

# The Ohio Ethics Law and Public Contracts E-Course Transcript

## Slide 1

### The Ohio Ethics Law and Public Contracts

Thank you for participating in this e-course, created and presented by the Ohio Ethics Commission.

This brief course will not cover the entire Ethics Law, but rather focus specifically on the prohibitions related to public contracts. We begin with an example.

## Slide 2

This is Township Trustee Brian Hawkins. He has served as a trustee for 3 years and is also the owner of a small HVAC company.

## Slide 3

The township hall was built in 1948 and to date, has never had central air-conditioning. This year, the township has allocated funds to install central AC throughout the township hall - much to the delight of staff!

## Slide 4

Trustee Hawkins submitted a bid to the township to obtain the contract. His bid was selected by staff and the decision must be approved by the trustees.

## Slide 5

At the trustee meeting, another trustee makes a motion to accept Trustee Hawkins' bid for the HVAC contract. Each trustee - including Trustee Hawkins - votes 'yes' on the contract."

## Slide 6

Imagine that you lived in this township and had been thinking of starting your own HVAC business. How would you feel about this public official voting to approve his own HVAC contract with his township?

Select your reaction



What is your reaction? Imagine that you lived in this township and you had been thinking about starting your own HVAC business. How would you feel about this public official voting to approve his own HVAC contract with his township?

## Slide 7

### 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

Aaaaand....violation! But I'm guessing you knew that. The scenario that you just watched would be a clear violation of an area of the Ethics Law known as "the Public Contracts Law."

## Slide 8

Public money being spent is a public contract, regardless of the amount or process of the purchase.

A public contract essentially exists whenever a public agency spends money or money is spent for a public agency. It could be ten dollars or ten thousand dollars; it could be a written contract or just a casual purchase for the office.

Regardless of the amount or process of the purchase, public money being spent is a public contract under the Ethics Law.

## Slide 9

It should seem pretty obvious, then, that a township authorizing installation of air conditioning in the township hall is, in fact, a public contract. No problem so far.

Where Trustee Hawkins got off track was in participating - voting no less - in the approval of his own HVAC contract with the township.

## Slide 10

### Profiting from Contracts Authorized

ORC 2921.42(A)(1) prohibits:

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

Now, someone may think, "What if Trustee Hawkins' company actually is a good company that does quality work?"

That may be, but that doesn't negate the prohibition against government officials or employees from profiting from public contracts they authorized.

This part of the law prohibits all of us in public service from securing a public contract where we, our families, or our business associates have an interest in the contract.

In fact, violations of this provision of the statute is a fourth-degree felony.

## Slide 11

### 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

If you are wondering if recusal would be a good solution in this scenario, I'm glad that abstaining from violations is your first reaction.

But that actually wouldn't solve the problem in this scenario. Trustee Hawkins serves on the public board that must approve the public contract. The law prohibits public officials from profiting from a public contract that was authorized by that board.

Even if Trustee Hawkins recused himself, the law would not allow him to get that HVAC contract since he would still profit from a public contract awarded by the very public body on which he serves.

## Slide 12

And don't forget - there are laws outside of the Public Contract Laws that could apply here so Trustee Hawkins would be well advised to seek legal counsel from the county prosecutor, as well.

## Slide 13

Now that we're warmed up on the Public Contract part of the law, let's take a look at a different example.

## Slide 14

Courtney: I don't understand. What's the big deal?

Chris: Courtney, it's your mother! You're asking me if you can sign off on a consulting contract for the city with your own mother!

Courtney: I realize that. And if I had been the person to review the bids and make the recommendations, I could see your point. But I didn't do those things! My staff did! They make recommendations and I almost always agree. I don't see why it should be any different this time.

Chris: Again, it's different because it's your own mother.

Courtney: Who is perfectly qualified for this contract!

Chris: Yeah, but the point is, you can't approve a contract for a member of your own family.

Courtney: I think we're making a big deal out of nothing. Are we honestly saying that none of our relatives can ever go after a contract with a city as large as ours just because we work here?

Chris: No, I'm saying that none of us can be involved in a contract when a member of our family is going after it.

Courtney: Are you absolutely sure about this or are you just being paranoid?

Chris: Look, you asked for my opinion as the City Law Director and I'm giving it to you. If you'd like, I can verify this with the Ohio Ethics Commission just to be safe.

Courtney: Alright, let me know what you find out.

## Slide 15

Imagine that YOUR Mom also submitted a bid for this contract. How would you feel if you saw a daughter signing off on her own mother's contract?

Select your reaction



What is your reaction? Imagine that YOUR Mom also submitted a bid for this contract. How would you feel if you saw a daughter signing off on her own mother's contract?

## Slide 16

It's a fair question, isn't it? Can anyone in our families or private outside lives go after contracts with the very public agencies where we serve?

In a nutshell, yes. The law doesn't prohibit our families and outside business associates from pursuing contracts with our agencies; it forbids us from getting involved in any way.

### Slide 17

This is where the concept of "recusal" becomes very important again. Recusal doesn't just mean that we have to abstain from a final decision regarding our family or business associates' public contracts.

It means that we can't participate in ANY PART of that process. This could be reviewing plans, discussing the project with co-workers, making recommendations on the contract...anything really. Complete recusal is required.

### Slide 18

So, if someone in your family or someone you have a business relationship with in your private life ever wants to sell goods or services to your public agency, wish them well in their pursuits and then stay away from all aspects of that process.

### Slide 19

Okay, a new example now! Have you ever received a text that made you a little uncomfortable? Listen to this next text exchange and think how you might react under the Ohio Ethics Law.

### Slide 20

(visually resembles a text exchange)

Hey Glenn, do you still do the building improvement grants for your state agency?

Well, I review & recommend them. I don't make the final decision. Why?

We're thinking of going after one of the grants. Wondering what you can do help it along?

I don't think I can do anything since I work part-time for you.

Seriously?

Hey Glenn, do you still do the building improvement grants for your state agency?

Well, I review & recommend them. I don't make the final decision. Why?

We're thinking of going after one of the grants. Wondering what you can do help it along?

I don't think I can do anything since I work part-time for you.

Seriously?

### Slide 21

Yes. I don't think I could even talk about your grant application at the agency, let alone help it along.

Could you at least check?

I'd prefer not to. Sorry, hope this doesn't affect my work with you.

Don't worry. I'll call the agency.

Yes. I don't think I could even talk about your grant application at the agency, let alone help it along.

Could you at least check?

I'd prefer not to. Sorry, hope this doesn't affect my work with you.

Don't worry. I'll call the agency.

## Slide 22

Imagine that you worked at a state agency and also had an outside job. How would you feel if your part-time employer wanted you to give him a leg up on a public grant?

Select your reaction



What is your reaction? Imagine that you worked at a state agency and also had an outside job. How would you feel if your part-time employer wanted you to give him a leg up on a public grant?

## Slide 23

I hope you approve of the way Glenn responded to his fellow texter! It's clear from their exchange that Glenn is a public employee, but that he also works for this person asking for his help.

And his response is exactly what the Ethics Commission would recommend.

## Slide 24

You might be wondering, though, "How is this a public contract? Nobody is selling anything to the agency." Fair enough, but remember when we said that a public contract exists whenever public money is spent?

Guess what a public grant is? You got it: public money!

## Slide 25

So, Glenn did absolutely the right thing when he deferred from any action regarding the building improvement grants.

It doesn't mean his part-time employer can't pursue the grant; it means Glenn can't participate, even if he isn't the final decision-maker.

He is absolutely correct when he noted that he didn't even want to check on the grant status. It looks like Glenn took his ethics training this year and we're proud of him!

## Slide 26

Ohio Ethics Commission

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