



OHIO ETHICS COMMISSION

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Advisory Opinion

No. 75-029

November 4, 1975

Syllabus by the Ohio Ethics Commission:

Section 102.02 (A) of the Revised Code requires candidates for and members of the State Board of Education to file financial disclosure statements.

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Your request for an advisory opinion asks whether members of the State Board of Education are required, by Section 102.02 (A) of the Revised Code, to file financial disclosure statements. Section 102.02 (A) of the Revised Code requires certain persons to file financial disclosure statements:

"Every person who is elected to or is a candidate for a state, county, or city office, or the office of member of the United States congress, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office, and the director and deputy directors of any department or agency of the state, all members of the board of commissioners on grievances and discipline of the supreme court and of the ethics commission created under Section 102.05 of the Revised Code, . . . shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing:
. . . " (Emphasis added)

Thus, the issue is whether a member of the State Board of Education can be described as a "person who is elected to . . . a state . . . office . . . ", or stated another way, is being elected to the State Board of Education, in effect being elected to a state office.

The Ohio Ethics Commission has discussed in several Advisory Opinions what constitutes holding an office. However, these discussions have turned upon whether a person is "appointed to an office" for purposes of Section 102.04 of the Revised Code. There is a valid parallelism in these discussions as to what constitutes an "office," regardless of whether a person is appointed or elected. The criteria, as set forth in Ohio Ethics Commission Advisory Opinion No. 75-012 as to what constitutes being "appointed to an office of, are (1) was he appointed, (2) does he have a title, (3) does he exercise a function of government concerning the public, (4) is he not subject to a contract of employment, and (5) the exercise of sovereign power." As stated in that Advisory Opinion, the fifth criteria, that of exercising sovereign power, is the most significant. Obviously, the first criteria, for purposes of this discussion, should be altered from

was he "appointed" to, was he elected," since members of the State Board of Education hold elective positions.

Section 3301.011 of the Revised Code establishes the State Board of Education:

"There is hereby created the state board of education, which shall be comprised of one member from each congressional district created under section 3521.01 of the Revised Code. For the purpose of election of board members, the state of Ohio shall be divided into the number of districts from time to time created under section 3521.01 of the Revised Code. The boundaries of such districts and the counties composing each board member's district, shall coincide with the boundaries and counties composing each of the congressional districts from time to time created under section 3521.01 of the Revised Code. One member of the state board of education shall be elected from each such district."

Section 3301.021 of the Revised Code sets out the term of office for state board members:

"(A) Members of the state board of education as of the date of a change in district boundaries under section 3521.01 of the Revised Code shall continue in office until their successors are elected and qualified for office, at which time the board whose successors have been so qualified shall be dissolved. . . .

(B) In each subsequent year in which a congressional election is held, at the general election of that year, in conformity with the general election laws of this state, the members shall be elected as required by expiration of respective terms, each for a term of six years or until his successor is elected and qualified. . . ." (Emphasis added)

Thus, it is evident that a member of the State Board of Education is (1) elected, (2) does have a title, and (4) is not subject to a contract of employment but rather holds an office for a statutorily established term. The question remains does a State Board of Education member exercise a function of government concerning the public and does that function of government involve the exercise of sovereign power. Section 3301.07 of the Revised Code sets forth the powers of the State Board of Education:

"The state board of education shall exercise under the acts of the legislature general supervision of the system of public education in the state of Ohio. In addition to the powers otherwise imposed on the state board under the provisions of law, such board shall have the following powers:

(A) It shall exercise a policy forming, planning and evaluative function for the public schools of the state, and for adult education, except as otherwise provided by law.

(B) It shall exercise leadership in the improvement of public education in Ohio, and shall administer the educational policies of this state relating to public schools.

(C) It shall administer and supervise the allocation and distribution of all state and federal funds for public school education under the provisions of law, and may prescribe such systems of accounting as are necessary and proper to this function. It may require county auditors and treasurers, boards of education, clerks of such boards, teachers, and other school officers and employees, or other public officers and employees, to file with it such reports as it may prescribe relating to such funds, or to the management and condition of such funds.

(D) It shall formulate and prescribe minimum standards to be applied to all elementary and high schools in this state for the purpose of requiring a general education of high quality.
. . . .

(G) It shall prepare and submit to the director of budget and management the biennial budgetary requests of the state board of education, for its agencies and for the public schools of the state.

(H) It shall cooperate with federal, state and local agencies concerned with the health and welfare of children and youth of the state of Ohio. . . . " (Emphasis added)

Although several other sections set out the responsibilities and duties of the State Board of Education, the above quoted statute is sufficient to establish that the State Board of Education does indeed exercise a function of government concerning the public and that such function constitutes the exercise of sovereign power.

The Ohio Ethics Commission in Advisory Opinion No. 75-025 describes sovereign power as "a concept meant to imply the exercise of a duty entrusted to one by virtue of a statute or some public authority. Those duties are not merely clerical but involve some discretionary, decision-making quality." It is obvious the duties placed upon the State Board of Education members by Section 3301.07 of the Revised Code are not merely clerical but involve discretionary, decision-making qualities.

Therefore, the position of member of the State Board of Education can be described as an office of the state. The United States District Court for the Southern District of Ohio, Western Division, supported the conclusion that membership on the State Board of Education constitutes a state office in Heiser v. Rhodes et al, 51 Ohio Op. 2d 370 (1969). In that case the court held that federal guarantees of "one man, one vote, do not extend to one seeking placement on the ballot for the state office of state school board member." (Emphasis added) The court concluded "the right to become a candidate for state office is a right or privilege of state citizenship and not a federally guaranteed one." (Emphasis added)

Thus, a person elected to the state office of member of the State Board of Education falls within the requirement of Section 102.02 (A) of the Revised Code which states "every person who is elected to . . . a state . . . office . . . shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing: . . . "

Please note that other sections of Chapter 102 of the Revised Code use the term "public official or employee" rather than the term "person." The term "public official or employee" is defined in Division (B) of Section 102.01 of the Revised Code as follows:

"(B) 'Public official or employee' means any person who is elected or appointed to an elective office or employed by any public agency. 'Public official or employee' does not include . . . members of school boards. . . . "

Thus, members of school boards are not included in the term "public official or employee." However, the term "person", not "public official or employee," is used in Section 102.02 (A) of the Revised Code, which section contains the requirement to file a financial disclosure statement.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that Section 102.02 (A) of the Revised Code requires candidates for and members of the State Board of Education to file financial disclosure statements.

Barbara H. Rawson

OHIO ETHICS COMMISSION
(Mrs) Barbara H. Rawson, Chairman