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Advisory Opinion Number 2000-03
March 16, 2000

Syllabus by the Commission:

- (1) Division (A) of Section 102.02 of the Revised Code requires that any person appointed to fill the unexpired term of an elective county office must file a financial disclosure statement;
- (2) Divisions (B) and (D) of Section 305.02 of the Revised Code set forth the procedures by which an unexpired county elective office shall be filled by appointment;
- (3) Division (F) of Section 305.02 of the Revised Code provides that the county commissioners may appoint a person to hold any county elective office as an acting officer, and perform the duties of the office between the occurrence of the vacancy and the time when the officer appointed by the central committee, pursuant to Revised Code 305.02(B) or (D), qualifies and takes the office;
- (4) Division (A) of Section 102.02 of the Revised Code does not require a person who serves as an acting county officer, pursuant to Division (F) of Revised Code Section 305.02, to file a financial disclosure statement.

* * * * *

In your letter, you have asked whether you are required to file a financial disclosure statement for calendar year 1999. You have explained that you served as Acting County Prosecuting Attorney from January 2 to January 19, 1999.

As set forth more fully below, R.C. 102.02(A) does not require you to file a financial disclosure statement because you served as acting prosecuting attorney, pursuant to R.C. 305.02(F), and were not appointed to fill the unexpired term in the office of prosecuting attorney.

Financial Disclosure Statement Filing Requirement—R.C. 102.02(A)

The financial disclosure statement filing requirement is set forth in R.C. 102.02(A), which provides, in pertinent part:

[E]very person who is elected to or is a candidate for a state, county, or city office . . . and every person who is appointed to fill a vacancy for an unexpired term in such an elective office . . . shall file with the appropriate ethics commission on a form prescribed by the commission a [financial disclosure] statement.

At issue is whether a person who serves as an acting county elective officer on an interim basis, between the occurrence of a vacancy and the appointment of another person to serve for the remainder of the unexpired term, is required to file a financial disclosure statement.

Filling an Unexpired Term in County Elective Office—R.C. 305.02

At the county level, there is a statute that specifically addresses the methods by which the unexpired term in an elective office shall be filled by appointment. R.C. 305.02 states, in pertinent part:

(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section [county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, or coroner], the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

...

(D) If the last occupant of the office or the officer-elect was elected as an independent candidate, the board of county commissioners shall make such appointment at the time when the vacancy occurs, except where the vacancy is in the office of county commissioner, in which case the prosecuting attorney and the remaining commissioners or a majority of them shall make the appointment.

(E) Appointments made under this section shall be certified by the appointing county central committee or by the board of county commissioners to the county board of elections and to the secretary of state, and the persons so appointed and certified shall be entitled to all remuneration provided by law for the offices to which they are appointed.

In order for a person to be appointed to fill an unexpired term in an elective office, the person must be appointed by the appropriate persons, and the appointment must be certified to the county board of elections and the secretary of state. Any person appointed to an unexpired term in a county elective office, pursuant to the methods set forth in R.C. 305.02 (B) and (D), is required to file a financial disclosure statement with the Ohio Ethics Commission within fifteen days after he or she qualifies for the office.

Acting Officeholder

R.C. 305.02(F) also sets forth a procedure whereby a county can appoint an acting officer to fill any of those elective offices on an interim basis:

The board of county commissioners may appoint a person to hold any of the offices named in division (A) of this section as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes the office.

These individuals are not appointed to fill a vacancy for an unexpired term in an elective office. Rather, they perform the duties of the office until the appropriate appointing authority appoints an official to fill the unexpired term as provided in R.C. 305.02(B) or (D). Therefore, an official who serves as an acting office holder, but is not appointed to the unexpired term of an elective county office, is not required to file an annual financial disclosure statement.

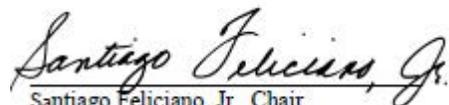
In your case, you served as acting prosecuting attorney for 17 days in January, 1999. You have stated that you did not apply for the Prosecutor's position, were not appointed to serve in the unexpired term, and are no longer acting as prosecuting attorney. Your service as acting prosecuting attorney on an interim basis does not require you to file a financial disclosure statement. Because you were not appointed to the unexpired term of elective office, you are not required to file a financial disclosure statement for calendar year 1999.

Conclusion

As set forth more fully above, R.C. 102.02(A) does not require you to file a financial disclosure statement because you served as an acting prosecuting attorney, pursuant to R.C. 305.02(F), and were not appointed to fill the unexpired term in the office of prosecuting attorney.

As a final note, you have stated that you filed a disclosure statement in 1999, for calendar year 1998, before you were told that you did not have to file that statement. That statement will remain on file with the Ethics Commission. The conclusions of this opinion may also apply to any person who holds an elective city office, on an acting basis, if there is a specific statutory method whereby the unexpired term in the elective office shall be filled and the person has not been appointed to fill that unexpired term. See R.C. 733.31(D) and (G). Contrast Adv. Op. No. 2000-02 (A person who is a business manager, treasurer, or superintendent of a city, local, exempted village, joint vocational, or cooperative education school district or an educational service center is required to file a financial disclosure statement, whether that person serves in the position on a temporary or permanent basis.).

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.02 of the Revised Code requires that any person appointed to fill the unexpired term of an elective county office must file a financial disclosure statement; (2) Divisions (B) and (D) of Section 305.02 of the Revised Code set forth the procedures by which an unexpired county elective office shall be filled by appointment; (3) Division (F) of Section 305.02 of the Revised Code provides that the county commissioners may appoint a person to hold any county elective office as an acting officer, and perform the duties of the office between the occurrence of the vacancy and the time when the officer appointed by the central committee, pursuant to Revised Code 305.02(B) or (D), qualifies and takes the office; and (4) Division (A) of Section 102.02 of the Revised Code does not require a person who serves as an acting county officer, pursuant to Division (F) of Revised Code Section 305.02, to file a financial disclosure statement.


Santiago Feliciano, Jr., Chair
Ohio Ethics Commission