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Paul M. Nick
Executive Director

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ADVISORY COMMITTEE
MINUTES OF MEETING
MARCH 14, 2022

Present: Commissioners Bruce Bailey, Megan Kelley & Julie Rutter
Executive Director Paul M. Nick
Staff Advisory Attorneys Kristin Cly & Christopher Woeste

The meeting was called to order at 11:04 a.m. via videoconference as authorized by Sub. HB 51.

Mr. Nick introduced the Ohio Administrative Code Sections that pertain to the Advisory section processes and procedures. Mr. Nick noted that OAC 102-3-08 was enacted by Commission action in 2013.

Regarding OAC 102-3-04, Mr. Nick provided examples of Commission staff's phone log, email responses, staff advisory opinions, and requests for opinions. He highlighted the staff's effort to provide succinct opinions and helpful email responses to callers. Mr. Nick also discussed R.C. 102.08 and how it applies to each of the three ethics agencies: the Commission; the Board of Professional Conduct; and the Joint Legislative Ethics Committee (JLEC). Mr. Bailey suggested that the Commission expand its phone advice to allow for immediate answers to simple issues and compared the Ethics Commission's responses to JLEC's procedures. Mr. Bailey also asked about providing confidentiality to callers and some opinions. Mr. Nick explained JLEC's statutory scheme in comparison to the Commission's statutes and stated he would follow up with JLEC colleagues for more information on their procedures. Mr. Woeste and Ms. Cly provided input on how the staff responds to questions stating that staff can answer many questions by providing past precedents. Ms. Rutter complimented staff on their efforts to improve procedures.

Mr. Nick introduced a staff opinion that Mr. Bailey had requested more information about during the last full Commission meeting. Mr. Nick explained that the staff opinion was consistent with past precedent, including formal and staff opinions, and that the same outcome was dictated by an Attorney General's opinion. Mr. Bailey explained his concerns that the opinion would require agencies to carry two health insurance policies and was not practical. Additionally, Mr. Bailey questioned whether \$50 a month reduction in health care costs is a sufficient change to cause an improper influence on an official and commented that this could be considered *de minimis*. Mr. Nick discussed the precedents and how they dictated the staff opinion in response and agreed that in some instances the change could be considered *de minimis*, though here, the annual amount was \$600. Ms. Kelley and Ms. Rutter agreed with Mr. Bailey's concerns but stated the opinion was well reasoned, legally. Ms. Rutter further noted that the reduction in health care cost

was being paid by the employer on behalf of the employee, thereby creating the conflict of interest. Mr. Bailey asked if a benefit change would be sufficient to be considered a change in compensation. Mr. Woeste responded that in some cases it would under existing precedent but that the case at hand involved a clear monetary change in benefits. Mr. Bailey noted that this could be viewed similarly to a uniform benefit like a change in utility rates. Mr. Nick suggested that a change in utility rates could be viewed differently because it applies to all citizens, not just the employees of the agency. Mr. Bailey stated that he still was not comfortable with the outcome of the opinion based on its practical implications. The Committee then moved on to the next item on the agenda.

Ms. Rutter excused herself from the remainder of the meeting due to a potential conflict of interest concerning the last item on the agenda and signed off the videoconference.

Mr. Nick introduced the memorandum to the Commission regarding statutory donations for solar projects. Mr. Woeste went through the memorandum describing the possible options and staff's recommendation. Mr. Nick highlighted the two letters attached to the memorandum and how the letters addressed the donations separately. Mr. Bailey noted that he felt this was a significant problem that is likely to recur. Mr. Bailey added that this law is a clear conflict with the Commission's statutes and precedents and asked staff to consider a possible conflict of laws analysis. Ms. Kelley noted that developers are typically required to pay fees for infrastructure but felt that this statutory scheme presented problems. Ms. Kelley and Mr. Bailey asked that the issue be moved forward as a potential informal advisory opinion. Mr. Bailey asked that staff look into the issue in more detail. Mr. Nick stated that staff would follow up on the issue and prepare an updated memorandum and draft informal opinion for the Commission meeting on April 8.

The meeting was adjourned at 12:14 p.m.

These Minutes were prepared by Executive Director Paul M. Nick.