

Merom Brachman, *Chairman*
Megan C. Kelley, *Vice Chair*
Bruce E. Bailey
Julie A. Rutter
Elizabeth E. Tracy
Mark A. Vander Laan



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Paul M. Nick
Executive Director

OHIO ETHICS COMMISSION
MINUTES OF MEETING
DECEMBER 15, 2021

MEMBERS OF THE COMMISSION

Merom Brachman	Megan C. Kelley	Bruce Bailey
Elizabeth E. Tracy	Julie A. Rutter	Mark A. Vander Laan

CALL TO ORDER

The meeting of the Ohio Ethics Commission was called to order at 10:03 a.m. in Meeting Room G on the 3rd floor of the William Green Building, at 30 W. Spring Street, in Columbus, Ohio.

ROLL CALL

The following Commission Members were present: Mr. Brachman, Mr. Bailey, Ms. Rutter, Ms. Tracy, and Mr. Vander Laan. Ms. Kelley was absent due to illness and excused from attending. Staff present: Executive Director Paul M. Nick; Deputy Director/General Counsel Jed Hood, IT & FD Administrator Brian Ring, Education and Communications Administrator Susan Willeke, HR & Fiscal Manager Alan Carlson, Investigative Attorney Molly Bruns, and Advisory Attorneys Chris Woeste and Kristin Cly.

EXECUTIVE SESSION

MOTION by Mr. Bailey, seconded by Mr. Vander Laan, to go into Executive Session to discuss matters that are statutorily confidential, including pending litigation, updates on investigations, and the confidential financial disclosure report. Mr. Bailey, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved, and the Commission, pursuant to Section 102.06 of the Revised Code, went into Executive Session at 10:04 a.m.

RETURN TO OPEN SESSION

The Commission returned to open session at 10:41 a.m.

PREVIOUS MEETING MINUTES

The Commission reviewed the draft minutes from the November 10, 2021 Commission meeting.

MOTION by Mr. Bailey, seconded by Ms. Tracy, that the Commission approve the minutes of the November 10, 2021 Commission meeting. Mr. Bailey, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

ADVISORY OPINIONS AND STATISTICS

Mr. Nick discussed a letter sent by the staff to a former retirement system director that received some media attention. Mr. Brachman asked two questions concerning advisory matters from the closure report. Mr. Nick and Ms. Cly responded to Mr. Brachman's questions.

Mr. Nick reviewed the advisory charts included in the packet, noting that the majority of the Commission's advisory requests and opened investigations involve county, city, and local matters. Mr. Bailey requested that the staff provide four years of statistics and trends with a focus on seeing if continuing to collect and report on the data was helpful. Mr. Nick responded that the data has been used in the past in support of budget requests before the General Assembly and also Commission newsletters.

EXECUTIVE DIRECTOR'S REPORT

Mr. Nick reported that Commission staff continue to observe temporary hybrid schedules and anticipate continuing to do so for the near future in compliance with CDC and Ohio Department of Health guidelines. He then provided the Commission with an update on a request the Commission received concerning the status of a newly established foundation, OneOhio, which will be tasked with distributing funds from a recent settlement agreement with several pharmaceutical companies. He then reported on a request from the City of Cleveland's Mayor-elect for Mr. Nick and Mr. Vander Laan to assist with an Ethics Transition Work Group that was tasked with recruiting a new city inspector general and/or chief ethics officer; creating an executive order and related legislation; and developing a compliance and education program.

LEGISLATION UPDATE

Mr. Hood provided updates on legislation pending before the General Assembly as outlined in the packet.

Mr. Nick reviewed a memorandum about enhancing the penalties for providing unlawful payments, including campaign contributions, to any public official in the State of Ohio. Mr. Nick provided an overview of the memorandum, noting that in Advisory Opinion No. 2002-03, the Commission considered whether the conflict of interest law applies when an elected officer, who also serves as a significant local party official solicits or accepts a campaign contribution from a person who is doing or seeking to do business with, regulated by, or interested in matters before the public office the official serves. Mr. Nick noted that the Commission concluded in that opinion that such contributions would be a conflict of interest where there is evidence of bribery or another offense under the Revised Code and a nexus exists between the public official and the person making the contribution. He added that the law also prohibits any person or entity for giving such contributions; however, the maximum penalty is a fine of \$1,000 and/or up to 6 months in jail. He noted that this does not provide much of a deterrent to persons or entities who violate this law. Mr. Nick then outlined two alternatives: civil debarment hearings or mandatory debarment from participating in any public contracts across the state upon conviction or ORC 102.03(F).

Mr. Brachman observed that although normally the Commission does not have jurisdiction over campaign contributions, it appears timely to address and strengthen the relevant provision in our statute, in light of the particular and confessed misdeeds currently in federal processes. He noted this would involve a proposal to the General Assembly and likely legislative hearings that would be of interest.

Mr. Vander Laan expressed a concern that a penalty could be imposed only when a conviction has been secured, which could be a lengthy process with no penalty resulting. He opined that it may be preferable to rely on a preponderance of the evidence standard rather than a conviction requiring proof beyond a reasonable doubt. He also recommended that any proposed language submitted to the General Assembly allow for adjustments and compromise while ensuring the outcome sought by the Commission.

Mr. Nick noted that the two alternatives are not mutually exclusive. He agreed with Mr. Vander Laan that a civil approach required a reduced level of proof which increases the likelihood of a penalty being assessed. Mr. Vander Laan added that a civil approach would likely be easier to accomplish with the General Assembly as it's not the goal to seek debarment for every potential Ethics Law violation.

Mr. Nick also reported on a current bill that would allow the Attorney General to debar companies and suggested the possibility of inserting language into that bill that would reflect similar outcomes when the Ethics Law is violated. A discussion also ensued regarding the use of the words "state contracts" as opposed to "public contracts" as the Ethics Law regulates both state and local governments. Mr. Vander Laan noted that if that bill passed, the Attorney General would act as the prosecuting attorney and the Commission would serve in an advisory capacity which is consistent with its historical role.

Mr. Brachman asked staff to refine appropriate language for the Commission that can be reviewed as soon as possible, to enable taking a proposal to the General Assembly when it reconvenes in January 2022, and that procedure had general consensus.

PUBLIC EDUCATION AND INFORMATION

Ms. Willeke reviewed the information in the packet and noted that currently scheduled "in-person" speeches could potentially be converted into online sessions should the virus continue to thrive in Ohio.

Mr. Nick reported that at the December meeting of the Council on Governmental Ethics Laws (COGEL), Ms. Willeke was appointed to serve a four-year term on the COGEL Steering Committee. Mr. Nick and the Commission congratulated her on this honor that recognized her continuing service to COGEL.

FINANCIAL DISCLOSURE STATISTICS REPORT/COMPLAINT REPORT

Mr. Ring reviewed the information in the packet and noted that the 2021 FDS statement will be available on the website on January 3 and that the 2022 deadline for filing year 2021 will be May 16, 2022 (since May 15 is a on Sunday in 2022). The Chairman inquired regarding an increase in reported non-compliance numbers and Mr. Ring explained that the new chief legal counsel at a large state agency had identified 30 additional employees who should be filing disclosure statements and they have been gradually submitting them.

MOTIONS

Late Fee Waivers:

MOTION by Mr. Vander Laan, seconded by Mr. Bailey, to waive the late fees for the individuals listed in the packet report. Mr. Bailey, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted "yes." The motion was approved.

Complaint Dismissals:

MOTION by Mr. Vander Laan, seconded by Mr. Bailey, to dismiss the financial disclosure complaints against the individuals listed in the packet report for good cause shown. Mr. Bailey, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted “yes.” The motion was approved.

Collections:

MOTION by Ms. Tracy, seconded by Ms. Rutter, to refer to the Attorney General’s Office for collections the individuals listed in the packet report. Mr. Bailey, Ms. Rutter, Ms. Tracy, Mr. Vander Laan, and Mr. Brachman voted “yes.” The motion was approved.

DATE OF FUTURE MEETING

The Commission set the next meeting for Wednesday, February 9, 2022 at 1:30pm with an Investigative Committee meeting scheduled for the same day at 12:30pm.

Adjournment

The meeting was adjourned at 11:56 a.m.

These minutes are respectfully submitted by:



Paul M. Nick
Executive Director