



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
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Advisory Opinion Number 90-014
October 11, 1990

Syllabus by the Commission:

(1) Division (A) of Section 102.02 of the Revised Code does not require a person who was elected as a village council member to file a financial disclosure statement with the Ohio Ethics Commission during the remainder of his term when, as a result of the decennial federal census the municipality's status has changed from a village to a city;

(2) Division (A) of Section 102.02 of the Revised Code requires a council member of a village that has been advanced to a city as a result of the federal decennial census, who desires to seek election as a city council member to file his first financial disclosure statement with the Ohio Ethics Commission no later than the thirtieth day before the first election at which his candidacy as a city official will be voted upon.

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You state that you are an elected village council member and that your term of office will end on December 31, 1991. You also state that the classification of your village has changed to that of a city since the 1990 decennial federal census has established that the village's population has increased to more than five thousand people. You further state that you intend to seek re-election to your present council position in 1991; you will not run as a write-in candidate. You ask when the Ohio Ethics Law requires you to file your first financial disclosure statement with the Ethics Commission.

Section 102.02(A) of the Revised Code provides in pertinent part:

Every person who is elected to or is a candidate for a . . . city office . . . and every person who is appointed to fill a vacancy for an unexpired term in such an elective office . . . shall file [a financial disclosure statement with the Ohio Ethics Commission]. . . A person who is a candidate for elective office shall file his statement no later than the thirtieth day before the primary, special, or general election at which such candidacy is to be voted on, whichever election occurs sooner, except a person who is a write-in candidate shall file his statement no later than the twentieth day before the earliest election at which such candidacy is to be voted on. A person who holds elective office shall file his statement on or before the fifteenth day of April of each year, unless he is a candidate for office. A person who is appointed to fill a vacancy for an unexpired term in an elective office shall file his statement within fifteen days after he qualifies for office. . . No person shall be required to file more than one statement for any one calendar year with the appropriate ethics commission. (Emphasis added.)

The plain language of R.C. 102.02(A) requires persons who hold elective city office to file a financial disclosure statement. R.C. 102.02(A) goes on, however, to specifically exclude village officials and employees from the requirement to file a financial disclosure statement. See Ohio Ethics Commission Advisory Opinion No. 76-002. You have asked whether R.C. 102.02(A) requires you to file a 1989 financial disclosure statement with the Ohio Ethics Commission since your village's status has changed to a city, or if the exclusion provided to you as a village official will apply for the remainder of your term.

Municipalities within Ohio are classified as either cities or villages; those with a population under five thousand are villages, those with a population of five thousand or more are cities. See Ohio Const. art. XVIII, Sec. 1. The classification of municipalities within Ohio is reviewed every ten years based upon the decennial federal census. See R.C. 703.01. When the results of the census become known to the Secretary of State of Ohio, he issues a proclamation which states the names of all municipalities having a population of five thousand or more and those having a population of less than five thousand. See R.C. 703.06. The Secretary of State sends a copy of his proclamation to the mayor of each municipality and the mayor transmits the proclamation to the legislative authority, reads it therein, and makes it part of the legislative records. Id. Each municipality is classified as a village or city thirty days after the issuance of the proclamation. Id. A municipality's status as a village or a city is not an optional matter with the municipality; once a municipality reaches the constitutionally specified population it becomes a city, as a matter of a law. See Board of Comm'rs v. City of Elyria, 174 Ohio St. 135 (1962).

The officers of a village that is advanced to a city continue in office until succeeded in office by the proper officials of the new city who are elected at the first regular municipal election held after the proclamation has been filed with the mayor. See R.C. 703.07. In this instance, the next regular municipal election will be held in November, 1991. See R.C. 3501.01(B) and 3501.02(D). The issue becomes whether you will hold an elective city office, thirty days after the issuance of the proclamation by the Secretary of State which advances your village to a city, due to your continuing to serve as a council member pursuant to R.C. 703.07, and therefore be required by R.C. 102.02(A) to file a 1989 financial disclosure statement with the Ohio Ethics Commission.

You will not be deemed to be a city council member for purposes of R.C. 102.02(A) for two reasons. First, R.C. 731.01 specifies the manner in which members of a city's legislative authority are elected; a separate statute, R.C. 731.09 specifies the manner in which members of a village's legislative authority are elected. As a village council member you were elected pursuant to the provisions of R.C. 731.09 and not 731.01. Therefore, you cannot be considered to have been elected to a city office for purposes of R.C. 102.02(A).

Secondly, the powers and duties that you will exercise during the remainder of your term are limited to those of village officers. The Ohio Supreme Court in State ex rel. Heffernan v. Serp, 125 Ohio St. 87 (1932) held, under a predecessor statute to R.C. 703.07, Section 3499 of the General Code, that holdover village officers continue in office with the powers and duties only of village officers and may not exercise the powers of corresponding city officers until they have been elected at the first regular election held after the proclamation of the Secretary of State has been filed with the municipality's mayor. The Ohio Supreme Court followed the holding of

Heffernan in Christensen v. Hagedorn, 174 Ohio St. 98 (1962) and determined that a holdover mayor under 703.07 has the powers only of a village mayor. You cannot be considered to be a person who currently holds elective city office for purposes of R.C. 102.02(A), since during the remainder of your term you will not possess any of the powers and duties of a city council member. See generally Advisory Opinion No. 89-007. Also, for the same reason, you cannot be considered to be appointed to fill a vacancy in an elective city office for purposes of R.C. 102.02(A). Therefore, R.C. 102.02(A) does not require you to file a financial disclosure statement with the Ohio Ethics Commission at any time during the remainder of your term as a village council member even in light of the fact that your municipality's status has changed from a village to a city as a result of the decennial federal census.

It should also be clarified that, due to the change in the status of your municipality from village to city, the office which you plan to seek in 1991 is a city office. It is not your present village office since, as described above, separate statutes govern the election of members, composition, and powers and duties of legislative authorities of villages and cities.

As noted above, Section 102.02(A) of the Revised Code requires candidates for elective city office to file a financial disclosure statement with the Ohio Ethics Commission no later than the thirtieth day before the first election at which such candidacy is to be voted on. Therefore, R.C. 102.02(A) requires you to file your first financial disclosure statement with the Ohio Ethics Commission no later than the thirtieth day before the first election at which your candidacy for city council will be voted upon. If you are elected to city council, then R.C. 102.02(A) will require you to file thereafter for each calendar year that you hold an elective city office. See generally Advisory Opinion 75-032. R.C. 102.02(A) will also require that you file a statement the year after you leave office if you served in the city office for any part of the preceding calendar year.

This advisory opinion is based on the facts presented and 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 Ethics Commission, and you are so advised, that: (1) Division (A) of Section 102.02 of the Revised Code does not require a person who was elected as a village council member to file a financial disclosure statement with the Ohio Ethics Commission during the remainder of his term when, as a result of the decennial federal census the municipality's status has changed from a village to a city; and (2) Division (A) of Section 102.02 of the Revised Code requires a council member of a village that has been advanced to a city as a result of the federal decennial census, who desires to seek election as a city council member to file his first financial disclosure statement with the Ohio Ethics Commission no later than the thirtieth day before the first election at which his candidacy as a city official will be voted upon.



David L. Warren, Chairman
Ohio Ethics Commission