is leaving the public job he holds for a new job. An official who is seeking a new job should also obtain Information Sheet # 4 on job seeking before beginning his search.

If an elected or appointed public board member would like to seek employment with the board he serves, other Ethics Laws are implicated. For more guidance on that issue, the board member should obtain Commission Information Sheet # 6 on that topic.

Except where otherwise noted, these restrictions apply to an official both during, and for one year after he leaves, his public position. They also apply whether the official is taking a new position with a private corporation, a non-profit organization, or another public agency.

### **III. Summary of the Law**

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

- Profiting from a contract of his public agency, if he authorized the contract or was part of a committee, board, or other authority that authorized the contract;
- Representing any person, before any public agency, on matters in which he personally participated during his public service; and
- Disclosing or using confidential information acquired while he was an official.

#### **IV. Profiting from Public Contracts**

R.C. 2921.42(A)(3) prohibits an official from profiting from a public contract authorized by him, or by a board or committee of which he was a member at the time the contract was authorized, unless the contract is let by competitive bidding to the lowest and best bidder. The restriction applies even if the official did not participate in the board action.

A public contract exists whenever a public agency buys or acquires goods or services, regardless of whether there is a written contract.<sup>ii</sup> Examples are:

- Purchases of goods like computers, fire trucks, and paper products<sup>iii</sup>;
- Purchases of services like insurance and accountants<sup>iv</sup>; and
- Grants (because the agency acquires services by virtue of the grant).<sup>v</sup>

When an official has approved an unbid contract to a company, the official cannot accept employment from the company if he will profit from the contract. An official who becomes an employee of a company will profit from his employer's contract if: (1) the establishment or operation of the company is dependent upon the contract; (2) the creation or continuation of the official's position with the company is dependent upon the contract; (3) the contract funds would be used by the company to compensate the official or as a basis for his salary; or (4) he will otherwise profit from the contract.<sup>vi</sup>

#### **V. Representation**

R.C. 102.03(A) prohibits an official from representing any person on any matter in which the official has personally participated.

The restriction applies regardless of whether the official is paid to represent the person. A "person" includes an individual, corporation, partnership, association, public entity, or similar entity.<sup>vii</sup>

A former official is "representing" a person when the official makes any kind of formal or informal appearance before, or has any kind of written or oral communication with, any public agency, on behalf of that person.<sup>viii</sup> Examples of representation are:

- An informal appearance before a public agency (a former official has a meeting with an employee of a city, in which he discusses his client);
- Oral communication with a public agency (a former official discusses his new employer's concerns with a county employee in a telephone call or a conversation in a hallway).<sup>ix</sup>
- Written communication with a public agency, even if the official does not sign the communication (A former official sends an e-mail to a village explaining his client's position, or prepares a letter to the village and the letter is signed by the client).<sup>x</sup>

The law prohibits a former official from representing any person before any public agency on matters in which he personally participated.<sup>xi</sup> The former official is prohibited from representing anyone before his former public agency, and before any other public agency. The term "public agency" is defined on page one of this information sheet.

An official has “personally participated” in a matter if he has engaged in the substantial exercise of administrative discretion regarding the matter such as:

- Decision;
- Approval;
- Disapproval;
- Recommendation;
- The rendering of advice; or
- Investigation.<sup>xii</sup>

For example, if an official reviews a report, and makes a recommendation about the report to his supervisor, the official has personally participated in the matter that is the subject of the report, even if his participation was not the final action on the report. An official has also personally participated in a matter if he has supervised other public officials and employees on the matter.<sup>xiii</sup>

A “matter” includes any case, proceeding, application, determination, issue, or question.<sup>xiv</sup> A matter can include concrete items, like an application or a problem. It can also include more abstract items, like a dispute or a policy decision. A matter is the underlying issue or question, regardless of whether it involves the same parties. Matter does not mean the same thing as subject matter.<sup>xv</sup>

Examples of restricted activity are:

- A former city building inspector, who is now employed by a developer, is prohibited from calling a city employee to ask when an inspection he started while he was a city employee will be completed;
- An employee of the EPA is prohibited from sending an e-mail, on behalf of an environmental group for which he volunteers, to the environmental court inquiring about the status of a case involving an inspection he completed;
- A former village council member, who is now employed by a law firm, is prohibited from speaking at a state board meeting, on behalf of his client, when the board is reviewing a policy decision made by the village council while he was a council member.

## **VI. Exceptions to the Prohibition**

There are three exceptions to the Revolving Door Law:

- A non-elected state official or employee who accepts employment at a different state agency is not prohibited from representing the new agency.
- A non-elected official or employee of a political subdivision who accept employment at a different department or agency of the same political subdivision is not prohibited from representing the new office.
- A former official is not prohibited from representing a client on a matter in which he did not participate.<sup>xvi</sup>
- A former official is not prohibited from assisting or aiding his former public agency.<sup>xvii</sup>
- A former official is not prohibited from doing ministerial activities, such as preparing tax returns and filing applications for permits or licenses.<sup>xviii</sup>

## **VII. Special Revolving Door Restrictions**

There are three special revolving door restrictions. The first is a specific restriction for legislators and legislative employees.<sup>xix</sup> For more information about that restriction, contact the Legislative Inspector General.

The second applies to the former commissioners and attorney examiners of the Public Utilities Commission, and is in effect for two years.<sup>xx</sup> It prohibits former commissioners and attorney examiners from representing utilities before state agencies.

The third is a two-year restriction that applies to any official who exercised discretion regarding solid or hazardous waste matters under R.C. Chapters 343. and 3734.<sup>xxi</sup> For more information about these two revolving door provisions, please contact the Ohio Ethics Commission.

## **VIII. Confidentiality**

R.C. 102.03(B) prohibits a current or former official from using or disclosing confidential information acquired by the official in the course of his duties. There is no time limit for this restriction.<sup>xxii</sup>

The official is prohibited from disclosing confidential information unless he is appropriately authorized to do so. If an official needs guidance about whether information is confidential, or whether he has been appropriately authorized to disclose information, he should speak to the legal advisor for the agency he serves.

## **IX. Other Considerations**

If the official is just beginning his search for a new job, the official should also read the Information Sheet # 4 on Job Seeking, which explains the Ethics Law as it applies to an official seeking employment.

If the official is an attorney, the official should contact the Board of Commissioners on Grievances and Discipline for the Ohio Supreme Court for guidance about D.R. 9-101(B) and other post-employment provisions in the Code of Professional Responsibility.

A state official should contact the Governor's Office to determine whether any executive order imposes limits on his post-employment activities.

If the official was required to file a financial disclosure statement during his public service, he will be required to file a statement in the year after his service concluded, reflecting financial information for his final year.

Any public official who is moving from one public position to another public position or to the private sector should ask his supervisor or legal counsel for the public agency he serves whether the agency has any additional policies or rules regarding post-employment. (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.

The ethics laws discussed in this information sheet are first-degree misdemeanors with a maximum penalty of six months in prison and/or a \$1000 fine.

## **XI. Conclusion**

Please contact the 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 on the Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov)

### 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> RC. 2921.42(G)(1).

<sup>iii</sup> Ohio Ethics Commission Advisory Opinions No. 84-013, 87-002, and 84-014.

<sup>iv</sup> Adv. Ops. No. 82-007, 92-017, and 97-004.

<sup>v</sup> Adv. Op. No. 87-003.

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

<sup>vii</sup> R.C. 1.59; Adv. Ops. No. 82-002, 89-003, and 99-001.

<sup>viii</sup> R.C. 102.03(A)(5).

<sup>ix</sup> Adv. Op. No. 86-001.

<sup>x</sup> Adv. Op. No. 86-001.

<sup>xi</sup> R.C. 102.03(A)(5).

<sup>xii</sup> R.C. 102.03(A)(1).

<sup>xiii</sup> Adv. Op. No. 91-009.

<sup>xiv</sup> R.C. 102.03(A)(5).

<sup>xv</sup> Adv. Op. No. 99-001.

<sup>xvi</sup> Adv. Ops. No. 82-002.

<sup>xvii</sup> R.C. 102.03(A)(6).

<sup>xviii</sup> R.C. 102.03(A)(7).

<sup>xix</sup> R.C. 102.03(A)(4).

<sup>xx</sup> R.C. 102.03(A)(2).

<sup>xxi</sup> R.C. 102.03(A)(3); Adv. Op. No. 91-003.

<sup>xxii</sup> Adv. Op. No. 92-005.