

ADVISORY OPINIONS

The Ohio Ethics Commission issues advisory opinions in response to questions relating to conflicts of interest or financial disclosure. Advisory opinions interpret the law and are available to public servants who are considering, but have not yet undertaken, an activity that may involve a conflict of interest. Staff reviews requests for advice with an Advisory Committee of the Commission.

An opinion issued by the Commission provides the official or employee, and any other public servant similarly situated, who follows the opinion with immunity from civil action, criminal prosecution, and removal from office actions. A public official or employee who fails to follow an opinion of the Commission is subject to potential civil and criminal action and removal from office for violating the Ethics Law. Advisory opinions are available, with search capability, on the Commission's Web site.

ETHICS EDUCATION AND PUBLIC INFORMATION

The Ethics Commission provides a wide variety of ethics education and public information free of charge. The Commission presents classes and other educational opportunities for groups of public officials, public employees, and private citizens. In addition, it provides pamphlets on a number of ethics issues. Each public agency is required to provide a copy of the Ethics Law to the officials and employees who serve the agency. The Commission can provide a master copy of the law to any agency, to assist it in complying with this law. Helpful materials are also available on the Web site.

For more information, to request an Ethics Commission speaker, or for answers to questions, write, call or view our Web site:

OHIO ETHICS COMMISSION

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Columbus, Ohio 43215
Phone: (614) 466-7090
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www.ethics.ohio.gov

[Rev. Oct. 2006]

ETHICS IS EVERYBODY'S BUSINESS



The Ohio Ethics Commission

“No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.”

- James Madison in *The Federalist*

Sarah M. Brown, Chairman
Dr. Robert Browning, Vice Chairman
Prof. Josiah Blackmore
Merom Brachman
Ben Rose
Prof. Ann Marie Tracey

David E. Freel,
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Questions or comments about this publication, or about the Ohio Ethics Law? Please contact:

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Citizens may contact the Ethics Commission to make a charge or allegation of unethical conduct, or file a sworn complaint alleging specific personal knowledge of facts and evidence supporting each element of an Ethics Law violation. Most investigations are initiated upon charges received by the Commission.

When the Commission receives a charge or allegation of unethical conduct, staff determines whether the alleged misconduct falls within the authority of the Commission. If so, staff initially reviews allegations and investigative priorities with an Investigative Committee of the Commission to determine whether to further review the allegation based upon existing prioritized investigations and available resources. The Commission can then direct the staff to conduct a confidential investigation into the factual support for the charge and the severity of the alleged unethical conduct.

The Commission's authority is analogous to the role of a grand jury. At the conclusion of an investigation, which may include a formal hearing upon a sworn complaint, the Commission may refer the matter for prosecution to the appropriate prosecuting authority. It can also resolve a charge with the accused person, or close the matter. The resolution may include: mediation of the dispute; financial restitution; rescission of affected contracts; forfeiture of any benefits resulting from this activity; or resignation of the public official or employee involved.

The Commission has no authority to prosecute public officials or employees independently. If it finds that the evidence supports a serious violation and determines that a resolution is not an option, the findings are turned over to the appropriate prosecuting authority for criminal prosecution. The referral remains confidential unless the prosecutor fails to act on the referral within 90 days. If the prosecutor fails to take any action with respect to the referral within that time, the Commission may make the referral public, though it can not comment regarding the merits of its findings.

Filing of statements and availability of filed statements

Three ethics agencies receive FDS from the public officials over whom they have jurisdiction:

- Members of, employees of, and candidates for the General Assembly file with the Joint Legislative Ethics Committee;
- Members of, employees of, and candidates for the judiciary file with the Supreme Court Board of Commissioners on Grievances and Discipline;
- All others file with the Ohio Ethics Commission.

Copies of most FDS are available for public inspection from the Ethics Commission and other ethics agencies. However, the Ethics Law requires that the Ethics Commission keep some statements confidential, such as those filed by school district employees. Blank FDS may be obtained from any county board of elections or from any ethics agency.

INVESTIGATIONS BY THE ETHICS COMMISSION

Any person can refer information that indicates that a public official or employee may have violated any of the criminal provisions of the Ethics Law to the ethics agency that has jurisdiction over the official or employee in question. Allegation forms are available from the Ethics Commission to refer information relating to public servants within its authority.

All Commission investigations and hearings are **confidential**. Breach of confidentiality by Commission members or employees is a criminal offense. At its discretion, the Commission may share or disclose information with an investigating or prosecuting authority when necessary and appropriate for the conduct of an investigation. However, the Commission generally cannot disclose to others the existence, status, or result of any investigation.

THE OHIO ETHICS LAW

The Ohio Ethics Law was originally enacted in 1973 to promote confidence in government. The law:

- establishes a code of conduct making it illegal for state and local public officials and employees to take official action if they have certain conflicts of interest;
- provides for the filing of financial disclosure statements by many public officials, and for public inspection of those statements;
- establishes procedures by which citizens may participate in the enforcement of the law; and
- creates agencies within the three branches of government to administer the law:
 - The Joint Legislative Ethics Committee (serving legislators);
 - The Supreme Court Board of Commissioners on Grievances and Discipline (serving judges); and
 - The Ohio Ethics Commission (serving all others).

This Ethics Commission publication is designed to help you understand the law. Whether you are a private citizen, public official, public employee, or candidate for public office, the pamphlet will explain how the Ethics Law applies to you.

This pamphlet is designed to advise the reader of general types of conduct prohibited by the Ohio Ethics Law and related statutes and is not intended to restate the specific restrictions of state statute. You are encouraged to contact the Ethics Commission with any questions you may have after reading this publication.

THE OHIO ETHICS COMMISSION

The Ohio Ethics Commission is an independent, bipartisan board whose six members are appointed by the Governor and confirmed by the Senate. The members, citizens from around the state with experience in both the public and private sector, serve six-year terms that are staggered so that one member is appointed each year.

PROHIBITED CONDUCT

Ohio's Ethics Law recognizes that many public officials and employees are in a position to make or influence decisions that directly affect their personal interests. The Ethics Law attempts to prevent this type of activity. Generally, a public officer may not participate in matters that involve his own financial interests, or those of his family or business associates. The following types of conduct are prohibited or restricted by Ohio's Ethics Law.

Misuse of Official Position

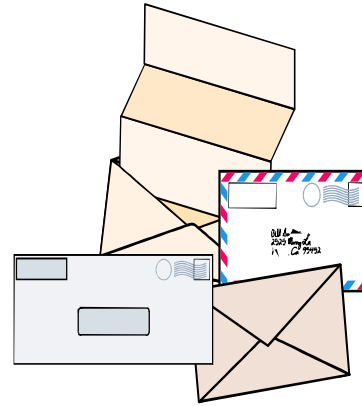
A public official or employee may not use, or authorize the use of, his public position to benefit himself or others in circumstances that create a conflict of interest where his objectivity could be impaired. This is a general restatement of one of the most important prohibitions in the Ethics Law.

Public officials and employees must avoid situations in which they might gain personally as a result of the decisions they make or influence as public servants. For example, a public official who owns property and profits by influencing his public agency to buy that property would likely be in violation of this prohibition. A public official or employee is also prohibited from using his position to benefit others, such as business associates and family members, because his relationship with those individuals could impair his objectivity in his public duties.

Two related provisions of the Ethics Law prohibit:

1. A public official or employee from soliciting or accepting anything of value that would create a substantial and improper influence upon the official in his public duties; and
2. Any person from promising or giving a public official anything of value that would create a substantial and improper influence upon the official in his public duties.

A candidate who has been certified to a ballot for election to public office is required to file his FDS not later than 30 days prior to the date of the first election in which his candidacy will be voted upon. A write-in candidate who has been certified to a ballot must file his FDS not later than 20 days prior to the first election in which his candidacy will be voted upon. Unless certified to a ballot, an incumbent office holder must file his FDS by April 15. A person appointed to an unexpired term of elective office has 15 days from the date he is sworn into office to file.



A person who is appointed to, promoted to, or employed in a non-elective position for which filing is required must file an FDS within 90 days of employment, promotion, or appointment, **unless** he is appointed on or before February 15th. If appointed to, promoted to, or employed in a non-elective position for which filing is required, on or before February 15th, he must file by April 15th.

FDS Fees and Penalties

The filer must include a filing fee with his FDS. The filing fees range depending upon the position for which filing is required. Filing fees are listed at www.ethics.ohio.gov/fds.html. The Ethics Commission is required to assess a **late filing fee** of \$10 per day, to a maximum of \$250, against those individuals who fail to file their FDS on time.

If a public official who is required to file a financial disclosure statement fails to file, a penalty of up to a \$250 fine, 30 days in jail, or both, could be imposed by the courts. If an official files a false statement, the penalty could be up to a \$1000 fine, six months in jail, or both.

Information the Filer Must Disclose

Along with general personal information, most FDS filers identify the following items:

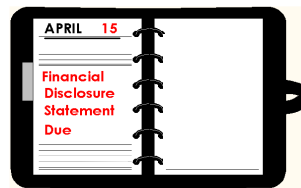
- all sources of income;
- investments worth more than \$1000;
- businesses in which the filer is an officer or board member;
- sources of travel expenses incurred in connection with official duties;
- sources of meals, food, and beverages, incurred in connection with official duties, aggregating more than \$100;
- sources of gifts worth more than \$75;
- Ohio real estate investments; and
- creditors and debtors of over \$1000.

City, county, and school board elected officials who make less than \$16,000 for their public service, and public university trustees, have different disclosure requirements. These officials are required to disclose:

- sources of income over \$500;
- investments worth more than \$1000;
- businesses in which the filer is an officer or board member;
- sources of gifts worth more than \$500;
- Ohio real estate investments; and
- creditors and debtors of over \$1000.

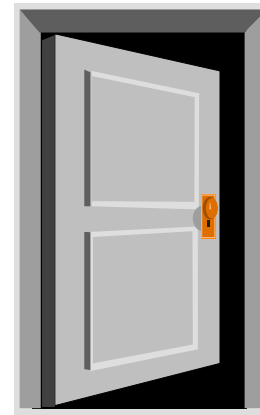
FDS Due Dates

A public official subject to the financial disclosure requirement is **generally** required to file his FDS with the appropriate ethics agency each year by **April 15th**. Statements may be filed by mail or in person, and a statement postmarked on or before April 15th is considered filed by that date.



These provisions prohibit a public official from soliciting or accepting gifts, travel expenses, consulting fees, or any other thing of substantial value from a party that is interested in, regulated by, or doing or seeking to do business with his public agency. Similarly, a private citizen may not promise or give things of value to a public official or employee under circumstances that create a conflict of interest. The Ethics Commission recommends that public servants should avoid all conduct that creates the appearance of impropriety.

The "Revolving Door" Restriction



A present or former public official or employee is prohibited from representing anyone before any public agency, including his former employer, on any matter in which he personally participated in his official capacity. This prohibition is in effect during public service and generally remains in effect for one year following departure from public service. It does not prohibit a public servant from representing his former public agency.

The revolving door restriction applies to all former public officials and employees, including professionals such as attorneys, accountants, and engineers. The restriction prohibits a former public servant from improperly using insider knowledge or exerting influence with his former co-workers on a matter in which he personally participated while in public service. Since this influence could be used to benefit his client, the revolving door provision prohibits the former public servant from performing this type of representation. However, it does not apply to matters in which the former public servant did not participate as a public official.

Stricter provisions exist for certain former public officials and employees:

1. A former public official or employee who participated as a public official or employee in administrative matters pertaining to solid or hazardous waste management, handling, transporting, or disposal is prohibited for a period of **two** years after his public service from representing, before any public agency, an owner or operator of a waste facility, or an applicant for a permit or license for a facility, on any matter in which he personally participated in his official capacity; and
2. A former commissioner or attorney examiner of the Public Utilities Commission is prohibited from representing public utilities before any state board, commission, or agency, for **two** years after the conclusion of his service, **regardless** of whether he personally participated in the matter.

Sale of Goods and Services to and Representation of Clients before Public Agencies

A public official or employee is prohibited from receiving compensation, other than from his own public agency, for services rendered in a matter before any agency of the governmental entity with which he serves. An example of this kind of activity would be a city transportation department employee who prepares private tax returns, without using public time or resources, and wishes to represent a client before any city department, including, for example, the tax department. The law generally prohibits him from performing this representation. In addition, state officials and employees are specifically prohibited from selling goods and services to state agencies, except through competitive bidding.



FINANCIAL DISCLOSURE REQUIREMENT

General Information

Under the Ethics Law, many public officials and employees file annual reports, called Financial Disclosure Statements (FDS), that disclose certain required financial information. The purposes of the financial disclosure requirement are to remind public officials of financial interests that may conflict with their duties and to assist citizens and the three ethics agencies in monitoring the areas of potential conflict of interest of public officials. Public disclosure serves as a deterrent to public officials considering activity that may result in a conflict.

Like a tax return, the FDS reflects personal financial information for the entire preceding calendar year. Therefore, a statement to be filed in 2005 will reflect the financial interests of the filer during the entire year of 2004, and will be described as a 2004 FDS.

Individuals Required to File FDS

Officials and employees who are required to file FDS are:

- Elected officials at the state, county, and city levels;
- Candidates for state, county, and city elective offices;
- School board members and candidates for school board in school districts with 12,000 or more students;
- All school district superintendents, treasurers, and business managers;
- Upper-level state employees, including chief administrative officers of sovereign-power state boards and commissions; and
- Members of sovereign-power state boards and commissions.

Village and township elected officers, board of education members in districts with fewer than 12,000 students, and most state and local public employees are not required to file FDS.

An example of this situation might be a county official or employee who operates a paving company and contracts with the county for road-paving work. The county official or employee may be in violation of the public contract prohibitions of the Ethics Law unless he can affirmatively show that he meets the limited conditions outlined above.

Soliciting or Receiving Improper Compensation

A public official or employee is prohibited from receiving compensation, in addition to that paid by his public agency, for performing his official duties. A private party is also prohibited from giving any supplemental compensation to a public official or employee to perform his



official duties. In addition, a public servant is prohibited from soliciting or accepting anything of value, or coercing a campaign contribution, in exchange for an appointment to a public position, or any other kind of personnel action, such as a promotion or transfer.

PENALTIES

All of the provisions of the Ethics Law are criminal prohibitions. Most of the provisions, including the conflict of interest prohibitions, are first degree misdemeanors, punishable by a maximum fine of \$1000, a maximum prison term of six months, or both. However, certain provisions of the public contract prohibitions are fourth degree felonies, punishable by a maximum fine of \$5000, a maximum prison term of eighteen months, or both.

Non-elected officials and employees may be exempted from both of these prohibitions if the following conditions are met:

1. The official or employee is doing business with or representing the client before an agency other than the one he serves; and
2. Prior to conducting the business or providing the representation, the official or employee files a statement with his own agency, the agency to which he plans to sell goods or services, and the appropriate ethics agency.

The statement described above must contain:

1. Specific information, including the names of the public agencies involved and a brief description of the business to be conducted; and
2. The public official's or employee's declaration that he will not participate in his public capacity, for a period of two years, in any matter involving the personnel of the agency with which he is conducting business or before which he is representing any clients.

In the example of the private tax service, the city transportation department employee would be required to file a statement with his own public agency (the transportation department), the agency before which he plans to appear for compensation (the city tax or finance department), and the Ohio Ethics Commission, before he could represent the client before the tax or finance department. Finally, the city transportation department employee must declare on the statement that he will abstain for a period of two years from official participation in any matters related to the personnel of the city tax or finance department. Thus, the public servant may conduct business with, or represent clients before, an agency other than the one he serves provided he is not an elected official and, where appropriate, follows the exemption provided by the law.

Confidential Information

CONFIDENTIAL

The Ethics Law prohibits present and former public officials or employees from disclosing or using any information appropriately

designated by law as confidential. This prohibition remains in effect as long as the information remains confidential.

License or Rate-Making Proceedings

A public official or employee is restricted from participating in license or rate-making proceedings that would affect the licenses or rates of any business if he or members of his immediate family own more than five percent of that business. A public servant is also prohibited from participating in license or rate-making proceedings that affect any person to whom the official, his immediate family, or any business of which he or his family members has sold more than \$1,000 of goods or services.

Public Contracts and Public Investments

A public official or employee is prohibited from having a financial or fiduciary interest in a public contract. A public contract includes any purchase or acquisition of goods or services, including employment, by or for the use of a public agency. Specifically, a public official or employee is prohibited from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which the official, a family member, or a business associate has an interest. This provision, for example, prohibits public officials and employees from hiring members of their families. A public official is also prohibited from securing the investment of public funds in any investment if he, a family member, or a business associate has an interest in the investment.



A public official or employee is also prohibited from having an interest in a public contract with his public entity, or an agency with which he is connected, even if he does not participate in the issuance of the contract. A public servant may have an interest in a public contract with the public entity that he serves if he meets the conditions set forth in two exemptions to this prohibition.

The two exemptions are:

1. A public official is not deemed to be "interested" in a public contract with his public agency if **all** of the following conditions apply:
 - a. his interest in the corporation is limited to being either a stockholder or a creditor of the corporation;
 - b. he either holds less than five percent of the outstanding stock of the corporation, or he is a creditor owed less than five percent of the outstanding debt of the corporation; and
 - c. he informs his public agency of his intentions by filing an affidavit with the agency prior to entering into the contract; and
2. The prohibitions do not apply if **all** of the following conditions are met:
 - a. the public official or employee takes no part in the deliberations and decisions on the transaction;
 - b. the public official or employee informs his public agency of his interest;
 - c. the contract involves necessary supplies or services that are not obtainable elsewhere at the same or lower cost or that are part of a contract established before he was hired; and
 - d. the public agency is given treatment at least equal to that given to other clients involved in similar transactions.