

The Ohio Ethics Law and Firefighters Part 3: Public Contracts and Nepotism E-Course Transcript

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Welcome to the Ohio Ethics Commission's four part series of e-courses on the Ohio Ethics Law with a focus on how the law impacts the essential work of firefighters and safety service professionals.

This is part three of the series and focuses on public contracts and nepotism.

Though not absolutely necessary we do encourage you to review parts one and two of the series if you haven't already to better help you understand how the Ethics Law relates to the duties of firefighters.

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The Ohio Ethics Law

- Conflicts of Interest
- Post-Employment
- Gifts
- Public Contracts
- Nepotism
- Sales to Public Agencies

Public Contracts ORC 2921.42(A)

Public Contracts

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Public Contracts

ORC 2921.42(A) prohibits:

- Profiting from public contracts authorized
- Profiting from public funds invested
- Occupying a position of profit
- Having a financial or fiduciary interest

A public contract exists any time a public agency purchases or acquires goods and services.

Whether it's ten dollars or ten thousand dollars, whether it's a competitively bid contract or just putting money in a parking meter - public money being spent is a public contract under the Ethics Law.

There are several Public Contract prohibitions in the Ethics Law, and a couple of them are fourth-degree felony violations, which means prison time.

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Profiting from Contracts Authorized

ORC 2921.42(A)(1) prohibits:

- Authorizing public contract
- Where they, their families, or business associates would profit

The first of those is 2921.42(A)(1), which prohibits anyone in public service from authorizing or using the authority of their public position to assist in securing a public contract for themselves, their families, or their business associates.

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Captain owns a uniform store, buys pants for his department's cadets from his own store

An example of this would be a captain who owns a uniform store and buys pants for his department's cadets going through the training academy from his own store.

Using department funds for a purchase is a public contract, and he is granting himself that public contract, giving himself those public funds.

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Those uniforms are obviously necessary, and he may be giving the department a fair price or even a discount - it doesn't matter, because the Law prohibits him from doing this.

The public shouldn't have to chase down his receipts to ensure that public servants are being good stewards of tax dollars, they deserve to know that, in government's ordinary course of business, public servants are not granting themselves public contracts.

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I mention this back in the Conflicts of Interest course when discussing a public servant inspecting her own sister's daycare. As a taxpayer, I am already putting so much trust into those public officials and employees that represent and serve me.

I deserve assurance that those servants do so without the added baggage of their own family or business partners or bank accounts potentially tipping the scales.

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Fire department employee does freelance work for a video production company, recommends the company to her department for training videos

Our next example - a fire department employee does freelance work for a video production company and recommends that company to her department for training videos.

This was actually one that I had to be aware of when I started working at the Ethics Commission.

I came from a video production company and still did a little bit of freelance writing and producing for it after I left full time employment there.

There have been times where the Ethics Commission was recording a training video and could benefit from using that team that I worked with,

but, if that company were going for a contract with the Ethics Commission, I could not recommend them in any way or even weigh in on competitors or anything else, because that company is my business associate.

And that's true even if I weren't working on that project for that production company.

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County employee approves lead paint abatement grant for sister's house

Another example of a public contract violation - a county employee approves a lead paint abatement grant for his sister's house.

Any expenditure of public money is a public contract so giving your sister a grant is a violation of the public contract provision of the Ethics Law.

She can apply for this grant, the public employee just cannot be involved in any way, he must be completely recused from it.

No giving a coworker a heads up that it's his sister, no recommending his coworker take a close look at it, and certainly no signing off on it himself.

Everyone applying for those grants deserves the same honest opportunity to get them, without worrying about public employees influencing the decision in favor of family members, business associates, or even themselves.

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Recusal is to abstain from

- Voting
- Discussing
- Reviewing
- Recommending

- Inspecting
- Investigating

We can't advocate, we can't be involved, we must recuse. Recusal doesn't just mean abstaining from a final decision, it means we can't participate in ANY PART of the process.

No reviewing plans, no discussing the project with co-workers, no making recommendations on contracts or grants. Complete recusal is required.

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Now I'll give you some public contract scenarios to answer. This isn't graded so don't worry about repercussions for getting something wrong but give these some thought.

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Should an assistant chief abstain from discussion or decision-making regarding his adult child's IT bid to the city?

Yes No
(select one)

Should an assistant chief abstain from discussion or decision-making regarding his adult child's IT bid to the city?

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Yes

I hope you got this one correct, yes, he must be completely recused from any discussion or decision making on this contract if his kid has a bid in on it.

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A Fire Chief also teaches EMS classes at a community college. An employee of the fire department is taking a professional development course at the college.

Can the Fire Chief approve invoices for payment from the fire department to the college where he teaches?

Yes No
(select one)

A Fire Chief also teaches EMS classes at a community college. An employee of the fire department is taking a professional development course at the college.

Can the Fire Chief approve invoices for payment from the fire department to the college where he teaches?

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No

No. This scenario was common enough that the Commission issued 2013-01 to directly address Fire Chiefs and other senior fire and public safety officers who teach at educational institutions.

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Since he teaches there, the college would be the Fire Chief's business associate, and we cannot be involved in any way in contracts between our public agency and a business associate.

The Chief is not prohibited from instructing at the college and the fire department employees are not prohibited from taking classes at the college, even those taught by the Chief.

It's just that the Chief must recuse from any of the invoice or payment processes.

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Can a chief be involved in hiring a construction company to update the station when that company always uses his son as a plumbing subcontractor?

Yes No

(select one)

Can a chief be involved in hiring a construction company to update the station when that company always uses his son as a plumbing subcontractor?

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No

Yikes. The answer is a resounding NO.

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The Ohio Ethics Commission has stated in numerous previous Advisory Opinions dating back several decades that even a subcontract with a public agency is still a public contract.

So, if we know it's illegal to be involved in authorizing a public contract with our agencies for our family members and outside business associates, that would be equally true for subcontracts, as well.

Even if my family member or private business associate is not the contractor who is actually seeking a contract with my own public entity,

I'm still required to recuse myself even if it does feel indirect because my relative or business associate would still benefit from that public contract. Therefore, it's still a violation of the Ethics Law.

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To be fair, if I were part of approving a public contract with no way of knowing that the primary contractor MIGHT eventually consider my family or business associate's company, I may be perfectly fine under the law.

If, however, I KNEW that my relative or business associate had already given a quote, was pursuing the subcontract, was already lined up to do the work if the primary contractor got the contract with my agency, etc.,

I could be looking at a fourth-degree felony under the law. Please be aware, this is not an uncommon situation; contractors often have subcontractors already lined up and ready to go even before they obtain the public contract.

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To me, this public contract stuff is COMPLICATED. Which is why we have a website full of information and advisory attorneys on call if you ever need advice on how to handle these complex situations!

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The Ohio Ethics Law

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[Nepotism ORC 2921.42\(A\)\(1\)](#)

Now I want to give a special shoutout to the king of Public Contract violations, and Ethics Law violations in general, this is our most common investigation at the Ethics Commission - Nepotism.

Nepotism is just a special word for a special kind of public contract violation.

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Nepotism

ORC 2921.42(A)(1) prohibits:

- Authorizing public contract
- Where they, their families, or business associates would profit

As I said earlier, no one in public service can authorize or use their public position to assist in securing a public contract for themselves, their families, or their business associates. And a public job is a public contract.

It's public money being spent, just in the form of salary or benefits. And just like any other violation of 2921.42(A)(1), nepotism in Ohio is a potential fourth-degree felony.

The public has a right to know that government work, decisions, and expenditures take place in a way that benefits the public, not individual public servants or their families.

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The Ethics Law does NOT prohibit more than one family member from looking for a job from the same public agency or even actually working at the same public agency.

What's illegal is when public officials or employees use their public positions to hire family members into public jobs or somehow influence the hiring process for their family members.

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And this does extend beyond just hiring.

If a family member were to legally get a job at your agency, you could not be their direct supervisor or participate in any decisions on matters that affect a family member's employment, such as raises, promotions, or performance evaluations.

You must have two layers of supervision to keep you from having influence in that ongoing public contract with your family member.

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Family

- Spouse
- Domestic partner
- Sibling
- Parent
- Stepparent
- Child
- Stepchild
- Grandparent

- [Grandchild](#)

When the Ethics Law says family member, it means a spouse or domestic partner, sibling, parent or stepparent, child or stepchild, grandparent, or grandchild. These relatives are your family regardless of where they live.

Extended family members, such as cousins or in-laws, are considered family only when the extended relative lives in our home.

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OK, I gotta admit, I came from the private sector and this was all a SHOCK to me when I started at the Ethics Commission!

My Mom works for a county public utilities department (in Maryland) and my Dad was an inspector for a federal agency - I thought for sure I could count on them for a good reference if I were to ever apply for a job where they work.

But the fact of the matter is they would have to completely recuse themselves.

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[Mom informing her supervisor that her son put in an application at the Public Utilities Division where she works](#)

Examples of nepotism would include my Mom letting her supervisor know that I had put in an application to be a maintenance tech at the Garrett County Sanitary District.

She definitely cannot use her public position to give me a leg up in getting a job at her agency.

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[Mom calling over to the court house to let them know that her son put in an application to be an inspector with Permits and Inspections](#)

Another example would be my Mom calling over to the courthouse to let them know that I put in an application with the Permits & Inspection Division of the Department of Planning & Land Management to be an inspector, which

coincidentally my brother-in-law happens to be and no my Mom didn't have anything to do with that. Plus, as I said, in-laws are only considered family when they live in our home, so we're safe, OK?

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Now I'll give you some nepotism scenarios to answer. This isn't graded so don't worry about repercussions for getting something wrong but give these some thought.

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City offers cash bonus to employees who recommend a family member for open positions, can you recommend your brother?

Yes No

(select one)

A city needs firefighters and offers a cash bonus to current employees who recommend a family member for open positions.

Can you, an employee of the department, recommend your brother for a job?

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No

No! An Ohio Ethics Law violation is still a crime even if the city erroneously asks you to commit it. They can't make it not a crime.

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Park board commissioner abstains from all discussion on the hiring of his daughter as a park ranger, must he abstain from signing off on her swearing in?

Yes No

(select one)

A park board commissioner abstains from all discussion on the hiring of his daughter as a park ranger, must he abstain from signing off on her swearing in?

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Yes

Yes, he must still abstain every step of the way. Give her a hug at the swearing in, but do not be involved in any official capacity.

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Advisory Opinion 90-010

City director or fire chief authorizing employment for son at fire department

Advisory Opinion No. 90-010 is worth noting here. It was actually initiated by a fire department.

Even when family earns the job on their own and proves their worthiness to hold the position we must be completely removed from the employment process.

If you are the sole or ultimate hiring authority and there is absolutely no other person or entity who may exercise such hiring authority your family member cannot get that position.

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Manager has a brother that works for department, can she be involved in discussions on promotions, raises, overtime, discipline, etc.?

Yes No

(select one)

A member of management has a brother that works for the department, can she be involved in management type discussions on his promotion, raises, overtime, discipline, etc.?

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No

No, she cannot have that sort of influence on that ongoing public contract that her brother has.

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[Informal Advisory Opinion 2005-INF-0811](#)
[Family seeking employment at fire department](#)

We have a few opinions that address this and one that touches on this topic as it pertains to Fire and Police chiefs specifically, because it is common for families to have proud histories of this sort of public service.

But you gotta maintain those layers of separation to ensure objectivity and fairness.

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Do note that public offices are permitted to have internal policies that are even more stringent than the Ethics Law. Especially on nepotism. So talk to your legal council or the Ethics Commission if you have any questions.

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That concludes this portion of this e-course series. I've thrown a lot of info at you and I certainly don't expect that you have memorized it all.

The biggest takeaway I want to leave you with is that the Ethics Commission is here to help guide you through these issues. Be on the lookout for potential conflicts, and know that the Ethics Commission is here to help guide you through them.

Whether you are calling our advisory attorneys or searching our website for more information, we're here for you!

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[For more information on Public Contracts and Nepotism](#)

Public Contracts

[Public Contract FAQs and additional resources](#)

[Public Contract Advisory Opinions](#)

[Advisory Opinion 2013-01](#)

[Fire chief approving payments to educational institutions](#)

[Informal Opinion 1999-INF-0219-1](#)

[Township trustee serving as fire captain](#)

[Advisory Opinion No. 2000-05](#)

[Paid township volunteer firefighters are public employees and subject to the Ethics Law](#)

[Advisory Opinion No. 91-001](#)

[Township trustees serving as firefighters](#)

[Advisory Opinion No. 91-002](#)

City council member serving as unpaid volunteer paramedic with fire department

Nepotism

[Nepotism FAQs and additional resources](#)

[Nepotism Advisory Opinions](#)

[Advisory Opinion No. 90-010](#)

City director or fire chief authorizing employment for son at fire department

[Informal Opinion 2005-INF-0811](#)

Family seeking employment at fire department

Here on our website you'll find all of those Advisory Opinions I specifically mentioned in addition to lots of other helpful information on these public contract provisions of the Ohio Ethics Law.

I do recommend following up this course with part 4 of this 4 part series, which covers additional public contract topics related to Sales to Public Agencies.

Thank you so much for the critical work that you do, and thank you for taking the time to review how the Ohio Ethics Law and Ohio Ethics Commission can assist you in that work.