

Members Only



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Office Holding and Employment Restrictions that Apply to Current or Former General Assembly Members*

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This *Members Only* brief discusses restrictions in the Ohio Constitution and in statutes that might prevent a current or former member of the General Assembly from holding a public office or position of public employment or from working as a lobbyist.

Eligibility for public office or employment

Current General Assembly members

The Ohio Constitution prohibits a member of the General Assembly from holding any other federal, state, or local public office during the member's term. (It does not prevent a legislator from holding a political party office, being a notary public, or being an officer in the U.S. armed forces or the Ohio National Guard.) It appears that the purposes of this prohibition are to promote the separation of powers and to prevent conflicts of interest that might result if a General Assembly member held another public office.

Further, under Ohio law, a current General Assembly member may not knowingly do any of the following:¹

- Serve on, or accept any appointment, office, or employment from, any commission or committee that the General Assembly authorizes or creates

*This *Members Only* brief is an update of earlier briefs on this subject, the latest of which was dated October 11, 2006 (Volume 126 Issue 11).

The Ohio Constitution prohibits a General Assembly member from holding another public office during the member's term.



The Revised Code forbids a General Assembly member from holding certain positions of employment in state government during the member's term.

and that provides compensation other than actual and necessary expenses;

- Accept any appointment, office, or employment from any executive or administrative branch or department of the state that provides compensation other than actual and necessary expenses, other than a commission as a notary public or a position as an officer in the Ohio National Guard;

- Be appointed as a trustee, officer, or manager of a benevolent, educational, or correctional institution that the state authorizes, creates, or regulates and that receives support in whole or in part from state treasury funds. These restrictions do not prohibit a General Assembly member from serving as a school teacher or a board of education employee or from being appointed as a trustee, officer, or manager of a private institution that receives state treasury funds only in exchange for services rendered.

Current and former members

The Ohio Constitution also prohibits a General Assembly member, during the member's term and for one year thereafter, from being appointed to a public office if the office was created, or the compensation of the office was increased, during the member's term. It does not matter whether the member voted for or against the bill that created the public office or increased its compensation, or whether the public office was added to the bill after the member voted on it. The provision does not, however,

bar a member from being elected to such a public office or from becoming a public employee in a position that was created, or the compensation of which was increased, during the member's term.

The Attorney General has advised that a General Assembly member who serves a term during which pay ranges are increased may constitutionally be appointed as the director of a state department within one year after the end of that term, if the individual does not, as director, receive compensation exceeding the maximum authorized for the position immediately before the member's term. It appears that the Attorney General reached this conclusion because the General Assembly only indirectly sets the compensation of department directors; the Director of Administrative Services assigns the directors' job classifications to specific pay ranges and the Governor, as the directors' appointing authority, fixes their specific compensation. However, according to that opinion, a former legislator could not hold the position of a director if the General Assembly had designated the director's salary by statute.²

Meaning of "public office"

If a court were asked to decide whether a position accepted by a current or former General Assembly member was a "public office," the court likely would take into account the Ohio Supreme Court's previous interpretations of the term. In a 1917 case, the Ohio Supreme Court described the characteristics of a "public office" as follows:

The Ohio Constitution prohibits a General Assembly member from being appointed during the member's term or for one year thereafter to a public office that was created, or the compensation of which was increased, during the term for which the member was elected.



If official duties are prescribed by statute, and their performance involves the exercise of continuing, independent, political or governmental functions, then the position is a public office and not an employment.

Similarly, in a later case, the Court held that a "public office" is a position created by law, with independent and continuing duties involving in their performance the exercise of some portion of the sovereign power.³

Term limits

The Ohio Constitution prohibits a former member of the House of Representatives who served four consecutive terms from holding that office for a period of four years after leaving the office. The Constitution also forbids a former member of the Senate who served two consecutive terms from holding the office for a period of four years after leaving the office. These prohibitions do not prevent a person who has served four consecutive terms as a state representative from immediately being elected as a senator, nor do they prevent a person who has served two consecutive terms as a senator from being elected immediately as a state representative.

Time spent in an office fulfilling a term to which another person was elected generally is not considered when calculating consecutive terms, provided that at least four years have passed since the person previously

held that office. On the other hand, a person who is elected in a regularly scheduled general election and resigns before the end of the term for which the person was elected is considered to have served the full term.⁴

Ethics restrictions

The "revolving door provision"

The "revolving door provision" of the Ethics Law specifies that:

No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

"Matter" includes any case, proceeding, application, determination, issue, or question, but not the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. "Represent" is defined as "any formal or informal appearance before, or any written or oral communication with,

The duties of a public office entail the performance of independent and continuing political or governmental functions involving the exercise of some portion of the sovereign power.



any public agency on behalf of any person."

As a result, for one year following public service, a former member or employee of the General Assembly is prohibited from representing any person or entity in regard to a nonlegislative matter, such as a contracting decision, in which the member or employee personally participated as a public official or employee.

(The Revised Code also specifically prohibits a former member of the General Assembly from representing any person on a legislative matter before the General Assembly for a period of one year. However, that provision is not being enforced because in 2010, a federal court ruled that it violates the First Amendment to the U.S. Constitution.)⁵

Post-employment disclosure statements

For 24 months after leaving public service, a person who was required to file financial disclosure statements, such as a former member of the General Assembly, must file post-employment disclosure statements and must provide an updated forwarding address. Not later than the day a former legislator leaves office, the person must file an initial statement with the Joint Legislative Ethics Committee (JLEC), declaring whether the person will receive any income from any of the following sources during that period:

- An executive agency lobbyist or legislative agent (legislative lobbyist);

- The employer of an executive agency lobbyist or legislative agent, other than an employer that is a state agency or political subdivision;

- Any entity, association, or business that, at any time during the two immediately preceding calendar years, was awarded or bid on one or more contracts let by one or more state agencies that had an aggregate value of \$100,000 or more.

A former legislator who receives income from one of those sources during the 24-month period must file additional periodic statements with JLEC regarding those sources of income and certain expenditures and gifts. The law prohibits any compensation from any of those sources being contingent on the introduction, modification, passage, or defeat of any legislation or on the outcome of any executive agency decision.⁶

The Joint Legislative Ethics Committee

The Ohio Ethics Law establishes JLEC, which is composed of 12 legislators, and the Office of the Legislative Inspector General, which assists JLEC. In addition to enforcing the Ethics Law with respect to current and former legislators and legislative employees, JLEC has the authority to advise General Assembly members, employees, and candidates on questions relating to ethics, possible conflicts of interest, and financial disclosure.


JLEC provides advice to members in the form of advisory opinions and

The Ethics Law restricts the ability of former members of the General Assembly to lobby the government on certain matters.



private written opinions. Both types of opinions state JLEC's position regarding the ethical appropriateness of specified actions under a set of hypothetical circumstances. Private written opinions may be converted into advisory opinions upon request and the approval of a majority of the Committee. Advisory opinions are public records and provide criminal and civil immunity, as well as protection from removal from office actions, for activities approved by the opinion. Private written opinions are not public records and grant no immunity.

Before accepting a potential appointment or employment opportunity, a General Assembly member may want to consider

asking JLEC whether it would be appropriate to accept the position. The member would send a written description of the position in question to the Office of the Legislative Inspector General or to the Chair of JLEC and specify the type of opinion (advisory or private written) requested. For example, in the past, JLEC has advised General Assembly members that the Ohio Ethics Law generally does not prohibit a member from being employed by a state college or university, but that certain Ethics Law prohibitions restrict the member's ability to engage in certain activities in connection with that employment.⁷ 

Before accepting a potential appointment or employment opportunity, a General Assembly member may want to ask the Joint Legislative Ethics Committee whether it would be appropriate to accept the position.

Endnotes

- ¹ Ohio Constitution, Article II, Section 4 and R.C. 101.26.
- ² Ohio Const., Art. II, Sec. 4 and Ohio Attorney General Opinion 83-0004 (1983).
- ³ *State ex rel. Landis v. Bd. of Commrs. of Butler Cty*, 95 Ohio St. 157, 159 (1917) and *State ex rel. Herbert v. Ferguson*, 142 Ohio St. 496, 501 (1944).
- ⁴ Ohio Const., Art. II, Sec. 2 and Art. V, Sec. 9.
- ⁵ R.C. 102.03(A)(1), (4), and (5) and *Brinkman v. Budish*, 692 F.Supp.2d 855 (S.D. Ohio 2010).
- ⁶ R.C. 102.021. More information about Ohio's post-employment disclosure requirements is available from the Office of the Legislative Inspector General at jlec-olig.state.oh.us/?page_id=1955.
- ⁷ R.C. 101.34 and 102.08. See also JLEC Advisory Opinions 95-002, 98-001, and 2007-001, available at jlec-olig.state.oh.us/?page_id=336.

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