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Public Contracts

A public contract exists whenever a public agency buys or acquires goods or services, regardless of whether there is a written [contract](#). Examples include grants, property, or goods such as office supplies, vehicle purchases, or even construction on public [buildings](#). The purchase or acquisition of services include examples such as consulting services, court reporting, or [insurance](#).

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Public Contract Prohibitions

A public official or employee cannot use his or her authority to secure a public contract where the official, his or her family member, or his or her business associate has an [interest](#). Whether the public official or employee directly uses a public position to authorize a public contract - or somehow influences the process - in favor of a family member or outside business associate, that is prohibited behavior. In fact, this is a fourth-degree felony under the [Ethics Law](#).

What is the purpose of this provision of the law?

The Public Contract provision of the Ohio Ethics Law exists to ensure that public officials or employees do not abuse their public positions to secure or directly profit from public contracts, either for themselves, their family members, or their outside business associates.

How can recusal help?

When a public employee's or official's family member or business associate wishes to pursue a public contract, the public employee official must completely recuse himself or herself from the process. That does not merely mean the final decision-making process, but also any discussion, reviewing, recommendations or any other [action](#).

What is the investing prohibition?

This provision of the law prohibits public officials or employees from directly investing or authorizing investments of public funds where the public official or his or her family members or business associates would directly [benefit](#). This violation is a fourth-degree felony under the [Ohio Ethics Law](#). The public is entitled to know that when public money is invested, it is done so with the public's best interest at heart; not the in the interest of a public servant or those close to them.

What is profiting from a public contract?

A public official or employee who authorizes contracts or is a member of any board or committee that authorizes contracts, including a governing board (such as a city council, school board, or board of trustees), is prohibited from occupying a position of profit in a contract if the contract is authorized by the official, or by a body, committee, or board of

which she sits, unless the contract is competitively bid and awarded to the lowest and best [bidder](#).

A public contract has been authorized by an official, body, board, or commission where the contract could not have been awarded without the approval of the board or official, the position in which the official serves, or the public entity with which he or she [serves](#).

If a board for an agency will authorize or approve a contract, a member of the board would be prohibited from receiving any profit from the contract unless the contract is competitively bid and awarded to the lowest and best [bidder](#). This is true even if the board member does not participate in the board's approval or authorization of the [contract](#).

Business Associates and Public Contracts

Public officials and employees may have business interests outside their public service. However, there are prohibitions regarding 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: (1) partners in a partnership; (2) co-owners of a business; (3) outside employer; and (4) 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, if there is no other business relationship between the board [members](#).

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 or 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.

Example

An elected official co-owns a consulting business with someone who also owns a construction business (in which the elected official is not involved). 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 is not involved). 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 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 or 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](#).

i ***Need more information?***

- [Advisory Opinion 2009-06](#) (expenditures of stimulus funds)
- [Advisory Opinion 85-004](#) (acting on public contracts that impact business associates)

Selling Goods and Services to Public Agencies

The Ohio Ethics Law and related statutes prohibit public officials and employees from selling goods or services to the agencies they serve unless very specific exceptions are met.

What if the public official or employee abstains from the process?

Using the authority or influence of a public position to secure or even attempt to obtain a public contract or payments from one's own public agency is illegal under the Ohio Ethics Law; [a fourth-degree felony](#), in fact. The official is even prohibited from discussing his or her contract with other officials or employees of the same [agency](#).

Recusal, however, does not remove the general prohibition against public officials and employees from having an interest in the profits or benefits of a public contract entered by or for the use of a public agency with which they are connected.

What does it mean to be “connected” to a public entity?

The Ohio Ethics Law prohibits public officials and employees from selling goods or services to the public agency with which they are “connected.”

A person is “connected” with the agency he or she [serves](#). In local governments, a public official or employee is connected with the broader governmental entity. For example, a person who works for the county is connected with all county agencies. An employee of the county engineer's office is prohibited from selling computer to the sheriff's office. A city council member is prohibited from selling uniforms to the police department.

State employees are connected specifically to the state agency they serve, not the entire body of state government.

Are there any exceptions?

Yes, there are exceptions to note which are outlined below.

Stockholding Exception

The first exception applies to both state and local government officials and employees. When an official is a stockholder of a company, owns less than five percent of the stock in a company, and files an affidavit about the stock ownership with the public agency, he or she will not have a prohibited interest in any contract between the agency and the company. The exception does not apply if the official has any additional connection with the company, such as [employment](#).

For example, if a city employee owns less than five percent of the stock in a car company, and she files an affidavit with the city disclosing her stockholding, she does not have a prohibited interest if the city buys a car from the company.

Four-Part Exception

There is another exception. For the exception to apply, the public official must be able to show that he or she meets all four of the following requirements:

Requirement 1: The goods or services are necessary goods or [services](#). In other words, the agency can demonstrate that it needs the goods or services the official will provide.

Requirement 2: Either the goods or services are part of a continuing course of dealing or they are unobtainable elsewhere for the same or lower [cost](#). There are two ways the official can show that he or she meets this requirement.

First, the official can meet the requirement if he or she is supplying goods or services to the agency as part of a continuing course of dealing established before he or she was elected or employed. In other words, if the official had a contract to sell goods or services to the agency before being hired, he or she can continue to perform that [contract](#). However, if there was simply a practice of purchases, or if there are any significant changes to the contract (including cost), the official cannot meet this exception. If the official believes that he or she can show this requirement is met, he or she should contact the legal advisor for the public agency, or the Ethics Commission, to independently assure that the requirement can be met.

Second, the official can meet the requirement if the agency cannot get the goods or services from any other source for the same or lower cost. However, the agency must use some objective price comparison and must provide adequate notice to other suppliers of the same goods or services, in a fair and impartial purchasing [process](#). If

the official provided the lowest and best bid after a fair and open competitive bid or offered the lowest price on the goods as determined by some other fair and objective process, the official may be able to demonstrate that he or she meets this requirement.

Requirement 3: The treatment that the official provides to the agency is the same as, or better than, the treatment that he or she provides to other customers or clients in similar [transactions](#). In other words, the official must treat the agency the same as, or better than, he or she treats the other customers or clients of the business.

Requirement 4: The transaction is conducted at arm's length, the agency has full knowledge of the official's interest in the sale of goods or services, and the official has taken no part in the deliberations or decision with respect to the [transaction](#). The official must first show that he or she did not use any unique access as an agency employee to secure the contract. Then the official must show that he or she has fully informed the agency that he or she is interested in the transaction. Finally, the official must show that he or she was not involved in any discussions, decisions, or votes about the contract.

Do these restrictions apply to both state and local governments?

Yes, however it is important to note that the law is even more stringent for state officials and employees.

The Ethics Law prohibits state officials or employees from selling goods or services to any state agency, except through competitive [bidding](#). For example, a person employed by a state department is prohibited from selling a computer to another state agency, unless the contract is competitively bid.

Is there any circumstance in which state officials and employees can sell goods and services to the state?

Non-elected state officials and employees may sell goods or services to state agencies other than the one they serve if they complete, sign, and file the statement described in R.C. 102.04(D). In that statement, the officials must disclose:

- Their name and home address
- The name and mailing address of the state agency they serve
- The name and mailing address of the state agency to which they wish to sell goods or services and
- A brief description of the goods or services they wish to [sell](#).

The statement also includes a declaration that the official is disqualified for two years from any participation as a state official in any matter involving any official or employee of the state agency to which he or she will sell goods or [services](#).

The state official is required to file the statement with:

- The state agency he or she serves
- The state agency to which he or she wishes to sell goods or services and
- The [Ohio Ethics Commission](#).

i ***Need more information?***

- [Advisory Opinion 82-007](#) (accounting firm partner contracting with regional sewer district appointed as district trustee)
- [Advisory Opinion 84-013](#) (city employee marketing software developed by private employer)
- [Advisory Opinion 84-014](#) (receiving commission for purchase from private employer)
- [Advisory Opinion 87-002](#) (county official selling property/services to county)
- [Advisory Opinion 88-008](#) (serving as insurance company director with public contract)
- [Advisory Opinion 89-010](#) (selling tool sharpening services to another state agency)
- [Advisory Opinion 90-003](#) (selling goods/services to school district)
- [Advisory Opinion 90-005](#) (selling goods on “as needed” basis)
- [Advisory Opinion 2001-02](#) (port authority board member owns company seeking bond)

Grants and the Ohio Ethics Law

The Ohio Ethics Law assures that government decisions and public expenditures, whether at the state or local level, are objective and serve the public's interest. This chapter outlines how that protection extends to public grants.

Are public grants subject to the Ohio Ethics Law?

Yes. [Public grants of money](#), such as federal or state stimulus funds, constitute "public contracts" and therefore are subject to protections under the Ohio Ethics Law.

What are public contracts?

A public contract exists any time a public agency buys or receives goods or services, including computers, office supplies, vehicles, construction, and insurance policies, or hiring consultants and court reporters. This is true even if there is no formal, written contract and regardless of the amount spent. Grants are also public contracts because the public agency issuing or awarding the grant is receiving a service in return - such as economic development, urban revitalization, or infrastructure improvements.

What are the restrictions under the Ethics Law as they pertain to grants?

The Ohio Ethics Law protects the public by prohibiting public officials and employees from using their office to receive a public contract where they, their family member, or their business associate has an interest. Directly using a public position to authorize a public contract - or otherwise influencing the process - to favor oneself, a family member or outside business associate, is illegal. In fact, this can be a fourth-degree felony under the Ethics Law.

Can public officials and employees' family members or business associates apply for grants from that public agency?

The Ethics Law does not prohibit family members or outside business associates of public officials and employees from receiving benefits from a grant program offered by the public official or employee's own public agency. However, the applicant must meet the specified requirements to participate in the program and not benefit from the program in a manner that is not available to other individuals. Furthermore, public officials and employees are [prohibited](#) from authorizing or soliciting any funds, or any

other kind of benefit related to grant program, for their family members or business associates; complete recusal is required.

As a result, when a public official or employee's family member or business associate wishes to apply for grants or other public funds, he or she must completely [recuse](#) himself or herself from the process. That does not merely mean the final decision-making process, but also any discussion, review, recommendations, or any other action.

What is meant by "recusal?"

The Ohio Ethics Law, specifically R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E), prohibits public officials and employees from authorizing, or using their positions to secure the authorization of, a public contract for themselves, their family members, and business associates. As a result, the public official or employee would be prohibited from:

- participating in the review or consideration of the application (or of any other applications) directly competing for allocations of the same funds;
- lobbying for, recommending, or otherwise using a public position and the authority and influence inherent in it to secure the funds;
- discussing, making recommendations, or reviewing the application, or taking any other formal or informal action, within the scope of public authority regarding the application;
- using their public position to secure quicker or more favorable consideration of the application for funding; and
- processing the application or taking any action to more favorably position the family member or business associate to receive the funds.

Example

Daniel is an employee at the Regional Planning Department, the agency that administers federal HUD money for a lead abatement program. His brother has applied for funding. Therefore:

- Daniel's brother must meet the specific grant requirements and cannot benefit from the program differently from other grant recipients;
- Daniel cannot participate in discussing, reviewing, considering, processing his brother's application **OR** other applications competing for the same funds;
- Daniel cannot recommend or lobby in any way on behalf of his brother in the grant process or use his authority to influence the decisions or actions of other public officials or employees on behalf of his brother; and
- Daniel cannot use his public job, time, or equipment to secure quicker or more favorable funding consideration for his brother.

In summary, Daniel must completely recuse himself from any action - formal or informal - on behalf of his brother throughout the entire grant process.

Are there restrictions after the grant is awarded?

Yes. If a public official or employee's family member or business associate applies for a grant from the official or employee's own agency and the official or employee abstains from all action as outlined above, there are still restrictions the official or employee must observe.

In the example above, Daniel would be prohibited from participating in matters that would affect the continuation, implementation, or terms and conditions of the grant funding his brother received. Daniel must abstain from the authorization or approval of payments of the funding or the renewal, modification, termination, or renegotiation of the funding terms.

Daniel would be prohibited from discussing, reviewing, assessing, or otherwise evaluating his brother's use of the grant funds to determine whether funding guidelines have been complied with or if his brother is qualified for additional funds.

Would it matter if the grant request is minimal?

No. The dollar amount of a grant request is irrelevant because any public expenditure is a "public contract" under the Ohio Ethics Law. Public officials or employees who use their positions to obtain grant money for themselves, their family members, or their business could be subject to a fourth-degree felony violation of [R.C. 2921.42\(A\)\(1\)](#).

Can public officials and employees apply for grants from their own agencies?

The Ethics Law prohibits public officials and employees from having an interest in the profits or benefits of a public contract awarded by their own agencies, including grants.

Therefore, public officials and employees are prohibited from applying for or receiving grants administered by their own public entities.

However, there is an exception to this prohibition under [R.C. 2921.42\(C\)](#). A public official or employee doesn't have a prohibited interest in a grant if:

- It is a necessary supply or service for the public entity. (The Ethics Commission has determined that some grants are "necessary," such as publicly funded Community Development Block Grants).
- The grant is unobtainable elsewhere for the same or lower cost or is part of a continuing course of dealing established before the public official or employee's association with the public entity (The Ethics Commission has determined this can be met if all qualified applicants who are not public officials or employees have been served and funds are still available).
- The same treatment is given to all who apply for the grant funding.
- An "arm's length transaction" was observed (see above description of recusal) and the public entity administering the grant money has full knowledge of the public official or employee's participation and the grant process must be fair and objective with no preference given to public officials or employees.

This exception would not apply if the public official or employee plays a role in the grant process or serves on a public body that approves grant money. In those circumstances, the public official or employee cannot seek or obtain grants from his or her own public agency.

Does recusal “cure” the conflict?

No. If a public body authorizes or approves the decision on the distribution of funds, [R.C. 2921.42\(A\)\(3\)](#) prohibits any board member during public service, and for one year after, from occupying any position of profit in the award of the grant money, even if he or she recused and abstained from participating in the process while serving on the board.

Example

Sandy is an elected city council member who also owns a small apartment complex. Sandy has applied for a Community Development Block Grant from funds provided to the city and then distributed by the city.

- If the city council approves the grant money, even with recusal, [R.C. 2921.42\(A\)\(3\)](#) prohibits Sandy from receiving the grant (cannot profit from a public contract).
- If the city council plays no role in the grant approval, Sandy still can't receive a grant under R.C. 2921.42 (A)(4) (having an “interest” in the grant) unless the exceptions under R.C. 2921.42(C) are met. Even if those exceptions are met, Sandy cannot participate in the review of her or any other grant application.

Can a public official or employee apply for a job with a grantee?

The Ethics Law does not absolutely prohibit current or former public officials or employees from seeking or accepting employment from a grantee of his or her former public agency. However, for a period of one year after leaving public service, the former employee is prohibited from accepting employment in any position where he or she would profit from contracts that he or she authorized as a public employee. Examples of profiting from a public contract would include if:

- The establishment of the organization is dependent upon the grant;
- The creation or continuation of the employment position is dependent on the grant; and

- The grant money would be used to fund the salary of the employment position.

Example

Jordan is an Assistant Director of an agency, and he reviews grant proposals and recommends approvals to the agency Director. Jordan is now seeking a job with a nonprofit organization that received grant money from the agency during his time as an Assistant Director.

If Jordan's involvement was necessary for the grant to be awarded (even if the grant was ultimately approved by the agency Director), there is a twelve-month prohibition from Jordan accepting employment with the nonprofit if Jordan profit as outlined above.

Would there be any restrictions after the former public official or employee is working at the entity that received from public grants from his/her former agency?

Yes. For twelve months after leaving public service, the Ohio Ethics Law prohibits most former public officials and employees from representing a new employer before any public agency on a matter in which the former employee personally participated, including processing and awarding grants. (Note: there is a two-year prohibition for former PUCO board members and attorney examiners, former Casino Control Commission staff and board, and those who exercised discretion for solid and hazardous waste. For all other former officials and employees, the [prohibition](#) is for one year).

Can I serve on a non-profit board that might request grant money from my agency?

While a public official or employee is not strictly prohibited from serving on a nonprofit board, there are potential conflicts of interest, even if the public official or employee is not compensated for serving on the nonprofit board. For example, he or she has a fiduciary responsibility and relationship with the nonprofit board and therefore must completely withdraw from any involvement in issues at her agency that affect the nonprofit organization. The Ethics Law prohibits public servants from securing public contracts – including grants – for their outside business associates, which includes nonprofit boards on which they serve.

Although the nonprofit can apply for the grant, the public official or employee may play no role in reviewing, discussing, recommending, or lobbying with agency personnel regarding the nonprofit's grant application. Even if the public official or employee abstains from all communication and action with agency personnel regarding the grant process, he or she may not be able to continue to serve on the board if the nonprofit is awarded the grant from the official or employee's public agency.

How does subcontracting pertain to public officials and employees and grants?

As previously noted, a grant administered by or through a public agency is a public contract and public official or employee cannot participate in the authorization of any contracts, including grants, in which they, their family members, or their outside business associates have an interest.

A subcontract under a public contract is also subject to the Ethics Law. As a result, public officials and employees must recuse themselves from participating in any grant processes in which they, their family, or business associates would obtain a subcontract under the grant funds.

Example

The City of Anywhere, Ohio has applied for a \$10 million state grant to revitalize its downtown space by rehabilitating several historic buildings. The city's grant application identifies the general contractor that would undertake the construction as well as the subcontractors that have been retained should the grant bid be successful. The plumbing company that is lined up to subcontract for the project is owned by the sister of a department chief at the state agency administering the grant.

The department chief is prohibited from participating in any part of the grant discussion and decision-making, even if the sister's plumbing company is a subcontractor and not the general contractor of the proposed project.

Is there an exception for home improvements?

Yes. There is a narrow [exception](#) that allows public officials and employees who did not participate in the grant process to secure housing program funding for their personal residence in similar fashion as other citizens.

Public Jobs and Family Members

Many families have a strong tradition of public service, and two or more family members may serve the same public entity. However, the Ethics Law forbids public officials or employees from authorizing or using a public position to secure a public job for a family [member](#). Therefore, public officials and employees are prohibited from using their public position to directly hire, or to indirectly secure the hire, of a family member. In fact, in Ohio, securing a job or job-related benefits for a family member - commonly referred to as “nepotism” - is a [fourth-degree felony](#). In this document, we will explore the issues related to family hires and the Ohio Ethics Law.

Can I hire my family member?

No, under the Ohio Ethics Law, public official or employee cannot authorize a family member’s employment or use his or her position in any way to obtain a public job for a family member.

What does it mean to “use a public position” to obtain a job for a family member?

Directly hiring a family member is illegal. However, the Ohio Ethics Law also prohibits public officials and employees from indirectly influencing the hiring process for a [family member](#). Examples of such indirect – but equally illegal – influences could include recommending a family member, participating in discussions about the family member’s job application, or requesting an interview or job for a family member. Prohibited activity would also include school board members voting on stipends that would secure their family members as district employees for summer camps and summer schools.

Are family hires a criminal matter or just bad public policy?

The Ohio Ethics Law, which includes prohibitions against securing a job or job-related benefits for a family member, is a criminal statute. While public agencies are wise to be aware of the appearance of impropriety that accompanies family hires, it’s important to understand that, in Ohio, the crime of securing a job or job-related benefits for a family member is a [fourth-degree felony](#).

Why does this issue matter so much?

Fair hiring practices are mandatory in government. Public agencies are required to conduct all hiring activity in a fair, open, and impartial manner. Giving precedence or advantages to family members in public hiring is unfair to other applicants who may be equally or even more qualified. Even more importantly, family hires are unfair to the public; all Ohio citizens have the right to expect that government jobs will be awarded to the most qualified candidate – not merely to the most family-connected candidate.

If I am a public official or employee, can my family member even apply for a public job?

In general, family members of public officials and employees can legally pursue public jobs. The issue is whether the applicant's family member who is already in public service can be recused from any and every aspect of the hiring process. If a public official or employee can be removed from any discussion, review, decision-making, or any other aspect of the hiring process, his or her family member generally can be awarded the public job. In other words, it's not illegal for your family member to pursue or get the government job at your agency; it is illegal if you involve yourself in any aspect of the hiring process.

What if I can't recuse myself from the hiring process?

There are situations in which a public official or employee cannot be removed from the hiring discussion or decision-making. Examples could include a township that has only one employee or an agency where the director is designated as the sole hiring authority. Those situations, however, do not relieve public officials and employees from complying with the law. If the public official or employee cannot recuse himself or herself, then that person's family member cannot be awarded the public [job](#).

Who is my "family"?

For purposes of the Ohio Ethics Law, a "family member" includes the following (regardless of where they live):

- Spouse;
- Domestic Partner;
- Children/Step-Children (whether dependent or not);
- Siblings;
- Parents/Step-Parents;
- Grandparents; and

- Grandchildren.

“[Family member](#)” also includes any other person related by blood or by marriage (e.g. cousins, aunts, uncles, in-laws, nieces, nephews) if that person resides in the same household as the public official or public employee.

What happens after my family member is hired?

It’s important to note that, should your family member legally receive the public job – without your involvement – recusal continues even after that family member is hired. For example, direct supervision, annual evaluations, or participation in discussions of promotions or raises would also be [prohibited](#).

What about indirect benefits my family member could receive from my actions?

There are circumstances in which a public official may participate in matters that indirectly benefit family members. For example, a public official is not prohibited from approving a union contract where a relative is a member of the union (as long as the relative is not a union officer, board member, member of negotiating team, and the public official does not receive health care benefits from the [union member](#)). Other exceptions include matters impacting an entire class of employees or participating in general budget discussions that include a family member’s [compensation](#).

Does it matter if my child is a minor?

Yes. Your minor child cannot work for the same agency unless you can show four things:

- The agency’s hiring process will be fair and open and will not favor your child;
- The agency will provide a broad opportunity to qualified and interested applicants to submit applications;
- All qualified and interested applicants other than your child have already been hired; and
- Vacancies still [exist](#).

In other words, the only way your minor child can receive a job/internship at your public agency is if all other qualified applicants have been hired but open positions remain unfilled. Keep in mind that even if your child can be awarded that open position after all

other qualified applicants are hired, you still may not participate – in any way – in the hiring deliberation or decision.

Are there any circumstances in which I can participate in the hiring process when my family member is somehow involved?

Yes, even when a public official's or employee's family member works for the same agency, there are some matters in which the current public servant can participate. Within some limits, an official is not prohibited from acting on:

- A union contract affecting a family member;
- Matters that affect a class of employees that includes a family [member](#); or
- General budget appropriations for a family member's [department](#).

A board member can really vote on a union contract that will cover his/her own family member?

A public official can never authorize individual employment, promotion, job/contract renewal, etc. However, the board member may vote on a union contract assuming his/her family member is not a union officer, union board member, or part of the union negotiating team.

There is an exception, however. When an official's spouse or parent is employed by the public agency he or she serves, and the official is covered under health insurance provided by the agency to his or her spouse/parent, there is an additional restriction.

Although the official is not prohibited from receiving the health insurance coverage, he or she is prohibited from taking any action to approve the union contract if it includes health insurance benefits and he or she is covered under those benefits.

- School board member voting on [spouse's union contract and individual contract](#)
- School board member voting on [spouse's union contract](#)
- School board member receiving [benefits from spouse](#) employed by school district

Are there other considerations?

Yes, keep in mind that public agencies may have policies or rules that are even more restrictive than the Ethics Law (cannot be less restrictive). Public officials or employees are advised to inquire if more stringent policies or rules exist at their public entities.

While the Ethics Law does not absolutely prohibit relatives from working for the same public agency, questions of fairness and impartiality may also arise in such situations.

Further, such hires may present the appearance of impropriety to the public, even where the public official fully and completely removes himself or herself from participating in the hiring process, as described above. A public agency may be able to minimize these concerns if the agency conducts all hiring activity in a fair, open, and impartial manner.

 *Need more information?*

- [Advisory Opinion 80-001](#) (public contract and family member)
- [Advisory Opinion 85-015](#) (obtaining public employment for spouse)
- [Advisory Opinion 90-004](#) (city council member married to municipal judge)
- [Advisory Opinion 90-010](#) (authorizing employment for son)
- [Advisory Opinion 91-004](#) (council member married to planning commission member)
- [Advisory Opinion 92-012](#) (city council member married to city employee)
- [Advisory Opinion 97-004](#) (library employee with family member seeking employment)
- [Advisory Opinion 98-003](#) (school superintendent & family members work for district)
- [Advisory Opinion 2009-02](#) (matters involving family member's employer)
- [Advisory Opinion 2010-03](#) (matters involving hiring and supervising family members)