



OHIO ETHICS COMMISSION
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

www.ethics.ohio.gov

REGULATORY MATTER AFFECTING A PUBLIC OFFICIAL OR EMPLOYEE Ethics Commission Information Sheet # 14

The Ohio Ethics Commission has often been asked how the Ohio Ethics Law applies when a public official serves a public agency that is considering a regulatory matter in which the public official has an interest.

It's important to note that the Ethics Law does not automatically prohibit someone from serving in a public position simply because he has an interest in a regulatory matter before his public agency. However, the Ethics Law generally prohibits an official from participating in a regulatory matter that would result in a definite and direct economic benefit or detriment to him. The purpose of this restriction is to protect the public by making sure that an official's decisions are not improperly influenced by his own interests. This fact sheet will explore this issue and restriction.

Participating in a Regulatory Matter—R.C. 102.03(D) and (E)

The Ohio Ethics Law prohibits a public official from using the authority or influence of his public position, formally or informally, to secure anything of value – such as regulatory or licensing decisions – for himself.¹

The Law also prohibits a public official from soliciting or even participating in a regulatory matter before his public agency that would result in a definite and direct economic benefit or detriment for the official. Due to this prohibition, a public official cannot take any formal or informal action in a regulatory matter that affects his outside interests, such as:

- voting;
- participating in discussions;
- participating in deliberations;
- making recommendations;
- providing advice; and
- formally or informally lobbying.

For example, if a member of the Medical Board were a doctor regulated by the Board, he would be prohibited from participating as a Board Member if a complaint were filed against him or another member of his practice. The Board member would be equally prohibited from discussing a complaint filed against him with the Board's investigators or the Executive Director.

The Ethics Law also prohibits an official from using the authority or influence of his public position over any other officials or employees of the agency, with respect to a regulatory issue that affects him. For example, an official cannot recommend, to a subordinate, an action that would benefit him or his business.

Actions that are not Prohibited

There are some actions that an official is not prohibited from taking even though they may, in some manner, affect him.

- An official is not prohibited from participating or voting on general legislative matters (such as a zoning code revision) that will have a uniform effect on all individuals affected by the legislation, including the official.²
- An official is not prohibited from applying to the public agency, in the same manner available to any other citizen, for a license or regulatory change, as long as he does not use his authority to secure the approval of his request.
- An official is not prohibited from appearing before the public agency he serves as a citizen, in the same manner available to other citizens, and testifying about his views on a regulatory matter that affects him.³ (The official cannot, however, testify as the representative of others.)

For instance, the Ethics Law does not prohibit a member of city council, who owns a business in a downtown square area, from participating in deliberations and decisions regarding an initiative petition to open truck traffic to a perimeter street, which proponents speculate may reduce truck traffic on the downtown state routes and increase business in the downtown square.⁴

However, if it is demonstrated that the city council member will derive a definite and direct pecuniary benefit or suffer a definite and direct pecuniary detriment from amending or revoking the initiative petition, the board member is prohibited from participating in the matter.

Further, if the petition would affect the board member's business in a manner that is selective, differential, or in disproportion to the affect it will have on all other business in the square, the board member is prohibited from participating.⁵ Additionally, the board member would be prohibited from participating in matters that directly and definitively affect his competitors or matters that affect employees of the city that are assigned to inspect or regulate his business.⁶

Conclusion

Any official who has an interest in a regulatory matter before the public agency he serves should ask his supervisors, or legal counsel for the public agency he serves, whether the agency has any additional policies or rules regarding these situations. (A public agency cannot create a policy or rule that is less restrictive than the prohibitions described above. However, an agency may have a policy or rule that is more restrictive than the Ethics Law.)

You are also encouraged to 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 found on the Commission's Web site: www.ethics.ohio.gov.

Revised June 2018

¹See Ohio Ethics Commission [Advisory Opinions No. 86-007](#) and [93-016](#).

² [Adv. Op. No. 93-016](#).

³ [Adv. Op. No. 92-019](#).

⁴ Id.

⁵ Id.

⁶ Id.