

provided by Joyce Brady @ 9/12/14 CRC mtg.

Section 9.21

Delete current first paragraph and substitute the following paragraph from RC 102.03 (D) as noted on Advisory Opinion 2010-03 dated July 25, 2010, to outline our Conflict of Interest Policy:

No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

Leave paragraph #2 the same to read:

No officer or employee shall hold any other elected public office nor any other employment incompatible with his duties as an officer of this municipality.

Delete current third paragraph and substitute the following paragraph from RC 102.03 € as noted on Advisory Opinion 2010-03 dated July 25, 2010, to further outline our Conflict of Interest Policy:

No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

We would also like to add the following provisions but were uncertain on how to appropriate incorporate it:

- 1) Five year cap on the time you do business with a vendor who may have had dealings with the Officer or Employee & should it be based on a dollar amount?
- 2) Would also like to add explanation of "a determination of whether an employee has an interest in his or her employer's contract as outlined in OEC Opinion 2009-02 dated 3/3/09. (i.e. states must have ownership interest in company, is a director...)

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Prior Application of the Restriction ✦

In past opinions, the Commission has held that a public official is prohibited from awarding a contract to a family member's employer if the family member has a definite and direct interest in the contract. A determination of whether an employee has an interest in his or her employer's contracts depends on the facts and circumstances of the particular situation. See Adv. Op. No. 84-009. In Advisory Opinion No. 89-008, and again in Advisory Opinion No. 92-002, the Commission held that an employee has an interest in his or her employer's contracts if the employee:

- (a) has an ownership interest in the company;
- (b) is a director, trustee, or officer of the company or agency;
- (c) takes part in the negotiation of the contract;
- (d) is paid a salary that is based on the proceeds of the contract;
- (e) receives a share of the contract's proceeds in a commission or fee;
- (f) has employment responsibilities that include participation in or oversight of the administration or execution of the contract;
- (g) is employed by an employer that receives all or most of its funding from a contract and is dependent on the receipt of the contract; or
- (h) is employed in a position that is dependent on the contract.

An appeals court concluded that a jury was justified in finding that a mayor's brother had an interest in his employer's contracts because the brother acted as manager and participated in the administration and execution of the contracts. *State v. Urbin*, (2002), 148 Ohio App. 3d 293, ¶¶ 13-16. In reaching its conclusion, the jury relied on the factors set forth by the Ethics Commission in Advisory Opinion No. 92-002. See also *State v. Urbin* (2003), 100 Ohio St. 3d 1207, ¶¶ 13-14 (appeal dismissed as improvidently allowed) (In an opinion concurring with the dismissal, Chief Justice Moyer wrote that the Ethics Commission's definition of when an employee has an interest in his or her employer's contracts is "a reasonable interpretation of the term 'interest' as used in R.C. 2921.42" and the court did not err in incorporating elements of an Ethics Commission opinion in jury instructions.)

If a public official's family member has an interest in the contracts of his or her employer in any of the ways described above, R.C. 2921.42(A)(1) would prohibit the official from participating in the authorization of any contract between the public agency and the family member's employer. If, however, the family member **does not** have an interest in the contracts of his or her employer, the family member is an "ordinary employee" of the employer. R.C. 2921.42(A)(1) would not prohibit the public official from authorizing a contract between the public agency and the family member's employer if the family member is an "ordinary employee."

Anything of Value—R.C. 102.03(D) and (E) and Definitions

R.C. 102.03(D) and (E) provide:

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Within ten (10) days after the filing of any petition, the Director of Elections or the Clerk of Council, as the case may be, shall examine each part of the petition to see if it is sufficient and in proper form, and certify his findings to the Board of Elections or to the Council, as the case may be. If any petition is found insufficient or incorrect in form or substance, the petitioners shall be notified of the findings, including what particulars have been found defective.

Any petition with the required number of valid signatures may be amended for other defects within a ten (10) day grace period after the notification and refiled upon additional forms in the manner provided for filing the original, including the repayment of filing fees, if any.

The sufficiency of the number of signatures on any petition shall be determined as being the required percentage of the number of electors voting in the last general Municipal election. (Amended 11-4-08)

8.33 Official Notice. At least thirty (30) days before any election at which an initiated or referred ordinance, recall of an elected official, or Charter amendment is to be submitted, the Clerk of Council shall have printed and mailed to each elector an official notice containing a full text of any such ordinances with their respective ballot titles, or the ballot title for a recall election; provided, however, that notice of Charter amendments may be given by newspaper advertising in accordance with the general laws of the State. The validity of the election result on such ordinances or recall shall not be questioned because of errors or irregularities in such mailing or newspaper advertising. (Amended 11-4-75)

**ARTICLE IX
PERSONNEL**

SECTION 9.1 OFFICERS.

The word "officer" as used in this section shall include the Mayor, members of Council, the Clerk of Council, members of all Council or Charter-established Committees, Bureaus, Commissions or Agencies and the Directors of all administrative departments.

SECTION 9.2 GENERAL QUALIFICATIONS.

9.21 For All Personnel. No officer or employee shall have any financial interest, either directly or indirectly, in any contract to which the Municipality is a party, or in the expenditure of money by the Municipality, except for his lawful compensation and reimbursable expenses.

No officer or employee shall hold any other elective public office, nor any other employment incompatible with his duties as an officer of this Municipality.

No officer or employee shall accept or receive a gratuity, directly or indirectly, from any person, firm or corporation having, or having had business dealings with the Municipality.

9.22 For Officers. No member of the immediate family of any officer of the Municipality may be employed by the Municipality in any noncivil service employment.

Every officer shall comply with such qualifications as may be stated in the section regarding his election or appointment.

Every officer shall, before entering upon the duties of his office, take and subscribe his oath or affirmation to support the Constitution of the United States and of the State of Ohio and the Charter and ordinances of Willoughby Hills, and faithfully, honestly and impartially discharge the duties of the office.

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