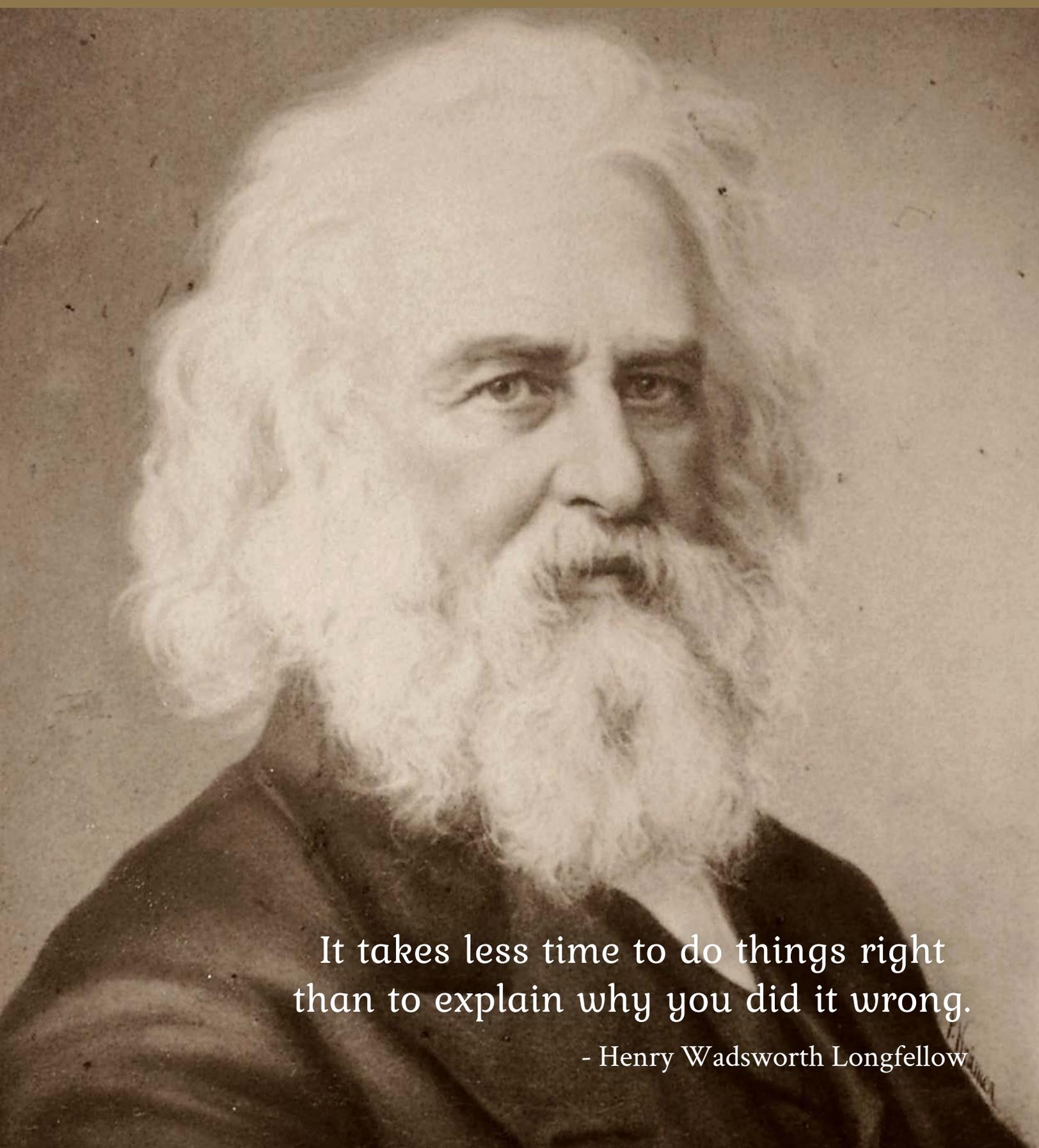


THE VOICE OF ETHICS

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It takes less time to do things right
than to explain why you did it wrong.

- Henry Wadsworth Longfellow

New E-Courses Released!

Each year, the Ohio Ethics Commission unveils a new e-course to provide an overview of the Ohio Ethics Law. The course is approximately 75 minutes long and serves as a convenient and cost-effective learning tool for state and local government. The 2018 e-course, “The Ohio Ethics Law: Upholding Trust in Government,” is already receiving positive reviews.



[Click here to take the 2018 e-course](#)

The Commission recognizes, though, that many questions arise regarding specific areas of the law. As a result, we have also created numerous short e-courses specific to topics ranging from gifts to nepotism to conflicts of interest.

This year, we are offering something different! The two newest e-learning options provide an insight into the Ethics Commission’s advisory and investigative processes. These courses can be a helpful and easy way to understand how the Commission tackles requests for advisory opinions as well as the investigative process.

Is there an e-course you would like to see on our website? Let us know; we’d love to hear your ideas!

[Click here to see our brief e-courses](#)

Public – Private Partnerships

In the face of increasing fiscal challenges, government agencies continue to explore new ways to provide services to citizens in an economical and efficient manner. In fact, it is common for public agencies to form cooperative partnerships with private corporations, nonprofit organizations, and other entities.

Such beneficial collaborations give public agencies access to the expertise and resources in the private sector, and allow private sector entities to financially and intellectually contribute to their communities. However, such cooperative arrangements can also give rise to conflicts of interest under the Ohio Ethics Law.

This article will address some of the common questions and concerns that can arise under the Ethics Law due to interactions between public agencies and private businesses or organizations.

Public Economic Aid to Private Business

The Issue

Public agencies often promote economic and business development by supporting private businesses that develop property, construct facilities or make other community improvements. Violations of the Ethics Law can occur if a public official or employee has a connection with a private organization seeking aid from the agency.

Example

A member of a port authority board is prohibited from receiving a definite and direct profit or benefit if the company for which the board member works is participating in a port authority bond program.

Possible Outcome

It is possible that the company could participate in the program provided that the board member meets specific exceptions described in the Ethics Law and does not take any action to approve the company's receipt of economic aid or secure other benefits for the company.

Bottom Line

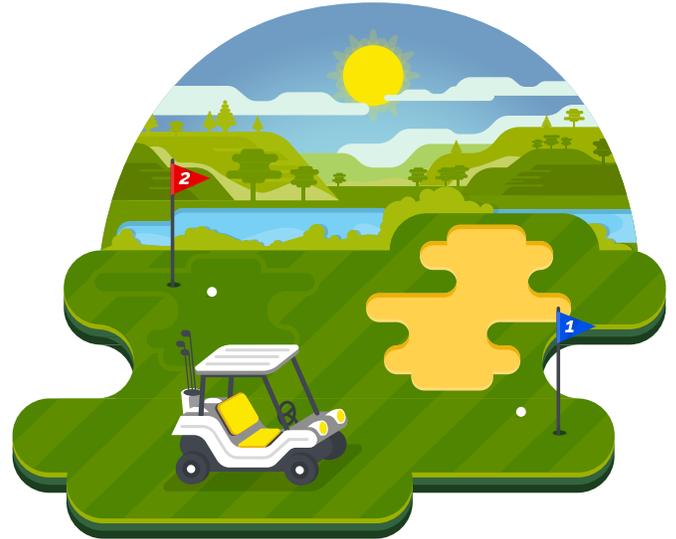
Because the Ohio Ethics Law prohibits public officials and employees from having an interest in the contracts of the public agencies they serve, caution should be observed here! Using one's public position to secure or authorize anything such as grants, loans, tax abatements, or other forms of economic aid from the public official or employee's public agency is illegal.

Companies or Private Companies Providing Gifts, Donations, or Compensation

The Issue

Picking up a tab for dinner, offering tickets to a ball game, taking in a round of golf with a client may be neither rare nor illegal in many cases in the private sector. Things change, though, when the private sector interacts with public employees and officials.

The Ohio Ethics Law prohibits public employees and officials from accepting substantial things of value from agency vendors (or potential vendors), regulated parties, or those with specific interests before the public agency. The private sector is equally prohibited from providing substantial things of value to public officials and employees. Substantial things of value could include consulting fees, golf outings, expensive meals, travel expenses, etc.



It is important to note, however, that private entities may donate items or services to assist public agencies in fulfilling its responsibility to provide services to the public as long as no public official or employee personally benefits from the donation.

Example

A city official is prohibited from accepting season tickets to the games of a professional sports team from the team's owner because the value of the tickets is substantial and the team is regulated by the city.

However, the team's owner would not be prohibited from donating sports equipment to the city's parks and recreation department for use in its public programs.

Possible Outcome

Again, provided that a donation is voluntary and no agency official or employee benefits personally from it, private entities may donate items or services to a public agency.

Gifts of a substantial nature, however, may not be offered or provided to public officials or employees from companies that sell (or wish to sell) goods or services to the public agency, are regulated by the agency, or have a specific interest before the agency.

Bottom Line

There are numerous advisory opinions in the Ethics Commission archives regarding gifts and donations. Take advantage of this resource!

Finally, public servants are prohibited from accepting compensation from any source other than the public agencies they serve, and a private organization is prohibited, regardless of its motivation, from augmenting or supplementing the salary of a public official or employee.

Payment to a public servant from any source other than the public agency he serves may give rise to divided loyalties and motivate the public servant to make decisions that benefit the source of his supplemental compensation to the detriment of the citizens he serves. Citizens should be secure in the conviction that their elected, appointed, and employed public servants are endeavoring to serve their interests, and not the interests of private parties.

Private Sector Recruitment of Public Officials or Employees

The Issue

Private sector entities that have regulatory or business ties with public agencies work with public officials who are very knowledgeable about the business in which the private entity is engaged. Private entities may wish to recruit these qualified and experienced public employees for positions in their own organizations.

Example

An environmental engineering firm that frequently submits permit applications to the Ohio Department of Natural Resources wishes to extend a job offer to an employee at that agency.

Possible Outcome

The Ohio Ethics Law prohibits promising or giving “anything of value” to a public official or employee that could have an improper influence on the official or employee. The “promise of future employment” is within that definition.

If a public official or employee is able to withdraw completely from consideration of any matter involving the party who is promising or giving him or her employment, the official or employee may be able to consider and accept the offer.

Bottom Line

If a public official or employee wishes to seek employment from a party that is doing or seeking to do business with, interested in matters before or regulated by his or her public agency, he or she must be able to completely withdraw from matters that affect the party. His or her withdrawal must be approved by his or her supervisor and the agency’s legal counsel.

Public Official Serving on Nonprofit Board in Private Capacity

The Issue

Many public officials are active in their communities in other ways, including serving on the boards of nonprofit organizations. While the Ethics Law does not generally prohibit such community involvement, it does recognize that a public official serving a nonprofit agency can face conflicts of interest if the governmental entity directly regulates or does business with the nonprofit agency. Officers, board members, or executives of nonprofit organizations have a fiduciary interest in the contracts of the organizations and, if compensated, may also have a financial interest.



Example

A member of the Ohio Children’s Trust Fund Board is prohibited from serving as a trustee or officer of a nonprofit organization that receives a grant awarded by the Board, and from using his or her Board position in any way to secure a grant for the nonprofit organization.

Possible Outcome

It’s important to note that the Ethics Law is designed to protect the public’s interest. While nonprofit organizations are not prohibited from pursuing partnerships with public agencies, there will be restrictions on the public officials and employees. Such prohibitions could include:

- Serving as a nonprofit board member if the nonprofit receives grants, loans, or other contracts from their public agencies, unless they meet specific exceptions;
- Authorizing or securing agency contracts, grants, or loans from the agency for the nonprofit where they serve as board members; or
- Participating at the public agency in matters that would benefit the nonprofit they serve.

Bottom Line

Don’t go alone on this one! The Ethics Commission has provided guidance to many public officials and employees who also serve on nonprofit boards. Call our office to receive copies of the guidance or to request information on how to ask for an advisory opinion specific to your situation.

Public Official Serving on Nonprofit Board in Official Capacity

The Issue

It is not uncommon for a public agency to create or participate in the creation of a nonprofit organization and then assign a public official or employee to represent the agency by serving on the board of directors. Questions often arise on whether a public official who serves with a nonprofit organization in this “official capacity” is prohibited from participating in decisions of the public agency affecting the nonprofit organization.



Example

Does the Ethics Law prohibit an employee of a county board of developmental disabilities from serving as the executive officer, in an official capacity, of a nonprofit organization created by the board to serve clients of the board?

Possible Outcome

There are specific criteria outlined by Commission precedent that identify when a public official is serving a nonprofit board in an “official capacity.”

1. The public agency participated in the creation of the nonprofit;
2. The agency formally appoints an official or employee to serve on the board as its representative;
3. The agency formally instructs the official or employee to represent the agency’s interest; and
4. There is no other conflict of interest between the nonprofit and the designated agency representative.

Bottom Line

A public official or employee who is serving on the board of directors of a nonprofit in an “official capacity,” does not have an unlawful interest in any contracts, grants, or loans awarded by the public agency to the organization. Because the public official or employee continues to pursue the interests of the public agency in that situation, he or she does not have a conflict of interest.

Need more information?



Of course, this newsletter is neither a comprehensive study of the Ethics Law nor binding legal advice. Instead, it hopefully has provided some insights that will prompt you to contact us when you have questions or concerns.

You can reach the Ohio Ethics Commission at (614) 466-7090 or through our website at www.ethics.ohio.gov.



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