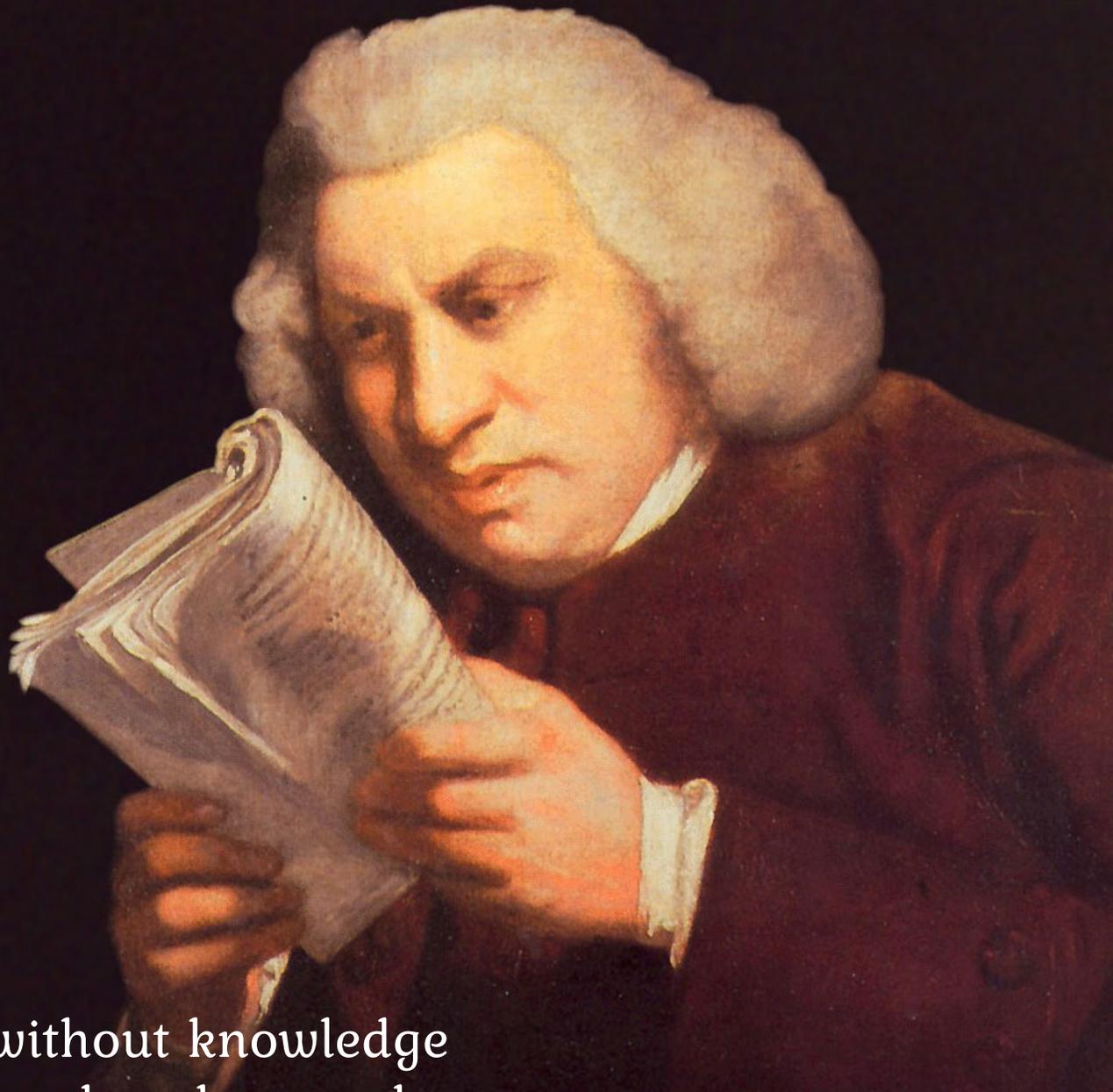


# THE VOICE OF ETHICS

A Publication of the Ohio Ethics Commission

2017 Quarter 4



Integrity without knowledge  
is weak and useless, and  
knowledge without integrity  
is dangerous and dreadful.

- Samuel Johnson, English author (1709 - 1784)

# Have a Holiday Gift Question?

The Ohio Ethics Commission receives many gift questions throughout the year, but especially when the holidays are upon us!

There are numerous resources available to help you understand and comply with this part of the Ohio Ethics Law. Some commonly referenced materials include:



[Advisory Opinion 2001-03](#)



[Gift Information Sheet](#)

Last year, the Ohio Ethics Commission addressed many of the mostly commonly asked holiday gift questions in our 2016 4th Quarter newsletter. Feel free to peruse it for a more in-depth but user-friendly guide regarding holiday gifts and public service.



[2016 4th Quarter Newsletter](#)

**Happy Holidays from the Ohio Ethics Commission!**

# Ethics Training by Year End?

If you are looking for opportunities to complete a training session regarding the Ethics Law before you ring in the New Year, we have some options for you!



On December 14, the Ohio Ethics Commission will conduct its final “regional” training of the year, to which anyone in public service is invited.

## Training Registration



On December 18, the final webinar of 2017 will be conducted at 11:00 AM.

## Webinar Registration



Our e-course is available 24/7. Don't wait until the last minute! As the deadline approaches thousands log on simultaneously to take the course, overloading the bandwidth and slowing the process significantly. So, log on to our 2017 e-course – the sooner, the better!

## 2017 E-Course



# Business Associates & Public Contracts

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 article 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 partners in a partnership, co-owners of a business, outside employer, or 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 them.

## 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. 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 her business associate since they own the separate consulting business together. Therefore, the elected official could not vote to award a construction contract to her business associate with whom she owns the consulting company.

Likewise, if a public employee has the authority to make final purchasing decisions for his/her public agency, his/her 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 his 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 he owns the catering company. If there is no other public employee authorized to finalize the contract, his 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 or family member. As discussed above, a public official or employee would have to abstain from any final decisions that impact his/her business associate.

Under the Ethics Law, though, even if the official or employee abstains from the final decision, the law would equally prohibit him/her 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 his/her 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 his/her 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 pertaining to business associates include:



[Advisory Opinion 2009-06](#)



[Advisory Opinion 85-004](#)

You may also contact the Ohio Ethics Commission if you have additional questions.



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