



# JOINT LEGISLATIVE ETHICS COMMITTEE 129<sup>th</sup> OHIO GENERAL ASSEMBLY

Joint Legislative Ethics Committee  
Advisory Opinion 2012-001

## Committee

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## Staff:

Tony Bledsoe  
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## Syllabus by the Committee:

R.C. §102.03(D) prohibits a Member or employee of the General Assembly from using or authorizing the use of the authority or influence of office or employment to promote or endorse an individual as a lobbyist<sup>1</sup> registered with the Office of the Legislative Inspector General in an advertisement or other promotional item.

## Jurisdiction and Question Presented:

Pursuant to §101.34 and §102.08 of the Ohio Revised Code, the Joint Legislative Ethics Committee is the advisory body to Members and employees of the General Assembly on questions pertaining to ethics, conflicts of interest, and financial disclosure. The Joint Legislative Ethics Committee advises Members and employees of the General Assembly on the following question:

Is a Member or employee of the General Assembly prohibited from providing a registered lobbyist with an endorsement, given by the Member or employee in his or her capacity as a Senator, Representative or legislative staffer, for purposes of an advertisement or other promotional item for lobbying services?

## Background:

A lobbyist registered with the Office of the Legislative Inspector General requests that a Member or employee acting in his or her official capacity as a Senator, Representative or legislative staffer, provide an endorsement for use in an advertisement or other promotional item.

## Consideration of the Issues:

Under R.C. §102.08, the Joint Legislative Ethics Committee (“Committee”) may render a publicly sought Advisory Opinion based on a particular set of facts and circumstances involving ethics, conflicts of interest, or financial disclosure under §2921.42, §2921.43, or Chapter 102. of the Ohio Revised Code.

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<sup>1</sup> For purposes of this opinion, lobbyist includes legislative agent as defined in R.C. §101.70(F), executive agency lobbyist as defined in R.C. §121.60(H), and retirement system lobbyist as defined in R.C. §101.90(H).

The person to whom the opinion was directed or who is similarly situated may reasonably rely upon such opinion; and shall be immune from criminal prosecution, civil suits, or actions for removal from office or employment for a violation of §2921.42, §2921.43, or Chapter 102. of the Ohio Revised Code based on the facts and circumstances covered by the opinion. In *JLEC Advisory Opinions 95-005, 95-006, 95-014, 97-004, and 00-003* the Committee addressed the prohibitions placed on a Member's or employee's use of the authority or influence of office or employment.

§102.03(D) of the Ohio Revised Code:

A Member or employee of the General Assembly is prohibited from using or allowing the use of office or employment to gain something of value for the Member or employee or any other person or entity if it would have a substantial and improper influence upon the Member or employee in carrying out his or her official duties. R.C. §102.03(D) states:

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.

The Committee interpreted the meaning of R.C. §102.03(D) in *JLEC Advisory Opinion 95-006 at p.4*:

R.C. 102.03(D) prohibits a public official or employee from using his official authority or influence to secure anything of value, either for himself or for any other party, if the thing of value is of such a character as to manifest a substantial and improper influence upon him with respect to his official duties by impairing his objectivity and independence of judgment as a public official or employer. Therefore, the Member should avoid taking any actions that would result in their Membership in the General Assembly being used to secure anything of value or the promise of anything of value, such as preferential consideration...

Members and employees of the General Assembly are prohibited from using or allowing someone else to use the prestige of office or public employment to directly solicit support for outside entities if it would result in an improper influence upon the Member or employee in carrying out their duties. A Member or employee of the General Assembly, who allows a lobbyist to use an endorsement by the Member or employee, in their official capacity as a Senator, Representative or legislative staffer, in an advertisement or other promotional item is providing something of value to the lobbyist (e.g. new clients, enhanced reputation, etc).

In *JLEC Advisory Opinion 98-003 at page 2*, the Committee identified the advocacy efforts of all lobbyists by defining legislative agent:

A legislative agent is an individual who is engaged by an employer during at least a portion of his or her time, **as one of his or her main purposes, to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation by direct communication with any Member of the General Assembly**, the controlling board, the governor, the director of any department listed in section 121.02 of the Revised Code or the staff of any of those listed persons. (See, R.C. §101.70) (Emphasis added)

The Committee also identified the role of a Member of the General Assembly in *JLEC Advisory Opinion 98-003 at page 3* as:

...it is a Member's role to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation...

Members and employees of the General Assembly, as well as lobbyists, attempt to impact the legislative process through advocacy. Consequently, a Member's or employee's use of the authority or influence of office or employment to promote or endorse a lobbyist could substantially impair that Member's or employee's objectivity; thereby, rendering it (objectivity) inherently incompatible with the Member's or employee's legislative duties. Potential clients of the lobbyist may come to expect, based on the Member's or employee's endorsement, that their issues may receive preferential treatment or consideration than would result by engaging a lobbyist other than one endorsed by a Member or employee.

#### Conclusion:

Accordingly, the Joint Legislative Ethics Committee finds; and Members and employees of the General Assembly are so advised: a Member or employee of the General Assembly is prohibited from using or allowing the use of the authority or influence of office or employment to endorse or promote an individual as a registered lobbyist. In addition, although a Member or employee of the General Assembly is not prohibited from promoting an individual as a lobbyist **without** using the authority or influence of office or employment (i.e. in a personal capacity); they are cautioned from doing so in order to avoid the appearance of impropriety.

This Advisory Opinion does not apply to or affect any endorsement activity by a Member or employee of the General Assembly to promote an individual in their capacity as a lobbyist registered with the Office of the Legislative Inspector General in an advertisement or promotional item occurring on or before the adoption of this opinion by the Committee. Nor does this opinion preclude a Member or employee from providing a letter of recommendation, or character reference for use by a lobbyist in the pursuit of non lobbying related goals such as academic pursuits or professional licensure; so long as nothing of value is given in consideration of the Member or employee providing the recommendation or character reference.

This advisory opinion is based on the facts presented. It is limited to questions arising under chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.