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THE OHIO ETHICS LAW OUTLINE

I. INTRODUCTION TO OHIO'S ETHICS LAW

A. **Purposes of the Ethics Law:**
- Protect the public from the financial, family, or business conflicts of its public servants
- Encourage impartiality in governmental decisions by restricting public actions on matters in which public officials and employees have direct and definite conflicts of interest
- Promote citizen confidence in the actions of public agencies

B. **Ethics Law History:**
- Created by the General Assembly in 1973
- Found in Ohio Revised Code Chapter 102 and R.C. 2921.42, 2921.421, and 2921.43
- Established the Ohio Ethics Commission, and two similar state ethics agencies in the Legislature and Judiciary, to oversee all within the three branches of government
- Ethics Commission is one of nearly 40 similar state ethics boards and commissions

C. **The Ethics Commission Oversees:**
- All state and local public officials and employees (except legislative and judicial members)
- Private parties and corporations who do business with public offices

D. **The Ethics Law:**
- Requires personal financial disclosure to identify and protect against conflicts;
- Restricts unethical conduct through laws that have criminal sanctions; and
- Allows uniform review and guidance regarding ethics issues.

II. THE OHIO ETHICS LAW – A WORKING UNDERSTANDING

General Rule: Whenever the interests of the public official or the public official's family or business associates are present in an issue before the public official, there is an ethics question.

A. **General Public Protections –** The Ethics Law contains *criminal* restrictions to:
- Restrict participation in public matters involving direct and definite personal, family and business interests of a public official or employee;
- Limit compensation for public duties to their public employer:
- Restrict personal, family, and business interests in public contracts;
- Prohibit nepotism in public hires and services;
- Condition former officials and employees' post-employment activity;
- Control the disclosure of confidential information, and;
- Provide protections against influence peddling in public agencies for personal benefit.

B. **Conflict of Interest and Supplemental Compensation – R.C. 102.03(D), (E), (F), 2921.43**
- **Core of Ethics Law restrictions that often appear together in analysis and violations. Ethics Law does not replace, but supplements, bribery and theft prohibitions. No quid pro quo required.**

1. **R.C. 102.03(D):**
   a. Prohibits a public official's *active use of authority to secure* anything of value that could have a substantial and improper influence on the official. Includes voting, discussing, deliberating, or formally or informally lobbying on matters of conflict [OEC 2007-01].
   b. Not necessary that thing of value is received by the official—could be received by family member or business associate.

2. **R.C. 102.03(E)**:
   a. Prohibits a public official's *acceptance or solicitation* of anything of value that could have a substantial and improper influence on the official [OEC 2001-03]. A thing of substantial value from an improper source would have a substantial and improper influence.
   b. Anything of value includes money, goods, *future employment*, interest in realty, and every other thing of value [R.C. 1.03].
   c. Improper sources include parties doing or seeking to do business with, regulated by, or interested in matters before a public agency [OEC 2003-03].
   d. Receipt or acceptance alone creates potential violation [OEC 2001-03].

3. **R.C. 102.03(F)**:
   a. Prohibits a private party from *giving or promising* anything of value. [OEC 2008-01]
   b. Prohibited regardless of whether official solicits the item.

4. **Application to issues of:**
   a. Employment: A public official is prohibited from soliciting, accepting, or using his position to seek employment from "improper" sources unless the official can withdraw from participating in any actions that affect the prospective employer and his abstention is approved by supervisors, where required. Official must withdraw from participation in official matters if attempting to secure, or approached about, employment [OEC 2008-02]
   b. Travel, meals, and lodging: A public official cannot accept anything of value, including travel, meals, and lodging, from an improper source. [OEC 2001-03]
   c. Gifts: Cannot accept gifts from any party that is doing or seeking to do business with, regulated by, or interested in matters before the public agency [OEC 2001-04].

5. **Other Governance:**
   a. Executive Order 2007-01S – State officials and employees under Governor
   b. Other Agency Specific Restrictions – i.e. PUCO, public investment systems

6. **R.C. 102.03(G):** Campaign Contributions not ordinarily governed under Ethics Law, unless another violation of law. [OEC 2002-03; see also R.C. 2921.43 below].

7. **R.C. 102.01 (H)(1) – Honoraria:** Most public officials and employees who file financial disclosure are prohibited from receiving honoraria [OEC 99-003].

8. **R.C. 2921.43 - Supplemental Compensation:**
   a. Prohibits the acceptance or giving of any compensation, other than allowed by law, for the performance of any public duty or responsibility. Separate notion of conflict; attempt to prohibit the conflict inherent in being compensated by dual employers. Public and private sectors *both* subject to supplemental compensation prohibitions [OEC 2008-01]
   b. Prohibits the coercion of a campaign contribution [State v. Conese (2004), 102 Ohio State 3d 435]

9. **R.C. 102.03(C) - Licensing Conflicts:** Bars participation in license or rate-making where public official or immediate family members (spouse residing with official and any dependent children) own more than 5 percent.

C. **Public Contract Restraints - R.C. 2921.42 and R.C. 102.04(B)**

1. **R.C. 2921.42**: **Five restrictions; The three most common are:**
   a. Public officials cannot secure public contracts for himself, family member, or a business associate (includes hiring a family member into public employment) [OEC79-005; 98-004].
   b. Public officials cannot have an interest in profits or benefits of a public contract entered into by a public agency with which he is "connected" [OEC 2008-04].
   c. Public official cannot profit from a public contract he approved or that was authorized by a body of which he was a member unless the contract was competitively bid and awarded to the lowest and best bidder [OEC 88-008].

2. **R.C. 2921.42(A)(2) - Investing Public Funds:** Public officials cannot secure the investment of public funds in any share, bond, mortgage, or other security, if he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

3. Public contract includes public purchases or acquisitions of any property or service, including employment, grants, or improvement or maintenance of public property [OEC 87-002; 89-006].

4. **Exceptions:**
   - Stockholding below 5 percent; with an affidavit.
   - Four-part exception—*All four must exist* and the burden is upon official to demonstrate:
     - Necessary supplies or services;
     - Unobtainable elsewhere for the same or lower cost or continuing course of dealing;
     - Equal or preferential treatment given agency; and
     - Arm's length, full disclosure, no participation [OEC 2000-02].

5. **R.C. 102.04(B)**: Restricts state employees from conducting business with any state agencies except through competitive bidding. (See F(5)(b) below for R.C. 102.04(D) exception) [OEC 2004-04].

D. **Post-Employment and Representation Restrictions – R.C. 102.03(A), (B), and 102.04**

1. **R.C. 102.03(A)(1)**: Revolving door prohibitions on a public official, during public service and for one year afterwards, from representing anyone on any matter in which he personally participated while he was a public official [OEC 2004-04].
2. **Statutory Definitions:**
   a. Matter includes any case, proceeding, application, determination, issue, or question [OEC 99-001].
   b. Personal participation includes decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion, including supervision [OEC 91-009].
   c. Representation is formal or informal appearance before, or any written or oral communication with, *any* public agency [OEC 86-001].
3. **Exceptions:**
   - Not prohibited from representing public agency the official formerly served.
   - New matters and matters in which public official did not participate; prohibition is tied to personal participation.

- Ministerial functions - Not prohibited from performing functions like filing or amending tax returns, incorporation papers, and similar documents.
- Proposal, consideration, or enactment of statues, rules [OEC2004-04].

4. **R.C. 102.03(B) – Confidentiality:** Lifetime prohibition on disclosure of confidential information both during and after leaving public position [OEC93-012].

5. **R.C. 102.04(A) - Representation and Influence Peddling**
   a. Prohibits state officials from receiving compensation directly or indirectly, other than from own public agency, for any service rendered personally on any case, application, or other matter before any public agency [OEC 93-010].
   b. **R.C. 102.04(D):** Exemption applies to non-elected employees who render services before, or sell goods and services to, state agencies other than the agency they serve [OEC 93-010].

III. THE OHIO ETHICS COMMISSION AND REMEDIES AVAILABLE

A. **Composition:**

- The Commission is a bipartisan body comprised of six members who are appointed by the Governor and subject to confirmation by the Senate. The members serve staggered, six-year terms, and are compensated $75 per meeting, to a maximum of $1800 per year.
- Current members are:

- *Merom Brachman, Bexley*	- *Ben Rose, Chair, Lima*
- *Betty Davis, Mason*	- *Ann Marie Tracey, Cincinnati*
- *Shirley Mays, Vice Chair, Delaware*	- *vacant*

- The Ethics Commission employs an Executive Director who supervises a staff of 21 that carries out the duties of administering the Ethics Law on a day-to-day basis.

B. **Statutory Responsibilities of the Ohio Ethics Commission:**

1. **Advice:** The Commission possesses the unique authority to interpret and provide advice regarding the Ethics Law to public servants before they act. The Commission's written advisory opinions provide immunity to those who follow the advice. In 2008, 255 requests for advice were closed.
2. **Education:** The Commission provides free ethics education and informational materials related to ethics, conflicts of interest, and financial disclosure. In 2008, 241 educational sessions were conducted by the Commission to more than 18,000 people.
3. **Financial Disclosure:** The Commission administers the financial disclosure requirement for most public employees required to file annual disclosure statements. More than 11,000 forms are filed annually with the Commission.
4. **Investigation:** The Commission confidentially investigates alleged violations of the Ethics Law and related statutes for potential referral for criminal charges. In 2008, 168 active investigations were conducted.
5. **Legislation**: The Commission recommends legislation to the General Assembly related to ethics, conflicts of interest, and financial disclosure.

IV. QUESTIONS:

Contact the Ohio Ethics Commission at (614) 466-7090. For more information about the Ethics Commission and its duties, searches of more than 300 formal Advisory Opinions, and common sense guidance regarding Ohio's Ethics Law, please go to www.ethics.ohio.gov, or contact the Commission.