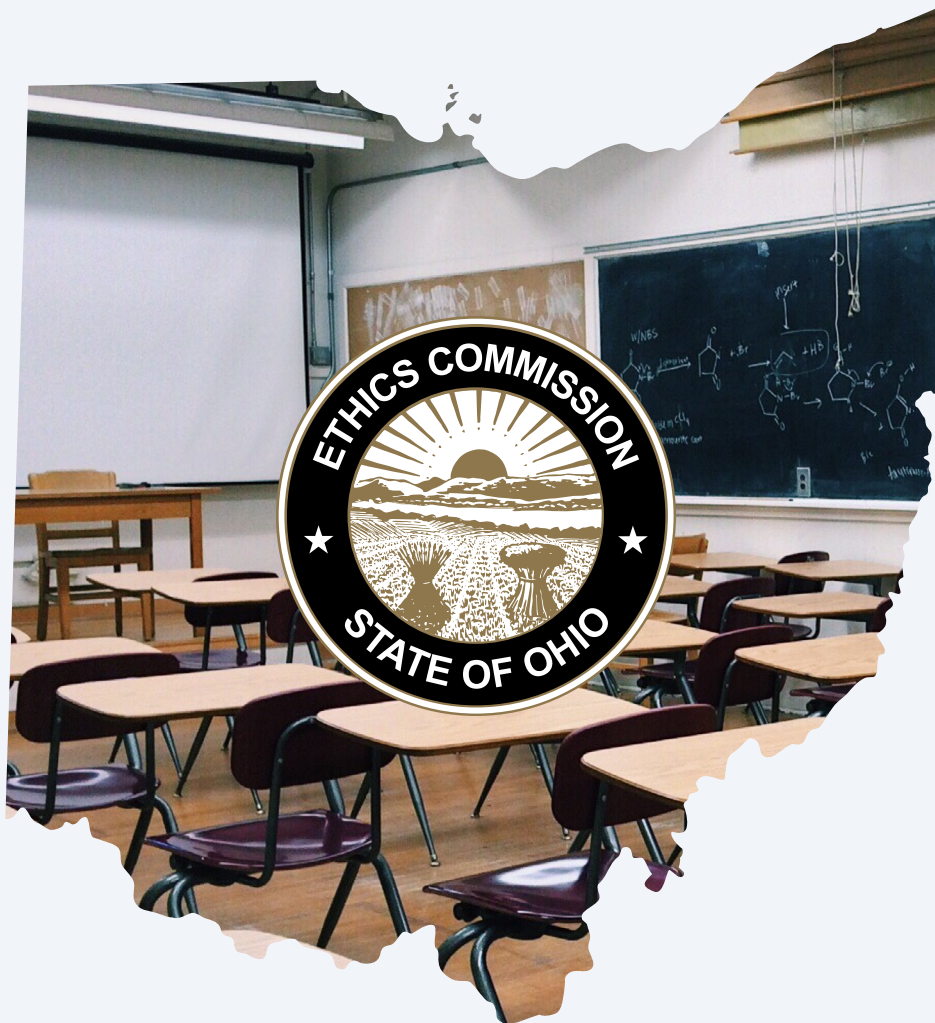


The Ohio Ethics Law 101: The Ethics Toolkit for Public School Districts



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Introduction

The Ohio Ethics Law contains conflict of interest, public contract, and supplemental compensation restrictions that apply to public school officials and employees. Also, the Ohio Ethics Law requires some public school officials and employees to file financial disclosure statements.

The conflict of interest restrictions are found in Chapter 102. of the Ohio Revised Code. In general, public officials and employees cannot use their public positions to secure things of value for themselves, their family members, or their business associates. All public school officials and employees are subject to these general conflict of interest provisions except teachers who do not perform administrative or supervisory functions.

The public contract restrictions are found in Section 2921.42 of the Ohio Revised Code. All public school officials and employees are subject to the public contract restrictions. These restrictions deal with situations in which the public school district is acquiring goods or services. In general, school officials and employees cannot contract with the public schools they serve.

The supplemental compensation restrictions are found in Section 2921.43 of the Ohio Revised Code. All public school officials and employees are subject to the supplemental compensation restrictions. These restrictions prohibit public school officials and employees from receiving compensation from anyone other than their public employers for performing their public duties.

Finally, some public school officials and employees are required to file financial disclosure statements with the Ohio Ethics Commission. Those required to file financial disclosure statements include members of boards of education in school districts with a total student count of 12,000 or more, and superintendents, treasurers, and business managers of a school district.

The Ethics Commission has issued several advisory opinions and educational materials that may provide useful guidance for school officials and employees. The remainder of this Ethics 101 overview will cover specific areas in which the Ethics Commission tends to get the most questions about the application of the Ethics Law.

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Chapter 1 - General Applicability of Ethics Law

All public school officials and employees are subject to the Ohio Ethics Law and related statutes, including public contract and supplemental compensation restrictions. Teachers who do not perform administrative or supervisory functions are not subject to the revolving door and conflict of interest provisions of the Ethics Law, however. This document will outline those restrictions as they apply to public school officials and employees. This chapter provides information regarding the general applicability of the Ethics Law to public school districts.

Receipt of the Ohio Ethics Law

Public school districts are required to provide a copy of the Ethics Laws to all public school officials and employees at the beginning of their public service.



For more information, review [Advisory Opinion 93-017](#).

Community Schools Subject to Ethics Law

Community school board members (also referred to as charter school board members) are subject to the Ethics Law. In fact, all governing boards of community schools are required to sign contracts agreeing to be bound by the conflict of interest and public contract statutes. In addition, all officers and employees of a community school are also subject to the revolving door, confidentiality, conflict of interest, representation, public contract, and supplemental compensation restrictions in the Ethics Law and related statutes. Teachers who do not perform and have no authority to perform supervisory or administrative functions are exempted from revolving door and conflict of interest prohibitions.



For more information, review [Advisory Opinion 2010-01](#).

Dual Service at Community Schools

1. School district employees cannot serve as a member of the governing board of a conversion community school sponsored by the district, unless the employee is serving as a member of the governing board in his or her official capacity as a district employee.
2. School district superintendents and treasurers may serve in the same roles at a conversion community school sponsored by the district under a contract between the district and the community school if they are serving in their official capacities as district employees. However, if they are serving in these roles, they are barred from taking any action as school district employees on matters that affect the conversion community school.

3. School district superintendents and treasurers may not serve as employees of a conversion community school sponsored by the district unless they can meet an exception in the law. If they meet the exception, and can serve in these roles, they are barred from taking any action as school district employees on matters that affect the conversion community school.



For more information, review [Informal Advisory Opinion 2011-INF-0926-1](#).

Superintendent Financial Disclosure Statements

Financial disclosure statements filed by school district or educational service center superintendents are generally kept confidential, although the Ethics Commission is required to make available for public inspection any portion of the financial disclosure statement that reveals a potential conflict of interest.



For more information, review [Advisory Opinion 2001-05](#).

Chapter 2 - Conflicts of Interest

Conflicts of interest involve public officials and employees taking official action or making decisions in matters that definitely and directly affect themselves, their family members, or their business associates. The basic assumption that underlies the Ethics Law is that Ohioans deserve public servants who advance the public interest rather than their personal interests or those of closely related parties. Simply put, a public official 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.

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 families or business associates. This chapter will address some of the common conflicts of interest that occur for those serving public schools.

All public school officials and employees are subject to these general conflict of interest provisions except teachers who do not perform administrative or supervisory functions. Examples of teachers who perform, or have the authority to perform, administrative or supervisory functions include academic department heads, athletic directors, and coaches.



For more information, review [Advisory Opinion 2001-04](#).

Outside Employment or Business Activity

1. Many public employees and officials pursue private outside work, consulting, and part-time jobs. While these pursuits are not necessarily prohibited, it's important that public time and equipment not be used for outside business ventures. For example, if your agency has provided you with equipment such as a laptop or a cell phone to carry out public duties from home, they cannot be used for private business or consulting work.



For more information, review [Advisory Opinion 96-004](#).

2. The Ohio Ethics Commission issued an advisory opinion in 1993 regarding a school board member working for an insurance company and wishing to sell tax-sheltered annuities to school employees. The opinion concluded that the Ethics Law prohibits the school board member from selling tax-sheltered annuities to school employees.



For more information, review [Advisory Opinion 93-014](#).

3. The Ethics Commission has advised school board members that they can't accept employment with the school district they serve if the employment contract must be authorized by the board. This prohibition applies even if the board member is not involved in the board's authorization of the contract of employment. This prohibition stems from a public contract law that prohibits a public official or employee from profiting from a public contract that is authorized by the public official or employee or by a board of which he or she is a member. The prohibition applies to any acquisition of property or services by a school board, and not just to the acquisition of services under an employment contract.



For more information, review [Advisory Opinion 87-008](#).

Tutoring

School districts in Ohio are fortunate to have talented employees who sometimes inquire if the Ethics Law allows them to tutor students for compensation outside normal school hours. The Ethics Law prohibits teachers from tutoring students if tutoring is already an expected part of their duties with the district. If not, however, teachers would be permitted to tutor students only if all of the following requirements are met:

- The teacher does not advertise tutoring services to students and/or parents;
- The teacher does not require tutoring as part of the class curriculum;
- The tutoring is not part of a school-sponsored program; and
- The tutoring does not take place during the school day when the teacher is already being paid by the district.

Student Teaching

In a 2007 Informal Advisory Opinion, the Ohio Ethics Commission concluded that the Ethics Law prohibits school board members from student teaching in the district where they are board members. The Ethics Law does not prohibit school board members from resigning from a school board in order to apply for a teaching position in the district as long as the board members do not use a board position in any way to secure or create a job opportunity for themselves before they resign from the board.



For more information, review [Informal Advisory Opinion 2007-INF-1017](#).

(See also [Chapter 4 - Supplemental Compensation](#) - for additional information regarding student teachers).

Booster Clubs

Booster clubs are formed to bolster the efforts of school-sponsored organizations, such as sports teams. Booster club support is demonstrated in various ways including volunteering time, raising money, and contributing funds to better enhance a school organization's endeavors.

The Ethics Commission has often been asked if the Ethics Law prohibits booster clubs or other school support organizations from compensating a school employee to serve as a coach or provide support for a school-related activity. In many situations, volunteer coaches are also employees of the district in other positions. Although the district may not compensate them for their service as coaches, the board usually votes to approve them to serve as volunteer coaches.

A volunteer coach whose service has been authorized by a board of education is engaged in the performance of a governmental function. As a result, volunteer coaches are "public servants" subject to the supplemental compensation restrictions in the Ohio Ethics Law which prohibit any coach, including a volunteer, who has been authorized to coach by a board of education, from receiving compensation for those services from any source, other than the school district. The law also prohibits any source from promising or giving a volunteer coach any compensation to perform coaching or providing support to sports or other school-related activities.

However, the Ethics Law does not prohibit a school district from receiving a gift from a booster group, school support organization, or other source provided that the donation or gift does not remove any portion of the board of education's control over its volunteer coaches. For example, a booster club cannot mandate that the district use its gift to provide compensation to volunteer coaches. However, after receiving a donation, the school district can then use the funds in any way it chooses within the guidelines discussed in [Advisory Opinion 2008-01](#).

(See also [Chapter 4 - Supplemental Compensation](#) - for additional information).

Chapter 3 - Gifts

It's not uncommon for a grateful community to want to express thanks to the hard-working employees of public school districts. Because public officials and employees must consider whether gifts can be accepted without violating the Ethics Law, we have compiled answers to the most common gift issues for those who serve public school districts.

The Ethics Law prohibits a public official or public employee from soliciting or accepting anything of value that could have a substantial and improper influence on the performance of public duties. Nominal or very inexpensive gifts such as a coffee mug, tin of popcorn, or t-shirt are not considered substantial. These types of inexpensive gifts are not prohibited under the Ethics Law, though you may still choose to decline them to avoid even the appearance of impropriety.

Examples of items that the Ohio Ethics Commission has identified as having "substantial" value, however, include tickets to theater or sporting events, vacations, expensive meals, and golf outings. When offered a substantial gift, school officials and employees must identify the giver or source to determine whether it is acceptable. Improper sources of substantial gifts include anyone doing or seeking to do business with, interested in matters before, or regulated by your public agency.

All public school officials and employees are subject to these general conflict of interest provisions except teachers who do not perform administrative or supervisory functions. Examples of teachers who perform, or have the authority to perform, administrative or supervisory functions include academic department heads, athletic directors, and coaches.



For additional information regarding general gift restrictions, review the [Gifts and Other Things of Value Fact Sheet](#) and [Advisory Opinion 2001-03](#).

School District Advisory Opinions

1. In [Advisory Opinion 2001-04](#), the Ethics Commission responded to an inquiry regarding school district administrators who were offered air travel, meals, and lodging by a construction company that wanted the administrators to see an example of the company's work in another state. The Advisory Opinion also addressed a question of whether a vendor that sells class rings, necklaces, and other jewelry to the district's high schools may provide free items of jewelry to some of the school administrators and teachers as an expression of good will.

The Commission concluded that the Ohio Ethics Law prohibits school district officials and employees (except a teacher, instructor, and other educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions), from soliciting, accepting, or using his or her position to secure travel, meals, and lodging, or a gift of substantial value, from any party that is interested in matters before, regulated by, or doing or seeking to do business with the school district he or she serves.

While the Ethics Law does not prohibit school district officials and employees from accepting a nominal item, such as a pen or calendar, all school officials and employees, including teachers

regardless of their job duties, are prohibited from accepting any gift, if either the purpose or the result of the gift is to provide payment to the public servant in return for the performance of his or her official duties. The Ethics Law prohibits anyone, including students, parents, and school district vendors, from promising or giving, to any school district official or employee, any gift that is provided to the official or employee as compensation for the performance of his or her official duties.

(See also [Chapter 4 - Supplemental Compensation](#) - for additional information).

2. [Advisory Opinion 2000-04](#) describes prohibitions on public school officials and employees from accepting or soliciting compensation from private tour companies for scheduling, organizing, or chaperoning school trips. The Ethics Law, however, does not prohibit public school officials and employees from accepting from a private tour company necessary and appropriate travel expenses to accompany students on a school trip, provided that the travel expenses are provided as part of a contract between the company and the school district. Further, the school district is not prohibited from providing additional compensation to school employees who accompany students on a school trip as part of their employment with the district. The advisory opinion states that the conclusions of the opinion do not apply to school board members, and that school board members should contact the Ethics Commission for further information and guidance if they have questions about accepting any form of compensation, from any source, including the school district the board member serves, for the performance of any duties associated with a school trip.
3. [Advisory Opinion 2001-08](#) concludes that the Ethics Law does not prohibit companies that do business with public school districts from promising or giving a uniform “across-the-board” discount on their goods or services to the district officials and employees. However, those companies may not promise or offer a discount on their services that is limited to individual public officials or employees whose duties and responsibilities affect the financial interests of the companies. Such companies are also prohibited from promising or offering discounts that are selective, differential, or in disproportion to the benefits provided to all other public officials and employees in the district.

Chapter 4 - Supplemental Compensation

The provision of the Ethics Law known as “Supplemental Compensation” ensures that public servants are not subject to divided loyalties when performing their public duties. Essentially, the law prohibits public officials or employees from accepting compensation from anyone other than the public entity they serve. It makes no difference whether it’s given to compensate the official or employee for some specific action or decision, or just for the general performance of job duties.

As noted in the chapter on gifts, the Ethics Law does not prohibit school district officials and employees from accepting a promotional item, such as a pen, pencil, or calendar, or a gift of nominal or de minimis value. However, all school officials and employees, including teachers regardless of their job duties, are prohibited from accepting any gift from students, parents, and school district vendors, if the gift is given to provide payment in return for the performance of official duties.

To summarize this provision of law, public school officials and employees should assume that nobody may augment their public salaries, either with money, gifts, the payment of travel expenses or any other form of supplemental compensation.

School District Advisory Opinions

1. [Advisory Opinion 2011-05](#) concluded that teachers and other school district employees may not accept compensation or payment from public or private colleges or universities to serve as classroom mentors for student teachers, host college or university students doing required field experience, or administer the district’s student teacher program.
2. [Advisory Opinion 2008-01](#) addresses the question of whether a school employee who serves as a coach or provides support for a school-related activity can receive compensation for those services from a booster group or other school support organization. The opinion concludes that the Ethics Law prohibits a school district employee from being paid by any source other than the school district for coaching or other support duties that the district board of education has authorized the employee to perform.

It should be noted that the law does not prohibit a booster group, school support organization, or other source that supports activities of a school district, from making a voluntary gift to the district. The opinion notes that a district can use the donation in whatever way it chooses, within certain limitations. For example, an organization cannot require that the district use the donated funds to provide compensation to employees or to fund positions. Donating organizations may exert no control over the district’s use of the gift or endowment, and no control over the establishment and funding of district positions, or the selection, hire, management, retention, or level of compensation of individuals serving in those positions.

Chapter 5 - Public Contracts

This chapter will focus on an area of the Ethics Law often referred to as “Public Contracts.” A public contract exists whenever a public agency spends money or money is spent for a public agency. Clearly, all school districts must purchase certain services or goods to fulfill their mission. Such purchases range from anything such as construction or legal services, or even goods like IT equipment or office furniture. Under the Ohio Ethics Law, every purchase made with public money, whether it’s ten dollars or ten thousand dollars or it’s a written contract or just a casual purchase, is a “public contract.”

There are two specific questions under the public contract statute that arise frequently for public school districts and will therefore be addressed in this section: sales to public school districts and nepotism.

Selling Goods or Services to the School District

The Ohio Ethics Law prohibits public officials and employees from having a financial interest in the contracts of the public agency with which they are “connected.” As a result, in general, public school officials and employees may not sell goods or services to their school district. Recusing oneself from the discussion and decision-making does not negate this restriction; under the law, school officials and employees cannot serve as vendors to their own school districts, even if they play no role in approving or securing the public contract.

The only way it could be possible for school officials or employees to sell goods or services to their own districts would be to meet a very specific exception under the Ohio Ethics Law. Please review the [Public Contracts Fact Sheet](#) for information regarding this prohibition and the related exception.

The following Advisory Opinions explain how these restrictions have applied to situations in Ohio’s public school districts:

1. [Advisory Opinion 90-003](#): School board members may not sell merchandise or profit from sales to the school districts they serve. Furthermore, school board members cannot sell goods or services to a booster club when the goods or services would be purchased for the use of the school district the board members serve. However, school board members can donate goods or services to their school districts provided they receive no financial gain from the donation and do not use the donation to secure anything of value for themselves or their businesses.
2. [Advisory Opinion 90-005](#): School board members may not sell goods or services to the districts they serve, regardless of whether such purchases are formal written contracts, or the purchases are made by school district employees on a casual “as needed” basis.
3. [Advisory Opinion 2008-04](#): Teachers and other school district employees cannot sell Supplemental Education Services (SES) to the school districts they serve unless they can meet specific exceptions to the Ethics Law including demonstrating that they can provide the services to the district at a lower cost than any other provider. Even if the teacher or other school district employee meets the exception, the Ethics Law does not require or obligate the district to purchase SES from a teacher or employee.

4. [Advisory Opinion 94-002](#): A teacher who owns and operates a commercial driver training school may not receive reimbursement from his or her school district for providing driver education to high school students. Further, the law prohibits a teacher who owns and operates a commercial driver training school from discussing, recommending, or otherwise using the authority or influence inherent in his or her position as a teacher, either formally or informally, to persuade students to utilize the services of his or her commercial driver training school.

Public Jobs and Family

Public contract restrictions under the Ohio Ethics Law prohibit public school officials or employees from authorizing a family member's employment or using their public positions in any way to obtain a public job for a family member. Direct hiring is clearly illegal, but the law also prohibits 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.

This is an important part of the law as fair hiring practices are mandatory in government. Public school districts are required to conduct all hiring activity in a fair, open, and impartial manner. Giving precedence or advantages to family members in hiring is unfair to other applicants who may be equally or even more qualified.

In general, family members of public school officials and employees can legally pursue jobs at the district. However, the applicant's family member who already serves the school district must 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 job.

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.



For additional information regarding general nepotism restrictions, review the Public Jobs and Family Members chapter of the [Public Contracts Fact Sheet](#).

The following Advisory Opinions explain how nepotism restrictions have applied to situations in Ohio's public school districts:

1. [Advisory Opinion 89-005](#): This is one of several advisory opinions that outline prohibitions that apply to a school board member's participation in approval of a collective bargaining agreement in which a spouse has an interest. Generally, the Ethics Commission has stated that unless the spouse is an officer or board member of the union or is involved in the negotiation of the contract, the school board member is not prohibited from participating in the approval of the collective bargaining agreement.

2. [Advisory Opinion 92-017](#): A school board member who is covered by his or her spouse's health insurance, where his or her spouse is employed by the same school district as the board member, does not have a prohibited interest in a public contract by virtue of his or her coverage under his or her spouse's health insurance. However, the school board member is prohibited from voting, discussing, deliberating, recommending, or otherwise using his or her authority or influence as a board member to authorize the collective bargaining agreement if the health insurance is provided under the terms of the collective bargaining agreement.
3. [Advisory Opinion 93-008](#): This opinion addresses whether a minor child of a board member may be employed by the school district. If the board member does not exercise his or her statutory right to the minor child's earnings, or if the child is not a minor child, the child can be paid by the school district to work summer or part-time jobs provided that the board member does not participate in any matters before the board involving his or her child's employment with the school district.



For additional information regarding hiring minor children in public service, see the Public Jobs and Family Members chapter of the [Public Contracts Fact Sheet](#).

Chapter 6 - Other Restrictions

This chapter will briefly address other restrictions of which a public school official or employee should be aware. First, the chapter will address restrictions that apply after a public school official or employee leaves public employment. Second, the chapter will address restrictions that apply if a public school official or employee wishes to serve more than one public entity simultaneously.

Post-Employment Restrictions

A public school official or employee is prohibited from profiting from a contract that the official or employee authorized, or that was authorized by the board of which the official or employee was a member at the time of authorization. This prohibition exists during public service and within one year of leaving public service.

Next, a public school official or employee is also prohibited from representing any person, except the school he or she served, on any matter in which the official or employee personally participated during his or her public service. This prohibition also exists during public service and within one year of leaving public service. This is commonly referred to as the “revolving door” prohibition.

Finally, a public school official or employee is prohibited from using or disclosing confidential information acquired during his or her service with the public school. There is no time limit for this prohibition.

These post-employment restrictions of the Ethics Law are illustrated in several formal, informal, and staff advisory opinions issued by the Ethics Commission. For example, in a staff opinion issued to a Columbus school board member who was about to leave his board position, the Ethics Commission discussed restrictions placed on the school board member. The board member owned and managed a private business, and he wanted to do business with the board, through his private business, after he left his board position. The Commission stated that he could not profit, during his public service and for a one-year period after leaving public service, from any contract that was authorized by the Board while he was a member of the board. Here, it is important to note that a board member cannot profit from a contract authorized by a board of which he is a member even if the board member abstains from participation in matters involving the award of the contract. There is only one exception to this prohibition: The board member is not prohibited from profiting from a contract that was awarded through a competitive bidding process. This advisory opinion also stated that a public official or employee is prohibited from using his public position in any way to secure a benefit for himself or his outside private business. Based on this conflict of interest restriction, the board member could not participate in matters before the board in which he or his business had a definite and direct interest. The advisory opinion also discussed the revolving door and confidentiality restrictions summarized above.

Dual Service Restrictions

If a public school official or employee serves more than one public entity, the school official or employee should be aware that provisions within the Ethics Law place restrictions on the official's or employee's ability to act in certain matters and may even act as a bar to the dual service. These restrictions were examined in [Advisory Opinion 91-006](#). In that formal advisory opinion, the Commission stated that dual service raises the issue of "compatibility" of public positions, and the Commission does not have the authority to issue opinions on compatibility. A public school official or employee who serves in more than one public position should contact the school board's legal advisor or the Ohio Attorney General's Office for more information pertaining to the compatibility of the public positions. If the positions are compatible, then several provisions of the Ethics Law may place restrictions on the school official's or employee's ability to act when serving in each position. In general, the school official or employee is prohibited from participating in matters in one public position in which the other public entity has a definite and direct financial interest. For example, in that same advisory opinion, the Commission stated that a school board member who also serves as a member of city council is prohibited from participating in matters before city council involving the potential grant of a tax abatement to a business located within the school district that the board member serves.

The public school official or employee who serves more than one public agency should also be aware that if there are contracts between the public entities he or she serves, additional restrictions will apply. Further, the school official or employee cannot represent one public entity before the other entity he or she serves. Finally, the school official or employee cannot disclose or use confidential information acquired while serving the public school or the other public entity he or she serves. In some situations, the result of the application of these prohibitions may, in effect, act as a complete bar to the dual service.

In summary, dual service issues are fact-specific and sometimes complex, and a public school official or employee who serves more than one public entity should seek advice from local counsel for the school board and/or from the Ohio Attorney General's Office and the Ohio Ethics Commission.

Conclusion

Every public school district must give each school official or employee a copy of the Ohio Ethics Law. This overview is intended to give public school district officials and employees some basic information about how the law applies to them. It is not intended to substitute for the Ethics Law or for an advisory opinion of the Ohio Ethics Commission.

For guidance on a specific situation, please contact the Commission at (614) 466-7090 and visit our website at www.ethics.ohio.gov.