




Ethics in Government Procurement

Presentation to the
OSBA/OASBO
School Law for Treasurers Workshop
October 16, 2015

COLUMBUS | CLEVELAND | CINCINNATI-DAYTON | MARIETTA







General Overview

Ohio Ethics Laws


- Conflicts of Interest
- Nepotism
- Revolving Door
- Gifts, Meals and Entertainment







Conflicts of Interest

- The Ohio Ethics laws prohibit public officials and employees from having a conflicting interest that would detract from their public duties and loyalties.
- A Public Official cannot “use or authorize the use of the authority or influence of office or employment to secure anything of value. . .”



R.C. 102.03(D)







Conflicts of Interest (A)(1) and (2)

A Public Official cannot:



- use the authority or influence of the public official's office to secure a public contract in which a family member or business associate has an interest. R.C. 2921.42(A)(1).
- use the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security in which a family member or business associate has an interest. R.C. 2921.42(A)(2).






Conflicts of Interest (A)(1) and (2)



- Violations of these two sections can be avoided by withdrawing from all participation in the matter.
- Remember that an appearance of impropriety can be very damaging even if no legal violation occurs.
- R.C. 2921.42 is a criminal statute. Felony penalties can apply.







Withdrawing to Avoid a Conflict

- Must completely and totally withdraw.
- No “behind-the-scenes” discussions with anyone.
- Best practice: Put it on the record.









Conflicts of Interest (A)(3) and (4)

A Public Official cannot:



- have “an interest in the profits or benefits of a public contract” entered into by the Board; R.C. 2921.42(A)(3).
- occupy any “position of profit” in a public contract authorized by the public official or by his public board at any time which the public official was a member. R.C. 2921.42(A)(4).







Conflicts of Interest (A)(3) and (4)



- A profit in a contract occurs when a public official receives a fee or compensation which is dependent upon the public action.
- Must be a pecuniary gain or benefit and must be “definite and direct” in nature.







Conflicts of Interest (A)(3) and (4)

- Cannot withdraw to avoid conflict
- Might be able to avoid a conflict by foregoing private salary, bonus, job duties or other benefits are related to public action.
- Must still withdraw from the matter.
- Appearance of impropriety particularly high.








Supplemental Compensation


R.C. 2921.43(A)(1) prohibits a school district employee from receiving supplemental compensation for performing official duties.

- Coach cannot accept additional compensation from booster group.




OEK Adv. Op. 2008-01







Nepotism

- Public employee cannot use the authority of office to secure “anything of value” including a job for a family member.
- Includes any employment, raise, promotion, assignment, etc.




OEC Information Sheet 2010-03







Nepotism

- Family member means:
 - Parents and step-parents
 - Grandparents
 - Siblings
 - Spouse
 - Children and step-children
 - Grandchildren
 - Any other individual related by blood or marriage who lives in the same household



OEC Information Sheet 2010-03







Revolving Door/Moonlighting

- R.C. 102.03(A)(1) – no public employee shall, during service or for one year after, represent a client on a matter in which he “personally participated” while in public service.
- Personal participation means decision, approval, advice, investigation, “or other substantial exercise of administrative discretion.”
- Exception: Former employee may be retained by the former public office. R.C. 102.03(A)(6).


OEC Information Sheet 2012-04






Gifts, Meals and Entertainment

- “No person shall promise or give to a public official or employee anything of value that is of such character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.”



Ohio Revised Code 102.03(F)







Gifts, Meals and Entertainment

- Ohio Ethics Commission violation test

 - Is the source of the gift *improper*?
 - Is the gift of *substantial* value?
 - Yes to both might violate R.C. 102.03(F)
- Criminal sanctions could be imposed for violations

 - \$1,000 fine and six months in jail








Gifts, Meals and Entertainment

Improper Sources

- Any public entity that is regulated by, doing business with, seeking to do business with, or interested in matters before the public entity that employs the gift recipient is an improper source.









Gifts, Meals and Entertainment

Improper Sources

- Any corporation holding a public contract, grant or license with a public agency is an improper source for that public agency's employees or officials.
- ***NO EXCEPTIONS FOR PERSONAL RELATIONSHIPS.***






Gifts, Meals and Entertainment

Substantial Value

- No specific dollar amount is set in state law.
- No specific standard for determining "substantial value" established by the Ohio Ethics Commission.





Gifts, Meals and Entertainment


Substantial Value



- General Guidelines
 - Modest lunch
 - Coffee mug or small gift



Note: Gifts aggregated for calendar year
- "Substantial" Gifts if given by an Improper Source
 - Dinner at an upscale restaurant
 - Tickets to a professional sporting event
 - Lodging
 - Golf outings






Question:


- Your spouse owns a plumbing company. The hot water tank at the elementary school just went out and the district needs a repair fast. The school principal calls and asks if your spouse's company can do the work. What should you do?







Answer:



You cannot participate in any manner in this issue. Refer the Superintendent to someone else in the District to assist and take no role in the matter.






Question:

- Your company created and owns a social media platform for school districts. Can you donate these services to your district?








Answer:

Yes. Although you cannot sell the services to your district, you can donate them so long as you do not receive any “profit” from the transaction, including a charitable deduction.



Unreported Advisory Opinion to La Flamme, July 9, 2014.







Question:

- Can a school district employee accept travel from a vendor to see a product installation?




Answer:




NO travel, meal, lodging from vendor

- Doesn't matter that only essential travel costs are paid.
- Doesn't matter that project will be let by competitive bidding.
- Doesn't matter if vendor payment is to the government agency as reimbursement.



Opinion No. 89-013, 014, 90-001






Question:

- A school vendor is throwing an open house reception at a trade association conference.
- Can you attend?








Answer:


- OK for vendors/private parties to provide meal, reception, or open house for attendees at a conference of public officials IF:
 - Meal is of “ordinary, routine character”
 - Event is educational or informational
 - Event is open to all conference attendees
 - Public official has not used his/her official position to obtain donation of meal, reception or open house

Opinion No. 2002-02







Question:



- Your college friend you’ve known for years, also does business with the district. She wants to take you golfing. Any problem?







Answer:

- Even though she is a friend, she cannot pay for greens fees or cart fees.
- Vendor can pay for food and beverages of “ordinary” character.


Opinion No. 2001-03







Question:

- A vendor sells office supplies to the district as well as the public. You come into the store on the day of a public sale to buy supplies for your family. Do you have to pay full price?




Opinion No. 2001-03







Answer:

- Yes. If uniformly offered to a large group and the public employees involved do not provide services having special benefit to the retailer.




Opinion No. 2001-08







Question:

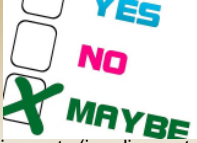
- So any discounts for public employees are okay?









Answer:



- Customer discounts (i.e. discount on software for district employees' personal use permitted except for any employees who negotiate or authorize that contract on behalf of the District. OEC Information Sheet 2011-08.


Opinion No. 92-015







Question:

- Everyone else is doing it.
- What's the worst that can happen?








Answer:

- State Teachers Retirement System (STRS) Board Members were convicted for the acceptance of entertainment paid for by and investment advisor while attending an official STRS tour of investment properties in New York. Another STRS member was convicted for unlawfully accepting four tickets worth \$120 to a Cleveland Indians baseball game from an investment firm that provided investment services to STRS.





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