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## **Conflicts of Interest**

Conflicts of interest occur in two primary ways. One is when a public official or employee accepts things like expensive gifts or even money. For more information regarding that provision of the law, please visit the [Gift Page](#) on our web site.

The second common conflict of interest involves public officials or employees taking official action or making decisions in matters that definitely and directly affect themselves, their family members, or their business associates.

The term “conflict of interest” is frequently used and often misunderstood. The basic assumption that underlies the Ethics Law is that Ohioans deserve public officials or employees who work for the public interest rather than their personal interests or those of closely related parties.

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## Overview of Conflicts of Interest

### ***Are conflicts of interest illegal?***

Having a conflict of interest is not illegal. In fact, conflicts are normal because public officials or employees have families and friends, and may have businesses, professions, investments, property interests, and other connections to their communities. Any of these connections could result in a conflict of interest for the official or employee. The issue is how the public official or employee responds to his or her conflict of interest.

Simply put, a public official or employee has a “conflict of interest” when his or her ability to be an objective decision-maker could be impaired by his or her own interests, or the interests of family members or business associates.

### ***Why is this part of the Ethics Law important?***

Taxpayers in Ohio deserve to know that government decisions, whether at the state or local level, are not compromised by a specific public official’s or employee’s benefit or personal gain. Every Ohioan has the right to expect that public decisions and public expenditures are objective and made with the public’s best interest at heart, not the interest of individual public officials and employees.

As a result, the Ohio Ethics Law prohibits public officials or employees from participating, in any way, in actions or decisions that definitely and directly involve their own interests, or those of their family members or business associates.

### ***Examples***

- A state employee who works as an inspector for the Ohio Department of Job and Family Services conducts an inspection [on behalf of her agency](#) at the day care center that her sister owns.
- At a board meeting, a state board member [discusses and votes](#) on a matter that impacts his firm’s client.

- A city employee who oversees public contracts for the city government is [monitoring](#) landscaping work being conducted at a city park. The city employee also works for the landscaping company on weekends.
- A county prosecutor's office employee [investigates](#) someone on behalf of the prosecutor's office. Unfortunately, the "someone" being investigated is also the person who employs the county employee part-time in his private life.
- A public employee [applies for a job](#) with the company she regulates on behalf of her public agency.

### ***How should public officials and employees respond to conflicts of interest?***

When someone in public service is confronted with a conflict of interest, he or she must completely abstain from making decisions about or influencing how the matter is resolved.

Such abstention or recusal should include refraining from:

- Voting
- Discussing
- Reviewing
- Recommending
- Inspecting
- Investigating
- Taking any other action on the matter

Remember, public officials or employees may NOT take any action in [matters](#) that definitely and directly affect themselves, their family members, or their business associates.

### ***Who is exempt from the conflict of interest law?***

The conflict of interest law applies to all public officials and employees. However, [certain teachers](#), professors, and instructors are not subject to the [conflict of interest law](#) if their position does not involve administrative or supervisory functions.

## Regulatory Matter Affecting a Public Official or Employee

***Is it illegal for someone to serve a public agency that may at some point consider a regulatory matter in which that public official or employee has an interest?***

The Ethics Law does not automatically prohibit someone from serving in a public position simply because he or she has an interest in a regulatory matter before his or her public agency. However, the Ethics Law generally prohibits a public official or employee from participating in a regulatory matter that would result in a definite and direct economic benefit or detriment to him or her, a family member, or a business associate.

***How does the Ethics Law define “participating?”***

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

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

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

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

### **Example**

Members of the Medical Board who are doctors regulated by the Board would be [prohibited](#) from participating as board members if a complaint were filed against them or another member of their practice. The board members would be equally prohibited from discussing a complaint filed against them with the Board's investigators or the Executive Director.

### ***What types of actions are not prohibited?***

There are some actions that public officials or employees are not prohibited from taking even though they may, in some manner, affect their interests:

- 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.
- 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 or she does not use his or her authority to secure the approval of his or her request.
- An official is not prohibited from [appearing](#) before the public agency he or she serves as a citizen, in the same manner available to other citizens, and testifying about his or her views on a property matter that affects him or her. (The official cannot, however, testify as the representative of others.)

## **Example**

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.

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 effect it will have on all other business in the square, the board member is prohibited from participating. 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.

## **Holding Two Public Positions (aka Dual Public Service)**

### ***What is dual public service?***

Dual public service simply means that someone is serving more than one public entity at a time. For example, a public university employee also serves as an elected city councilmember.

### ***Is dual service prohibited?***

Dual public service is not automatically prohibited by the Ohio Ethics Law. However, if a public official serves in more than one public position, the official has a conflict of interest if matters affecting one of the agencies come before the other public agency.

The Ethics Law prohibits a person 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 agency.

Also, a person cannot serve two agencies if there is a public 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.

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

A [public contract](#) exists whenever a public agency buys or acquires goods or services, from any source. A public contract exists regardless of whether there is a written contract. Grants, loans, tax abatements, revenue bonds, and land reutilization programs can all be public contracts.

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.

### ***How should a public official respond to dual service conflicts of interest?***

The public official must fully withdraw from all matters affecting the other public agency. 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) may be able to 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. The public 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. A public official cannot withdraw from a matter by [delegating](#) it to a subordinate.

#### ***Examples***

- 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.
- 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.

### ***Are there any exceptions to this prohibition?***

Yes, some narrow exceptions exist.

## **Examples**

- 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. However, she can work for the university provided that she does not have any financial or fiduciary interest in the grant.
- 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.

### ***Are there times when dual service is not prohibited?***

Yes. 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.

If someone 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.

### ***Can a person hold two positions with the same agency?***

No. A public official or employee is prohibited from having a [second employment position](#) with their own public [agency](#). However, public agencies have flexibility in assigning duties and compensating its [employees](#). The Ohio Ethics Law does not prohibit a public employee from accepting additional duties, and additional compensation, from his public employer within the scope of a [single employment contract](#) or relationship.

### ***Are there other laws that apply to dual service?***

Other laws that the Ethics Commission does not have jurisdiction over may stop an official from holding certain public jobs. Any official who wants to hold more than one public position should ask for advice from the legal advisors of the public agencies they want to serve. The Ohio Ethics Law does not cover whether positions are compatible, and the Ethics Commission cannot issue an opinion on the compatibility of public positions. For more information on the compatibility of public positions, please visit the [Attorney General's Website](#).

#### ***i* Need more information?**

- [Advisory Opinion 82-002](#) (job seeking and representation)
- [Advisory Opinion 86-001](#) (former state employee representing client before former employer)
- [Advisory Opinion 87-003](#) (serving on public board and non-profit board)
- [Advisory Opinion 89-006](#) (teaching at college that receives public grants)
- [Advisory Opinion 91-006](#) (public official's interest in gas and oil well drilling matters)
- [Advisory Opinion 91-009](#) (representation restrictions)
- [Advisory Opinion 92-004](#) (city council member married to planning commission member)
- [Advisory Opinion 92-005](#) (former assistant law director retained by port authority)
- [Advisory Opinion 92-013](#) (participating in infrastructure improvement matters)

- [Advisory Opinion 92-019](#) (participating in road extension matters impacting council member)
- [Advisory Opinion 96-002](#) (representation restrictions)
- [Advisory Opinion 99-001](#) (post-employment restrictions and former county Child Support Enforcement Agency attorneys)
- [Advisory Opinion 99-004](#) (simultaneously serving on Educational Service Center and Joint Vocational School boards)
- [Advisory Opinion 2007-01](#) (council member employed by college)
- [Advisory Opinion 2011-02](#) (department director's abstention)

## Public Officials & Employees Serving on External Boards

### ***Can a public official or employee serve on a non-profit board?***

It is common for public officials and employees to engage in activities and volunteerism in their communities. As a result, the Ethics Commission has been asked if there are restrictions for public officials and employees in serving on non-profit boards. In general, the Ohio Ethics Law does not prohibit a public official or employee from serving on a non-profit board if there is no connection between the non-profit organization and the public agency served by that public official or employee. This fact sheet will explore nuances and situations where public employees or officials can and cannot serve in both capacities.

### ***Can the public officials or employees serve on a non-profit board if the non-profit organization was created by, receives funds from, or contracts with his or her public entity?***

Public employees and officials can [legally serve on non-profit boards](#) in these situations if he or she is serving in his or her "[official capacity](#)."

### ***What is "[official capacity](#)?"***

The Commission has explained that, in some situations, a public agency may create or be a participant in a private non-profit corporation to provide necessary services to the citizens of the community that it could not otherwise provide. In those cases, to facilitate the agency's public services goals, a public official or employee can serve with another organization in a position that would otherwise be considered a conflict of interest, and [can fully participate in both positions](#), if he or she serves in his or her "official capacity" as a representative of the public agency.

### ***How is official capacity determined?***

Whenever a public official or employee serves on the board of directors of a nonprofit corporation in his or her official capacity, he or she [continues to pursue the interests of his or her public entity](#) and, therefore, there would not be a dual interest in which private considerations would distract from his serving the public interest.

There are four criteria that must be met for a public official or employee to be deemed to serve with a nonprofit corporation in his her [official capacity](#):

- (1) the public agency must create the non-profit corporation or participate in its operation;
- (2) the public agency must appoint the public official or employee to serve on the non-profit corporation;
- (3) the public agency must instruct the appointed public official or employee to represent his or her public agency and its interests; and
- (4) the appointed public official or employee must not have any other conflict of interest.

***If serving in an official capacity, can the public official or employee participate in evaluating, approving, and monitoring funding from the non-profit he or she serves?***

Yes. Because the public official or employee would be serving in his or her official capacity, the Ethics Commission has determined that there would not be a dual interest. Instead, his or her interest is public and official rather than private and would therefore be representing the interests of the governmental entity, [not his or her own interests](#).

***Can a public official or employee serve on a non-profit board that receives funding from his or her public entity?***

If the public official or employee is acting in his or her [official capacity](#), he or she can serve on the board that receives [funding](#), such as [grants](#), from his or her public agency.

***If serving in an official capacity, are there other Ethics Law issues of which the public official or employee should still be aware?***

Conflicts of Interest

When serving on a board in an official capacity, a public official or employee does not have to recuse from consideration of matters that affect the board or the public entity he or she serves. However, the public official or employee is [prohibited from participating in related public contracts](#) if there would be a definite or direct interest for the himself or herself, his or her family, or his or her business associates.

Supplemental Compensation

A public official or employee serving on a non-profit board in an official capacity means he or she is performing a public duty by serving on the board. As a result, under the [Supplemental Compensation restriction](#), R.C. 2921.43(A), the public official or employee is prohibited from receiving any additional compensation – including from the non-profit board – for the performance of those public duties.

## Confidentiality

Even if a public official or employee is serving on a board in an official capacity, he or she cannot divulge [confidential information](#) to board members or board employees.

### ***Can a member of a city planning commission participate in discussions or decisions to rezone property owned by a designated community improvement corporation of which he or she is a trustee?***

Yes, if the commissioner has been designated by the city to serve as a trustee in his or her official capacity. However, the commissioner cannot use his or her official authority or influence to ensure the [zoning change](#) is not approved if he or she is interested in purchasing the property and the failure of the commission to approve the zoning change would provide the commissioner the opportunity to buy the property

Further, the commissioner cannot – in any way – participate in the decision to rezone the property if his or her immediate supervisor in his or her private employment is the president of the [community improvement corporation](#).

### ***Can a fire chief or other city employee or official serve on the board of a non-profit organization created by the city and other jurisdictions to provide paramedic services?***

Yes, provided that the [fire chief](#) serve in his or her official capacity as designated by city council, and that no other conflicts of interest exist.

### ***Can a public official or employee serve as executive director of an organization if his or her public entity pays membership dues to the organization?***

Public agencies commonly pay [membership dues](#) to local organizations such as chambers of commerce, regional planning commissions, municipal leagues, or other professional organizations. In return for the membership dues, the public entity is granted access to and receives the benefits of the services provided to the organization's members.

When a public entity pays those membership dues, the organization provides a “service” to the city that meets the statutory definition of a “public contract.” Therefore, the question has historically arisen of whether someone could be the executive director of such an organization while also serving the public entity that is a due-paying member of the organization.

While this may be possible under the Ethics Law, there are [requirements and exceptions](#) to the public contract law that must be met and noted mandated recusal and

withdrawal from matters before his or her public entity that would definitely and directly affect the membership organization.

For example, R.C. 2921.42(A)(3) prohibits a public official or employee from “occupying a position of profit” or otherwise realizing a financial advantage, gain, or benefit resulting from a public contract authorized by the official/employee or the public board he or she serves. The public official or employee occupies a “position of profit” in a non-competitively bid contract awarded to the organization he or she serves as executive director if:

1. The organization’s establishment or operation is dependent on the funds provided by the public entity
2. The creation or continuation of his or her job at the organization is dependent on the funds provided by the public entity
3. The public official or employee’s compensation at the organization is provided by the public entity’s funding
4. The public official or employee would [otherwise profit](#).

Further, a public official or employee cannot serve as an executive director of an organization to which his or her public entity pays dues unless he or she also does not have an “interest” in the profits of public contracts between the public entity and the organization. To meet this requirement, a public official or employee must demonstrate that:

1. The goods or services that the membership organization provides to the public entity are necessary
2. The goods or services are unobtainable elsewhere for the same or lower cost or were established before the public official or employee became associated with the public entity
3. The treatment the membership organization provides to the public entity must be either preferential to or the same as that accorded to other due-paying members
4. The public entity has full knowledge of the public official or employee’s interest between the public entity and the membership organization, and he or she recuses from all deliberations or decisions regarding public contracts awarded to the organization.

Even if the official or employee can meet the requirements and exceptions outlined above, the Ethics Law prohibits him or her from using his or her position by voting, discussing, deliberating, formally or informally lobbying, or otherwise [participating](#), as a public official or employee, on matters that affect the interests of the organization he or she serves.

***Can a private attorney whose law firm provides legal counsel to a public agency also serve on the public agency’s board of directors?***

Yes, that is possible, though there would be [significant restrictions](#) upon the attorney's actions on the board. For example, he or she could not vote on, discuss, or take any other action – formally or informally – to secure, renew, or modify contracts between the public agency and his or her law firm.

In addition, the attorney serving as a board member must recuse from all matters pending before the board in which a member of the firm provides legal services to the board. The law may also prohibit the board member from altering his or her stated association with the law firm while serving as a member of the public board.

### ***Are there any implications for public schools?***

Yes, the Ethics Commission has issued two advisory opinions that may be helpful to public school officials and employees regarding serving on boards:

- A [member of an educational service center](#) (ESC) may also serve in an official capacity on the board of a joint vocational school district (JVS) even if the JVS contracts with the ESC, provided the member has no other conflicts of interest
- The person serving on both boards may vote on a contract between the JVS and the ESC
- A member of an ESC board may not serve on the JVS board if he or she is also an employee of the JVS
- A [school superintendent](#) may serve and participate in an official capacity on the board of a Data Acquisition Site that provides services to the school district or ESC the superintendent serves
- The Ethics Law makes public record any part of the superintendent's financial disclosure form that reveals a potential conflict of interest between the school district and the Data Acquisition Site

## Property Matter Affecting Public Officials/Employees & Their Families

The Ethics Law does not prohibit people from serving in a public position simply because the officials or their families own or have an interest in property that will be affected by an action of the public agency they serve. However, to protect the public by making sure that officials are not improperly influenced by the officials' or their families' private property interests, the Ethics Law generally prohibits the officials from participating in a property matter in which they or their family members have an interest.

### *What are the prohibitions related to property matters?*

The Ethics Law prohibits public officials from taking any formal or informal action on any matter that could provide a definite, financial benefit or detriment to property they or their family own. The official is prohibited from:

- voting
- participating in discussions
- participating in deliberations
- making recommendations
- providing advice
- formally or informally lobbying or
- taking any other action on the matter.

### **Example**

A city planning commission member has requested a zoning variance that, if granted, will increase or decrease the value of his or her property. The Ethics Law prohibits the commission member from [voting on the variance](#) and from taking any other action, formally or informally, to secure approval or disapproval of the variance by the planning commission.

The same recusal requirements would apply if the variance was sought by the commission member's family member.

### ***Are there other property prohibitions to note?***

Yes. The law also prohibits public officials from using the authority or influence of a public position over any other officials or employees, with respect to an issue that affects property they or their family member own. For example, a public official cannot recommend an action that would increase, or avoid a decrease to, the value of the official's own property.

Finally, public officials are prohibited from participating with respect to land use, zoning, or other property matters before the public agency that affect land adjacent to or near their or their family's property, if the matters will result in a definite and direct benefit or detriment to the value of the property.

#### ***Example***

A city council is considering extending a road that is 150 feet from a city council member's home. The Ethics Law prohibits the council member from using his or her [authority or influence](#) in any way regarding the extension.

### ***Are there actions that are not prohibited even if they may, in some manner, impact property value?***

Yes, several:

- An official is not prohibited from participating or voting on general legislation (such as the adoption of a new zoning code) that provides a [uniform benefit](#) to all or most property within the community, including property owned by the official or a relative
- An official is not prohibited from applying to the public agency, in the same manner available to any other citizen, for a variance or other regulatory change involving his or her property, as long as he or she does not use his or her [public authority](#) to secure the change
- An official is not prohibited from [appearing](#) before the public agency he or she serves as a citizen, in the same manner available to other citizens, and testifying about his or her views on a matter affecting his or her property. (The official cannot, however, testify as the representative of others.)

### **Example**

A planning commission is considering a change to the city's setback requirement that will affect all property owners in the city, including the planning commission members, in the same way. The Ethics Law does not prohibit the commission members from participating in the adoption of the change.

However, if the setback change will affect a fraction of properties in the community, and a commission member owns one of the properties, the commission member is prohibited from participating in the matter. Also, if the setback change will affect a planning commission member's property in a manner that is unique, or different from the impact of the change on other property owners, the planning commission member is prohibited from participating.

### **Need more information?**

- [Advisory Opinion 79-008](#) (voting on zoning changes impacting spouse)
- [Advisory Opinion 88-004](#) (general and uniform benefits)
- [Advisory Opinion 92-013](#) (participating in infrastructure improvement matters)
- [Advisory Opinion 92-019](#) (participating in road extension matters impacting council member)
- [Advisory Opinion 98-002](#) (matters impacting family member's property)

## Public Servants and Outside Businesses

People who serve in the public sector often also have private outside businesses. Some may have a full or part-time job in addition to public service, some may do consulting work, or some may even own their own companies.

In most situations, the Ethics Law does not prohibit a public official or employee from engaging in [private employment](#) or business activity. However, a public official or employee must follow certain restrictions when working an outside job or running a business.

For example, the law prohibits public officials or employees from:

- using [public time, facilities, personnel, or resources](#) in operating a private business or while engaging in private outside employment. For example, a public official is prohibited from conducting demonstrations for clients on public equipment
- using their official [titles or identification](#) on private business cards or other written materials or appearing in uniform while soliciting business or conducting demonstrations for clients
- using public service [relationships](#) to secure a favorable decision or action by another official or employee regarding their private interests
- discussing, deliberating, or voting on any matter involving their [private business](#), including recommending their employer's or business's services to their own public agency
- [performing](#) (or refraining from performing) their public duties in a manner that would enable them to realize personal financial gain
- charging clients fees for the [same services](#) that they are required to provide as a public official or employee
- participating in decisions or making recommendations regarding their [competitors](#)
- receiving future compensation, employment, consulting fees, or any other thing of value from their public agency on a project on which they [advocated](#) their public agency proceed. This prohibition applies regardless of whether the public officials or employees resign or retain the public position
- using their public position to benefit an outside employer or business interest

## Rendering Services on a Matter Before Another Public Agency

Public officials may be asked to represent clients or perform work on matters that are before public agencies. For example, private lawyers, architects, engineers, lobbyists, consultants, and other professionals may either appear on behalf of clients, or perform work for clients, on matters that are before public agencies.

The Ethics Law outlines times when public officials or employees are prohibited from accepting compensation to [represent clients](#) before public agencies. The four representation provisions in the Ethics Law are:

- State Officials and Employees Rendering Services – R.C. 102.04(A)
- State Officials and Employees Selling Goods and Services – R.C. 102.04(B)
- Local Officials and Employees Rendering Services – R.C. 102.04(C)
- Exception for Non-Elected Officials – R.C. 102.04(D)

## State Officials Rendering Services

### ***What is the restriction?***

R.C. 102.04(A) prohibits any state official from receiving compensation, other than from the agency he or she serves, for any services he or she renders personally on any case, proceeding, or other matter before any state department, board, commission, agency, or other body.

### ***To whom does R.C. 102.04(A) apply?***

The restriction applies to all state officials and employees, including members of state boards even if they are not compensated for their board service. The restriction applies regardless of the subject matter on which the official is providing services.

### ***What is meant by “representing or personally performing services”?***

Even though this restriction is sometimes called the “representation” restriction, it applies to more than representing. Representation or performing services includes:

- negotiating or discussing matters with agency personnel or contractors
- appearing at an agency meeting or hearing
- preparing pleadings or documents to be filed with or submitted to an agency

A public official or employee cannot be paid by a client to perform any services on a matter that is being reviewed or decided by a public agency, even if he or she will not personally appear before the agency.

### ***When is a matter “before” a state agency?***

A case, proceeding, application, or other matter is “before” a state agency when it is “being considered by, decided by, or in the presence of or under the official purview of” the state agency.

## **Examples**

- A state board member who is an attorney in private practice is prohibited from receiving payment from a client to attend a meeting with a state agency on a [matter affecting the client](#).
- A state employee is prohibited from preparing drawings for a client of his architectural firm to be filed in connection with a matter being decided by a state agency, even if he or she will not attend any agency meetings or hearings on the matter.

### ***Are there any exceptions?***

Yes. There is an exception in R.C. 102.04(D) which would allow a non-elected state official or employee to represent or perform services on a matter before state agencies other than the one he or she serves. The official or employee is also required to submit a form known as the R.C. 102.04(D) statement (see the [Exception for Non-Elected Officials chapter](#) for additional information on R.C. 102.04(D)).

For example, the state officials and employees in the examples above may represent these clients before another state agency if he or she completes the required documentation described in the [Exception for Non-Elected Officials chapter](#). However, a state official or employee cannot represent a client in front of his or her own state agency.

## State Officials and Employees Selling Goods and Services

### ***What is the restriction?***

This provision of the law prohibits a state official or employee from selling goods or services to any state agency, except through competitive bidding.

### ***To whom does R.C. 102.04(B) apply?***

The restriction applies to all state officials and employees, including members of state boards even if they are not compensated for their board service.

### ***Are there any exceptions?***

Yes. The exception in R.C. 102.04(D) allows a non-elected state official or employee to sell goods or services to state agencies other than the one he or she serves. The official or employee is also required to submit a form known as the 102.04(D) statement (see the [Exception for Non-Elected Officials chapter](#) for additional information on R.C. 102.04(D)).

### ***Example***

A state employee working at The Ohio Department of Agriculture is prohibited from [selling](#) tool sharpening services to his or her own agency. However, that state employee could potentially sell tool sharpening services to the Ohio Department of Rehabilitation and Corrections if the sale is competitively bid, and he or she submits the lowest and best bid. The state employee would also have to complete the required documentation described in the [Exception for Non-Elected Officials chapter](#).

## Local Officials and Employees Rendering Services

### ***What is the restriction?***

R.C. 102.04(C) prohibits an official or employee of a local agency from receiving compensation, from anyone other than the department or sub-unit of the agency he or she serves, to perform services on matters before any other department or sub-unit of the local agency.

### ***To whom does R.C. 102.04(C) apply?***

The restriction applies to officials and employees of local public agencies—for example cities, counties, and school districts.

### ***Are there any exceptions?***

Yes. The exception in R.C. 102.04(D) allows a non-elected local official or employee to perform services on a matter that is pending before a department or sub-unit of the agency other than the one he or she serves. The official or employee is also required to submit a form known as the 102.04(D) statement (see the [Exception for Non-Elected Officials chapter](#) for additional information on R.C. 102.04(D)).

### ***Example***

An employee of a city zoning department cannot accept [compensation from a client](#) to prepare plans that will be filed with and approved by the zoning department, because the approval of the plans is a matter that is before her city department.

## Exception for Non-Elected Officials

### ***What is the R.C. 102.04(D) Exception?***

R.C. 102.04(D) allows certain non-elected public officials and employees to represent someone before a different public agency. However, the non-elected public officials and employees must file a statement before using the exception.

### ***To whom does R.C. 102.04(D) apply?***

R.C. 102.04 applies to hired or appointed public officials and employees. Elected officials cannot use the exception in R.C. 102.04(D).

### ***How can a non-elected public official or employee use the exception?***

Before providing any services or selling any goods to an agency, the non-elected public official or employee must file a [R.C. 102.04\(D\) statement](#) with:

- The Ohio Ethics Commission
- The official's own public agency
- The public agency where the matter is pending or where the official wants to conduct business

On the R.C. 102.04(D) document, the public official or employee states that he or she is representing someone before a public agency and that he or she will disqualify himself or herself from any matter involving any public official or employee of that agency.

### ***Who does not need to utilize the R.C. 102.04(D) exception?***

- A state public official or employee who is representing someone in front of a local public agency does not need to file a R.C. 102.04(D) statement.
- A local public official or employee who is representing someone in front of a state public agency does not need to file a R.C. 102.04(D) statement.
- A state or local public official or employee who is representing someone in front of a court does not need to file a R.C. 102.04(D) statement.

** *Need more information?***

- [Advisory Opinion 2007-03](#) (state board member paid for services before state agencies)
- [Advisory Opinion 93-010](#) (state board member representing clients before another state agency)
- [Advisory Opinion 89-010](#) (selling tool sharpening services to another state agency)