

**Ohio Commission on Hispanic and Latino  
Affairs Retreat  
February 10, 2006**

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**ETHICS LAW**

*Ethics Law Overview*

*Chapter 102 of the Ohio Revised Code*

*R.C. 2921.42*

*R.C. 2921.43*

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# ETHICS LAW OVERVIEW

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## A. *Ohio Ethics Commission/Jurisdiction*<sup>1</sup>

1. Ethics Commission has jurisdiction in matters relating to ORC Chapter 102 and ORC §§2921.42 and 2921.43.
  - a. ORC Chapter 102 (Relevant Sections)

Financial Statements .....	102.02
Restrictions on Public Officials .....	102.03
Improper Compensation .....	102.04
Opinions/Immunity .....	102.08
Penalties .....	102.99
  - b. ORC Chapter 2921

Unlawful Interest in Public Contract .....	2921.42
Improper Compensation .....	2921.43

## B. *Ohio Ethics Commission/Powers & Duties* *(ORC §§ 102.05 and 102.06)*

1. May receive, initiate and investigate complaints alleged to be in violation of Chapter 102 or §2921.42 or §2921.43.
2. Shall hold a hearing if there is reasonable cause to believe a violation has occurred. A hearing includes:
  - a. right to counsel;
  - b. right to examine evidence and produce evidence;
  - c. right to subpoena witnesses; and
  - d. right to cross-examine.

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<sup>1</sup> There are three entities with different ethics responsibilities and processes: the Joint Legislative Ethics Committee, for matters relating generally to members of the general assembly; the Board of Commissioners on Grievances and Discipline of the Supreme Court, relating generally to matters involving judicial officers and employees; and the Ohio Ethics Commission, for matters relating to all other persons governed by the ethics laws. This overview deals only with the responsibilities and processes of the Ohio Ethics Commission which exercises jurisdiction over ethics matters involving public officials. It is intended as a general overview, but it is not exhaustive. The actual language of the statutory provisions should be examined before any decision is made.

3. If by a preponderance of the evidence the Ohio Ethics Commission finds a violation, the finding is reported to the prosecuting authority. (ORC §102.06(C))
4. The Ohio Ethics Commission or prosecuting attorney may settle or compromise the complaint and are authorized to use mediation. (ORC §102.06(G)(1))

**C. *Annual Financial Statement and Disclosures (ORC §102.02)***

1. Financial Statement must be filed annually with the Ohio Ethics Commission (filing fee based on sliding scale/late filing fee assessed).
2. Disclosures required include, but are not limited to, the following:
  - a. Name of the person filing the statement and each member of his or her immediate family and all names under which the person or members of his or her immediate family does business.
  - b. Every source of income received during the proceeding calendar year by filer or by others for filer's use or benefit and a description of the nature of services for which income was received.
  - c. Breakout required:
    - (i) Identity of and amount of income from a person who filer knows or has reason to know is doing or seeking to do business with filer's agency.
    - (ii) Attorneys, physicians and other professionals subject to confidentiality requirements must still disclose name of person and amount unless the disclosure (1) would threaten the client, patient or other recipient of services; (2) would reveal details of the subject matter for which services were sought; or (3) would reveal an otherwise privileged communication.
  - d. All gifts over \$75. Gifts from certain related individuals, by will, or from certain trusts excluded. (ORC §102.02(A)(7))
  - e. Sources and amount for payment of expenses for travel incurred in official duties. For limited exception, see §102.02(A)(2)(b).
  - f. Sources of payment of food and beverage expenses incurred in official duties that exceed \$100 aggregated per calendar year. For limited exception, see §102.02(A)(9).

- g. Name of corporation, trust, business trust, partnership or association in which filer, or other person for his use or benefit had investment of over \$1,000, or in which filer has interest or holds a fiduciary relationship.
- h. Fee simple and leasehold interests in real estate, excluding the person's residence and property used for personal recreation.
- i. Names of persons residing in or transacting business in Ohio to whom filer owes more than \$1000.
- j. Names of persons residing in or transacting business in Ohio who owe more than \$1000 to filer.

**D. *Restrictions on Public Officials***  
***(ORC §102.03) (as relevant to Commission Members)***

- 1. No present or former public official, while publicly employed or for twelve (12) months thereafter, may represent a client in a matter in which he personally participated.
- 2. No present or former public official may disclose or use, without authorization, any information acquired in the course of the official's public duties that is confidential, either by statute or which (1) was designated as confidential, (2) such designation was warranted under the circumstances, and (3) preserving the confidence is necessary for the proper conduct of government business.
- 3. No public official may use or authorize the use of his office to secure anything of value that would manifest a substantial and improper influence on the official with respect to his duties.
- 4. No public official may solicit or accept anything of value that would manifest a substantial and improper influence on the official with respect to his duties.

**E. *Improper Compensation***  
***(ORC §2921.42)***

- 1. No public official shall knowingly do any of the following:
  - a. Authorize, or employ the authority of influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;
  - b. Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which 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;

- c. During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;
  - d. Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected;
  - e. Have an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and that involves more than \$150.
2. In the absence of bribery or a purpose to defraud, the public official, members of his family or business associates are not considered to have an interest in a public contract or the investment of public funds, if all of the following apply:
- a. The interest is limited to controlling or owning shares of the corporation, or being a creditor of the contracting corporation or organization;
  - b. The shares owned or controlled do not exceed 5% of the outstanding shares of the corporation. The amount due the public official as a creditor does not exceed 5% of the total indebtedness of the corporation or organization; and
  - c. The public official, prior to the time the contract is entered into, files an affidavit with the agency giving his exact status in connection with the corporation or organization. (ORC §2921.42(B))

Note that the Ohio Ethics Commission takes the position that the above exceptions do not apply to the prohibitions set out in 1(a) and (c) above.

3. ORC §2921.42 does not apply to public contracts in which the public official, his family member or a business associate have an interest when all the following apply:
- a. The contract is for necessary supplies or services for the public officials agency;
  - b. The supplies or services are unobtainable elsewhere for the same or lower cost or are being furnished as part of a continuing course of dealing established prior to the public official's association with the agency;

- c. The treatment accorded the agency by the contractor is the same or preferential to treatment accorded other customers;
- d. The entire transaction is:
  - (i) at arm's length;
  - (ii) with full agency knowledge of the public official's interest; and
  - (iii) the public official takes no part in the deliberations or decision by the agency regarding the contract.

**G. *Soliciting or Receiving Improper Compensation***  
**(ORC §2921.43)**

- 1. No public servant may knowingly solicit or accept either of the following:
  - a. Any compensation, unless authorized under the Revised Code, to perform his official duties, to perform any other act in the public servant's public capacity, public office or public employment, or as a supplement to his public compensation;
  - b. Any additional or greater fees or costs than are allowed by law to perform his official duties.
- 2. No public servant, for his own personal or business use, and no person for the personal or business use of the public servant, shall solicit or accept anything of value in connection with either of the following:
  - a. Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency; or
  - b. Preferring, or maintaining the status of, any public employee with respect to his compensation, duties, placement, location, promotion, or other material aspects of his employment.
- 3. No person for the benefit of a political party, campaign committee, legislative campaign fund, or political action committee shall coerce any contribution in consideration of either of the following:
  - a. Appointing or securing, maintaining, or renewing the appointment of an person to any public office, employment, or agency; or
  - b. Preferring, or maintaining the status of, any public employee with respect to his compensation, duties, placement, location, promotion, or other material aspects of his employment.

**H. Opinions/Immunity  
(ORC §102.08)**

**1. Advisory Opinions**

The Ohio Ethics Commission may issue advisory opinions relating to a special set of circumstances involving ethics, conflict of interest, or financial disclosure under Chapter 102 or §§2921.42 or §2921.43 of the Revised Code.

**2. Immunity**

If the opinion states that there is no violation of the above sections, a person to whom the opinion was directed (or who has similarly situated) may reasonably rely upon the opinion and will be immune from criminal prosecution, civil suits, or actions for removal from office of employment for violations of Chapter 102.

**I. Penalties  
(ORC §102.99)**

**1. Violation of**

- a. §102.02(C) (Knowingly fail to file financial statement) - misdemeanor of the fourth degree.
- b. §102.02(D) (Knowingly file a false financial statement) - misdemeanor of the first degree.
- c. §102.03 (Restrictions on Public Officials) or §102.04 (Improper Compensation) or §102.07 - misdemeanor of the first degree.
- d. §2921.42 (Unlawful Interest in a Public Contract):
  - (i) §2921.42(A)(1) and (2) - felony of the fourth degree.
  - (ii) §2921.42(A)(3), (4) or (5) - misdemeanor of the first degree.
- e. §2921.43 (Soliciting or Receiving Improper Compensation) - misdemeanor of the first degree. A conviction carries disqualification from holding any public office, employment, or position of trust in Ohio for seven years from the date of conviction.