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The Ohio Ethics Law & Non-Profit Organizations

Non-profit organizations play an important role in strengthening Ohio's communities. Whether supporting schools through booster clubs and educational foundations, enhancing parks and recreation programs through "Friends of" organizations or foundations, assisting public libraries, supporting first responders, or partnering with other public agencies, these organizations help provide resources, opportunities, and services that benefit the public.

Because non-profits frequently interact with public officials and employees, raise funds for public purposes, and provide support to government programs and activities, it is important to understand how Ohio's Ethics Law may apply to these relationships. While non-profit organizations are often motivated by charitable and civic-minded goals, the Ethics Law helps ensure that government decisions remain impartial, transparent, and made in the best interests of the public.

As a result, non-profits that work with, support, seek funding from, or otherwise interact with government agencies should be aware of the Ethics Law and the important role it plays in maintaining public trust. The following are some of the most frequently asked questions about non-profit organizations and the Ethics Law.

Can non-profits give gifts or other things of value to public officials or employees?

Non-profit organizations often express gratitude to supporters, volunteers, and community partners through gifts, meals, event invitations, and other forms of recognition. However, when those partners include public officials or employees, the Ethics Law places important limits on what may be offered or accepted.

While non-profit organizations may voluntarily donate items or services to public agencies, provided no public official or employee personally benefits from the donation, R.C. 102.03(F) prohibits a person or non-profit organization from promising, offering, or giving "things of value" to a public official or employee if the things of value could have a "substantial" and "improper" influence on the public official or employee. To determine whether a thing of value would have a substantial and improper influence on a public official or employee, it is necessary to consider both the source and the nature of the thing of value.

The Ethics Commission refers to the following persons or entities as "improper sources" for purposes of gift restriction:

- Those who are doing or seeking to do business with a public agency;
- Those who are regulated by a public agency; or
- Those who have an interest in matters before a public agency.

A private entity, including a non-profit, that has one of the above connections to a public entity is an "improper" source of gifts and cannot offer or give "substantial" gifts to a public official or employee.

What is a "substantial" gift?

"Substantial" gifts could include jewelry, the promise of future employment, meals at expensive restaurants, entertainment activities, such as exclusive golf outings or season tickets for a professional sports team, or travel, meal and lodging expenses.

Small gifts that are not prohibited include meals at a family restaurant, promotional items, a basic t-shirt, or an inexpensive entertainment activity. However, multiple items of minimal value should not be offered to public servants if the combined value becomes substantial. It is also helpful to keep in mind that individual government agencies may have policies that are even more strict than the Ethics Law.

Can a non-profit provide a ticket to a charitable fundraising dinner?

A non-profit may provide a complimentary ticket to a public official or employee attending a fundraising dinner as a guest if the only thing of value included is an "ordinary and routine" meal. In that circumstance, the public official or employee may accept the ticket without reimbursing the non-profit, provided no additional things of value are included.

Can non-profits give "tips" or other financial gifts of gratitude to public officials or employees?

No. Private organizations – including non-profits – cannot promise or give anything of value to a public servant with the intent to compensate the public servant for some official action, inaction, or decision, regardless of motivation.

Payment to a public servant from any source other than the public agency he or she serves – known as Supplemental Compensation – may give rise to divided loyalties and motivate the public servant to make decisions that benefit the source of the supplemental compensation.

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

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 and the public agency served by that public official or employee. However, there are nuances and situations where public employees or officials can and cannot serve in both capacities. For example, public officials and employees can only serve on a non-profit board that was created by, receives funds from, or contracts with his or her public entity if he or she is serving in his or her "official capacity."

What is "official capacity?"

The Commission has explained that a public agency may create or participate in a non-profit organization to provide necessary services to the community. To further the agency's public-service mission, a public official or employee may serve in both the public position and a position with the non-profit – even if doing so would otherwise present a conflict of interest – provided the individual serves with the non-profit in an "official capacity" as a representative of the public agency.

How is official capacity determined?

Whenever a public official or employee serves on a non-profit board in his or her official capacity, he or she is expected to serve as a representative of the public employer that appointed him or her to the non-profit board position. The public official's or employee's service with the non-profit is an extension of his or her service with the public agency.

A public official or employee must meet four criteria to use the official capacity exception:

(1) the public agency must create the non-profit or participate in its operation;
(2) the public agency must appoint the public official or employee to serve on the non-profit;
(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 is 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.

However, the public official or employee is prohibited from participating in related public contracts if there would be a definite or direct financial interest for himself or herself, his or her family, or his or her business associates.

Can non-profits pay for travel expenses and honoraria for public speakers?

The Ethics Law limits outside parties from covering the cost of travel or offering honoraria (payments for speaking engagements) to public officials or employees who may be serving as public speakers for conferences or similar events.

This provision of the Ethics Law differs on whether the public official is required to file Financial Disclosure Statements with the Ohio Ethics Commission. For those who must file this statement, the Ethics Law:

- Prohibits private sector parties from offering honoraria to disclosure filers, but
- Does not prohibit private sector parties from providing actual travel expenses to disclosure filers at meetings where:
  - the public official will participate in a panel, seminar, or speaking engagement; or
  - the public official will attend a meeting or convention of a national organization to which any state agency pays dues.

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

The Ethics Law prohibits a public official from being employed by a non-profit if the establishment or operation of the non-profit is dependent upon receipt of the public agency's financial assistance, or the public official would otherwise profit from the award of the contract.

Are there restrictions on public officials or employees working for non-profits after public service?

Yes. The Ethics Law limits "revolving door" activity, just as non-compete agreements impose limits in the private sector, to protect against conflicts of interest. Individuals who leave government service have, in effect, a "cooling off" period before they can "represent" new employers or clients before government agencies on matters in which they had participated at the former public agency.

"Representation" includes making any kind of formal or informal appearance before or having any kind of written or oral communication with any public agency (not just the official's former agency) on behalf of that person.

Can public officials or employees volunteer with non-profits?

Public officials or employees are not prohibited from volunteering for non-profits. The Ethics Law provides an exception to the conflict of interest provision if a public official or employee is merely a member of a non-profit. (R.C. 102.03(J))

The exception does not apply to a public employee who is an employee of a non-profit or who serves as a trustee, director, officer, or fiduciary of a non-profit. The exception also does not apply to a member of a non-profit who has assumed a particular responsibility for the non-profit regarding the matter that is before his or her public agency. Finally, the exception does not apply if the matter before the public agency would affect the public official or employee's personal financial interests.

Can public officials or employees fundraise for non-profits?

Public officials or employees are not prohibited from fundraising for a non-profit. However, the Ethics Law imposes two important limitations. First, a public official or employee may not use the authority of his or her public position – including public time, public resources, or an official title – to solicit donations. Second, a public official or employee may not solicit, accept, or secure donations from any party that is regulated by, interested in matters before, or doing or seeking to do business with the public agency the official or employee serves.