

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

INFORMATION SHEET: ADVISORY OPINION NO. 2006-01 **FINANCIAL DISCLOSURE FILING REQUIREMENT FOR** **STATE EMPLOYEE SERVING IN A TEMPORARY WORKING LEVEL (TWL)**

What is the question addressed in the opinion?

Does the Ethics Law require a state employee to file a Financial Disclosure Statement if the employee is serving, as the result of a temporary working level (TWL) assignment, in a state employment position for which a financial disclosure filing is ordinarily required?

What is the answer in the opinion?

A state employee who is serving for fewer than ninety days, as the result of a TWL assignment, in an employment position for which financial disclosure filing would ordinarily be required, is not required to file a Financial Disclosure Statement.

A state employee who has served for more than ninety days, as a result of a TWL assignment, in a position for which financial disclosure filing would ordinarily be required, is required to file a Financial Disclosure Statement. Once the state employee has served for ninety days, he or she has another ninety days within which to file the statement.

The financial information to be disclosed is for the complete preceding calendar year.

To whom does this opinion apply?

This opinion applies to any state official or employee who serves, as a result of a TWL assignment, after January 1, 2008, in a position for which financial disclosure filing is ordinarily required.

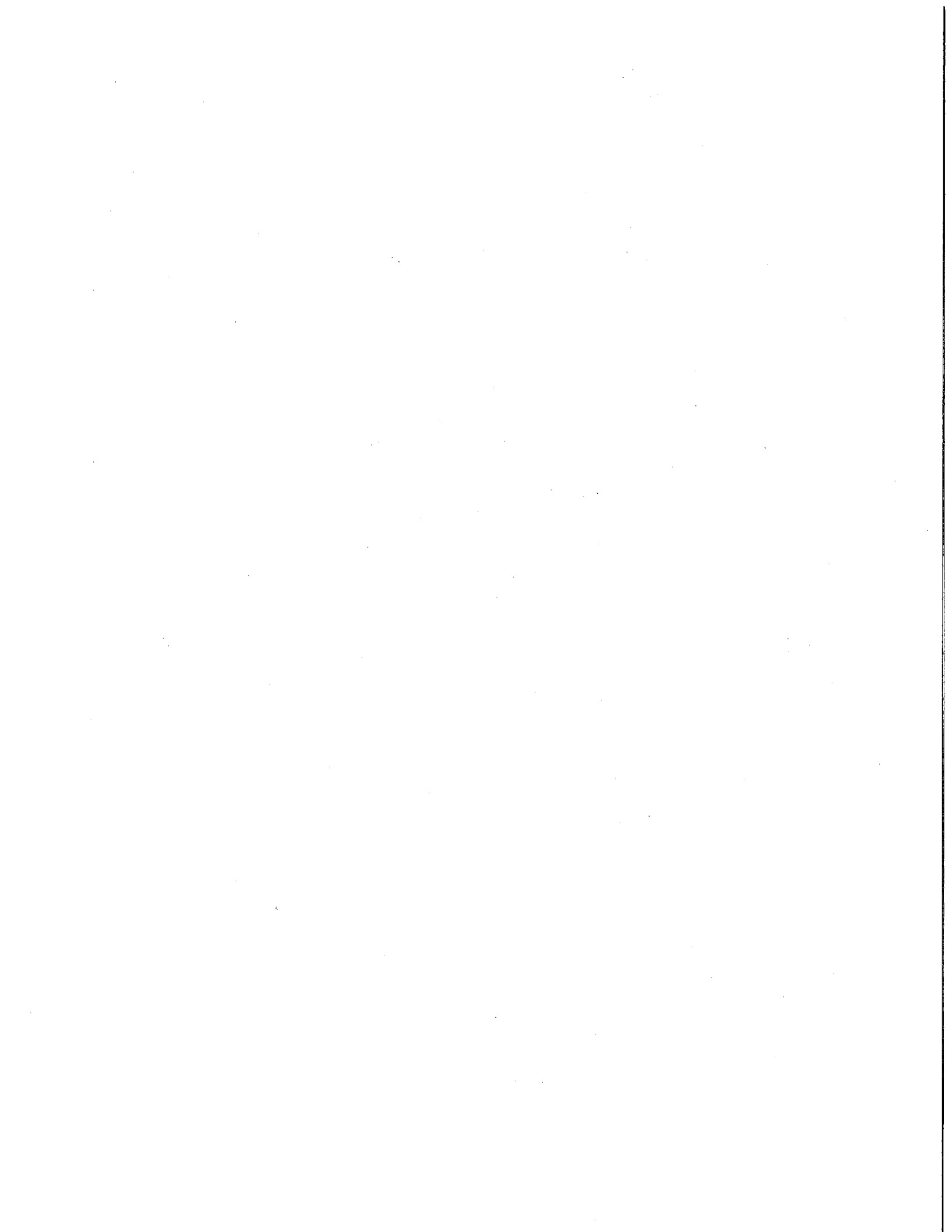
How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2006-01 IS ATTACHED.**



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Advisory Opinion
Number 2006-01
March 17, 2006

Syllabus by the Commission:

- (1) Division (A) of Section 102.02 of the Ohio Revised Code requires that the director, assistant directors, deputy directors, division chiefs, or persons of equivalent rank of any administrative department of the state are required to file financial disclosure statements;
- (2) Any state employee who is assigned, in a temporary working level, to perform the duties of the director, assistant director, deputy director, division chief, or a position of equivalent rank to these positions, for a state department, is required to file a financial disclosure statement if he or she has served in the temporary working level for more than ninety days;
- (3) Division (A) of Section 102.02 requires that every public official or employee who is paid a salary or wage in accordance with schedule C of Section 124.15 or schedule E-2 of Section 124.152 of the Revised Code is required to file a financial disclosure statement;
- (4) Any state employee who is assigned, in a temporary working level, to perform the duties of any position that receives a salary or wage in accordance with schedule C of Section 124.15 or schedule E-2 of Section 124.152 of the Revised Code is required to file a financial disclosure statement if he or she receives the schedule C or E-2 salary in connection with the temporary assignment and has served in the temporary working level for more than ninety days.

* * *

The Ohio Ethics Commission has been asked whether a state employee is required to file a financial disclosure statement if he or she is assigned, on a temporary basis, to perform the duties of a position for which financial disclosure is statutorily required (a "filing position.") The question arises because state agencies occasionally assign an employee who serves in a non-filing position to a "temporary working level" (TWL) in a filing position. A state agency uses a TWL to assign duties of a position with a higher pay range than the employee's permanently designated position on a temporary basis.

The length of TWL assignments varies with the needs of the agency. If an employee who is exempt from collective bargaining performs duties in a position with a higher pay range for less than two weeks, then the employee is not eligible for a TWL. R.C. 124.181(J) provides that, whenever an employee is assigned to work in a higher level position for more than two weeks because of a vacancy, the employee's pay may be established at a rate that is approximately four percent above the employee's current base rate for the period the employee occupies the position.

At the time R.C. 124.181(J) was enacted, the TWL assignments were used to fill vacancies and the maximum time a person could serve in a TWL was two years. Subsequently, in H.B. 66, the General Assembly enacted an uncodified provision that amended the use of TWL. Section 569.03(B)(1) provides that an exempt employee can be assigned duties of a higher classification for up to two years. The exempt employee shall receive compensation at a rate commensurate with the duties of the higher classification. Section 569.03(B)(2) also provides that, if necessary, exempt employees who are assigned duties to maintain operations during the Ohio Administrative Knowledge System (OAKS) implementation may agree to a temporary assignment that exceeds the two-year limit.

The question before the Commission is whether an exempt employee who is serving in a "filing position" because of a TWL assignment to the position, where the employee exercises the authority of the position and receives a salary increase during the assignment, should be required to file a financial disclosure statement and, if so, when the statement must be filed.

Brief Answer

As explained more fully below, an exempt employee who serves in a TWL assignment is required to file a financial disclosure statement with the Ohio Ethics Commission if, for more than ninety days:

- (1) He or she is performing the duties of a department director, assistant director, deputy director, division chief, or person of equivalent rank; or
- (2) He or she receives compensation, for service in the assigned position, under Schedule C of R.C. 124.15 or Schedule E-2 of R.C. 124.152.

Financial Disclosure

R.C. 102.02(A) provides that all of the following shall file a financial disclosure statement with the Ohio Ethics Commission:

[T]he director, assistant directors, deputy directors, division chiefs, or persons of equivalent rank of any administrative department of the state . . . [and] every public official or employee who is paid a salary or wage in accordance with schedule C of section 124.15 or schedule E-2 of section 124.152 of the Revised Code.

Any person in one of these "filing positions" is required to file a financial disclosure statement each year. Any person appointed to or employed in one of these positions is required to file a financial disclosure statement within ninety days of his or her appointment or employment. R.C. 102.02(A)(10). The law does not distinguish between people holding their positions on permanent or temporary bases.

Therefore, if a person is serving, as a result of a TWL assignment, as the director, assistant director, deputy director, or division chief of an administrative department, or in a position that the department has determined is of an "equivalent rank" to one of these positions, for more than ninety days, that person would be required to file a financial disclosure statement. If a person is serving in a position, as a result of a TWL assignment, for more than ninety days, and is paid a salary or wage in accordance with Schedule C of R.C. 124.15 or Schedule E-2 of R.C. 124.152, while serving in the position, he or she would also be required to file a financial disclosure statement.

The financial disclosure filing requirement would apply starting the ninety-first days after the TWL assignment becomes effective as described in R.C. 124.181(J). Thereafter, the employee serving in the position will then have ninety days to file his or her financial disclosure statement, reflecting financial information for the preceding calendar year.

For example, if a state department employee is temporarily assigned to the position of division chief and her TWL becomes effective on March 31, 2008, she would not be required to file a financial disclosure statement if her service in the TWL ends on or before June 28, 2008, ninety days after the TWL became effective. If she continues in the position after June 28, she would be required to file a financial disclosure statement. Because the ninety-first day of the TWL, when her duty to file starts, occurs in 2008, the employee would be required to file a disclosure statement reflecting financial information for calendar year 2007. Her filing deadline for the statement would be Friday, September 26, 2008.

Because the state agency is responsible for the TWL assignment, the state agency must notify the employee of the requirement to file a financial disclosure statement. The agency is also required to notify the Ethics Commission of the employee's temporary assignment.

However, in order to establish a uniform standard for employees at all state agencies using TWLs, the Commission has determine that a state employee who has a TWL assignment to a filing position for a period of *fewer than* ninety days is not required to file a financial disclosure statement. Also, a state employee is not required to file a financial disclosure statement if he or she is temporarily performing some of the duties of a filing position where a TWL assignment is not required.

There may also be other situations where a person is temporarily serving in a filing position, exercising the authority of the position, without a TWL assignment. For example, if otherwise authorized by law, a person might be appointed from the private sector to serve as interim director of an administrative department while the appointing authority completes a search for a replacement director. In such situations, no TWL assignment would be necessary.

A person serving in a filing position, exercising all of the authority of the office, would be required to file a financial disclosure statement within ninety days of appointment even though there was no TWL assignment.

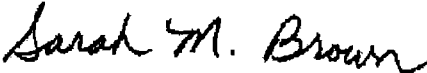
Collective Bargaining Employee

While this opinion considers the application of the filing requirement to employees who are exempt from collective bargaining, it is possible that the same question could arise for collective bargaining employees. For collective bargaining employees, guidelines for TWL assignments vary by contract. All contracts set forth a specific duration and calculation that is to be used for the salary adjustment when a TWL assignment is made. For example, an employee subject to the OCSEA contract is entitled to a pay adjustment if he or she serves in a TWL for more than four days.

Therefore, if a collective bargaining employee were to serve in a filing position, as a result of a TWL assignment, for more than ninety days, then the employee would be required to file a financial disclosure statement. The filing requirement and deadline for the employee would be determined in the manner discussed above.

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 the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.02 of the Ohio Revised Code requires that the director, assistant directors, deputy directors, division chiefs, or persons of equivalent rank of any administrative department of the state are required to file financial disclosure statements; (2) Any state employee who is assigned, in a temporary working level, to perform the duties of the director, assistant director, deputy director, division chief, or a position of equivalent rank to these positions, for a state department, is required to file a financial disclosure statement if he or she has served in the temporary working level for more than ninety days; (3) Division (A) of Section 102.02 requires that every public official or employee who is paid a salary or wage in accordance with schedule C of Section 124.15 or schedule E-2 of Section 124.152 of the Revised Code is required to file a financial disclosure statement; and (4) Any state employee who is assigned, in a temporary working level, to perform the duties of any position that receives a salary or wage in accordance with schedule C of Section 124.15 or schedule E-2 of Section 124.152 of the Revised Code is required to file a financial disclosure statement if he or she receives the schedule C or E-2 salary in connection with the temporary assignment and has served in the temporary working level for more than ninety days.



Sarah Brown, Chairman
Ohio Ethics Commission