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## **RENDERING SERVICES ON A MATTER BEFORE ANOTHER PUBLIC ENTITY**

This information sheet was prepared to explain when public officials or employees (official) are barred from accepting compensation to represent clients before their own public agencies. The following provisions in ORC 102.04 will be outlined in this fact sheet:

### **ORC 102.04(A) – State Officials and Employees Rendering Services**

### **ORC 102.04(B) – State Officials and Employees Selling Goods and Services**

### **ORC 102.04(C) – Local Officials and Employees Rendering Services**

### **ORC 102.04(D) – Exception for Non-Elected Officials**

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#### **A. ORC 102.04(A)**

##### ***To whom does ORC 102.04(A) apply?***

ORC 102.04(A) prohibits any state official from receiving compensation, other than from the agency he or she serves, for any services he or she renders personally on any case, proceeding, or other matter before any state department, board, commission, agency, or other body. The restriction applies to all state officials and employees, including members of state boards even if they are not compensated for their board service. Furthermore, the restriction applies regardless of the subject matter on which the official is providing services.

##### ***What is meant by “representing or personally performing services?”***

Even though this restriction is sometimes called the “representation” restriction, it applies to more than representing. Representation or performing services would include activities such as negotiating or discussing matters with agency personnel or contractors; appearing at a state agency meeting or hearing; or preparing pleadings or documents to be filed with or submitted to a state agency.

Again, a public official or employee cannot be paid by a client to perform any services on a matter that is being reviewed or decided by a state agency, even if he or she will not personally appear before the state agency.

### ***When is a matter “before” a state agency?***

A case, proceeding, application, or other matter is “before” a state agency when it is “being considered by, decided by, or in the presence of or under the official purview of” the state agency.

#### **Examples of Restriction**

A state board member who is an attorney in private practice is prohibited from receiving payment from a client to attend a meeting with his or her state agency on a matter affecting the client.

A state employee is prohibited from preparing drawings for a client of his architectural firm to be filed in connection with a matter being decided by his or her state agency, even if he or she will not attend any agency meetings or hearings on the matter.

### ***Are there any exceptions?***

Yes. There is an exception in ORC 102.04(D) which would allow a non-elected state official or employee to represent or perform services on a matter before state agencies other than the one he or she serves. The official or employee is also required to submit a form known as the ORC 102.04(D) statement (see section below regarding ORC 102.04(D)).

For example, the state officials and employees in the examples above may represent these clients before another state agency if he or she completes the required documentation described in the ORC 102.04(D) section below.

#### **B. ORC 102.04(B)**

##### ***To whom does ORC 102.04(B) apply?***

This is the other ORC 102.04 restriction specifically for state officials or employees.

##### ***What is the restriction?***

This provision of the law prohibits a state official or employee from selling goods or services to any state agency, except through competitive bidding.

However, the exception in ORC 102.04(D) does allow a non-elected state official or employee to sell goods or services to state agencies other than the one he or she serves. The official or employee is also required to submit a form known as the ORC 102.04(D) statement (see section below regarding ORC 102.04(D)).

#### **Example of Restriction**

A state employee working at The Ohio Department of ABC is prohibited from selling a computer to his or her own agency. However, that state employee could potentially sell a computer to another state agency if the sale is competitively bid and he or she submits the lowest and best bid or the state employee completes the required documentation described in the ORC 102.04(D) section below.

## C. ORC 102.04(C)

### ***To whom does ORC 102.04(C) apply?***

The final restriction, ORC 102.04(C), applies to officials and employees of local public agencies—that is, agencies such as cities, counties, and school districts.

### ***What does this part of the law prohibit?***

This provision of the law prohibits an official or employee of a local agency from receiving compensation, from anyone other than the department or sub-unit of the agency he or she serves, to perform services on matters before any other department or sub-unit of the local agency.

However, the exception in ORC 102.04(D) does allow a non-elected local official or employee to perform services on a matter that is pending before a department or sub-unit of the agency other than the one he or she serves. The official or employee is also required to submit a form known as the 102.04(D) statement (see section below regarding ORC 102.04(D)).

### **Example of Restriction**

An employee of a city zoning department cannot accept compensation from a client to prepare plans that will be filed with and approved by the zoning department, because the approval of the plans is a matter that is before her city department.

## D. ORC 102.04(D)

### ***What is the purpose of Ohio Revised Code 102.04(D)?***

This part of the Ohio Ethics Law provides an exception to prohibitions regarding public employees or officials who receive compensation from anyone, including clients, to represent or personally perform services on any matter that is before other public agencies. Specifically, as described above:

- ORC 102.04(A) prohibits state employees or officials from rendering services in matters before any state agency;
- ORC 102.04(B) prohibits a state official or employee from selling goods or services to any state agency, except through competitive bidding; and
- ORC 102.04(C) prohibits local government employees or officials from rendering services in matters before any division or unit of their own local agency

### ***What is the ORC 102.04(D) Exception?***

ORC 102.04(D) is an exception to the prohibitions for non-elected public officials and employees. The exception applies to a state or local employee or appointed official if two requirements can be met:

- a. The agency before which the matter that involves the rendering of his or her services or the sale of his or her goods/services is pending, is an agency other than the one with which he or she serves; and
- b. Prior to rendering the personal services, he or she files a ORC [102.4\(D\) statement](#) with:
  - i. the Ohio Ethics Commission,
  - ii. the public agency with which he or she serves, and
  - iii. the public agency before which the matter or sale is pending.

On the ORC 102.04(D) document, the public official or employee states that he or she is selling goods or services to or representing someone before another public agency and that he or she will disqualify himself or herself from any matter involving any public official or employee of that agency.

## **E. Conclusion**

This information sheet is not an advisory opinion and is not intended to provide advice on specific facts. For additional information, see the following Advisory Opinions regarding ORC 102.04:

- [Advisory Opinion 2007 – 03](#)
- [Advisory Opinion 93 – 010](#)
- [Advisory Opinion 89 – 010](#)

You may also contact the [Ohio Ethics Commission](#) if you have questions regarding this provision of the Ohio Ethics Law.