

The Ohio Ethics Law and Firefighters Part 4: Sales to Public Agencies

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 four of the series and focuses on sales to public agencies.

Though not absolutely necessary we do encourage you to review parts one, two and three of the series if you haven't already to better help you understand how the Ohio 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

Sales to Public Agencies ORC 2921.42(A)(4)

Sales to Public Agencies

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Sales to Public Agencies

ORC 2921.42(A)(4) prohibits:

- Having an interest
- In a public contract
- Any connected agency

In the last e-course we discussed recusing ourselves from the securing of the contracts where we, our family members, and business associates would benefit.

Additionally, 2921.42(A)(4) prohibits having an interest in a public contract with any connected agency.

"Having an interest in a public contract" isn't limited to making money from a public contract, but making money from a public contract is certainly "an interest."

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Recusal as Solution?

Recusal doesn't solve this problem. It IS possible for a member of your family to get a contract with your public agency if you are able to recuse yourself from any aspect of the process.

But that is not a solution for this part of the law. We are prohibited from having that continued interest.

As public employees and officials, we cannot sell goods or services to our own public entities, even if we play no role in approving or securing the public contract.

In other words, it's illegal for public employees and officials to serve as vendors to their own public entities, even if they did not actually authorize the contract.

Any businesses that we own or co-own should not be considered a potential vendor to our own agencies.

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Obviously, it's not uncommon for people in public service to have outside jobs or outside businesses. But we need to be aware that the Ethics Law prohibits us from having a financial interest in the contracts of our own public agencies.

Generally speaking, public officials and employees can have outside businesses, but they can't sell goods or services to their public entity. Some quick examples:

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

In the public contracts course we used an example of a captain who owns a uniform store and buys pants for his department's cadets going through the training academy from his own store.

His one action violates multiple parts of the public contract prohibitions, because he 1) used his authority to authorize his own public contract and 2) had an interest in a public contract, he made money on the contract.

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Township office manager owns a cleaning company which gets the contract to clean township offices

Another example of a violation of this sales to public agencies prohibition would be a township office manager whose cleaning company gets the contract to clean township offices.

Even if she wasn't involved in the decision to authorize the contract, you can see the definite conflict there, right? How that has so much potential to violate the public's trust that government decisions and expenditures are fair and objective?

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If you are taking this e-course and you own or co-own a business in your private life, that's great! We hope it's a productive and meaningful journey and we'd be happy to help answer any questions you ever have about your business and the Ohio Ethics Law.

But you also need to assume that the public entity you serve will never be one of your clients. In fact, don't even attempt to serve as a vendor to your own public entity and you'll always be safe under the law.

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Four Part Exception

- Goods or services must be necessary
- Public servant must be recused
- Must be as good as service to other customers
- Cannot be obtained elsewhere for a similar or lower cost

The only way it could be possible to sell goods or services to your own public agency would be to meet a very specific exception under the Ohio Ethics Law. This exception is a four part one and all four parts must be met:

The purchase of goods or services must be necessary; The public servant must be able to be completely recused from the discussion and decision-making processes;

The public servant must be able to provide as good or even better service to the public entity; and The goods or services cannot be obtained somewhere for a similar or lower cost;

I want to stress that last one - the goods or services cannot be obtained somewhere for a similar or lower cost.

In other words, if there is ANYone else that can clean my township's offices for an equal or reasonably similar price, they must go with that vendor, and not me, since I work for the township.

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This four part exception can allow smaller governments in Ohio to take care of business while staying on budget.

For example, if a county office can get its vehicles repaired by a company owned by a county employee instead of taking the cars to a garage 50 miles farther away,

that county employee may well meet this exception and they are welcome to call our advisory attorneys to discuss it.

Now, if someone in Franklin County were to call us and ask if they can have county vehicles repaired by a shop owned by a county employee,

we're going to be pretty skeptical that there aren't other shops in Columbus that could do the same work for a similar price.

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It's possible to sell goods or services to public agencies other than your own but there are factors to consider.

All safety service professionals, whether at the city, county, township, or village levels, be aware that you work for that entire governmental body not just the department or office where you report to work each day.

For example, if you are a battalion chief in Washington County you could not be a vendor to ANY Washington County government office, not just the department where you work.

For State Fire Marshal employees, it is possible to sell goods and services to a state agency OTHER than the Department of Commerce, but you would be required to complete a 102.04(D) statement which can be found on the Ohio Ethics Commission's web site.

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This is a lot of confusing contract stuff but I'm gonna make it pretty easy and give you a pro-tip, it is safest to assume that you will not be a vendor to the public entity you serve, bottom line.

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Now I'll quiz you on some scenarios related to this part of the law. This is not graded so don't worry about repercussions for getting something wrong but, please give these some thought.

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Can a fire department employee make the promotional t-shirts for the department's festival?

Yes No

(select one)

A fire department is planning its annual community festival and would like to hire a company to print up some promotional t-shirts to give away to guests.

One of its employees has a shirt printing side hustle and can make the shirts for a very reasonable price, would that be OK?

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No

No. Can't do it, she cannot sell goods and services to her own agency. The size of the sale doesn't matter, the reasonableness of her fee doesn't matter, still a violation.

I'm sure that are lots of folks that would jump at the chance to do this job for a reasonable fee so there's no way she would be able to meet that four part exception.

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[Advisory Opinion 83-004](#)
[Police officer selling to city department](#)

The Ethics Commission's Advisory Opinion 83-004 was written in response to a city police officer who wanted to sell trophies and awards to the city's parks and rec department.

It emphasizes the importance and challenge of meeting the four part exception. I will include a link to the opinion at the end of the course if you would like to take a look at it.

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[Can a fire chief solicit potential employment with a city agency before stepping down as chief?](#)
Yes No
(select one)

OK next one - Can a fire chief solicit potential employment with a city agency before stepping down as chief?

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No

Definitely not. This one taps into a number of areas of the law - he is soliciting a substantial thing of value, he is using the authority of his position to secure a public contract, lots of bad news here.

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City fire inspector does some snow plowing on the side. Can he be on the city's to-call list for quick emergency jobs?

Yes No

(select one)

A city fire inspector does some snow plowing on the side. Can he be on the city's to-call list for quick emergency jobs?

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No

No. As we've said, no matter the amount of the contract, whether it's ongoing or just an "as-needed" basis, we can't have a public contract with our agency.

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Would a city employee be prohibited from marketing software that he helped a computer software firm develop under a contract with the city to computerize police and fire reporting and dispatching?

Yes No

(select one)

Would a city employee be prohibited from marketing software that he helped a computer software firm develop under a contract with the city to computerize police and fire reporting and dispatching?

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Yes

Yes, he would be prohibited.

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Advisory Opinion 84-013

City employee marketing software developed by private employer

In fact, this was the exact question addressed in Advisory Opinion 84-013, and amongst the issues raised this opinion explicitly states that the Ethics Law prohibits a city employee from knowingly soliciting or receiving

a commission, payment, or fee, or having any other interest in the profits or benefits of a contract between the city and a computer software firm with which he is associated.

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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

So to recap, here are the Public Contract provisions of 2921.42(A). In this e-course we have been diving into 2921.42(A)(4), bullet point 4 there. In part three of this series we discussed (A)(1) which is bullet point 1.

Now, for completeness's sake I'm going to mention 2 and 3 though they are a bit more niche.

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Profiting from Public Funds Invested

ORC 2921.42(A)(2) prohibits:

- Investment of public funds
- Where they, their families, or business associates would profit

2921.42(A)(2) prohibits the investment of public funds where they, their family member or business associate would benefit. That includes not only having an interest but also underwriting or receiving brokerage, origination or servicing fees.

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Occupying a Position of Profit

ORC 2921.42(A)(3) prohibits:

- Member of authorizing board
- Profiting from contract
- Unless competitively bid
- Applies for one year after leaving board

And 2921.42(A)(3) prohibits occupying a position of profit. A public servant occupies a position of profit in a public contract if the contract was authorized by the public official, or by a body, committee, or board on which he or she sits,

unless the contract is competitively bid and awarded to the lowest and best bidder. This is prohibited even if the public servant doesn't participate in the approval or authorization of the contract, AND applies for one year after leaving public service.

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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 Sales to Public Agencies

Sales to Public Agencies

[Sales to Public Agencies FAQs and additional resources](#)

[Sales to Public Agencies Advisory Opinions](#)

[Advisory Opinion 83-004](#)

[City employee selling to city department](#)

[Advisory Opinion 84-013](#)

[City employee marketing software developed by private employer](#)

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

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

[Advisory Opinion 2013-01](#)

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

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

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.