Ohio Ethics Law: Public Incentives & Economic Development

October 6, 2026

Jeffry D. Harris

Partner

Bricker Graydon Wyatt

Who we are…

- Dynamic Full-service Regional Law Firm
  - 8 key industries:
    - Banking & Financial Services
    - Higher Education
    - Education (Pre-K to 12)
    - Energy
    - Health Care
    - Insurance
    - Manufacturing
    - ***PUBLIC SECTOR***
- 325 attorneys in Indiana, Kentucky, Ohio & Tennessee



Discussion Agenda

- Overviews:
  - Ohio Ethics Law
  - Ohio Sunshine Laws
- Confidentiality of Economic Development Information
- Q&A

Bricker Graydon Wyatt

Overview – Ohio Ethics Law

Ohio Ethics Law

- Complicated landscape
  - Several sources of ethics rules & laws
- Application of these ethics laws is very fact specific
  - Outcomes vary greatly depending upon what might seem to be minor details
- Consequences of violation can be significant
  - Contracts can become void; positions can be lost; criminal penalties
- We'll cover general concepts

Ohio Ethics Law

- Conflicts of Interest
- Accepting Gifts – Items of Value
- Interests in Public Contracts

Ohio Ethics Law

Bricker Graydon Wyatt

Generally:

- Prohibits public officials or employees from participating, in any way, in actions or decisions that **directly involve their own financial interests, or those of their families or business associates**
- A public official has a "conflict of interest" when his or her **ability to be an objective decision-maker is impaired** by his or her own interests, or the interests of family members or business associates

Are conflicts of interest illegal?

- **No**. *Having* a conflict of interest is not illegal
  - Conflicts are normal
    - Public servants have families & friends, and may have businesses, professions, investments, property interests & other connections to their communities
    - Any of these connections could result in a conflict of interest for the official
- It's *how the public servant responds* to his or her conflict of interest
  - Public servants may NOT take any action in matters that definitely & directly affect themselves, their family members, or their business associates

Are conflicts of interest illegal?

- When someone in public service is confronted with a conflict of interest, he or she must **completely abstain** from making decisions about or influencing how the matter is resolved
- Such abstention or recusal should include refraining from:
  - Voting
  - Discussing
  - Reviewing
  - Recommending
  - Inspecting
  - Investigating
  - Or taking any other action on the matter

R.C. Chapter 102 ~ Conflict of Interest Statute

Bricker Graydon Wyatt

R.C. 102.03:

- Prohibits public official or employee (current or former) from using his or her position to secure "**anything of value**" for the **public official, the public official's family, or anyone that has a close economic or business relationship** with the public official
  - R.C. 102.(D); Ohio Ethics Op. 98-002
  - This includes money and every other thing of value (R.C. 102.01(G))
  - Self
  - Family members - spouse, child (whether or not dependent), parent, grandparents, grandchildren & siblings & any other person related by blood or marriage & who resides in the same household w/ you
  - Business Associates

R.C. Chapter 102 ~ Conflict of Interest Statute

Bricker Graydon Wyatt

R.C. 102.03:

- Gifts
  - Do not **accept or solicit** anything of value, such as honoraria, travel expenses, or gifts that "is of such a character as to manifest a **substantial and improper influence**"
    - Substantial Influence – refers to WHAT is given (compare: *de minimus*)
    - Improper Influence – refers to WHO gives it – is it someone doing business, seeking to do business, regulated, or who has interests in matters?
  - General Rules – Play it Safe
    - Don't accept tickets to sporting events w/o paying for them
    - Don't take home that TV you won in the raffle at the conference
    - Pay for your own dinners, lunches, etc.

R.C. Chapter 102 ~ Conflict of Interest Statute

Bricker Graydon Wyatt

"What" is given:

- Ohio law has no specified $$ limit
- Nominal (*de minimus*) gifts – but small things add up
- Be mindful of appearances of impropriety (even if not an ethics law violation)

"Who":

- Any person, company, organization, or other entity, that is:
  - Doing or seeking to do business with the public agency the official or employee serves;
  - Regulated by the agency the official or employee serves; or
  - Interested in matters before the agency the official or employee serves

R.C. Chapter 102 ~ Conflict of Interest Statute

Bricker Graydon Wyatt

R.C. 102.03:

- Conflicting positions
  - Cannot hold two positions if they are such that one would improperly influence your judgment in the other (concern w/ divided loyalties)
  - "**Revolving Door**" principle prohibits public employees from representing anyone who is interested in a matter before the public agency in which the employee has had some involvement during the employee's term of employment or for 12 months afterward
- Confidentiality
  - No present or former public official or employee shall disclose or use . . . information acquired in the course of official duties that is confidential
  - Ban has no time limit and applies to disclosure or use of the confidential information
    - Put a pin in this for a minute…

R.C. Chapter 102 ~ Conflict of Interest Statute

Bricker Graydon Wyatt

Outside Employment:

- Using public time, facilities, personnel, or resources in operating a private business or while engaging in private outside employment
- Using official titles or identification on private business cards or other written materials or appearing in uniform while soliciting business or conducting demonstrations for clients
- Using public service relationships to secure a favorable decision or action by another official or employee regarding their private interests
- Discussing, deliberating, or voting on any matter involving their private business, including recommending their employer's or business's services to their own public agency

R.C. 2921.42 – Criminal Statute

- Prohibits a public official from:
  - **Authorizing** a public contract in which he, his family, or a business associate has an interest; and
  - **Having an interest in** the profits or benefits of a public contract entered into by a political subdivision with which the public official is connected
    - *R.C. 2921.42(A)(4).*
  - Having "**an interest**" means a "definite and direct" interest
    - *Ohio Ethics Op. 2001-02, at 3*
    - Think: an officer of a company has a definite & direct fiduciary & pecuniary interest in the company's contracts
- A public contract exists whenever a political subdivision either purchases services from a provider or acquires services as part of the contractor's responsibility under the contract
  - *Ohio Ethics Op. 91-011*.
  - But there are exceptions . . .

R.C. 2921.42 – Criminal Statute

The prohibitions do not apply if the public official can demonstrate **all four** of the following:

(1) the subject of the public contract is necessary supplies or services for the government agency;

(2) the supplies or services are unobtainable elsewhere for the same or lower cost;

(3) the government is treated preferentially or the same as other customers; and

(4) the transaction is conducted at arm's length and with full knowledge of the potential conflict.

R.C. 2921.42(C)(1)-(4).

Common Law

- Court decisions and other legal precedents such as the Ohio Attorney General opinion and other guidance
- These address a variety of ethics concepts especially around issues of compatibility of public office
  - Example: when is it ok for a person to hold two different public positions?

Overview - Ohio's Sunshine Laws

Ohio's Sunshine Laws

Bricker Graydon Wyatt

Public Records Law

- R.C. 149.43
- "Upon request… all public records… shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours… [or] shall make copies"

Open Meetings Act

- R.C. 121.22
- "All meetings of any public body are declared to be public meetings open to the public at all times"

Public Records Act – R.C. 149.43

- "Construed liberally in favor of broad access, with **any doubt resolved in favor of disclosure of public records**"
  - *State ex. rel. Hogan Lovells U.S. L.L.P. v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56 (2018)
- "The primary duty of a public office when it has received a public records request is to **promptly provide any responsive records** within a reasonable amount of time and **when a records request is denied, to inform the requester of that denial and provide the reasons**[.]"
  - *State ex. rel. Cordell v. Paden*, 156 Ohio St.3d 394 (2019)

Public Records Act – 3 Requirements

1. Public records are **promptly prepared & made available for** inspection **to any person** at **all reasonable times** during regular business hours
2. Make available **copies at cost**, within a reasonable period of time
3. **Maintain public records** in a manner that they can be made available for inspection

Public Records Act

- **All records** created, received, or coming under the jurisdiction of a **public office** that **document** the activities or function of the public office are public records
- **Any records** that meet this definition—regardless of where they are held—are records subject to release
  - Personal devices
  - Personal messages
  - Third-parties

Public Records Act

- Information on a **fixed medium**
- Created, received or sent under the jurisdiction of the public office
  - Incl. **drafts**!
- Documents the **functions, policies, decisions, procedures, operations, or other activities** of a public office

Public Records Act

- Non-records: **do not document the functions of the public office**:
  - Employee home addresses & personal information
  - Personal notes kept for one's own use & not shared with others
  - Transient information
  - "Records do not include every piece of paper on which a public officer has written something"

Public Records Act - Exclusions

Bricker Graydon Wyatt

Generally:

- R.C. 149.43(A) removes from public records **many types of information kept by public offices**
  - Medical records, health records, JobsOhio & ODOD records
- **Trade secrets** under R.C. 1333.61
  - Technical information, design, process, technique that derives economic value and is the subject of efforts to maintain its secrecy
  - However, but… records that detail **strategy, planning, bids & negotiations** don't automatically qualify as trade secrets

Open Meetings Act – R.C. 121.22

- Members of a public body **taking official action**, must conduct deliberations, and discuss the **public business in an open meeting**, unless subject matter specifically exempted by law
    - **Majority** of the public body's members **must come together**
- Act governs prearranged discussions, but it **does not prohibit unplanned encounters** between members of public bodies, such as hallway discussions

Open Meetings Act – 3 Requirements

1. Meetings must be **open to the public**
   - Location is everything
2. **Public notice** of the meeting is required
   - In writing, made in advance
   - *How* notice is given - up to each public body's pertinent rule (R.C. 121.22(F))
     - "Every public body, **by rule, shall establish** a reasonable method by which any person may determine the time and place" of all meetings
       - *Newspaper or website or social media or outdoor signs or front door / bulletin boards at local hall*
     - Add'l note: public body must provide at least 24 hours' notice of special meetings to news media which have requested notification
3. **Minutes** of all public meetings must be kept
   - Prepared promptly, filed and maintained
   - Must reflect general subject matter discussed

Open Meetings Act

- All public bodies must conduct their meetings in the open, provide notice of meetings, and maintain meeting minutes
  - "Public body" includes legislative authority, like a city council; but it also includes any committees or subcommittees of the larger public body
    - This applies even *if* there isn't a majority of council on the committee
- A meeting is a (1) **prearranged gathering** of (2) a **majority of members** (3) to **discuss the public's business**

Open Meetings Act – Remote Meetings

Following entities to hold **remote (i.e., interactive video or teleconference) meetings** otherwise prohibited under Ohio Sunshine Laws:

- Joint Economic Development Zones (JEDZs) (R.C. 715.693)
- Joint Economic Development Review Councils (R.C. 715.692)
- **Community Improvement Corporations (R.C. 1724.11)**
  - Including county land banks

Bricker Graydon Wyatt

Confidentiality of Economic Development Information

Public Records Act – Exclusions

Economic Development:

- **Port Authorities** (R.C. 4582.091(A)) & **Community Improvement Corporations** (incl. county land banks) (R.C. 1724.11(A)):
  - In connection with relocation, expansion or preservation of business…
    - Financial & proprietary information – never a public record
    - Any other information – not a public record until business commits in writing to proceed
- **JobsOhio** (R.C. 187.04(C)):
  - Records created or received from any person
  - Exempt records received from public offices
- **Ohio Department of Development (**R.C. 122.36):
  - Project materials comprising trade secrets or commercial or financial information

Open Meetings Act – Executive Session

- **R.C. 121.22(G)**
- Certain matters may be discussed in a nonpublic setting by a public body otherwise subject to Open Meetings Act:
  - Certain personnel matters
  - Purchase or sale of property
  - Pending or imminent court action
  - Collective bargaining matters
  - **Matters required to be kept confidential by federal or state law**
  - Security matters
  - Public hospital trade secrets
  - **Economic development project negotiations**

R.C. 9.66(D)

- NEW provision:
- Applies to **counties, municipalities, townships, port authorities, and tax incentive review councils**
- **Individualized payroll information** submitted by an **applicant** or **recipient** of economic development assistance
  - "any grant, exemption, credit, loan, award, cooperative agreement, or other similar and related form of financial assistance, and any information derived therefrom"
  - Deemed **confidential and excluded from Ohio's Public Records Act**

R.C. 9.66(D)

- New law **requires** confidentiality
- Confidentiality required under R.C. 9.66(D) **does not clearly sunset**
- R.C. 9.66(D)'s "**under no circumstance**" language:
  - Public officials & employees who violate that mandate may be **subject to liability, including potential criminal penalties, for unauthorized disclosure of confidential information**
- R.C. 102.03(B):
  - No current or former **public official, whether elected or appointed**, or **employee** may **disclose any information** acquired by the public official or employee in the course of the public official's or employee's official duties **that is confidential, *without appropriate authorization***
- R.C. 102.99(B):
  - Criminal penalties for violations

Q&A Discussion

Thank You

Bricker Graydon Wyatt