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REGULATORY MATTER AFFECTING A PUBLIC OFFICIAL OR EMPLOYEE Ethics Commission Information Sheet # 14

The Ohio Ethics Commission has often been asked how the Ohio Ethics Law applies when a public official serves a public agency that is considering a regulatory matter in which the public official has an interest.

It's important to note that the Ethics Law does not automatically prohibit someone from serving in a public position simply because that person has an interest in a regulatory matter before his or her public agency. However, the Ethics Law generally prohibits public officials from participating in a regulatory matter that would result in a definite and direct economic benefit or detriment to them. The purpose of this restriction is to protect the public by making sure that public officials' decisions are not improperly influenced by their own interests. This fact sheet will explore this issue and restriction.

Participating in a Regulatory Matter—R.C. 102.03(D) and (E)

The Ohio Ethics Law prohibits public officials from using the authority or influence of their public position, formally or informally, to secure anything of value – such as regulatory or licensing decisions – for themselves.¹

The Law also prohibits public officials from soliciting or even participating in a regulatory matter before their public agency that would result in a definite and direct economic benefit or detriment for the officials. Due to this prohibition, public officials cannot take any formal or informal action in a regulatory matter that affects their outside interests, such as:

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

For example, if a member of the Medical Board were a doctor regulated by the Board, the member would be prohibited from participating as a Board Member if a complaint were filed against the member or another member of his or her practice. The Board member would be equally prohibited from discussing a complaint filed against him or her with the Board's investigators or the Executive Director.

The Ethics Law also prohibits public officials from using the authority or influence of their public positions over any other officials or employees of the agency, with respect to a regulatory issue that affects them. For example, public officials cannot recommend, to a subordinate, an action that would benefit themselves or their businesses.

Actions that are not Prohibited

There are some actions that public officials are not prohibited from taking even though they may, in some manner, affect themselves:

- Officials are not prohibited from participating or voting on general legislative matters (such as a zoning code revision) that will have a uniform effect on all individuals affected by the legislation, including the officials.²
- Officials are not prohibited from applying to the public agency, in the same manner available to any other citizen, for a license or regulatory change, as long as they do not use their public authority to secure the approval of their request.
- Officials are not prohibited from appearing before the public agency they serve as a citizen, in the same manner available to other citizens, and testifying about their views on a regulatory matter that affects themselves.³ (The official cannot, however, testify as the representative of others.)

For instance, the Ethics Law does not prohibit a member of city council, who owns a business in a downtown square area, from participating in deliberations and decisions regarding an initiative petition to open truck traffic to a perimeter street, which proponents speculate may reduce truck traffic on the downtown state routes and increase business in the downtown square.⁴

However, if it is demonstrated that the city council member will derive a definite and direct pecuniary benefit or suffer a definite and direct pecuniary detriment from amending or revoking the initiative petition, the board member is prohibited from participating in the matter.

Further, if the petition would affect the board member's business in a manner that is selective, differential, or in disproportion to the affect it will have on all other business in the square, the board member is prohibited from participating.⁵ Additionally, the board member would be prohibited from participating in matters that directly and definitively affect his or her competitors or matters that affect employees of the city that are assigned to inspect or regulate his or her business.⁶

Conclusion

Public officials who have an interest in a regulatory matter before the public agency they serve should ask supervisors or legal counsel at the public agency 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.)

You are also encouraged to 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 found on the Commission's Web site: www.ethics.ohio.gov.

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¹See Ohio Ethics Commission [Advisory Opinions No. 86-007](#) and [93-016](#).

² [Adv. Op. No. 93-016](#).

³ [Adv. Op. No. 92-019](#).

⁴ Id.

⁵ Id.

⁶ Id.