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## PERSON SERVING IN MULTIPLE PUBLIC POSITIONS: Ethics Commission Information Sheet # 12

### I. Introduction

The Ohio Ethics Law and related statutes<sup>1</sup> applies to elected or appointed officials, or employees, in public agencies in Ohio. “Public agencies” are:

- State departments, boards, and commissions;
- Counties;
- Cities and villages;
- Townships;
- School districts;
- Public colleges and universities;
- Public libraries; and
- All other governmental agencies.

### II. Purpose of this Information Sheet

The Ohio Ethics Commission administers, interprets, and assists in the enforcement of the Ethics Law.<sup>2</sup> This information sheet explains the Law as it applies to any person who wants to hold more than one public position at the same time. In this information sheet, “official” means any person who serves a public agency, whether elected, appointed, or employed, full-time or part-time, compensated or uncompensated.

### III. Compatibility/Other Considerations

Any official who wishes to serve in more than one public position should seek advice from the legal advisors for the public agencies the official wishes to serve to determine whether the positions are compatible. The Ohio Ethics Law does not govern compatibility, and the Ethics Commission cannot issue a compatibility opinion.

A public official may also be prohibited from holding other public positions by laws that are not within Ethics Commission’s jurisdiction.<sup>3</sup>

### IV. Summary of the Ethics Law

One person can serve two or more public agencies at the same time unless:

- There is a public contract between the public agencies; and
- The person would have a financial or fiduciary interest in the contract.

Even if an official can serve in more than one position, the Law will restrict his or her actions in the public positions.

### V. When Dual Service is Prohibited

A person cannot serve two agencies if there is a contract between the two agencies and the person would have an interest in the contract. The person cannot have either a financial or fiduciary interest in any contract of an agency the official serves.<sup>4</sup>

A public contract exists whenever a public agency buys or acquires goods or services, from any source, regardless of whether there is a written contract.<sup>5</sup> Many public agencies have contracts with one another. For example, a township may have a contract with a neighboring city to provide emergency services to township residents. A state agency may award a grant to a public library to provide job placement services to citizens in the community. A state department may provide loans to villages and cities to build or expand water treatment facilities.

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There are some narrow exceptions to this prohibition.<sup>6</sup> If a person wants to hold public positions with two public agencies that have contracts with each other, he or she should contact the Commission for further guidance.

### **Example 1:**

A state department employee also wants to accept employment with a state university. Her department has awarded a grant to the university. The grant is a public contract. The person cannot accept employment with the university if she will have an interest in the grant awarded by the department.<sup>7</sup> However, she can work for the university provided that she does not have any financial or fiduciary interest in the grant.

### **Example 2:**

The chief of a city police department is considering running for trustee in the township where he lives. The township purchases police services from the city. If the chief were to become a township trustee, he would have a prohibited interest in the contract between the city and the township. He cannot serve in these two positions at the same time.

## **VI. When Dual Service is Not Prohibited**

If there are no contracts between the public agencies, or the person does not have a prohibited interest in the contracts, the person can serve both agencies. However, the person will have to comply with the conflict of interest, revolving door, representation, and other restrictions while serving in both positions.

### **A. Conflicts of Interest**

If a public official serves in more than one public position, the official will have a conflict of interest if matters affecting one of the agencies come before the other public agency. R.C. 102.03(D) and (E) prohibit an official who serves in more than one public position from using the authority or influence of either position to benefit the other public agency. The official cannot

participate, in either public position, on matters that affect the other entity.<sup>8</sup>

The official must fully withdraw from consideration of matters affecting the other public agency.<sup>9</sup> A public official who serves on a governing board (such as a city council, board of township trustees, board of county commissioners, or other public decision-making committee) can withdraw by abstaining from any discussion, deliberation, or vote, on matters before the governing board. The other board members can then make the decision on the matter.

A public official who serves in any other kind of public position can withdraw by informing the official's supervisor and chief legal counsel at the agency of the outside service any time a matter before either agency affects the interests of the other agency.<sup>10</sup> The official's supervisor must assign the matter to a person who is a superior to, or on the same level as, the official who has withdrawn.<sup>11</sup> A public official cannot withdraw from a matter by delegating it to a subordinate.<sup>12</sup>

### **Example 1:**

A city council member is employed by a college in the city. The council member cannot vote, discuss, deliberate on, lobby his fellow council members, or otherwise participate in the consideration of any regulatory or other matter before city council affecting the college.<sup>13</sup>

### **Example 2:**

A state department employee is employed as an adjunct instructor with a state university. The university has applied for a grant from her department. As a department employee, she cannot participate, in any way, in the department's discussions, deliberation, or decision regarding the university's grant. She is also prohibited from lobbying other department employees to favor the university's interests.<sup>14</sup>

B. **Revolving Door Restrictions**

A public official is prohibited from representing any person on any matter in which the official has personally participated.<sup>15</sup> This restriction applies to the official during and for one year after public service.

The restriction applies regardless of whether the official is paid to represent the person. A “person” includes an individual, corporation, partnership, association, public agency, or similar entity.<sup>16</sup>

An official is “representing” a person when the official makes any formal or informal appearance before, or has any kind or written or oral communication with, any public agency, on behalf of that person.<sup>17</sup> Examples of representation are:

- An informal appearance before a public agency;
- Oral communication with a public agency;<sup>18</sup>
- Written communication with a public agency, even if the official does not sign the communication.<sup>19</sup>

The law prohibits an official who holds more than one public position, from representing either public agency before the other on any matter in which the official has personally participated.

An official has “personally participated” in a matter if the official has engaged in any substantial exercise of administrative discretion regarding the matter such as:

- Decision;
- Approval;
- Disapproval;
- Recommendation;
- The rendering of advice; or
- Investigation.<sup>20</sup>

For example, if an official reviews a report, and makes a recommendation about the report to supervisors, the official has personally participated in the matter that is the subject of the report, even if the official’s participation was not the final action on the report. An official has also personally participated in a matter if the official has supervised other public officials and employees on the matter.<sup>21</sup>

A “matter” includes any case, proceeding, application, determination, issue, or question.<sup>22</sup> A matter can include concrete items, like an application or a problem. It can also include more abstract items, like a dispute or a policy decision. A matter is the underlying issue or question, regardless of whether it involves the same parties. Matter does not mean the same thing as subject matter.<sup>23</sup>

**Example:**

A county employee who also serves as a township trustee cannot appear before the township, or any other public agency, on behalf of the county on matters in which he or she personally participated as a county employee. The person would be prohibited from sending e-mails or making telephone calls to the township or any other public agency, on behalf of the county, as well as engaging in more formal representations.

C. **Rendering Services Before Agency**

There are two restrictions that prohibit a public official from receiving payment to render services on some matters. One restriction applies to state officials and another to local officials.

(1) **State Officials (R.C. 102.04(A))**

An official serving a state entity cannot receive, directly or indirectly, compensation for any service the official renders in matters that are before any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.<sup>24</sup> [As noted above, the word “officials,” as used here, includes elected and appointed officials and employees.] If a state official is also serving in a second public

position, the official cannot perform services for the second public agency on matters that are before any agency of the state.

**Example:**

An employee of a state department also serves as a school board member. The school district asks her to contact the state Department of Education regarding a matter that affects the district. If she were to contact the Department, she would be accepting compensation (her salary as a board member) to perform services on a matter before an agency of the state, which is prohibited by R.C. 102.04(A).

**(2) Local Officials (R.C. 102.04(C))**

An official serving a local public agency (city, county, township, etc.) cannot receive, directly or indirectly, compensation for any service the official renders in matters that are before any department, division, institution, instrumentality, board, commission, or bureau of the local agency the official serves.<sup>25</sup> [“Officials,” as used here, includes elected and appointed officials and employees.] If a local official is also serving in a second public position, the official cannot perform services for the second public agency on matters that are before any agency of the first local agency.

**Example:**

A member of a city council who is employed by a township is prohibited from receiving compensation from the township for representing the township on any matter pending before any office or board of the city.<sup>26</sup> If the township were to ask its employee to represent its interest before the city building department, he would be accepting compensation from the township to perform a service on a matter that is before an office of the city he also serves, which is prohibited by R.C. 102.04(C).<sup>27</sup>

**Exception**

R.C. 102.04(D) provides an exception to the prohibitions of R.C. 102.04(A) and (C) if both of the following apply: (1) the agency before which the matter is pending is an agency other than the one with which the official serves; and (2) prior to rendering personal services on the matter, the official files the statement described in that section with the Ethics Commission, the agency with which the official serves, and the agency before which the matter is pending. The exception in by R.C. 102.04(D) does not apply to a person serving in an elected position.<sup>28</sup>

**VII. Penalties**

The Ethics Law and related statutes are criminal laws. If a person is convicted of violating an ethics law, that person may receive a jail sentence and/or be levied a fine. The statutes discussed in this information sheet are all misdemeanors of the first degree with a maximum penalty of six months in jail and/or a \$1000 fine.

**VIII. Conclusion**

Please 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:

Ohio Ethics Commission  
30 West Spring Street, L3  
Columbus, Ohio, 43215  
(614) 466-7090  
<http://www.ethics.ohio.gov>

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### Endnotes:

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<sup>1</sup> Ohio Revised Code Chapter 102. and Sections 2921.42 and 2921.43.

<sup>2</sup> Two other state agencies have jurisdiction over ethics issues: The Joint Legislative Ethics Committee (JLEC) for members and employees of the General Assembly and the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court for judges and judicial employees.

<sup>3</sup> See, among others, R.C. 3313.33.

<sup>4</sup> R.C. 2921.42(A)(4).

<sup>5</sup> R.C. 2921.42(I)(1); [Ohio Ethics Commission Advisory Opinion No. 87-003](#).

<sup>6</sup> [Adv. Op. No. 99-004](#).

<sup>7</sup> [Adv. Op. No. 89-006](#).

<sup>8</sup> [Adv. Ops. No. 91-006](#) and [2007-01](#).

<sup>9</sup> [Adv. Ops. No. 91-009](#) and [92-005](#).

<sup>10</sup> However, some high-level public officials and employees are charged with unique authority from which they cannot withdraw. [Adv. Op. No. 92-004](#). Because they cannot withdraw from the performance of their official duties, it is impossible for these officials and employees to pursue certain kinds of private activity.

<sup>11</sup> Id.

<sup>12</sup> [Adv. Op. No. 2011-02](#).

<sup>13</sup> [Adv. Op. No. 2007-01](#).

<sup>14</sup> [Adv. Op. No. 89-006](#).

<sup>15</sup> R.C. 102.03(A)(1); see Revolving Door Information Sheet No. 5 on Commission's Web site.

<sup>16</sup> R.C. 1.59; [Adv. Ops. No. 82-002](#), [89-003](#), and [99-001](#).

<sup>17</sup> R.C. 102.03(A)(5).

<sup>18</sup> [Adv. Op. No. 86-001](#).

<sup>19</sup> Id.

<sup>20</sup> R.C. 102.03(A)(1).

<sup>21</sup> [Adv. Op. No. 91-009](#).

<sup>22</sup> R.C. 102.03(A)(5).

<sup>23</sup> [Adv. Op. No. 99-001](#).

<sup>24</sup> R.C. 102.04(A).

<sup>25</sup> R.C. 102.04(C).

<sup>26</sup> [Adv. Op. No. 91-006](#).

<sup>27</sup> [Adv. Op. No. 96-002](#).

<sup>28</sup> Id.