

CAN MY AGENCY ALSO BE MY CLIENT?

Like many Americans, public employees and officials are busy people: public sector jobs, families, volunteer work, and for some, a second job.



Many public servants actually own or operate a private business or consulting company. In fact, the Ethics Commission often receives questions from public employees and officials who wonder if they can do business with the public entity they serve.

Obviously, public agencies routinely make purchases to carry out their mission and ensure efficient operations. These purchases can range from services such as consulting or insurance to goods such as vehicles or office supplies. These purchases are “public contracts” under the Ohio Ethics Law. A public contract exists anytime a public agency buys goods or services, even if there is no written contract.

The Ethics Law prohibits public officials and employees having a financial interest in the contracts of the public agency with which they are “connected.” A public employee is connected with the agency they serve, but may be connected to other agencies, as well. For example, a county employee is connected with all county agencies and a city employee is connected with all city agencies.

In general, the Ethics Law prohibits public servants from selling goods or services to their public agencies. Some examples include:

- a public school secretary is prohibited from selling t-shirts to

the school district;

- a state employee is prohibited from selling excavating services to their state agency;

- a county engineer employee is prohibited from selling computers to the county sheriff’s office; or
- a city council member is prohibited from selling uniforms to the police department.

There is an exception to this prohibition; it is a four-part exception and the public servant must meet all four parts in order to sell goods or services to their agency.

1. The goods or services are necessary;
2. The agency would be unable to obtain comparable goods or services from another company at the same or lower cost;
3. The public servant provide the public agency with services as good or better than those provided to other customers; and
4. The public servant does not participate in any discussion or decision regarding the public contract process and the entire transaction is conducted at “arm’s length.”

The Ethics Law contains additional requirements for state employees. First, a state employee is required to compete in a bidding process before securing a public contract with his or her state agency. The competitive bidding process must be fair and open and the state agency must provide adequate notice to other

vendors. Secondly, a state employee may sell goods and services to a state agency other than the one for which she works. The employee must disclose the sales to her own agency, to the agency where she sells the goods or services, and to the Ohio Ethics Commission. The state employee must disqualify and remove herself from any participation involving matters or public servants at the agency where she has made the sales.

Finally, the Ethics Law prohibits all public servants from using a public position to secure anything of value for themselves or their business. For example, a public servant who owns a private business would be prohibited from:

- Using agency time, facilities, personnel or resources for the company;
- Using connections to agency officials and employees to secure access to information that would provide an unfair advantage; or
- Receiving any benefit from the sale of goods or services if the public servant recommended, in their official capacity, that the agency needed the goods or services.