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## **BUSINESS ASSOCIATES AND PUBLIC CONTRACTS:**

### **Ethics Commission Information Sheet # 15**

The Ohio Ethics Law and related statutes were created to generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates. This fact sheet will specifically address the issue of public officials and employees using the authority or influence of their public positions to secure public contracts for outside business associates.

#### **What is a business associate?**

A “business associate” includes any individuals, companies, or organizations with which the official is acting together to pursue a common business purpose. Examples of a public official’s business associates include, but are not limited to, the official’s: (1) partners in a partnership; (2) co-owners of a business; (3) outside employer; and (4) co-members of an LLC.

Note that two individuals who serve as board members on the same public board (e.g. school district board of education) are not business associates under the Ohio Ethics Law, provided that there is no other business relationship between the board members.

#### **What is a public contract?**

State and local governments have to make purchases to fulfill their duties to the public. Such purchases can range from services such as construction or consulting to goods such as vehicles or office supplies. Any purchases made with public money are “public contracts” under the Ohio Ethics Law. Therefore, grants, loans, and employment are also public contracts. Additionally, money spent by a third party to acquire goods or services for a public agency is also a public contract.

Basically, a public contract exists whenever a public agency spends money or money is spent for the use of a public agency. There is no minimum purchase amount required. It’s a public contract whether the agency spent ten dollars or ten thousand dollars. Note that even if there is no written contract, public money being spent is still a public contract.

#### **Is authorizing a business associate’s public contract illegal?**

Yes. R.C. 2921.42(A)(1) prohibits a public official or employee from authorizing a public contract for a business associate he/she may have outside his/her public service.

The “authorization” of a public contract occurs when the public contract could not have been awarded without the approval of the official or employee. Therefore, under the law, a public official or employee is prohibited from making the final decision about whether a business associate obtains a public contract.

For example, an elected official co-owns a consulting business with someone who also owns a construction business (in which the elected official has no involvement). Even though the elected official plays no role in the construction company, the owner of that company is still a business associate since they own the separate consulting business together. Therefore, the elected official could not vote to award a construction contract to that business associate who co-owns the consulting company with the elected official.

Likewise, if public employees have the authority to make final purchasing decisions for the public agency, their business associates cannot obtain a public contract with the public agency. For example, a county employee co-owns a catering business with someone who also owns a small cleaning company (in which the public employee has no involvement). Even though the public employee has no financial or fiduciary interest in the cleaning company, the owner of the cleaning company is still a business associate since they own the separate catering business together. Therefore, the public employee could not sign off on a cleaning contract for the public agency with the business associate with whom the catering company is co-owned. If there is no other public employee authorized to finalize the contract, the outside business associate cannot obtain a cleaning contract with that public agency.

**What is meant by “securing” a public contract?**

A public official or employee is prohibited from using the “authority or influence of” a public position to secure a public contract for an outside business associate family member. As discussed above, a public official or employee would have to abstain from any final decisions that impact the business associate. Under the Ethics Law, though, even if the official or employee abstains from the final decision, the law would equally prohibit the official or employee from discussing, recommending, or otherwise using the prestige of the public position to get a public contract for a business associate. The public official or employee also cannot use the influence of the public position to persuade other public officers or employees, especially subordinates, to grant a public contract to those business associate.

**Are there any issues after a public contract has been granted?**

Yes, the Ohio Ethics Law’s prohibitions continue even after an official’s business associate has been granted a public contract. The law prohibits an official or employee from participating in any decision, or using a public position to secure any decision that affects the continuation, implementation, or terms and conditions of a business associate’s public contract. For example, an official is prohibited from participating in matters related to the renewal, modification, or termination of a business associate’s public contract.

**Where can I receive additional information?**

Advisory Opinions that offer additional information pertaining to business associates include [Adv. Op. No. 2009-06](#) and [Adv. Op. No. 85-004](#). You may also 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 obtained from the Commission’s Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov).