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## Grants and the Ohio Ethics Law

The Ohio Ethics Law assures that government decisions and public expenditures, whether at the state or local level, are objective and serve the public's interest. This fact sheet outlines how that protection extends to public grants.

### *Are public grants subject to the Ohio Ethics Law?*

Yes! Public grants, such as federal or state stimulus funds, constitute “public contracts” and therefore subject to protections under the Ohio Ethics Law. [Advisory Opinion 2009-06](#)

### *What are public contracts?*

A public contract exists any time a public agency buys or receives goods or services, such as grants, computers, office supplies, vehicles, construction, or hiring consultants, court reporters, or insurance policies. This is true even if there is no formal, written contract and regardless of the amount spent.

### *What are the restrictions under the Ethics Law as they pertain to grants?*

The Ohio Ethics Law protects the public by prohibiting public officials and employees from using their office to get a public contract where they, their family member, or their business associate has an interest. Directly using a public position to authorize a public contract – or otherwise influencing the process – to favor oneself, a family member or outside business associate, is illegal. In fact, this can be a fourth-degree felony under the Ethics Law.

### *Can public employee/officials' family members or business associates apply for grants from that public agency?*

The Ethics Law does not prohibit family members or outside business associates of public officials from receiving benefits from a grant program offered by the officials' own public agency. However, the applicant should meet the specified requirements to participate in the program and should not benefit from the program in a manner that is not available to other individuals. Furthermore, public officials are prohibited from authorizing or soliciting any funds, or any other kind of benefit related to grant program, for their family members or business associates; complete recusal is required. [Informal Opinion 2010-INF-0427-1](#)

As a result, when a public employee or official's family member or business associate wishes to take advantage of these stimulus funds, he or she must completely recuse himself or herself from the process. That does not merely mean the final decision-making process, but also any discussion, reviewing, recommendations or any other action. [Advisory Opinion 89-006](#)

### ***What is meant by “recusal?”***

The Ohio Ethics Law, specifically R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E), prohibits public officials and employees from authorizing, or using their positions to secure the authorization of, a public contract for their family members and business associates. As a result, the public employee/official would be prohibited from:

- participating in the review or consideration of the application or of any applications directly competing for allocations of the same funds
- lobbying for, recommending, or otherwise using a public position and the authority and influence inherent in it to secure the funds
- discussing, making recommendations, or reviewing the application, or taking any other formal or informal action, within the scope of public authority regarding the application
- using the public position to secure quicker or more favorable consideration of the application for funding
- processing the application or taking any action to more favorably position the family member or business associate to receive the funds.

### ***Example***

Daniel is an employee at the Regional Planning Department, the agency that administers federal HUD money for a lead abatement program. His brother has applied for funding.

- Daniel's brother must meet the specific grant requirements and cannot benefit from the program differently from other grant recipients
- Daniel cannot participate in discussing, reviewing, considering, processing his brother's application **OR** other applications competing for the same funds
- Daniel cannot recommend or lobby in any way on behalf of his brother in the grant process or use his authority to influence the decisions or actions of other public officials or employees on behalf of his brother
- Daniel cannot use his public job, time, or equipment to secure quicker or more favorable funding consideration for his brother

In summary, Daniel must completely recuse from any action – formal or informal – on behalf of his brother in the grant process.

### ***Are there restrictions after the grant is awarded?***

Absolutely. If a public official's family member or business associate applies for a grant from the official's own agency and the official abstains from all action as outlined above, there are still restrictions the official must observe.

In the example above, Daniel would be prohibited from participating in matters that would affect the continuation, implementation, or terms and conditions of the grant funding his brother received. This would include Daniel's abstention from the authorization or approval of payments of the funding or the renewal, modification, termination, or renegotiation of the funding terms.

For example, Daniel would be prohibited from discussing, reviewing, assessing, or otherwise evaluating his brother's use of the grant funds to determine whether funding guidelines have been complied with or if his brother is qualified for additional funds.

### ***Would it matter if the grant request is minimal?***

No, the dollar amount of a grant request is irrelevant. Any public expenditure is a "public contract" under the Ohio Ethics Law. Public employees or officials who use their positions to obtain grant money for themselves, their family members, or their personal business could be subject to a fourth-degree felony.

### ***Can public employees/officials apply for grants from their own agencies?***

In general, the Ethics Law prohibits public employees/official from having an "interest" in a public contract awarded by their own agencies, including grants. Therefore, public employees/officials would generally be prohibited from applying for or receiving grants administered by their own public entities.

However, there is an exception under [R.C. 2921.42\(C\)](#).

A public official doesn't have an "interest" in a grant if:

1. It is necessary supply or service (*The Ethics Commission has determined that some grants are "necessary" such as publicly funded Community Development Block Grants*)
2. The grant is unobtainable elsewhere for the same/lower cost or is a continuous course of dealing established before the public official's association with the public entity (*The Ethics Commission has determined this can be met if all qualified applicants who are not public officials or employees have been served and funds are still available*).
3. The same "treatment" is given to all who apply for the grant funding
4. An "arm's length transaction" was observed (*See above description of recusal. The public entity administering the grant money must have full knowledge of the official/employee' participation and that the grant process must be fair and objective with no preference given to public officials or employees*).

**Note: This exception would not apply if the public employee/official plays a role in the grant process or serves on a public body that approves grant money. In those circumstances, the public employee/official cannot seek or obtain grants from his or her own public agency.**

### ***Does recusal protect members of a board that approves/distributes grants?***

No. If a public body authorizes or approves the decision on the distribution of funds, [R.C. 2921.42\(A\)\(3\)](#) prohibits the board member during public service and one year after, from profiting from the grant money, even if he or she recused and abstained on the process while serving on the board.

#### ***Example***

Sandy is an elected city council member who also owns a small apartment complex. Sandy has applied for a Community Development Block Grant from funds provided to the city and then distributed by the city.

- If the city council approves grant money, even with recusal, Sandy can't receive the grant per R.C. 2921.42 (A)(3) (cannot profit from a public contract)
- If the city council plays no role in the grant approval, Sandy still can't receive a grant under R.C. 2921.42 (A)(4) (having an "interest" in the grant) unless the exceptions under R.C. 2921.42(C) are met. Even if those exceptions are met, Sandy cannot participate in the review of the application.

### ***Can a public employee/official apply for a job with a grantee?***

The Ethics Law does not absolutely prohibit a current or former public employees from seeking or accepting employment from a grantee of his or her former public agency. However, for a period of one year after leaving public service, the former employee is prohibited from accepting employment in any position where he or she would profit from contracts that he or she authorized as a public employee. Profiting from the public contract would include:

- Establishment of the organization is dependent upon the grant
- Creation or continuation of the position is dependent on the grant
- Grant money would be used to fund the salary of the position.

#### ***Example***

Jordan reviews grant proposals and recommends approvals to the agency Director. Jordan is now seeking a job from a nonprofit organization that received grant money from the agency during Jordan's time as an Assistant Director.

The Ethics Law does not absolutely prohibit a current or former public employee from seeking or accepting employment from a grantee of his or her former public agency. However, for a period of one year after leaving public service, the former employee is prohibited from accepting employment in any position where he or she would profit from contracts that he or she authorized as a public employee. Profiting from the public contract would include:

- Establishment of the nonprofit organization is dependent upon the grant
- Creation or continuation of Jordan's position at the nonprofit is dependent on the grant
- Grant money would be used to pay Jordan at the nonprofit

If Jordan's involvement was necessary for the grant to be awarded (even if the grant was ultimately approved by the agency Director), there is a twelve-month prohibition from Jordan accepting employment with the nonprofit if Jordan profit as outlined above.

***Would there be any restrictions after the former employee is working at the entity that received from public grants from his/her former agency?***

Yes. For twelve months after leaving public service, the Ohio Ethics Law prohibits most former employees/officials from representing a new employer before any public agency on a matter in which the former employee personally participated, including grant processes. (Note: there is a two-year prohibition for former PUCO board members and attorney examiners, former Casino Control Commission staff and board, and those who exercised discretion for solid and hazardous waste. For all other former officials/employees, the prohibition is for one year). [Advisory Opinion 87-004](#)

***Can I serve on a non-profit board that may request grant money from my agency?***

While a public official/employee is not automatically prohibited from serving on a nonprofit board, there are many opportunities for conflicts of interest, even if the public employee is not compensated for serving on the nonprofit board. He or she has a fiduciary responsibility and relationship with the board and therefore must completely withdraw from any involvement in issues at her agency that affect the nonprofit organization. As previously discussed, the Ethics Law prohibits public servants from securing public contracts – including grants – for their outside business associates, such as nonprofit boards on which they serve.

Although the nonprofit can apply for the grant, the public employee/official may play no role in reviewing, discussing, recommending, lobbying, etc. with agency personnel regarding the nonprofit's grant application. Even if the public employee/official abstains from all communication and action with agency personnel regarding the grant process, he or she may not

be able to continue to serve on the board if the nonprofit is awarded the grant from the employee/official's public agency. [Advisory Opinion 87-003](#)

### ***How does subcontracting pertain to public officials and grants?***

As previously noted, a grant administered by or through a public agency is a public contract and that public employees and officials cannot participate in the authorization of any contracts, including grants, in which they, their family members, or their outside business associates have an interest.

A subcontract under a public contract is also subject to the Ethics Law. As a result, public employees and officials must equally recuse from grant processes in which they, their family, or business associates would obtain a subcontract under the grant funds.

#### ***Example***

The City of Anywhere, Ohio has applied for a \$10 million state grant to revitalize its downtown space by rehabilitating several historic buildings. The city's grant application identifies the general contractor that would undertake the construction as well as the subcontractors that have been retained should the grant bid be successful. The plumbing company that is lined up to subcontract for the project is owned by the sister of a department chief at the state agency administering the grant.

The department chief mayor is prohibited from participating in any part of the grant discussion and decision-making, even if the sister's plumbing company is a subcontractor and the general contractor of the proposed project.

### ***Isn't there an exception for home improvements?***

Yes. There is a narrow exception that allows public employees/officials who did not participate in the grant process to secure housing program funding for their personal residence in similar fashion as other citizens. [Advisory Opinion 95-007](#)

### ***Need additional information?***

This fact sheet provides an overview on how the Ohio Ethics Law pertains to public grants, though it does not provide legal advice. We encourage you to review the Ethics Commission's website for additional advisory opinions that may be helpful. You may also visit the website to [request written guidance](#) specific to your facts and circumstances.