



# JOINT LEGISLATIVE ETHICS COMMITTEE

## 128<sup>th</sup> OHIO GENERAL ASSEMBLY

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Joint Legislative Ethics Committee

Advisory Opinion 09-001

October 2009

### Syllabus by Committee:

1. A Member of the General Assembly may access the Ohio General Assembly – Public Wireless Internet network, for personal use, so long as they do so in the same manner as members of the general public; and without utilizing any state resources, as outlined in this opinion.
2. Members choosing to access the Public Wireless Internet network must strictly adhere to the *Ohio General Assembly – Public Wireless Access Acceptable Use Policy*.
3. The guidance outlined in this opinion does not supersede any policies set forth by a Member's respective chamber or caucus.

### 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 questions:

1. In what capacity may a Member utilize the Ohio General Assembly – Public Wireless Internet network, a state resource that is generally available to the public, for use not associated with the Member's official duties?
2. What are the ethical guidelines for the use of state resources when using the Ohio General Assembly – Public Wireless Internet connection?

### Background:

In 2008, Legislative Information Systems, a non-partisan legislative agency charged with providing information technology services to legislative agencies, began hosting a

broadband wireless Internet network (herein 'Public Wireless') accessible free of charge to the general public. The Public Wireless network is available to the general public and specifically services the Statehouse and certain floors of the Vern Riffe Center, where many state legislative offices are located.

As state-provided Internet networks are a state resource, questions have arisen regarding the ethical use of the Public Wireless for official and/or personal use by Members of the General Assembly.

Consideration of the Issues:

Pursuant to Ohio Revised Code § 102.08, the Joint Legislative Ethics Committee has the authority to render an Advisory Opinion on an issue that has been publically sought and that relates to a special set of circumstances involving ethics, conflicts of interest, or financial disclosure under § 2921.42, § 2921.43, or Chapter 102. of the O.R.C. 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 their office or position of employment for a violation of § 2921.42, § 2921.43, or Chapter 102. of the O.R.C. based on the facts and circumstances covered by the opinion.

The facts and circumstances relating to the use of state resources, not specific to a Member's office and generally available to the public, are addressed in JLEC Advisory Opinion 95-015. The facts and circumstances relating to a Member's prohibition of utilizing staff, equipment owned by the state, title, or legislative office space, in furtherance of activities not related to a Member's official duties are addressed in JLEC Advisory Opinion 2007-001.

- 1. In what capacity may a Member utilize the Ohio General Assembly – Public Wireless Internet network, a state resource that is generally available to the public, for use not associated with the Member's official duties.**

JLEC Advisory Opinions 95-015 & 2007-01 address the issue of Members utilizing state resources in furtherance of activities not related to their official duties. Broadly, Members are to refrain from using General Assembly time, facilities, and resources; specifically, Members are prohibited from utilizing legislative staff, equipment owned by the state, their official title, or legislative office space, for the furtherance of non-official duties. However, in JLEC Advisory Opinion 2007-01 The Committee recognizes an exception to this prohibition:

"Members are not prohibited from obtaining benefits available to non Members" (*Id.* at 7.)

Therefore, the prohibition does not apply to resources which are available to the general public. The Public Wireless is a state resource available free of charge to the general public, therefore Members are permitted to access and utilize this resource for activity unrelated to their official duties.

Members are advised that the specific prohibitions outlined in JLEC Advisory Opinion 2007-01 remain applicable. Members may not use their legislative staff, **state owned equipment**, or their official title when utilizing the Public Wireless for non-official reasons. Members accessing the Public Wireless in any non-official capacity (personal, campaign, outside employment, etc.) must do so on a personally owned device (laptop, mobile device, etc.) and do so as a member of the general public. A Member is advised against using their legislative staff to assist in accessing the Public Wireless, and should a Member have technical issues with the Public Wireless, they must refrain from using their position or title as a General Assembly Member to resolve the issue and abide by the protocol available to the general public.

If a Member is utilizing the Public Wireless for official purposes, the member may treat it as any other state Internet network. However, Members are advised that the Public Wireless is an open network and there can be no guarantee of privacy while using the Public Wireless.

JLEC Advisory Opinion 2007-01 includes 'legislative office space' as a resource prohibited from use for non-official duties. Within the context of Opinion 2007-001, the use of legislative office space was prohibited as a resource to hold private personal meetings. The use of legislative office space (in the context of 2007-01) provides the benefit of a Member's status as a public official; thus creating a possible benefit to the furtherance of a Member's non-official activities. However, accessing the Internet does not create this benefit; therefore a Member may access the Public Wireless from their legislative office space, so long as they adhere to the guidance outlined in this opinion.

## **2. What are the ethical guidelines for the use of state resources when using the Ohio General Assembly – Public Wireless Internet connection?**

Any Member who chooses to access the Public Wireless is to strictly adhere to the Ohio General Assembly – Public Wireless Access Acceptable Use Policy (see Attachment A). This policy prohibits all users from violating any federal, State of Ohio, or local laws including: the transmission or receiving of child pornography or harmful material, fraud, and downloading copyrighted material. Further, Members are advised that while using the Public Wireless there can be no expectation of privacy; and users assume all risks associated with accessing a public wireless connection.

Finally, no guidance outlined in this opinion is to supersede any policy set forth by a Member's respective chamber or caucus. For specific details, Members are advised to speak to their caucus counsel about their governing computer network policies.

Conclusion:

Accordingly, the Joint Legislative Ethics Committee finds; and Members and employees of the General Assembly are so advised: (1) A Member of the General Assembly may access the Public Wireless so long as they do so in the same manner as a member of the general public; and do so without utilizing any state resource as outlined in this opinion; (2) any Member choosing to access the Public Wireless must strictly adhere to the *Ohio General Assembly – Public Wireless Access Acceptable Use Policy*; and (3) the guidance outlined in this opinion does not supersede any policies set forth by a Member's respective chamber or caucus.

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

## Acceptable Use

All users are expected to use the General Assembly's wireless access in a legal and responsible manner, consistent with the communications and information purposes for which it is provided.

While using this wireless access, users shall not violate federal, State of Ohio or local laws, including:

- The transmission or receiving of child pornography or harmful material. Access to or display of obscene language and sexually explicit graphics as defined in section 2901.01 and 2907.31 of the Ohio Revised Code is not permitted.
- Fraud . Users are prohibited from misrepresenting themselves as another user; attempting to modify or gain access to files, passwords, or data belonging to others; seeking unauthorized access to any computer system, or damaging or altering software components of any network or database
- Downloading copyrighted material. U.S. copyright law (Title 17, U.S. Code) prohibits the unauthorized reproduction or distribution of copyrighted materials, except as permitted by the principles of "fair use". Users may not copy or distribute electronic materials without the explicit permission of the copyright holder .

Anyone using the wireless network provided by the General Assembly is forewarned that there can be no expectation of privacy when using the wireless network. Users assume all associated risks and agree to hold harmless the State of Ohio, Ohio General Assembly, and its employees for any personal information that is compromised, or for any damage caused to users' hardware or software.

**By using this wireless access network, the user acknowledges that he/she is subject to, and agrees to abide by all laws, and all rules and regulations of the State of Ohio, the Ohio General Assembly, and the federal government that are applicable to Internet use.**