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**BOARD MEMBER TRAPS AND PITFALLS:
WHAT CAN COME BACK AND BITE YOU**

Franklin J. Hickman
December, 2009

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**SELECTED OHIO ETHICS LAWS
and
SAMPLE DECLARATION FOR BOARD MEMBERS**

Includes provisions of

**SB10 (2005)
HB699 (2006)**

Franklin J. Hickman
Elena A. Lidrbauch
May, 2007

O.R.C. CHAPTER 102: PUBLIC OFFICERS - ETHICS

102.01 Definitions

(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 any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

(C) "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, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include 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.

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

102.03 Restrictions on present or former officials

(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.

* * *

(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.

* * *

(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.

(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.

O.R.C. CHAPTER 2921: OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

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 his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

* * *

(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 he 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.

* * *

(C) This section does not apply to a public contract in which a public official, member of his family, or one of his 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 his 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.

(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.

For purposes of RC § 2921.42, the term "a member of his family" includes, but is not limited to: a) grandparents; b) parents; c) spouse; d) children, whether dependent or not; e) grandchildren; f) brothers and sisters; or g) any person related by blood or marriage and residing in the same household: Ohio Ethics Commission Advisory Opinion No. 80-001.

O.R.C. § 5126 COUNTY BOARDS OF MR/DD

§ 5126.01 Definitions

As used in this chapter:

(K) "Immediate family" means parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

§ 5126.029 Types of individuals to be included on board

(A) When making appointments to a county board of mental retardation and developmental disabilities, an appointing authority shall do all of the following:

(1) Appoint only individuals who are residents of the county the appointing authority serves, citizens of the United States, and interested and knowledgeable in the field of mental retardation and other allied fields;

(2) If the appointing authority is a board of county commissioners, appoint, subject to division (B) of this section, at least two individuals who are immediate family members¹ of individuals eligible for services provided by the county board and, whenever possible, ensure that one of those two members is an immediate family member of an individual eligible for adult services

¹ For purposes of Chapter 5126, "immediate family members include "parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law."

and the other is an immediate family member of an individual eligible for early intervention services or services for preschool or school-age children;

(3) If the appointing authority is a senior probate judge, appoint, subject to division (B) of this section, at least one individual who is an immediate family member of an individual eligible for residential services or supported living;

(4) Appoint, to the maximum extent possible, individuals who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service;

(5) Provide for the county board's membership to reflect, as nearly as possible, the composition of the county or counties that the county board serves.

* * *

§ 5126.0210 Individuals who may not serve on board; resolution and examination of possible conflicts of interest

(A) None of the following individuals may serve as a member of a county board of mental retardation and developmental disabilities:

(1) An elected public official, except for a township trustee, township fiscal officer, or individual excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;

(2) An immediate family member of another county board member;

(3) A county board employee or immediate family member of a county board employee;

(4) A former employee of the county board whose employment with the county board ceased less than one calendar year before the former employee would begin to serve as a member of the county board;

(5) An individual who or whose immediate family member is a board member or an employee of an agency licensed or certified by the department of mental retardation and developmental disabilities to provide services to individuals with mental retardation or developmental disabilities;

(6) An individual who or whose immediate family member is a board member or employee of an agency contracting with the county board that is not licensed or certified by the department of mental retardation and developmental disabilities to provide services to individuals with mental retardation or developmental disabilities unless there is no conflict of interest;

(7) An individual with an immediate family member who serves as a county commissioner of a county served by the county board unless the individual was a member of the county board before October 31, 1980.

(B) All questions relating to the existence of a conflict of interest for the purpose of division (A)(6) of this section shall be submitted to the local prosecuting attorney for resolution. The Ohio ethics commission may examine any issues arising under Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code.

§ 5126.0211 Declaration to be provided prior to appointment or reappointment

(A) No individual may be appointed or reappointed to a county board of mental retardation and developmental disabilities unless the individual, before the appointment or reappointment, provides to the appointing authority a written declaration specifying both of the following:

(1) That no circumstance described in section 5126.0210 of the Revised Code exists that bars the individual from serving on the county board;

(2) Whether the individual or an immediate family member of the individual has an ownership interest in or is under contract with an agency contracting with the county board, and, if such an ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency.

(B) On appointment or reappointment of an individual to the county board, the appointing authority shall provide a copy of the individual's declaration to the superintendent of the county board. The declaration is a public record for the purpose of section 149.43 of the Revised Code.

§ 5126.0212. Date of appointments; terms

Except for members appointed under section 5126.0214 of the Revised Code to fill a vacancy, members of a county board of mental retardation and developmental disabilities shall be appointed or reappointed not later than the last day of November, commence their terms on the date of the stated annual organizational meeting in the following January as provided under section 5126.0216 [5126.02.16] of the Revised Code, and serve terms of four years. The membership of an individual appointed as an immediate family member of a recipient of services shall not be terminated because the services are no longer received.

§ 5126.0213. Reappointment of members

Except as otherwise provided in this section and section 5126.0225 of the Revised Code, a member of a county board of mental retardation and developmental disabilities may be reappointed to the county board. Prior to making a reappointment, the appointing authority shall ascertain, through written communication with the board, that the member being considered for reappointment meets the requirements of sections 5126.029 and 5126.0225 of the Revised Code.

A member who has served during each of three consecutive terms shall not be reappointed for a subsequent term until two years after ceasing to be a member of the county board, except that a member who has served for ten years or less within three consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for two years.

§§ 5126.03 -5126.034 Ethics Councils for Direct Service Contracts

Establishes procedures which allow members of MR/DD Boards and employees of MR/DD Boards to obtain benefits for family members. Procedures include prohibition against voting on contracts which benefit a board member directly and establishment of ethics councils to review direct services contracts.

Direct services contract means “any legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of mental retardation and developmental disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person.” R.C. § 5126.03.

Note that *ALL* direct services contracts must be reviewed by the Ethics Council. R.C. § 5126.031; R.C. § 5126.032(A).

§ 5126.034. Effect of meeting requirements; expenses of immediate family member

(A) If the requirements of section 5126.033 of the Revised Code have been met for a particular direct services contract, a member or former member of a county board of mental retardation and developmental disabilities, an employee or former employee of a county board, or an immediate family member of a member, former member, employee, or former employee of a county board is not in violation of the restrictions in Chapter 102. and sections 2921.42 and 5126.0210 [5126.02.10] of the Revised Code with regard to that contract.

(B) Nothing in section 5126.033 of the Revised Code shall be construed to allow a member or employee of a county board to authorize, or use the authority of the member's or employee's office or employment to secure authorization of, a contract that could result in receipt by the county board member or employee or a member of the immediate family of the county board member or employee of payment for expenses incurred on behalf of an immediate family member who is an eligible person.

S.B. 10 SECTION 3

(A) As used in this section, "immediate family" has the same meaning as in section 5126.01(K) of the Revised Code and includes "parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law."

Not later than thirty days after the effective date of this section, each individual who serves as a member of a county board of mental retardation and developmental disabilities on the effective date of this section shall provide to the superintendent of the county board a written declaration specifying both of the following:

- (1) That no circumstance described in section 5126.029 of the Revised Code exists that bars the individual from serving on the county board;
- (2) Whether the individual or an immediate family member of the individual has an ownership interest in or is under contract with an agency contracting with the county board, and, if such an ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency.

The attached declaration meets the requirements of O.R.C. § 5126.0211 and §3 and addresses the provisions of O.R.C. § 5126.0210 which further limits who can act as a board member.

Signed declarations must be given to the Superintendent and maintained as public records.

Once the declarations are signed and received by the Superintendent, each should be compared to the provisions of O.R.C. §§ 5126.029 and 5126.0210. If it appears that a board member violates any of the provisions, the matter should be investigated further, and, if necessary, referred to the prosecutor or legal counsel to determine the next steps. Note that in some circumstances a prosecutor can determine that there is no conflict and no need for a board member to resign.

The document should be used as new board members are appointed or current board members are reappointed.

**DECLARATION BY MEMBER OF
_____ COUNTY MR/DD BOARD**

I, _____ [*Name of board member*] am a member of the _____ Board of Mental Retardation and Developmental Disabilities (referred to as the “MR/DD Board”). Pursuant to the requirements of 5126.011 of the Revised Code and section 3 of Am. S.B. 10, I make the following declaration:

1. I am a citizen of the United States.
2. I am a resident of _____ County.
3. I am interested and knowledgeable in the field of mental retardation and other allied fields.

Check all which apply:

I have an immediate family member² who is eligible to receive early intervention services or services for preschool or school-age children from the MR/DD Board.

I have an immediate family member who is eligible to receive adult services from the MR/DD Board.

I have an immediate family member who is eligible to receive residential or supported living services from the MR/DD Board.

I have an ownership interest in the _____ agency which has a contract with the MR/DD Board. The nature of this ownership interest is as follows:

I have an immediate family member who has an ownership interest in the _____ agency which has a contract with the MR/DD Board. The nature of this ownership interest is as follows:

I have a contract with the _____ agency which has a contract with the MR/DD Board. The nature of contract is as follows:

I have an immediate family member who has a contract with the _____ agency which has a contract with the MR/DD Board. The nature of contract is as follows:

I am a board member or employee of the _____ agency which is licensed or certified by the Ohio Department of MR/DD and which provides services to individuals with MR/DD.

I have an immediate family member who is a board member or employee of the _____ agency which is licensed or certified by the Ohio Department of MR/DD and which provides services to individuals with MR/DD.

² “Immediate Family Member” includes the following: parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

I am a board member or employee of the _____ agency which is not licensed or certified by the Ohio Department of MR/DD, which provides services to individuals with MR/DD and which is under contract with the MR/DD Board.

I have an immediate family member who is a board member or employee of the _____ agency which is not licensed or certified by the Ohio Department of MR/DD, which provides services to individuals with MR/DD and which is under contract with the MR/DD Board.

I am an elected public official in the following position: _____

I have an immediate family member who is currently on the MR/DD Board.

I am currently an employee of the MR/DD Board.

I was an employee of the MR/DD Board and terminated my employment with the MR/DD Board on _____.

I have an immediate family member who is currently an employee of the MR/DD Board.

I have an immediate family member who is currently a county commissioner for _____ county.

Date

Signature



Franklin J. Hickman
Janet L. Lowder
David A. Myers
Elena A. Lidrbauch
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**RESTRICTIONS ON EMPLOYMENT
AFFECTING EMPLOYEES OF MR/DD BOARDS**

Franklin J. Hickman
January, 2009

O.R.C. CHAPTER 102: PUBLIC OFFICERS - ETHICS

102.01 Definitions

(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 any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

(C) "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, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include 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.

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

102.03 Restrictions on present or former officials

(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.

* * *

(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.

* * *

(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.

(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.

O.R.C. CHAPTER 2921: OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

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 his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

* * *

(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 he 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.

* * *

(C) This section does not apply to a public contract in which a public official, member of his family, or one of his 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 his 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.

(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.

For purposes of RC § 2921.42, the term "a member of his family" includes, but is not limited to: a) grandparents; b) parents; c) spouse; d) children, whether dependent or not; e) grandchildren; f) brothers and sisters; or g) any person related by blood or marriage and residing in the same household: Ohio Ethics Commission Advisory Opinion No. 80-001.

O.R.C. § 5126 COUNTY BOARDS OF MR/DD

§ 5126.01 Definitions

As used in this chapter:

(K) "Immediate family" means parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

§ 5126.029 Types of individuals to be included on board

(A) When making appointments to a county board of mental retardation and developmental disabilities, an appointing authority shall do all of the following:

(1) Appoint only individuals who are residents of the county the appointing authority serves, citizens of the United States, and interested and knowledgeable in the field of mental retardation and other allied fields;

(2) If the appointing authority is a board of county commissioners, appoint, subject to division (B) of this section, at least two individuals who are immediate family members¹ of individuals eligible for services provided by the county board and, whenever possible, ensure that one of those two members is an immediate family member of an individual eligible for adult services

¹ For purposes of Chapter 5126, "immediate family members include "parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law."

and the other is an immediate family member of an individual eligible for early intervention services or services for preschool or school-age children;

(3) If the appointing authority is a senior probate judge, appoint, subject to division (B) of this section, at least one individual who is an immediate family member of an individual eligible for residential services or supported living;

(4) Appoint, to the maximum extent possible, individuals who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service;

(5) Provide for the county board's membership to reflect, as nearly as possible, the composition of the county or counties that the county board serves.

* * *

§ 5126.0210 Individuals who may not serve on board; resolution and examination of possible conflicts of interest

(A) None of the following individuals may serve as a member of a county board of mental retardation and developmental disabilities:

(1) An elected public official, except for a township trustee, township fiscal officer, or individual excluded from the definition of public official or employee in division (B) of section 102.01 of the Revised Code;

(2) An immediate family member of another county board member;

(3) A county board employee or immediate family member of a county board employee;

(4) A former employee of the county board whose employment with the county board ceased less than one calendar year before the former employee would begin to serve as a member of the county board;

(5) An individual who or whose immediate family member is a board member or an employee of an agency licensed or certified by the department of mental retardation and developmental disabilities to provide services to individuals with mental retardation or developmental disabilities;

(6) An individual who or whose immediate family member is a board member or employee of an agency contracting with the county board that is not licensed or certified by the department of mental retardation and developmental disabilities to provide services to individuals with mental retardation or developmental disabilities unless there is no conflict of interest;

(7) An individual with an immediate family member who serves as a county commissioner of a county served by the county board unless the individual was a member of the county board before October 31, 1980.

(B) All questions relating to the existence of a conflict of interest for the purpose of division (A)(6) of this section shall be submitted to the local prosecuting attorney for resolution. The Ohio ethics commission may examine any issues arising under Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code.

§ 5126.0211 Declaration to be provided prior to appointment or reappointment

(A) No individual may be appointed or reappointed to a county board of mental retardation and developmental disabilities unless the individual, before the appointment or reappointment, provides to the appointing authority a written declaration specifying both of the following:

(1) That no circumstance described in section 5126.0210 of the Revised Code exists that bars the individual from serving on the county board;

(2) Whether the individual or an immediate family member of the individual has an ownership interest in or is under contract with an agency contracting with the county board, and, if such an ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency.

(B) On appointment or reappointment of an individual to the county board, the appointing authority shall provide a copy of the individual's declaration to the superintendent of the county board. The declaration is a public record for the purpose of section 149.43 of the Revised Code.

§ 5126.0212. Date of appointments; terms

Except for members appointed under section 5126.0214 of the Revised Code to fill a vacancy, members of a county board of mental retardation and developmental disabilities shall be appointed or reappointed not later than the last day of November, commence their terms on the date of the stated annual organizational meeting in the following January as provided under section 5126.0216 [5126.02.16] of the Revised Code, and serve terms of four years. The membership of an individual appointed as an immediate family member of a recipient of services shall not be terminated because the services are no longer received.

§ 5126.0213. Reappointment of members

Except as otherwise provided in this section and section 5126.0225 of the Revised Code, a member of a county board of mental retardation and developmental disabilities may be reappointed to the county board. Prior to making a reappointment, the appointing authority shall ascertain, through written communication with the board, that the member being considered for reappointment meets the requirements of sections 5126.029 and 5126.0225 of the Revised Code.

A member who has served during each of three consecutive terms shall not be reappointed for a subsequent term until two years after ceasing to be a member of the county board, except that a member who has served for ten years or less within three consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for two years.

§§ 5126.03 -5126.034 Ethics Councils for Direct Service Contracts

Establishes procedures which allow members of MR/DD Boards and employees of MR/DD Boards to obtain benefits for family members. Procedures include prohibition against voting on contracts which benefit a board member directly and establishment of ethics councils to review direct services contracts.

Direct services contract means “any legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of mental retardation and developmental disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person.” R.C. § 5126.03.

Note that *ALL* direct services contracts must be reviewed by the Ethics Council. R.C. § 5126.031; R.C. § 5126.032(A).

§ 5126.034. Effect of meeting requirements; expenses of immediate family member

(A) If the requirements of section 5126.033 of the Revised Code have been met for a particular direct services contract, a member or former member of a county board of mental retardation and developmental disabilities, an employee or former employee of a county board, or an immediate family member of a member, former member, employee, or former employee of a county board is not in violation of the restrictions in Chapter 102. and sections 2921.42 and 5126.0210 [5126.02.10] of the Revised Code with regard to that contract.

(B) Nothing in section 5126.033 of the Revised Code shall be construed to allow a member or employee of a county board to authorize, or use the authority of the member's or employee's office or employment to secure authorization of, a contract that could result in receipt by the county board member or employee or a member of the immediate family of the county board member or employee of payment for expenses incurred on behalf of an immediate family member who is an eligible person.

S.B. 10 SECTION 3

(A) As used in this section, "immediate family" has the same meaning as in section 5126.01(K) of the Revised Code and includes "parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law."

Not later than thirty days after the effective date of this section, each individual who serves as a member of a county board of mental retardation and developmental disabilities on the effective date of this section shall provide to the superintendent of the county board a written declaration specifying both of the following:

(1) That no circumstance described in section 5126.029 of the Revised Code exists that bars the individual from serving on the county board;

(2) Whether the individual or an immediate family member of the individual has an ownership interest in or is under contract with an agency contracting with the county board, and, if such an ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency.

The attached declaration meets the requirements of O.R.C. § 5126.0211 and §3 and addresses the provisions of O.R.C. § 5126.0210 which further limits who can act as a board member.

Signed declarations must be given to the Superintendent and maintained as public records.

Once the declarations are signed and received by the Superintendent, each should be compared to the provisions of O.R.C. §§ 5126.029 and 5126.0210. If it appears that a board member violates any of the provisions, the matter should be investigated further, and, if necessary, referred to the prosecutor or legal counsel to determine the next steps. Note that in some circumstances a prosecutor can determine that there is no conflict and no need for a board member to resign.

The document should be used as new board members are appointed or current board members are reappointed.

**DECLARATION BY MEMBER OF
_____ COUNTY MR/DD BOARD**

I, _____ [*Name of board member*] am a member of the _____ Board of Mental Retardation and Developmental Disabilities (referred to as the “MR/DD Board”). Pursuant to the requirements of 5126.011 of the Revised Code and section 3 of Am. S.B. 10, I make the following declaration:

1. I am a citizen of the United States.
2. I am a resident of _____ County.
3. I am interested and knowledgeable in the field of mental retardation and other allied fields.

Check all which apply:

- I have an immediate family member² who is eligible to receive early intervention services or services for preschool or school-age children from the MR/DD Board.
- I have an immediate family member who is eligible to receive adult services from the MR/DD Board.
- I have an immediate family member who is eligible to receive residential or supported living services from the MR/DD Board.
- I have an ownership interest in the _____ agency which has a contract with the MR/DD Board. The nature of this ownership interest is as follows:

- I have an immediate family member who has an ownership interest in the _____ agency which has a contract with the MR/DD Board. The nature of this ownership interest is as follows:

- I have a contract with the _____ agency which has a contract with the MR/DD Board. The nature of contract is as follows:

- I have an immediate family member who has a contract with the _____ agency which has a contract with the MR/DD Board. The nature of contract is as follows:

- I am a board member or employee of the _____ agency which is licensed or certified by the Ohio Department of MR/DD and which provides services to individuals with MR/DD.
- I have an immediate family member who is a board member or employee of the _____ agency which is licensed or certified by the Ohio Department of MR/DD and which provides services to individuals with MR/DD.

² “Immediate Family Member” includes the following: parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.

- I am a board member or employee of the _____ agency which is not licensed or certified by the Ohio Department of MR/DD, which provides services to individuals with MR/DD and which is under contract with the MR/DD Board.
- I have an immediate family member who is a board member or employee of the _____ agency which is not licensed or certified by the Ohio Department of MR/DD, which provides services to individuals with MR/DD and which is under contract with the MR/DD Board.
- I am an elected public official in the following position: _____
- I have an immediate family member who is currently on the MR/DD Board.
- I am currently an employee of the MR/DD Board.
- I was an employee of the MR/DD Board and terminated my employment with the MR/DD Board on _____.
- I have an immediate family member who is currently an employee of the MR/DD Board.
- I have an immediate family member who is currently a county commissioner for _____ county.

Date

Signature

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RULES FOR COMPLIANCE WITH OHIO'S OPEN MEETING ACT

For most complete information:

**Ohio Sunshine Laws 2009
An Open Government Resource Manual**

Online at

<http://www.ohioattorneygeneral.gov/files/Publications/Publications-for-Legal/2009-Sunshine-Laws-Manual.aspx>

2009 Supplement

<http://www.ohioattorneygeneral.gov/files/Publications/Publications-for-Legal/2009-Sunshine-Laws-Addendum.aspx>

Franklin J. Hickman
September, 2008

NOTE: this summary is not intended as legal advice and is not a complete or comprehensive analysis of the legal issues.
For further information contact the county prosecutor

A PUBLIC BODY, INCLUDING A COG, MUST:

1. Establish, by rule, a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings of the Board, committee or subcommittee.¹
2. Establish, by rule, a reasonable method whereby any person may determine the time, place and purpose of any special meeting of the Board, committee or subcommittee. Give at least twenty-four hours advance notice of any special meetings to the news media that have requested such notification. Any meeting which is not regular, is special.²
3. In the event of an emergency which requires immediate official action, the member or members calling the meeting must notify the news media that have requested such notification immediately of the time, place and purpose of the meeting.
4. Establish, by rule, that any person may upon request and payment of a reasonable fee, obtain reasonable advance notification of a meeting at which a specific type of public business is to be discussed. Boards may maintain a subscriber list and mail the meeting agenda to all subscribers, or request that such persons provide self-addressed stamped envelopes in which notice of the meeting can be mailed.
5. Hold all meetings, both full Board and committee or subcommittee meetings, open to the public at all times, unless the subject matter is specifically excepted by law. Members must be physically present. Teleconferencing is prohibited.³
6. Conduct all official business and deliberations upon official business at open meetings.⁴

¹ ORC sec. 121.22(B)(1)(b) includes committees and subcommittees in the definition of public bodies. Further, ORC sec. 340.03(E) states that meetings held by any committee of a board of alcohol, drug addiction, and mental health services shall be considered to be meetings of a public body subject the Open Meeting Act.

² *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 564 N.E.2d 486 (1990).

³ This rule raises the obvious question of what is a meeting. The statute defines meeting as "any prearranged discussion of the public business of a public body by a majority of its members." ORC 121.22(B)(2). Who initiates the meeting is irrelevant. A gathering of members of more than one public body may constitute a meeting for each public body. One-to-one conversations about public business between individual members may not constitute a meeting, but 'round robin' meetings where a business item is discussed by a majority of members, albeit sequentially, does constitute a meeting. Ratification of an administrator's proposed actions by a silent vote of ratification is prohibited. *Signal Publishing Co. v. Northwest Bd. of Education*, No. 87-1116-OT-3 (C.P. Stark County Sept. 1, 1988). Approval by signature without a formal meeting also violates the statute.

⁴ A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the Board. Even if adopted in an open meeting, if it is the result of deliberations in a meeting not

7. Prepare the minutes of any regular or special meeting promptly. Minutes must be filed, maintained and open to public inspection. Minutes of executive sessions need only state the general subject matter of discussion.

8. Conduct retreats as special meetings. Provide notice of the time, place and purpose of the retreat to the news media requesting such notice at least twenty-four hours in advance. Prepare minutes of the retreat, and make the minutes available to the public for inspection.⁵

8. Executive sessions, the portion of the meeting where the public is excluded and only such persons that the Board has invited are permitted to be present, may only be held after, by roll call vote, the majority of the quorum decides to hold such meeting, and only for the excepted reasons listed by statute. The motion and vote must state which of the approved matters excepted by statute are to be considered.⁶

open to the public, the resolution, rule or formal action is invalid. Upon proof that a violation or threatened violation of the Open Meeting Act has occurred, the court must issue an injunction to compel the Board to comply. Upon issuance of the injunction, the court must order the Board to pay a civil forfeiture of \$500, costs and attorney fees, subject to reduction. ORC secs. 121.22(H); 121.22(I).

⁵ *State ex rel. Fairfield Leader v. Rickets*, 56 Ohio St.3d 97, 564 N.E.2d 486 (1990), considered whether County Commissioners and Township trustees must record minutes of a meeting that was designed to be a workshop or retreat, where officials discussed annexation, concerns about water and sewer service, planning and traffic. No specific proposals were made and no official action was taken. The court did not address the issue of whether the meeting should have been open to the public, as the issue was not raised. The court held, however, that where "the members of a public body agree to attend, in their official capacity, a meeting where public business is to be discussed and a majority of the members do attend, ORC sec. 121.22(C) necessitates that minutes of the meeting be recorded." Minutes must also be made available for public review.

⁶ The exceptions listed under ORC sec. 121.22(G) are:

1. To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee, official, licensee or regulated individual unless that person requests a public hearing. The statement given of the purpose for executive session need not include the individuals name. No executive session can be held for the discipline or removal of an elected public official for conduct related to performance in office.

2. To consider the purchase of property for public purposes, or for the sale of property at competitive bidding if the premature disclosure would give unfair advantage or bargaining advantage to an individual whose interest is adverse to

9. Limit deliberation in executive session to the stated purpose. Decision making must still be carried out in open meeting.⁷

10. If a violation or suspected violation of the Open Meeting Act does occur, promptly re-deliberate the issue and take official action in an open meeting.⁸

the general public interest. Property includes both tangible and intangible property. OAG 88-003.

3. Conferences with the Board's attorney concerning pending or imminent court action. *Compare State ex rel. Bond v. City of Montgomery*, 63 Ohio App.3d 728, 580 N.E.2d 38 (Hamilton County 1990) (court action is pending if the suit has been commenced; court action is imminent if it is on the point of happening or impending) *with Greene County Guidance Center, Inc. v. Greene-Clinton Community Mental Health Bd.*, 19 Ohio App.3d 1, 482 N.E.2d 982 (Greene County 1984) (discussion is permitted where litigation is a reasonable prospect).

4. Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms or conditions.

5. Matters required to be kept confidential by federal law or rules or state statutes.

6. Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.

⁷ *Drake v. Fairfield County Bd. of Health*, No. 28-CA-90, 1991 Ohio App. LEXIS 301 (Ct. App. Fairfield County Jan. 22, 1991).

⁸ This is the safest, but not certain, approach. *Compare M.F. Waste Ventures Inc. v. Board of Amanda Township Trustees*, No. 1-87-46, 1988 Ohio App. LEXIS 493 (Ct. App. Allen County Feb. 12, 1988) (stating that invalidity under the Open Meeting Act cannot be cured) *with Theile v. Harris*, No. C-860103 (Ct. App. Hamilton County June 11, 1986); *Carpenter v. Board of Allen County Comm'rs*, No. 1-81-44 (Ct. App. Allen County Aug. 10, 1982) (stating that invalidity may be cured). *See also Fox v. City of Lakewood* 39 Ohio St.3d 19, 528 N.E.2d 1254 (1988) (holding that invalidity may be cured by subsequent referendum); *Beisel v. Monroe County Bd. of Educ.*, No. CA-678, 1990 Ohio App. LEXIS 3761 (Ct. App. Monroe County Aug. 29, 1990) (invalidity may be cured prospectively by subsequent rescission and re-execution of employment contract); *Brownfield v. Board of Education*, No. 89-CA-26, 1990 Ohio App. LEXIS 3878 (Ct. App. Washington County Aug. 28, 1990).