

Outside employment for County Board employees



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PERSONNEL COUNCIL
FRANKLIN COUNTY BOARD OF DD
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Introduction



- County Board employees limited from engaging in certain outside employment by law
 - R.C. §5126.0228 (all employees)
 - R.C. §5126.15 (SSAs)

ORC §5126.0228

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- An employee of an agency contracting with the county board
- An immediate family member of an employee of an agency contracting with the county board unless the county board adopts a resolution authorizing the immediate family member's employment with the county board or the employment is consistent with a policy adopted by the board establishing parameters for such employment and the policy is consistent with Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code

ORC 5126.0228

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- An individual with an immediate family member who serves as a county commissioner of any of the counties served by the county board unless the individual was an employee of the county board before October 31, 1980;
- An individual who is employed by, has an ownership interest in, performs or provides administrative duties for, or is a member of the governing board of an entity that provides specialized services, regardless of whether the entity contracts with the county board to provide specialized services.

R.C. §5126.0228(B)(1)

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- Employee of agency contracting with county board
 - Holdover from prior statute
 - Now applies to more than just “service providers”
 - Term “agency” is given its usual meaning, so it can mean any type of company
 - ✦ Printing and publishing
 - ✦ Telephone
 - ✦ Alarm companies
 - ✦ Construction contractors (paving, roofing)

R.C. §5126.0228(B)(2)

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- Immediate family member of an employee of an agency contracting with the county board unless the county board adopts a resolution authorizing the immediate family member’s employment with the county board or the employment is consistent with a policy adopted by the board establishing parameters for such employment and the policy is consistent with Chapter 102. and R.C. §§2921.42, 2921.421, and 2921.43.

R.C. §5126.0228(B)(3)

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- An individual with an immediate family member who serves as a county commissioner of any of the counties served by the county board unless the individual was an employee of the county board before October 31, 1980

R.C. §5126.0228(B)(4)

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- An individual who is employed by, has an ownership interest in, performs or provides administrative duties for, or is a member of the governing board of an **entity** that provides specialized services, regardless of whether the entity contracts with the county board to provide specialized services.

R.C. §5126.0228(B)(4)

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- Prohibition applies to more than just traditional service providers that may or may not be contracting with a County Board
- If the company has a program or service that is designed and operated to serve “primarily” individuals with DD, then dual employment is prohibited

R.C. §5126.033(C)

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- Sets forth a safe harbor for individuals to be both a County Board employee and a private provider (either as an independent or employee of an agency provider)
- If criteria set forth in R.C. §5126.033(C) are met, then the employee is not in violation of R.C. §5126.0228 or Ohio’s Ethics (R.C. Chapter 102) and criminal laws (R.C. §§2921.42 and 2921.43)
 - R.C. §5126.034

R.C. §5126.033(C)

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- County board shall not enter into a direct services contract for services under which an individual, agency, or other entity will employ an individual who is also an employee of that county board unless all of the following conditions are met:
 - (1) Employee is not in a capacity to influence the award of the contract.
 - (2) Employee has not attempted in any manner to secure the contract on behalf of the individual, agency, or other entity.
 - (3) Employee is not employed in management level two or three according to ODoDD and does not provide service and support administration.

R.C. §5126.033(C)

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- (4) Employee is not employed by the board during the period when the contract is developed as an administrator/supervisor responsible for approving or supervising services to be provided under the contract and agrees not to take such a position while the contract is in effect, regardless of whether the position is related to the services provided under the contract.
- (5) Employee has not taken any actions that create the need for the services to be provided under the contract.
- (6) The individual, agency, or other entity seeks the services of employee because of employee's expertise and familiarity with the care and condition of one or more eligible persons and other individuals with such expertise and familiarity are unavailable, or an eligible person requested to have the services provided by employee.

R.C. §5126.033

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- While a County Board employee can become a qualified independent waiver provider or an employee of a provider agency contracting with the County Board or an employee/owner/member of an entity that provides specialized services, **unless the R.C. §5126.033(C) criteria are met**, the employee will have to choose between continued employment with the County Board or being an independent waiver provider, employee of a provider agency contracting with the County Board, or an employee/owner/member of an entity that provides specialized services.

R.C. §5126.15

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- Governs employment of service and support administrators (SSAs)
- Limits the outside employment of a SSA in a more restrictive manner than R.C. §5126.0228
 - Individuals employed by a board as service and support administrators ... shall not be employed by or serve in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with mental retardation or developmental disabilities

R.C. §5126.15

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- Like R.C. §5126.0228(B)(4), a contract between the County Board and the entity is not necessary
- “any other entity that provides programs or services to individuals” with DD is more encompassing than an entity that “provides specialized services.”
 - Entity does not have to primarily serve individuals with DD

Exceptions

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- R.C. §5126.0229
 - Employee of a County Board may be a member of the governing board of a political subdivision, including the board of education of a school district, or an agency that does not provide specialized services
 - ✦ County Board may contract with such governing board even though the governing board includes an individual who is an employee of the county board
 - That member of the governing board may **not** vote on any matter before the governing board concerning a contract with the County Board **or** participate in any discussion or debate regarding such a contract

Cautions

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- R.C. §5126.0228(B)(2) prohibits an “immediate family member of an employee of an agency contracting with the county board” from being a public employee
- We would not give a literal meaning to the term “employee” in this context
 - Division further states that the employment must be “consistent with a policy adopted by the board establishing parameters for such employment and the policy is consistent with Chapter 102. and sections 2921.42, 2921.421, and 2921.43 of the Revised Code”

Cautions

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

_____ County Board of Developmental Disabilities
Staff Conflict of Interest Affidavit

State of Ohio : ss
County Of _____

_____ (Name) BEING DULY
SWORN, DEPOSES AND SAYS:

1. I am above the age of eighteen years and competent to testify.
2. I currently am employed by the _____ County Board of Developmental Disabilities as a _____ (position).
3. I reside at _____
_____ (address)
4. I do not hold a supervisory or managerial position with the _____ County Board of Developmental Disabilities.
5. I have been selected by _____ (Organization or Family/Individual) to provide _____ services to _____ (individual(s)).
6. I have not participated in any decisions affecting provision of the aforementioned services, the necessity for services or the choice as to who should provide services.
7. Services I will provide, as identified in paragraph 5, are necessary for an individual or individuals.
8. I am providing the services identified in paragraph 5 because of (1) my expertise and familiarity with the care and condition of one or more eligible persons and other individuals with such expertise and familiarity are unavailable or (2) a client of the _____ County Board Developmental Disabilities has requested that I provide the identified services. For example, I am knowledgeable about the individual's condition and needs and therefore have special expertise that I can incorporate into my training programs.
9. I have explained to the individual/family and or organization for whom I will be providing services that I am an employee of the _____ County Board of

Developmental Disabilities, and that I am subject to certain ethical requirements with respect to the delivery of services identified in paragraph 5.

10. In connection with the services identified in paragraph 5, I have explained the terms and conditions upon which I will be providing services, including the necessity for the services, to the family/individual and or organization for whom I will be providing services and to a representative of the _____ County Board of Developmental Disabilities.
11. I did not participate in any discussion, deliberations, meetings or other decision-making processes in determining the necessity of the proposed service.
12. I have exercised no undue influence, either directly or indirectly, in obtaining the work in question.
13. I agree not to take a management position with the _____ County Board of Developmental Disabilities while I am providing the services identified in paragraph 5.
14. In connection with the services identified in paragraph 5, I have not been required by the _____ County Board of Developmental Disabilities to provide the services identified in paragraph 5.
15. In connection with the services identified in paragraph 5 (check one):
 - _____ I am an individual provider of Home and Community Based Services (HCBS) under a Medicaid waiver and I am a self-employed person who provides HCBS to individuals with developmental disabilities and do not employ, either directly, or through a contract, anyone else to provide such services.
 - _____ I am an individual provider selected by a family under the Family Home Services program and I am a self-employed person who provides services to individuals with developmental disabilities and do not employ, either directly, or through a contract, anyone else to provide such services.
 - _____ I am employed separately by _____, and my services are rendered to and on behalf of _____, not the _____ County Board of Developmental Disabilities. The _____ County Board of Developmental

Disabilities did not refer, order, require, or otherwise participate in my employment with _____.

16. The _____ County Board of Developmental Disabilities did not direct, order, or require me to provide the services identified in paragraph 5, and is not liable for payment of wages, including overtime, withholding of taxes, or provision of other employment benefits (including public retirement system contributions) in connection with the delivery of the services identified in paragraphs 5 and 15. I agree to hold the _____ County Board of Developmental Disabilities harmless from any and all liability with respect to the provision of the services identified in paragraphs 5 and 15.

The above is true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

Date

Signature of Affiant

SWORN TO AND SUBSCRIBED BEFORE ME AT _____, OHIO, THIS
_____ DAY OF _____, _____.

NOTARY PUBLIC