

THE VOICE OF ETHICS

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Life starts all over again when
it gets crisp in the fall.

- F. Scott Fitzgerald

The Ohio Ethics Law & Working from Home

As Ohio continues to rise to the challenges of the COVID-19 crisis, the Ethics Commission has received questions from public employees and officials who are still carrying out their work duties from home. This article will outline some restrictions under the Ohio Ethics Law that may result from public servants working from home.



Conflicts of Interest

Public officials and employees have a “conflict of interest” when their ability to be an objective decision-maker could be impaired by their own interests, or the interests of family members or business associates. While working from home, there are several potential conflicts of interest of which to be aware.

Use of Public Time and Equipment

Many public employees and officials pursue private outside work, consulting, and part-time jobs. While these pursuits are not necessarily prohibited, it’s important that public time and equipment not be used for outside business ventures. For example, if your agency has provided you with equipment such as a laptop or a cell phone to carry out public duties from home, they cannot be used for private business or consulting work.

A very helpful summation of these and other similar prohibition can be found in [Advisory Opinion 96-004](#).

Use of Our Public Position

There is a natural inclination to assist loved ones during difficult times, but even times of crisis do not remove the prohibition from public employees and officials using their public positions or authority to benefit themselves, their families, or outside business associates. For example, a public employee or official may serve a public entity where a family member or business associate has a permit, license, or project pending before the agency. That employee or official could not “move along” such a matter, but instead must recuse himself or herself from anything at the public agency that definitely and directly impacts family members and business associates.

[Advisory Opinion 2009-06](#) provides an outline of how these restrictions may apply in similar situations.

Job Seeking

While it's not illegal for those in public service to pursue new career opportunities, the Ohio Ethics Law prohibits public officials and employees from soliciting or using their public positions to get a job from those who are:

- Regulated by their public agency;
- Doing or seeking to do business with their public agency; or
- Interested in matters before their public agency.

During uncertain times where public employees may be thinking of future opportunities, it's important to be aware of the type of recusal required to pursue new jobs.

If you are thinking about seeking new employment, an excellent resource to first consult is the Ohio Ethics Commission's [Job-Seeking Information Sheet](#).

Representation

The final conflict of interest issue is representation. This is a particularly important discussion for anyone who has an outside job or performs consulting work in addition to a public role. It's understandable that people might be concerned about the economy right now and may wish to pursue extra work to supplement the income that they receive in their public jobs, and it's not uncommon for some members of state boards and commissions, who are attorneys or consultants, for example, to be asked to represent clients or perform work on matters that are before state agencies.

The Ethics Law prohibits those in public service from accepting compensation from anyone for services they are personally performing on a matter before the public entity they serve. For example, an employee of a county engineer's office who has an engineering consulting business in his or her private life would be prohibited from representing a client from the private consulting business before the county engineer's office.

For additional information on Representation restrictions, review [Advisory Opinion 2007-03](#).



Gifts

Public employees and officials cannot accept substantial things of value from entities that are doing or seeking to do business with their public agencies, regulated by their public agencies, or interested in matters before their public agencies. However, donations to public agencies, such as public school districts or public libraries, are neither uncommon nor illegal, provided that the donation benefits the public agency as a whole and an individual employee or official of the public agency does not personally benefit from the donation. While working from home, it's important for public employees and officials to know that the Ethics Law allows companies or other private entities to donate goods or services to public agencies but not to public officials/employees directly.

For example, a city employee would be prohibited from accepting free or discounted construction work on his or her home from a company that sells construction work to the city. However, that company would not be prohibited from donating work to the city parks and recreation program. The difference is whether the public is the ultimate beneficiary of the gift as opposed to individual public servants.

The Ethics Commission is also sometimes asked if public officials may donate goods or services to their own public entities. While that is not prohibited by the Ethics Law, the public official cannot receive any benefits from the donation, such as a tax write-off or financial benefits that may accrue as a result of advertising or publicizing the donation.

If you would like additional information on this topic, you may find the following information sheets and advisory opinion helpful:

- [Accepting Gifts, Meals, Entertainment, or Other Things of Value](#)
- [When is a Gift a Donation?](#)
- [Advisory Opinion 89-002](#)



Public Contracts and Authorization of Financial Assistance

The Ohio Ethics Law prohibits public officials and employees from being involved – in any way – when they, their family members, or outside business associates are seeking a public contract with, or financial assistance from, their own public entities. In a work-from-home situation, it's possible that someone's family member may be experiencing some financial hardship due to the current crisis and the public official or employee may wonder if he or she can participate in the review or approval process involving the award of the public contract or financial assistance. The Ethics Law requires that public officials and employees completely abstain from discussions, decisions, or any other action pertaining to the potential public contract or financial assistance. See [Advisory Opinion 2009-06](#) for more information about the restrictions that apply to participating in matters involving financial assistance programs.

While public officials and employees have been working from home this year, the Ethics Commission has also been asked if an agency can contract with a company when an agency employee or official has a family member who works for that company. Public officials and employees cannot participate in a contractual or regulatory matter before their public agency if a family member has an interest in the contract or will receive a definite and direct benefit from the matter. However, if a public official's family member does not have an interest and will not receive a benefit from the matter, the official is not prohibited from participating in matters affecting a relative's employer. [Advisory Opinion 2009-02](#) provides a helpful overview of these prohibitions.



Sales to Your Agency

The final issue to be addressed in this article is one that has arisen several times during the COVID-19 crisis - public officials and employees selling goods or services to their own public entities.

The Ethics Commission has already received inquiries from public officials wondering if they can fill the “gap” in their personal budgets by selling goods or services to their own township, villages, etc. Because there are many public officials or employees who do not serve the public in a full-time capacity, many have outside careers, employment, or consulting work. Since some of these officials may not be currently working due to the crisis, some have inquired regarding sales to their public entities.

In general, the Ethics Law prohibits those in public service from being a vendor to their own public entities. Except in limited circumstances, public officials and employees may not have a financial interest in the contracts of the public agency with which they are “connected.” As a result, public officials and employees may not sell goods or services to their public entities, even if they recuse themselves from the decision-making process.

The Ethics Commission has two fact sheets that provide helpful overviews of this part of the law, one for local government and one for state government:

- [Local Government](#)
- [State Government](#)

Conclusion

If you have any questions about the issues addressed in this article or other issues you may encounter while carrying out your public duties outside of the office, feel free to visit the [Ethics Commission's website](#) or contact our office at (614) 466-7090.



Ethics Commission Issues Advisory Opinion Regarding Confidential Information and Executive Sessions



The Ohio Ethics Commission's most recently issued formal advisory opinion provides guidance regarding confidential information and executive sessions. In the course of public duties, many officials and employees encounter records that have been deemed statutorily confidential and/or participate in executive sessions; [Advisory Opinion No. 2020-02](#) outlines prohibitions under the Ohio Ethics Law related to these issues.

The opinion notes that the Ohio Open Meetings Act authorizes executive sessions by public bodies under limited circumstances to promote free and open discussion. However, ORC 102.03(B) prohibits current or former public officials and employees from disclosing or using confidential information discussed in executive session without appropriate authorization. Information may be deemed "confidential" due to statutory provisions or when preserving the confidentiality of the information being discussed is necessary to the proper conduct of government business.

Advisory Opinion 2020-02 concluded that simply discussing matters in executive session does not make that information confidential, unless certain conditions explained in the opinion are met. The opinion further emphasized that if a document is a "public record" and is not otherwise exempt from disclosure by the Public Records Act, the document can still be subject to disclosure even if it was appropriately discussed in executive session.



For more information, read [Advisory Opinion No. 2020-02](#) or feel free to discuss it with your agency legal counsel.

Ethics Education Update

Due to the COVID-19 crisis, the Ohio Ethics Commission has cancelled the remaining 2020 “in-person” Regional Trainings that had been scheduled to take place around the state.

While the Commission regrets these cancellations, the safety of our staff and all those who attend these trainings was paramount in this decision. However, we are very pleased to remind all public officials and employees that we offer online training options that are effective, convenient, and free!

- Our monthly [live webinars](#) provide an overview of the Ohio Ethics Law and allows for interaction and questions with electronic attendees.
- Our on-demand [e-course](#) provides the same overview of the law and is available to learners 24/7.

Proof of attendance is provided for both learning alternatives. For the webinar, learners receive an email with their name on the list of those who completed the webinar. For the e-course, learners print their own certificates of completion at the end of the course or the certificates can be saved as a pdf document.

Both the webinar and the e-course meet the requirement for annual Ethics Law training per the Governor’s Executive Order for state officials and employees (including financial disclosure filers). As a special note for public practice attorneys, the webinar and the e-course are both approved for one-hour of general CLE.

Thank you for your understanding and flexibility. We look forward to safely congregating once again to dialogue about this law in which we so strongly believe.



Continuing Legal Education (CLE) Class Update

Public practice attorneys are likely aware that the Ohio Ethics Commission and the Ohio Board of Professional Conduct annually provide free Continuing Legal Education (CLE) courses.

Due to the COVID-19 crisis, the CLE class scheduled for this fall will instead be provided as an online streaming class on the same date and time: Thursday, October 29, 2020 at 9am.

Any public practice attorney who is already scheduled for the October CLE will receive an email invitation to register for this Go-to-Webinar. We regret that you must register a second time, but we hope you will find the webinar informative and convenient. Please watch for an email from Go-to-Webinar with details and registration information.

If you are a public practice attorney who would like to receive the Go-to-Webinar electronic registration information, please complete the information located at [this link](#).

If you have any questions or if you would like me to remove your name from class list, please feel free to email susan.willeke@ethics.ohio.gov.



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