

BOARD OF ZONING APPEALS

I. OVERVIEW

A. Since a township is a creature of statute, townships have only those powers expressly conferred upon them by statute or those necessarily implied therefrom. *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875).

B. Ohio Revised Code Chapter 519 sets out the powers of townships in relation to zoning.

C. Zoning has been defined as the division of a community into districts and the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses. In other words, zoning is concerned with “land use” as opposed to “land ownership.”

D. Zoning is an exercise of the police power, and, accordingly, must be justified on the basis of promoting the public convenience, comfort, prosperity, or general welfare.

1. The Ohio Constitution vests the “police powers” of the State in the general assembly.

2. Ohio Revised Code Chapter 519 constitutes a delegation of a portion of those police powers to the township.

E. Since a township’s power to zone is a creature of statute, there are many limitations imposed upon this power.

1. **Constitutional limitations.**

(a) Zoning regulations must be reasonable. Regulations which are found to be unreasonable and arbitrary constitute an unconstitutional taking of property without due of process of law.

(b) Since zoning is a “legislative” function, courts traditionally will not question the expediency, advisability, or wisdom of the legislation.

(i) Courts can determine whether zoning regulations are so unreasonable and arbitrary as to be unconstitutional. However, zoning regulations are presumed valid and any illegality must be plain, apparent, and beyond debate. In other words, there is presumption of constitutionality attached to zoning regulations.

(ii) Since zoning regulations are in derogation of property rights, they are strictly construed in favor of the property owners.

(c) The constitutionality of a zoning provision may be challenged in one of two ways.

(i) Whether the zoning provision is clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community. (Must be shown “beyond fair debate.”)

(ii) Does the zoning provision deny the property owner of all economically viable use of the land (i.e., effect a taking).

2. Statutory limitations.

(a) Since the power of a township to adopt and administer a zoning resolution is a specific statutory grant of authority, a township cannot enact regulations which are in conflict with the applicable statutes.

(b) Ohio Revised Code Chapter 519 limits the ability of a township to regulate certain types of uses:

(i) Townships may not force discontinuance of a “lawful” nonconforming use (meaning a lawful use existing at the time of the enactment of the zoning resolution). In addition, the zoning resolution must provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms. (R.C. 519.19)

(ii) Zoning resolutions must classify outdoor advertising as a business use and must permit such advertising in all districts zoned for industry, business, or trade, or lands used for agricultural purposes. (R.C. 519.20)

(iii) Townships may not prohibit the use of land for “agricultural” purposes or the construction or use of buildings or structures incidental to the agricultural land use on which the buildings or structures are located. However, townships may regulate “agriculture” in any platted subdivision or in any area consisting of 15 or more lots approved under Ohio Revised Code Section 711.131 that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated

public road. (No authority to regulate agriculture on lots greater than 5 acres.) (R.C. 519.21)

(iv) In districts zoned for agricultural, industrial, residential, or commercial uses, townships may not prohibit the use of any land for a farm market where 50% or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, townships may regulate factors such as the size of the structure, size of parking areas that may be required, setback building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety. (R.C. 519.21)

Townships may also regulate factors pertaining to agritourism, except farm markets, as size of the structure used primarily for agritourism, size of parking areas that may be required (but not requiring that they be improved in any manner), setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect health and safety. (R.C. 519.21)

(v) Except for telecommunications towers located in an area zoned for residential use, townships may not regulate the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad. (R.C. 519.211)

(vi) Townships may not prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, and restaurant is permitted. (R.C. 519.211)

(vii) Townships may not prohibit permanently sited manufactured homes. (R.C. 519.212)

(viii) Townships may regulate small wind farms. (R.C. 519.213)

II. CREATION AND FUNCTION OF BOARD OF ZONING APPEALS (“BZA”)

A. Ohio Revised Code Section 519.13 - governs the creation and composition of BZA (five members and two alternates).

B. BZA usually acts in a quasi-judicial capacity.

1. BZA is a public body and its meetings are open to the public.
2. “Private Deliberations”
 - (a) “The Ohio Supreme Court has determined that public bodies conducting quasi-judicial hearings...‘require privacy to deliberate...’.” – 2020 Ohio Sunshine Manual
 - (b) Should not include the zoning officer or individual presenting the matter on behalf of the township; may include BZA attorney
 - (c) Private deliberations are not an executive session
 - (d) Make decision in open session

C. Section 519.15 – Rules Governing Organization and Meetings.

1. BZA is required to organize and adopt rules in accordance with zoning resolution.
2. Meetings shall be held at the call of the Chairperson and at such other times as the BZA shall determine.
3. Chairperson (or, if absent, the acting chairperson) may administer oaths.
4. BZA may compel the attendance of witnesses.
5. BZA must keep record of actions and determinations and file with Board of Trustees.
6. A public body must, by rule, establish a reasonable method whereby persons can determine the time and place of regular meetings and the time, place, and purpose of a special meeting.
 - (a) Special meetings.
 - (b) Emergency meetings.

III. JURISDICTION OF THE BZA

A. Ohio Revised Code Section 519.14 – vests a BZA with jurisdiction over four (4) areas:

1. To hear appeals;

2. To authorize variances;
3. To grant conditional zoning certificates; and
4. To revoke an authorized variance or conditional zoning certificate for the extraction of minerals, if any condition of the variance or certificate is violated.

5. Special Note: If a zoning resolution regulates surface mining activities as a conditional use, the BZA must proceed in accordance with Ohio Revised Code Section 519.141.

B. Appeals.

1. A BZA is authorized to hear and decide appeals from the administrative official in charge of the enforcement of the zoning resolution.

2. Section 519.14 provides that appeals to the BZA must be taken within 20 days after the administrative officer's decision by filing, with the officer and with the board of zoning appeals, a notice of appeal specifying the grounds.

(a) Appeals may be taken by any person "aggrieved."

(b) The BZA is required to decide the appeal within a reasonable period of time.

(c) The BZA is required to give at least ten days' prior written notice of the hearing to the "parties in interest." Notice by publication is also required.

C. Conditional Uses.

1. Conditional uses are not "permitted" uses. Rather, conditional uses are uses which may be permitted, subject to the issuance of a special permit. A use is typically categorized as a conditional use in recognition of the impact such use may have upon the surrounding area.

2. A township board of zoning appeals' power to grant conditional zoning certificates is no greater than that vested in it by the township's zoning resolution. Stated differently, if a zoning resolution does not provide for conditional uses, then a board of zoning appeals is without authority to grant them.

3. The decision whether or not to grant an application for a conditional use permit is administrative in nature. Consequently, such a decision is made in an adjudicative, as opposed to a legislative, setting.

4. Unless the zoning resolution provides otherwise, if an applicant's request for a conditional use permit meets all technical requirements of the zoning resolution, the application may still be denied. See *Laurie Sue Groff-Knight, et al. v. Board of Zoning Appeals of Liberty Township*, Delaware County App. No. 03 CAH 08-042 (2004) (unreported).

5. Conditional use permits for surface mining are regulated under the provisions of Section 519.141.

D. Variances.

1. Definition – in *Nunamaker v. Board of Zoning Appeals*, 2 Ohio St.3d 115, 118 (1982), the Supreme Court provided the following definition of a variance:

“A variance authorizes a land owner to establish or maintain a use which is prohibited by the zoning regulations. Thus, a variance results in a deviation from the literal impact of the ordinance or resolution and may be granted upon the showing of practical difficulties or unnecessary hardship.

Stated differently, a variance seeks permission (or, in some cases, forgiveness) to do something which is prohibited.”

2. Types – there are two types of variances: a use variance and an area variance.

(a) A use variance permits property to be **used** in a way not expressly or implicitly allowed by the applicable zoning code.

(b) An area variance provides relief from the area requirements contained within a zoning code, such as setbacks, lot size, height, structure size, and the like. In theory, area variances do not involve uses, but rather structural or lot restrictions.

(c) In the case of either a use or area variance, the applicant bears the burden of proving that the variance should be permitted.

3. Use Variance.

(a) As previously noted, a use variance permits property to be used in a way not expressly or implicitly permitted by the applicable zoning code. When determining the merits of a request for a use variance, the test is whether the particular zoning code creates an “unnecessary hardship” with respect to the use of the property. An unnecessary hardship exists where the hardship is unique to a particular property, and

where the uses permitted by the zoning ordinance are not economically feasible. A demonstration that the property could be put to a more profitable use, standing alone, is insufficient to establish unnecessary hardship. The “unnecessary hardship” standard for use variances is a much more stringent standard than those for area variances. The rationale for the distinction is that “when the variance is one of area only, there is no change in the character of the zoned district and the neighborhood considerations are not as strong as in a use variance.” *Kisil v. Sandusky*, 12 Ohio St.3d 30, at 32-33 (1984).

(b) The factors to be considered in determining whether or not “unnecessary hardship” exists in the case of a use variance are varied. However, and unlike the practical difficulty standard, failure to comport with any one standard established for a use variance will be fatal. When reviewing use variances, courts have utilized the following standards:

(i) Is the property unsuitable for any of the uses permitted by the zoning resolution? Simply because property may be put to a more profitable use does not, in and of itself, establish an unnecessary hardship where less profitable alternatives are available within the zoning resolution.

(ii) Does the variance result from conditions unique to the property in question and not as a result of actions by the property owner? This is the so-called “self-imposed hardship rule.” Generally speaking, a person who purchases land with knowledge of the zoning restriction is said to have created his own hardship and is not entitled to a use variance to relieve such a condition.

(iii) Other factors include whether the variance is the minimum necessary to obviate the offending condition; whether the variance would be inconsistent with the spirit and intent of the zoning resolution; and whether the variance is substantial.

(c) Although there is little question as to the authority of municipalities to grant use variances, there is an issue as to whether or not counties and townships have this same authority. However, in *North Fork Properties v. Bath Township*, 2004 WL 57564 (Ohio App. 9th Dist.), the Bath Township Zoning Resolution contained a provision prohibiting use variances. Upon appeal, the court struck down the offending provision claiming that it was inconsistent with the statutory scheme set forth in Ohio Revised Code Section 519.14.

(d) A variance does not encompass the ability to change zoning schemes or correct errors of judgment in zoning laws. This action is

within the purview of a rezoning. Despite this pronouncement, the distinction is sometimes blurred. In *Brady Area Residents Ass'n v. Franklin Township Zoning Board of Appeals*, 11th Dist. No. 92-P-0034, 1992 Ohio App. LEXIS 6216 (1992), the court determined that a request for 70 area variances affecting virtually every lot within a proposed subdivision was invalid because the variances effectively rezoned the property. Following this decision, the applicant filed suit against the township which resulted in a settlement agreement that conditioned the applicants filing of a plat upon obtaining eight separate variances affecting 29 proposed lots, with these variances being approved by the board of zoning appeals. The homeowners' association again appealed. In *Brady Area Residents Ass'n v. Franklin Township Zoning Board of Appeals*, 2003 WL 21437019 (Ohio App. 11th Dist.), the court upheld the board of zoning appeals decision granting the variances and rejected the argument that the variances were the functional equivalent of a rezoning. In distinguishing its previous decision, the court noted that the board of zoning appeals granted "only eight separate variances to an allotment consisting of twenty-nine lots." (emphasis added.) In the court's opinion, the case did not resemble an across-the-board grant of variances which would result in a rezoning. Instead, the court stated its belief that the applicant was attempting to comply with already existing zoning resolutions through "a minimal amount of variances."

4. Area Variance.

(a) In 1984, the Ohio Supreme Court established two separate legal standards for variances. The Supreme Court noted that the standard for granting a variance which relates solely to area requirements should be a lesser standard than the unnecessary hardship standard applied to use variances. For area variances, it is sufficient to show "practical difficulties." The court justified the distinction by noting that when "the variance is one of area only, there is no change in the character of the zoned district and the neighborhood considerations are not as strong as in a use variance." The court went on to note that the self-imposed hardship rule will not necessarily preclude the granting of an area variance under the practical difficulty standard.

(b) In 1986, the Supreme Court outlined the factors to be considered in determining whether or not a property owner has encountered practical difficulty with respect to an area requirement.

"While existing definitions of 'practical difficulties' are often nebulous, it can safely be said that a property owner encounters 'practical difficulties' whenever an area zoning requirement (e.g., frontage, setback, height) unreasonably deprives him of a permitted use of his property. The key to this standard is whether the area zoning requirement, as applied to

the property owner in question, is reasonable. The practical difficulties standard differs from the unnecessary hardship standard normally applied in use variance cases, because no single factor controls in a determination of practical difficulties. A property owner is not denied the opportunity to establish practical difficulties, for example, simply because he purchased the property with knowledge of the zoning restrictions.

The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of his property include, but are not limited to:

- (1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) whether the variance is substantial;
- (3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) whether the variance would adversely affect the delivery of governmental services (*e.g.*, water, sewer, garbage);
- (5) whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
- (7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance."

Duncan v. Village of Middlefield, 23 Ohio St.3d 83, 86 (1986).

- (c) The factors listed by the Supreme Court are non-exclusive.

IV. CONDUCTING THE HEARING

A. Call meeting to order.

1. A good rule to keep in mind is to be prepared to run the hearing as a civil trial if circumstances dictate.

- (a) Be prepared for an appeal.
- (b) Understand the importance of a record.

B. Ground Rules.

1. Order of presentation.
2. Formality.

- (a) Recording.
 - (b) Podium.
 - (c) Court Reporter.
 - 3. Multiple meetings.
- C. Administering Oath.
 - 1. Individual vs. mass swearing in of witnesses.
- D. Limiting Testimony.
 - 1. Allow all persons to “testify.”
 - 2. Do not establish time limits for testimony.
 - (a) Use other methods to obtain efficient testimony. These include requesting audience not to be repetitive; physically separate witness from the audience by use of a podium.
 - 3. Allow for cross-examination.
- E. Sample Hearing Format.
 - 1. Chair announces application.
 - 2. Zoning officer provides report. (In an appeal, skip this portion.)
 - 3. Applicant presents case.
 - 4. Opponent(s) present arguments.
 - 5. Applicant presents rebuttal.
 - 6. Board deliberates and renders decision.
 - (a) Understand the importance of “conclusions of fact.”
- F. Appropriate Evidence.
 - 1. Relevant testimony.

2. Exhibits.
 3. Personal comments or speculation.
 4. Order of testimony.
- G. Problems with poorly worded zoning resolutions.
- H. *Res Judicata*
1. Multiple variance applications – “change in circumstance.”
 2. Failure to appeal.
- I. Reconsideration.
1. A BZA has the inherent authority to reconsider its own decision. However, this ability only exists until the actual institution of a court appeal or until the expiration of the time for appeal.
- J. Judicial Review.
1. Ohio Revised Code Chapter 2506 - appeal to common pleas court.
 2. Ohio Revised Code Section 2506.04 - establishes the standard of review.
 - (a) The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.
 3. Ohio Revised Code Section 2506.03 - emphasizes the importance of a complete and accurate record of the hearing.
 - (a) The court is confined to the record unless:
 - (i) The transcript is incomplete;
 - (ii) The appealing party was not permitted to testify, offer evidence, examine, and cross-examine witnesses or offer a rebuttal;
 - (iii) Testimony was not given under oath;
 - (iv) The appealing party was refused the opportunity to use a subpoena; or

(v) Conclusions of fact supporting the decision were not filed with the transcript.

V. CONFLICTS OF INTEREST AND ETHICAL CONSIDERATIONS

A. Ohio Revised Code Chapter 102 – Ohio Ethics Laws.

1. Personal Interests.
2. Family and business associates.
3. Advisory opinions.
4. Ohio Ethics Commission Hot Line: (614) 466-7090
5. Ohio Ethics Law Manual:
<https://www.ethics.ohio.gov/education/factsheets/EthicsLawOverview.pdf>

B. Primary prohibitions:

1. Use of authority or influence to secure a thing of value if the thing of value has a substantial and improper influence upon the public official.
 - (a) Prohibits actions, discussions, lobbying, etc.
 - (b) Thing of value includes a “detriment.”
2. Cannot solicit or accept anything of value if the thing of value has a substantial and improper influence upon the public official.
3. Individual meetings with applicants or opponents.
 - (a) Legislative vs. quasi-judicial.
4. Trustees’ attendance at BZA hearings (and vice versa).
5. Ohio Revised Code Section 511.13 – Interest in a township contract is prohibited. (Absolute prohibition.)
6. Ohio Revised Code Section 2921.42 – Unlawful interest in a public contract is prohibited. (Exceptions.)
7. Ohio Revised Code Section 102.09 – Copies of Chapter 102 and Section 2921.42.

[Sample Format for BZA Hearings]

<p>Chairperson or Secretary Announces application:</p>	<p>Application: # Applicant: . Location: Request:</p>
<p>Chairperson must swear In witness:</p>	<p>All people wishing to testify in this proceeding please stand and be sworn in. (Attorneys are not required to be sworn in.)</p> <p>“Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God.”</p>
<p>Special Note:</p>	<p>Prior to allowing anyone to testify, you should always confirm that he/she has been sworn in. (Example: Jane Doe has been recognized by the Chairperson to speak and is asked to come to the front of the room to testify. Once she gets to the front of the room and prior to her speaking, the Chairperson should ask her if she has been sworn in. If she says no, then swear her in and allow her to speak.) <u>Also</u>, you should always request a speaker to provide his/her name and address for the record. If you are tape recording the meeting, it is advisable to have speakers come to the front of the room near the tape recorder.</p>
<p>Zoning Officer:</p>	<p>Distribute photographs and/or show slides of subject.</p> <p>Describe existing use and give existing zoning classifications. The Zoning Officer (who also <u>must</u> be sworn in) presents his information to the Board. Any exhibits (presented by the Zoning Officer or any other witness) should be marked for identification purposes. (Example: “Zoning Officer Exhibit 1”; or “Applicant Exhibit 1”; or “Smith Exhibit 1”.)</p> <p>Review past actions to date as applicable – Zoning Inspector, Zoning Commission, Township Trustees, Board of Zoning Appeals.</p>
<p>Applicant:</p>	<p>Following the Zoning Officer’s presentation, the applicant should be asked to proceed. (Remember to confirm that he/she has been sworn in.)</p>
<p>Chairperson:</p>	<p>Following the Applicant’s presentation, as if there is anyone in the audience who would like to speak in favor of the Application.</p> <p>Afterwards, ask if there is anyone in the audience who would like to speak in opposition.</p> <p>Following the conclusion of all testimony, ask the Applicant if there is</p>

	<p>anything he or she would like to add in conclusion.</p> <p>Following the Board's discussion, you can ask for motions (include reasons for actions).</p> <p>Ask for Second.</p> <p>Ask for Roll Call.</p>
Secretary:	<p>Calls the Roll Call.</p>

A CHECKLIST FOR DEFENSIBLE DECISION MAKING

A. Elements of Defensible Procedures

1. Notice

Notice should be adequate and timely. It should be reasonably calculated to apprise interested parties of a proposed action and afford them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare.

2. Opportunity To Be Heard

All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public.

3. Full Disclosure

All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. Ex parte communications should be avoided. Avoid acting on information received at the last minute.

4. Unbiased Decisions

The decision maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified.

5. Timely Decisions

Decisions should be made within a reasonable period of time. The decision-maker must avoid having the process used as a delaying tactic.

6. Findings

Findings are the legal "footprints" that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. Written documentation should reflect:

- List of all facts (documents, exhibits, testimony, etc.);
- List of standards;
- Weighing of evidence;
- Determination of compliance; and
- The decision with any conditions or reflections.

7. Complete Records

A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

8. Clear Rules

Rules for the proceedings should be set out clearly in advance and followed.

B. Elements of Defensible Decisions

1. Legitimate Public Interest
Does the regulation advance a legitimate public interest? Many zoning regulations have the intent and effect of accomplishing results that are not legitimate public policy objectives.
2. Is the regulation a reasonable way to accomplish that public interest?
There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.
3. Can the relationship between the regulation and public interest be documented?
A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. See discussion of findings below.
4. Does the regulation allow a reasonable economic use of property?
Again, the public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property possible under the zoning regulation.
5. Is the regulation fairly applied?
Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

The bottom line is that a court will be reluctant to overturn a decision that is well reasoned, supported by valid planning analysis, allows some reasonable use of the property, and was fairly made. Regardless of whether you are approving or denying a development request, the reasonableness and fairness of your decisions are what is critical.

Selected Ethics Laws - Ohio Revised Code

511.13 Interest in township contract prohibited - exception.

No member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by such board. No such person shall be individually liable to any contractor upon any contract made under sections [511.08](#) to [511.17](#), inclusive, of the Revised Code, nor shall he be liable to any person on any claims occasioned by any act or default of a contractor or anyone employed by him.

This section does not apply where such person is a shareholder of a corporation, but not an officer or director thereof, and owns not more than five per cent of the stock of such corporation, the value of which does not exceed five hundred dollars.

If a stockholder desires to avail himself of the exception provided in this section, he shall, before entering upon such contract, first file with the clerk of the board of county commissioners, an affidavit, stating his exact status and connection with the corporation.

Effective Date: 10-01-1953 .

102.01 Public officers - ethics definitions.

As used in this chapter:

(A) "Compensation" means money, thing of value, or financial benefit. "Compensation" does not include reimbursement for actual and necessary expenses incurred in the performance of official duties.

(B) "Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency. "Public official or employee" does not include a person elected or appointed to the office of precinct, ward, or district committee member under section [3517.03](#) of the Revised Code, any presidential elector, or any delegate to a national convention. "Public official or employee" does not include a person who is a teacher, instructor, professor, or other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

(C)

(1) "Public agency" means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, or township, the five state retirement systems, or any other governmental entity.

(2) Notwithstanding any contrary provision of division (C) (3)(a) of this section, "public agency" includes a regional council of governments established under Chapter 167. of the Revised Code.

(3) "Public agency" does not include either of the following:

(a) A department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; that does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated;

(b) The nonprofit corporation formed under section [187.01](#) of the Revised Code.

(D) "Immediate family" means a spouse residing in the person's household and any dependent child.

(E) "Income" includes gross income as defined and used in the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, interest and dividends on obligations or securities of any state or of any political subdivision or authority of any state or political subdivision, and interest or dividends on obligations of any authority, commission, or instrumentality of the United States.

(F) Except as otherwise provided in division (A) of section [102.08](#) of the Revised Code, "appropriate ethics commission" means:

(1) For matters relating to members of the general assembly, employees of the general assembly, employees of the legislative service commission, and candidates for the office of member of the general assembly, the joint legislative ethics committee;

(2) For matters relating to judicial officers and employees, and candidates for judicial office, the board of commissioners on grievances and discipline of the supreme court;

(3) For matters relating to all other persons, the Ohio ethics commission.

(G) "Anything of value" has the same meaning as provided in section [1.03](#) of the Revised Code and includes, but is not limited to, a contribution as defined in section [3517.01](#) of the Revised Code.

(H) "Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering. "Honorarium" does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts

of nominal value or trivial items of informational value; or earned income from any person, other than a legislative agent, for personal services that are customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to the public official's or employee's office or position of employment.

(I) "Employer" means any person who, directly or indirectly, engages an executive agency lobbyist or legislative agent.

(J) "Executive agency decision," "executive agency lobbyist," and "executive agency lobbying activity" have the same meanings as in section [121.60](#) of the Revised Code.

(K) "Legislation," "legislative agent," "financial transaction," and "actively advocate" have the same meanings as in section [101.70](#) of the Revised Code.

(L) "Expenditure" has the same meaning as in section [101.70](#) of the Revised Code when used in relation to activities of a legislative agent, and the same meaning as in section [121.60](#) of the Revised Code when used in relation to activities of an executive agency lobbyist.

Amended by 132nd General Assembly File No. TBD, SB 239, §1, eff. 10/29/2018.

Amended by 132nd General Assembly File No. TBD, HB 49, §610.38, eff. 6/29/2017.

Amended by 131st General Assembly File No. TBD, HB 64, §125.10, eff. 1/1/2018.

Amended by 129th General Assembly File No. 94, SB 208, §1, eff. 7/3/2012.

Amended by 129th General Assembly File No. 1, HB 1, §1, eff. 2/18/2011.

Effective Date: 03-02-1994; 05-18-2005.

Related Legislative Provision: See 129th General Assembly File No. 94, SB 208, §8 .

See 129th General Assembly File No. 94, SB 208, §7 .

See 129th General Assembly File No. 94, SB 208, §6 .

See 129th General Assembly File No. 94, SB 208, §5 .

See 129th General Assembly File No. 94, SB 208, §4 .

See 129th General Assembly File No. 94, SB 208, §3 .

102.03 Representation by present or former public official or employee prohibited.

(A)

(1) 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.

(2) For twenty-four months after the conclusion of service, no former commissioner or attorney examiner of the public utilities commission shall represent a public utility, as defined in section [4905.02](#) of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency.

(3) For twenty-four months after the conclusion of employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section [3734.01](#) of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which the public official or employee personally participated as a public official or employee.

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section "person" does not include any state agency or political subdivision of the state.

(5) As used in divisions (A)(1), (2), and (3) of this section, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in division (A)(4) of this section, "matter" includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

(7) Division (A) of this section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(8) Division (A) of this section does not prohibit a nonelected public official or employee of a state agency, as defined in section [1.60](#) of the Revised Code, from becoming a public official or employee of another state agency. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official's or employee's new state agency on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former state agency. However, no public official or employee of a state agency shall, during public employment or for twelve months thereafter, represent or act in a representative capacity for the official's or employee's new state agency on any audit or investigation pertaining to the official's or employee's new state agency in which the public official or employee personally participated at the official's or employee's former state agency through decision, approval,

disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(9) Division (A) of this section does not prohibit a nonelected public official or employee of a political subdivision from becoming a public official or employee of a different department, division, agency, office, or unit of the same political subdivision. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official's or employee's new department, division, agency, office, or unit on any matter in which the public official or employee personally participated as a public official or employee at the official's or employee's former department, division, agency, office, or unit of the same political subdivision. As used in this division, "political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(10) No present or former Ohio casino control commission official shall, during public service or for two years thereafter, represent a client, be employed or compensated by a person regulated by the commission, or act in a representative capacity for any person on any matter before or concerning the commission.

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

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, 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 because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee or the public official's or employee's immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging that sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section [4732.12](#) of the Revised Code, or patients of persons licensed under section [4731.14](#) of the Revised Code.

(D) 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.

(E) 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.

(F) No person shall promise or give to a public official or employee 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.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

As used in this division, "contributions," "campaign committee," "political party," "legislative campaign fund," "political action committee," and "political contributing entity" have the same meanings as in section [3517.01](#) of the Revised Code.

(H)

(1) No public official or employee, except for the president or other chief administrative officer of or a member of a board of trustees of a state institution of higher education as defined in section [3345.011](#) of the Revised Code, who is required to file a financial disclosure statement under section [102.02](#) of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is required to file a financial disclosure statement under section [102.02](#) of the Revised Code from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in section [3345.011](#) of the Revised Code, pays membership dues. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is not required to file a financial disclosure statement under section [102.02](#) of the Revised Code from accepting and do not prohibit a person from promising or giving to that public official or employee an honorarium or the payment of travel, meal, and lodging expenses if the honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(2) No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not 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. The house of representatives and senate, in their code of ethics, and the Ohio ethics commission, under section [111.15](#) of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section [102.08](#) of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and

improper influence on the public official or employee with respect to that person's duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use the public official's or employee's official position with regard to the interests of the organization on the matter if the public official or employee has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, pecuniary interests.

(K) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with division (B) of section [309.06](#) and section [2921.421](#) of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections [733.621](#) and [2921.421](#) of the Revised Code, for a township law director appointed under section [504.15](#) of the Revised Code to appoint assistants and employees in accordance with sections [504.151](#) and [2921.421](#) of the Revised Code, or for a coroner to appoint assistants and employees in accordance with division (B) of section [313.05](#) of the Revised Code.

As used in this division, "chief legal officer" has the same meaning as in section [733.621](#) of the Revised Code.

(L) No present public official or employee with a casino gaming regulatory function shall indirectly invest, by way of an entity the public official or employee has an ownership interest or control in, or directly invest in a casino operator, management company, holding company, casino facility, or gaming-related vendor. No present public official or employee with a casino gaming regulatory function shall directly or indirectly have a financial interest in, have an ownership interest in, be the creditor or hold a debt instrument issued by, or have an interest in a contractual or service relationship with a casino operator, management company, holding company, casino facility, or gaming-related vendor. This section does not prohibit or limit permitted passive investing by the public official or employee.

As used in this division, "passive investing" means investment by the public official or employee by means of a mutual fund in which the public official or employee has no control of the investments or investment decisions. "Casino operator," "holding company," "management company," "casino facility," and "gaming-related vendor" have the same meanings as in section [3772.01](#) of the Revised Code.

(M) A member of the Ohio casino control commission, the executive director of the commission, or an employee of the commission shall not:

(1) Accept anything of value, including but not limited to a gift, gratuity, emolument, or employment from a casino operator, management company, or other person subject to the jurisdiction of the commission, or from an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission;

(2) Solicit, suggest, request, or recommend, directly or indirectly, to a casino operator, management company, or other person subject to the jurisdiction of the commission, or to an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission, the appointment of a person to an office, place, position, or employment;

(3) Participate in casino gaming or any other amusement or activity at a casino facility in this state or at an affiliate gaming facility of a licensed casino operator, wherever located.

In addition to the penalty provided in section [102.99](#) of the Revised Code, whoever violates division (M)(1), (2), or (3) of this section forfeits the individual's office or employment.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 130th General Assembly File No. 51, HB 83, §1, eff. 3/20/2014.

Amended by 129th General Assembly File No.129, SB 314, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No.38, HB 519, §1, eff. 9/10/2010.

Effective Date: 09-05-2001; 09-15-2004; 03-31-2005; 04-26-2005.

2921.42 Having an unlawful interest in a public contract.

(A) No public official shall knowingly do any of the following:

- (1) Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;
- (2) Authorize, or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which the public official, a member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;
- (3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;
- (4) 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 the public official is connected;
- (5) 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 one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

- (1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;
- (2) The shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;
- (3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

- (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;
- (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;
- (4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public

official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public moneys if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the moneys are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (2) of this section is a felony of the fourth degree. Violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with sections [309.06](#) and [2921.421](#) of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections [733.621](#) and [2921.421](#) of the Revised Code, or for a township law director appointed under section [504.15](#) of the Revised Code to appoint assistants and employees in accordance with sections [504.151](#) and [2921.421](#) of the Revised Code.

(G) This section does not apply to a public contract in which a township trustee in a township with a population of five thousand or less in its unincorporated area, a member of the township trustee's family, or one of the township trustee's business associates has an interest, if all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the township and the amount of the contract is less than five thousand dollars per year;

(2) The supplies or services are being furnished to the township as part of a continuing course of dealing established before the township trustee held that office with the township;

(3) The treatment accorded the township is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted with full knowledge by the township of the interest of the township trustee, member of the township trustee's family, or the township trustee's business associate.

(H) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of this section is void and unenforceable.

(I) As used in this section:

(1) "Public contract" means any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either;

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

(2) "Chief legal officer" has the same meaning as in section [733.621](#) of the Revised Code.