

OHIO ETHICS COMMISSION

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RESTRICTIONS ON NEPOTISM OR HIRING FAMILY MEMBERS: Ethics Commission Information Sheet # 1

I. Introduction

The Ohio Ethics Law and related statutes are found in Ohio Revised Code (R.C.) Chapter 102. and Sections 2921.42 and 2921.43. These laws generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates.

The Ethics Law applies to all people who serve as officials and employees for public agencies in Ohio. "Public agencies" include state departments, boards, and commissions, counties, cities, villages, townships, school districts, public colleges and universities, public libraries, port authorities, and all other public entities.

The Ohio Ethics Commission was created to administer, interpret, and assist in the enforcement of the Ethics Law for all officials in the state, except members and employees of the General Assembly and judicial officers and employees.¹ In this information sheet, the word "official" indicates any person who serves a public agency, whether elected, appointed, or employed.

II. Purpose of this Information Sheet

The Commission prepared this information sheet to explain the Law as it applies to situations where a relative of an official seeks a job with the public agency she serves.

III. Summary of the Law

The Ohio Ethics Law and related statutes prohibit an official from:

- Authorizing the employment of a family member; and
- Using the authority or influence of her public position to secure authorization of the employment of a family member.

An official is prohibited from hiring a family member in any employment position, including a full-time, part-time, temporary or permanent position, a position in the classified or unclassified civil service, or a non-civil service position.

In most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency, as long as no official has secured a job, or job-related benefits, for her family member.

IV. Prohibition Against Authorizing a Family Member's Employment

R.C. 2921.42 (A)(1) prohibits a public official from authorizing the employment of a family member. A "public official" is any elected or appointed officer, or employee, of the state or any political subdivision of the state.

A "member of [an official's] family" includes the following relatives, regardless of where they reside: (1) spouse; (2) children (whether dependent or not); (3) siblings; (4) parents; (5) grandparents; and (6) grandchildren.² It also includes any other person related by blood or by marriage and living in the same household.³

An official has "authorized" the employment of a family member when the employment could not have been awarded without the approval of the official. In other words, under this section, an official is prohibited from making the final decision about whether a family member should be hired. For example, an official is prohibited from voting to hire a family member.⁴

If the official makes the final hiring decisions for the public agency she serves, her family members cannot be employed by the public agency. For example, a county office holder cannot hire a family member and cannot delegate the authority to hire her family members to a subordinate employee, which means that her family members cannot be hired by her office.⁵ However, a person who worked in the office before her relative is elected is not prohibited from continuing to work for the office, as long as the terms and conditions of her employment are not changed through promotion or other actions described below.

V. Using Position to Secure Job

An official is also prohibited, by R.C. 2921.42(A)(1) from using the "authority or influence of" her public position to secure a job for a family member.⁶ Even if an official abstains from decisions, the law prohibits the official from discussing, recommending, or otherwise using the prestige of her office, formally or informally, to get a family member a job.⁷

R.C. 102.03(D) also prohibits an official from using her position to secure a job for a family member.⁸ R.C. 102.03(D) and (E) prohibit an official from using her influence with other public officers or employees, especially subordinates, to persuade them to hire her family member.⁹

VI. Using Position After Employment

The prohibitions in R.C. 2921.42(A)(1) and 102.03(D) continue after an official's family member has been employed.

R.C. 2921.42(A)(1) prohibits an official from participating in any decision, or using her position to secure any decision, that affects the continuation, implementation, or terms and conditions of a family member's employment.¹⁰ For example, an official is prohibited from participating in matters related to the renewal, modification, or termination of a family member's public employment.¹¹

R.C. 102.03(D) prohibits an official from participating, formally or informally, in any matter that directly affects a family member's employment.¹² For example, R.C. 102.03(D) prohibits an official from securing any employment-related benefits for a family member.

For example, a public official is prohibited from participating in matters affecting her family member's employment including: (1) changes in compensation or benefits; (2) assignment of duties; (3) evaluations; and (4) actions involving promotions, disciplinary actions, lay-offs, and removal.¹³ R.C. 102.03(D) also prohibits an official from influencing the decisions or actions of other officials or employees, particularly subordinates, regarding a family member's job with the public agency or any job-related benefits.

VII. Actions That Are Not Prohibited

R.C. 2921.42(A)(1) and 102.03(D) do not prohibit an official from participating in certain matters in which a family member has an indirect interest or from which a family member may indirectly benefit.

A. Approval of Union Contract: An official is not prohibited from approving a union contract when her relative is a member of the union, unless the relative serves as a union officer, board member, or on the union negotiating team or the official is covered by health insurance under the contract.¹⁴

B. Matters Affecting a Class: The law generally does not prohibit a public official from voting on an ordinance or resolution to fix the compensation of a class of employees, one of whom is a relative of the official. However, an official is prohibited from voting on an ordinance setting compensation for employees if the ordinance: (a) establishes compensation on a basis other than membership in the class of employees; (b) affects the family member's compensation in a differential manner than other members of the class; or (c) secures, renews, modifies, or renegotiates the terms of the family member's job.¹⁵

C. General Appropriations: The law also does not prohibit an official from participating in a general budgetary appropriation that includes money to fund a family member's compensation and benefits, or from participating in budgetary appropriations to a department that employs a family member. However, the appropriation cannot provide the official or employee with the authority or discretion to alter the compensation and benefits for her family member, and must provide compensation and benefits that are identical for all members in the class.¹⁶

VIII. Other Considerations

Where an official's spouse is employed by the public agency she serves, and the official is covered under health insurance provided by the agency to her spouse, there is an additional restriction. In that case, the official is receiving a thing of value, for purposes of R.C. 102.03(D) and (E). While the official is not prohibited from receiving the health insurance coverage, she is prohibited from taking any action to approve the union contract if it includes health insurance benefits and she is covered under those benefits.¹⁷

Any official whose family member has applied for a job with her public agency should ask her supervisors, or legal counsel for the public agency, whether the public agency has a policy or rule regarding employment of family members. (A public agency cannot create a policy or rule that is less restrictive than the prohibitions described above. However, a governmental entity can have a policy or rule that is more restrictive than the Ethics Law.)

Finally, while the Ethics Law does not absolutely prohibit relatives from working for the same public agency, questions of fairness and impartiality may arise in such situations. Further, such hires may present the appearance of impropriety to the public, even where the public official fully and completely removes herself from participating in the hiring process, as described above. A public agency may be able to minimize these concerns if the agency conducts all hiring activity in a fair, open, and impartial manner.

IX. Penalties

The Ethics Law and related statutes are criminal laws. If a person is convicted of violating an ethics law, that person may receive a jail sentence and/or have a fine levied against her.

R.C. 2921.42(A)(1) is a fourth-degree felony with a maximum penalty of eighteen months in prison and/or a \$5000 fine. R.C. 102.03(D) is a first-degree misdemeanor with a maximum penalty of six months in prison and/or a \$1000 fine.

X. Conclusion

Please contact the Ethics Commission if you have questions about this information sheet or the Ohio Ethics Laws. This information sheet is not an advisory opinion, and is not intended to provide advice on specific facts. Copies of the Commission's formal advisory opinions can be obtained from: Ohio Ethics Commission, 8 East Long Street, The Atlas Building, 10th Floor, Columbus Ohio, 432315-2940; telephone (614) 466-7090, and on the Commission's Web site: www.ethics.ohio.gov.

Endnotes:

¹ The ethics agency with jurisdiction over ethics issues related to members and employees of the General Assembly is the Joint Legislative Ethics Committee. The ethics agency with jurisdiction over ethics issues related to judicial officers and employees is the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

² Ohio Ethics Commission Advisory Opinion No. 80-001.

³ Adv. Op. No. 80-001.

⁴ Adv. Ops. No. 85-015 and 97-004.

⁵ Adv. Op. No. 85-015.

⁶ Adv. Ops. No. 92-012 and 98-003.

⁷ Adv. Op. No. 92-012.

⁸ R.C. 102.01(B) and (C); A "public official or employee" includes any person who is elected or appointed to an office or is an employee of any public agency.

⁹ Adv. Op. No. 97-004.

¹⁰ See Adv. Ops. No. 82-003, 89-005, and 92-012.

¹¹ Adv. Op. No. 92-012.

¹² Adv. Ops. No. 90-004, 91-004, and 92-012.

¹³ Adv. Op. No. 92-012.

¹⁴ Adv. Ops. No. 89-005, 92-017, and 98-003.

¹⁵ Adv. Op. No. 92-012.

¹⁶ Adv. Op. No. 91-004.

¹⁷ Adv. Op. No. 92-017.