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INFORMATION SHEET: ADVISORY OPINION NO. 2012-03
NEW REVOLVING DOOR LAW EXCEPTIONS—R.C. 102.03(A)(8) AND (A)(9)

What is the question in the opinion?

How do the newly enacted exceptions to the Revolving Door Law, in R.C. 102.03(A)(8) and R.C. 102.03(A)(9), change the application of the law to non-elected state and local officials and employees?

What is the answer in the opinion?

R.C. 102.03(A)(8) applies to any non-elected state official or employee who leaves one state agency to become an official or employee of another state agency. The person can represent his or her new state agency on any matters, except audits and investigations, in which he or she participated in the former position. The exception removes the one-year prohibition on representation that would otherwise apply.

R.C. 102.03(A)(9) applies to any non-elected local official or employee who leaves one position in a local public agency for another position in the same public agency. The person can represent his or her new department, division, agency, office, or unit on any matters in which he or she participated in the former position. The exception removes the one-year prohibition on representation that would otherwise apply.

What prompted this opinion?

Two new provisions of the Ethics Law, R.C. 102.03(A)(8) and R.C. 102.03(A)(9), were enacted in S.B. 314. They became effective on September 28, 2012.

When did this opinion become effective?

The opinion became effective on October 25, 2012.

For More Information, Please Contact:

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ADVISORY OPINION NO. 2012-03 IS ATTACHED.**

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Advisory Opinion
Number 2012-03
October 25, 2012
New Revolving Door Exceptions

Syllabus by the Commission:

- (1) The Revolving Door Law prohibits any former public official or employee from representing any person before any public agency on any matter in which the official or employee personally participated.
- (2) The General Assembly has enacted two new exceptions to the revolving door law, effective September 28, 2012.¹ The exceptions are applicable only in situations when a nonelected public official or employee leaves one public position and takes a position as a public official or employee of another public agency.
- (3) The first exception applies to a nonelected official or employee of a state agency who leaves that position to become an official or employee of another state agency.² The person can represent his or her new employer on matters, other than audits or investigations, in which he or she personally participated while serving in his or her former state position.
- (4) In this context, an “audit” is an official examination, analysis, or inspection of records or other documents. An “investigation” is an inquiry or detailed and careful examination to ascertain facts.
- (5) The second exception applies to any person who leaves employment at one department, division, agency, or unit of a political subdivision to work for another department, division, agency, or unit of the same political subdivision.³ The person can represent his or her new employer on matters in which he or she personally participated while serving in his or her former position.

* * *

In this advisory opinion, the Ohio Ethics Commission will explain how two new exceptions to the Revolving Door Law, R.C. 102.03(A)(8) and R.C. 102.03(A)(9), will apply to state and local public officials and employees who are moving from one public position to another.⁴

Revolving Door Restriction—R.C. 102.03(A)(1)

R.C. 102.03(A)(1), the “revolving door” law, applies to most public officials and employees, at all levels of government, in the state except teachers.⁵ The revolving door law prohibits a state or local public official or employee, for one year after he or she leaves a public position, from **representing** or acting in a representative capacity for any **person**, including a new employer, on any **matter** in which the official or employee **personally participated** while serving in his or her former public position.⁶ The Ohio Ethics Commission has issued several advisory opinions and information sheets that explain the general provisions of the “revolving door law” in more detail.⁷

The Commission has concluded, in a number of advisory opinions, that a state or local official or employee who accepted employment with another public agency is subject to this restriction.⁸ In other words, unless he or she met an exception in the law, a person who left one public position to accept another one was prohibited from representing his or her new employer before any other public agency on matters in which he or she personally participated in the former employment.

However, the General Assembly has enacted two exceptions to the “revolving door law” that apply to non-elected officials and employees moving or transferring from one public agency to another.⁹

Exception for State Officials and Employees—R.C. 102.03(A)(8)

The first new exception is R.C. 102.03(A)(8) which provides an exception to the “revolving door restrictions” for non-elected state officials and employees leaving one state agency to work for another. “State agency” includes every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.¹⁰

R.C. 102.03(A)(8) provides that the revolving door restriction does not prohibit a non-elected state official or employee from leaving one state agency to become a public official or employee of another state agency. Further, the law allows any such person to represent his or her new state employer on any matters in which the employee personally participated in his or her former state service.

There is one limitation to the exception. A state official or employee is prohibited, for one year after leaving one state agency to accept a job with another, from representing his or her new state agency on any **audit or investigation** pertaining to the state agency if the official or employee worked on the audit or investigation in his or her former position.

The words “audit” and “investigation” are not defined in R.C. 102.03, so they must be read in context and according to common usage.¹¹ In this context, an “audit” is an official examination, analysis, or inspection of records or other documents.¹² “Audits” include audits conducted by the Auditor of State’s Office (R.C. 117.01(G)), the State’s Internal Audit

Committee (R.C. 126.45), the Casino Control Commission (R.C. 3772.061), Department of Taxation (*see, e.g.*, R.C. 5703.50), and any other state agency.

An “investigation” is an inquiry or detailed and careful examination to ascertain facts.¹³ “Investigations” includes investigations conducted by the Ethics Commission (R.C. 102.06), Inspector General’s Office (R.C. 121.42), Attorney General’s Office (*see, e.g.*, R.C. 109.24, 109.362, 109.83), Auditor of State’s Office (*see generally* R.C. 117.091), the Environmental Protection Agency (*see, e.g.*, R.C. 3745.016, 3704.06, and 3734.10), and any other state agency.

Because of the exception in R.C. 102.03(A)(8), a non-elected state official or employee is not prohibited from:

- (1) Leaving one state agency to become a public official or employee of another state agency; and
- (2) Immediately representing his or her new state agency employer on any matters, except audits and investigations pertaining to the state agency, in which he or she participated in the former position.

The exception does not apply to a former state official or employee who accepts employment with a local public agency, such as a village, township, city, or county.

Example of the Exception

A former assistant state auditor has accepted a new job with the Ohio Department of Transportation. The former assistant auditor has several questions about the revolving door law. He knows that the restriction applies to him for one year, and he is aware of the newly enacted exception.

1. Within the first year after leaving his job at the Auditor’s Office, can the former assistant auditor represent the Department of Transportation at a meeting with the Auditor’s Office on a non-audit matter in which he personally participated while he was an Auditor’s Office employee?

Yes. Under the exception in R.C. 102.03(A)(8), the employee is not prohibited from representing the Department of Transportation on the matter, even though he personally participated in it while he was employed at the Auditor’s Office. The exception removes the one-year time restraint on representation that would have formerly applied to the Department employee in this situation.

2. Can the former assistant auditor send an email to a former coworker at the Auditor’s Office asking about an audit of the Department of Transportation on which he worked while he was an Assistant Auditor?

No. Because the former assistant auditor personally participated in the audit, the exception in R.C. 102.03(A)(8) does not apply to this situation. He is prohibited from contacting the Auditor's Office, or any other public entity, regarding the audit.

3. Can the former assistant auditor telephone the Inspector's General's Office regarding a fraud investigation on which he worked at the Auditor's office? The matter involves another employee of the Department of Transportation.

No. Because the former assistant auditor personally participated in the investigation, while at the Auditor's Office, the exception in R.C. 102.03(A)(8) does not apply to this situation. He is prohibited from representing the Department of Transportation on this matter before any public agency, including the Inspector General's Office.

Exceptions for Local Officials and Employees—R.C. 102.03(A)(9)

The second new exception is R.C. 102.03(A)(9) which provides an exception to the "revolving door restriction" for non-elected officials and employees of a political subdivision. A political subdivision is a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.¹⁴

R.C. 102.03(A)(9) provides that the revolving door restriction does not prohibit a non-elected official or employee of a political subdivision from leaving one department of the political subdivision to work for another department of the same political subdivision. Further, the law allows any such person to represent the department in which he or she now works on any matters in which the employee personally participated during his or her service in the other department.

Because of the exception in R.C. 102.03(A)(8), a non-elected local official or employee is not prohibited from:

- (1) Leaving one department, division, agency, office, or unit of a political subdivision to accept a job with another department, division, agency, office, or unit of the same political subdivision; and
- (2) Immediately representing his or her new department, division, agency, office, or unit on any matters in which he or she personally participated in the former position.¹⁵

The exception does not apply to a former official or employee of a political subdivision who accepts employment with a different political subdivision or with a state agency.

Example of the Exception

A former employee of a city zoning office has accepted a new job with the city's development department. She knows that the revolving door restriction applies to her for one year and is aware of the newly enacted exception.

1. Can the employee represent the development department at a meeting with the zoning office on a matter in which she personally participated while she was an employee of the zoning office?

Yes. Under the exception in R.C. 102.03(A)(9), the employee is not prohibited from representing the development department on the matter, even though she personally participated in it while she was employed in the zoning office. The exception removes any time restraint on representation.

2. Can the former zoning office employee send an email to her former boss asking about an investigation the former employee conducted while she worked in the zoning office?

Yes. There is no limit on the kinds of matters on which the employee can represent the development department, even if she personally participated in those matters while employed at the zoning office.

Conclusion

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: The General Assembly has enacted two new exceptions to the revolving door law, effective September 28, 2012. The exceptions are applicable only in situations when a nonelected public official or employee leaves one public position and takes a position as a public official or employee of another public agency. The first exception applies to a nonelected official or employee of a state agency who leaves that position to become an official or employee of another state agency. The person can represent his or her new employer on matters, other than audits or investigations, in which he or she personally participated while serving in his or her former state position. In this context, an “audit” is an official examination, analysis, or inspection of records or other documents. An “investigation” is an inquiry or detailed and careful examination to ascertain facts. The second exception applies to any person who leaves employment at one department, division, agency, or unit of a political subdivision to work for another department, division, agency, or unit of the same political subdivision. The person can represent his or her new employer on matters in which he or she personally participated while serving in his or her former position.



Merom Brachman, Chairman
Ohio Ethics Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission’s Web site: www.ethics.ohio.gov.

¹ Am. Sub. S.B. 314 (eff. 09/28/2012).

² R.C. 102.03(A)(8).

³ R.C. 102.03(A)(9).

⁴ The exceptions do not change the application of R.C. 2921.43 or R.C. 102.03(B) and do not apply to someone who becomes a contractor, not a public official or employee, of another public entity.

⁵ See R.C. 102.01(B). “Public official or employee” does not include a person who is a teacher, instructor, professor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

⁶ These terms—“represent,” “person,” “matter,” and “personal participation”—are defined in the Ohio Revised Code. Ohio Ethics Commission Advisory Opinions that have more fully explained these terms as applied to specific situations include Ohio Ethics Commission Advisory Opinions No. 86-001, 87-001, and 92-005 (represent), 82-002 and 89-003 (person), 84-005, 99-001, and 2004-04 (matter), and 86-001 and 91-009 (personal participation).

⁷ See Post-Employment Restrictions: Ethics Commission Information Sheet # 5; Adv. Op. No. 2011-03.

⁸ Adv. Ops. No. 91-005 and 93-011.

⁹ There are two other exceptions to the restriction in R.C. 102.03(A)(1): (a) R.C. 102.03(A)(6), which allows a former public employee to represent, assist, or act in a representative capacity for his or her former public employer; and R.C. 102.03(A)(7), which allows a former public employee to perform ministerial functions on behalf of a client or employer. Ohio Ethics Commission Advisory Opinion No. 2012-04 fully discusses the exception in R.C. 102.03(A)(6).

¹⁰ R.C. 1.60.

¹¹ R.C. 1.42.

¹² Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/audit> (accessed: October 15, 2012) and R.C. 117.01(G).

¹³ Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/investigation> (accessed: October 15, 2012).

¹⁴ R.C. 102.03(A)(9).

¹⁵ See also R.C. 102.03(A)(6) and (A)(7).