



OHIO ETHICS COMMISSION

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Advisory Opinion Number 95-003

March 27, 1995

Syllabus by the Commission:

Division (A) of Section 102.02 of the Revised Code requires an individual who holds a valid school district manager's license issued by the Department of Education and who performs for a school district, at any time during the calendar year, the duties of "business manager," as established in Chapter 33. of the Revised Code, to file a financial disclosure statement with the Ohio Ethics Commission.

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You have asked whether changes to Ohio's Ethics Law require an individual, who is employed by your school district as an administrative assistant but performs some of the functions of a business manager, to file a financial disclosure statement with the Ohio Ethics Commission. You state that your school district does not have a named school district business manager. The school district, however, employs an individual with the title of "Administrative Assistant to the Superintendent" who, as you have described, "performs the functions" of a school district business manager. You have indicated that this individual does not hold a school district manager's license issued by the Department of Education pursuant to R.C. 3319.03. To explain your request, you have enclosed the school district's Administrative Organizational Plan and a job description that enumerates the administrative assistant's responsibilities.

As explained below, recent changes in Ohio's Ethics Laws contained in R.C. 102.02 (A) do not require the Administrative Assistant to your school district superintendent to file a financial disclosure statement with the Ohio Ethics Commission.

Your attention is directed to R.C. 102.02 (A), which reads, in pertinent part:

[E]very business manager, treasurer, or superintendent of a city, local, exempted village, county, joint vocational, or cooperative education school district; every person who is elected to or is a candidate for the office of member of a board of education of a city, local, exempted village, county, joint vocational, or cooperative education school district that has an average daily membership of twelve thousand or more as most recently certified to the state board of education pursuant to division (A) of section 3317.03 of the Revised Code; . . . shall file with the appropriate ethics commission on a form prescribed by the commission, a [financial disclosure statement].

The General Assembly, in Am. Sub. H.B. 285, 120th Gen. A. (1994) (eff. March 2, 1994), amended R.C. 102.02 (A) to require business managers, treasurers, and superintendents of

all school districts, as well as board members and candidates for the office of member of a board of education of school districts with over 12,000 students, to file financial disclosure statements with the Ohio Ethics Commission.

The amendment to R.C. 102.02 (A) did not define the terms "business manager," "treasurer," and "superintendent" for purposes of R.C. 102.02 (A). Thus, as you have described, the issue becomes whether the individual who is employed by your school district as an administrative assistant will be deemed to be a "business manager" for purposes of the financial disclosure filing requirement of R.C. 102.02 (A).

R.C. 1.42 requires that, in interpreting statutes that contain words which are not statutorily defined, words and phrases shall be construed according to rules of grammar and common usage but that words and phrases that have acquired a technical or particular meaning by legislative definition or otherwise, shall be construed accordingly. See also Ohio Ethics Commission Advisory Ops. No. 75-014, 87-002, and 89-001. Also, the Ohio Supreme Court has held that statutes relating to the same subject matter must be read and construed together and that a particular statute should be construed in light of, and with reference to, other statutes which are part of the same scheme. State ex rel. Pratt v. Weygandt, 164 Ohio St. 463 (1956); Inglis v. Pontius, 102 Ohio St. 140 (1921); Ohio Ethics Commission Advisory Op. No. 89-001.

In order to address your question with regard to these principles, it is necessary to review statutes that pertain to a school district business manager.

R.C. 3319.03 provides the board of education of each city, exempted village, and local school district with the option to create the position of "business manager" and to elect an individual to hold that position. An individual must hold a valid school district manager's license issued by the Department of Education in order to serve as school district business manager. R.C. 3319.03. See also R.C. 3319.074 (A)(2) (The State Board of Education shall, by rule, adopt standards for licensing school district business managers). R.C. 3319.03 provides that the board of education shall remove a business manager who fails to maintain a valid license.

The board of education may establish a term of office for a business manager which is not to exceed four years. R.C. 3319.03. However, a board of education, by a two-thirds vote, may suspend or remove a business manager for cause before the expiration of the term. R.C. 3319.06. An individual who is appointed to fill a vacancy in the office of business manager will serve only for the remainder of the term. R.C. 3319.03. A business manager's compensation is fixed by the board of education. R.C. 3319.05. A business manager must furnish bond in an amount approved by the board of education. Id.

Whenever a board of education creates the office of business manager, the board has the option to make the business manager responsible to either the board or the superintendent. R.C. 3319.03. If the board of education makes the business manager responsible to the superintendent, then the superintendent is charged with appointing the business manager and the appointment must be confirmed by the board of education. Id.

A business manager is responsible for: the care and custody of the school district's property, except monies; the supervision of the construction, maintenance, operation, and repair of the school district's buildings; and, the purchase and custody of all supplies and equipment authorized by the board of education. R.C. 3319.04. A business manager assists the board of education in the preparation of the school district's annual appropriation resolution. *Id.* A business manager may, with the confirmation of the board of education, appoint and discharge noneducational employees. *Id.* The Ohio Supreme Court has held that a business manager has the authority to suspend noneducational employees for terms of five working days or less without the direct approval of the board of education. State, ex rel. Specht v Bd. of Edn. 66 Ohio St. 2d 178 (1981).

As used in R.C. 102.02 (A), the term "business manager," has a technical or particular meaning. In the initial version of Am. Sub. H.B. 285 that was passed by the House of Representatives, R.C. 102.02 (A) imposed the requirement to file a financial disclosure statement upon "every clerk, treasurer, and superintendent of a city, local, exempted village, county, joint vocational, or cooperative education school district." (Emphasis added.) The substitution of "clerk" with the term "business manager" before the passage of Am. Sub. H.B. 285 by the General Assembly evidences a conscious legislative intent to impose the requirement to file a financial disclosure statement upon a particular class of individuals.

Furthermore, R.C. 102.99 (A) imposes a criminal penalty upon those who are required to file a financial disclosure statement and knowingly fail to file. Because the financial disclosure law is a criminal statute, the Ethics Commission has consistently followed the rule of statutory construction for criminal statutes mandated by R.C. 2901.04 (A), which reads:

Sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

See Advisory Op. No. 75-036 (construing the requirement imposed by R.C. 102.02 (A)(2) liberally in favor of the public official required to file a financial disclosure statement). Because R.C. 2901.04 requires that the term "business manager" in R.C. 102.02 (A) be strictly construed against the state, the term must be used narrowly in determining which individuals are "business managers" and required to file a financial disclosure statement.

Accordingly, the requirement imposed by R.C. 102.02 (A) upon "every business manager . . . of a city, local, exempted village, county, joint vocational, or cooperative education school district" relates to individuals who: (1) hold a valid school district manager's license issued by the Department of Education; and (2) exercise the statutorily created powers and duties on behalf of school districts as described above.

In the instant situation, the school district's Administrative Organizational Plan and the job description that enumerates the administrative assistant's responsibilities are not analogous with the statutorily mandated powers and duties of a school district "business manager." For example, as explained above, R.C. 3319.04 provides that a business manager is responsible for the purchase and custody of all supplies and equipment authorized by the board of education. However, it is apparent from the position description that the administrative assistant does not

act autonomously with regard to the purchase and custody of supplies and equipment authorized by the board of education; rather, the administrative assistant's duties are organizational and designed to assist the superintendent and treasurer.

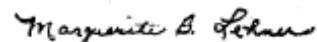
Therefore, in light of the factors described above, the term "business manager," as used in R.C. 102.02 (A), has a particular meaning and is related to the term as it is used in statutes found in R.C. Chapter 33. Accordingly, Division (A) of Section 102.02 of the Revised Code requires an individual who performs, at any time during the calendar year, the duties of "business manager," as established in Chapter 33. of the Revised Code, to file a financial disclosure statement with the Ohio Ethics Commission. Because R.C. 3319.03 requires that an individual must hold a valid school district manager's license issued by the Department of Education in order to perform these statutorily mandated tasks for a school district, the Ethics Commission holds that R.C. 102.02 (A) requires individuals who: (1) hold a valid school district manager's license issued by the Department of Education; and, (2) who serve during the calendar year in the position of "business manager" for a school district, to file a financial disclosure statement with the Ohio Ethics Commission.

In the instant situation, because the school district's administrative assistant to the superintendent of your school district does not hold a valid school district manager's license issued by the Department of Education, and performs duties that are not analogous with the statutorily mandated powers and duties of a school district "business manager," R.C. 102.02 (A) does not require your school district's administrative assistant to file a financial disclosure statement with the Ohio Ethics Commission.

It must be noted that the Ethics Commission has no authority to determine whether a board of education may assign duties to an employee other than a licensed business manager if R.C. Chapter 33. statutorily prescribes these duties be performed by a licensed business manager. This issue is for the determination of the school district's legal advisor.

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

Therefore, it is opinion of the Ohio Ethics Commission, and you are so advised, that: Division (A) of Section 102.02 of the Revised Code does not require the Administrative Assistant to the school district superintendent, who performs some of the functions of a business manager, to file a financial disclosure statement with the Ohio Ethics Commission under the facts you have described. Division (A) of Section 102.02 of the Revised Code requires an individual who holds a valid school district manager's license issued by the Department of Education and who performs for a school district, at any time during the calendar year, the duties of "business manager," as established in Chapter 33. of the Revised Code, to file a financial disclosure statement with the Ohio Ethics Commission.



Marguerite B. Lehner, Chair

Ohio Ethics Commission