



OHIO ETHICS COMMISSION

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Advisory Opinion
No. 75-036
December 17, 1975

Syllabus by the Ohio Ethics Commission:

Section 102.02 (A) (2) of the Revised Code does not require a councilwoman, who must file a financial disclosure statement, to disclose sources of income of her husband which are over \$500 unless the income, as initially received by the husband, is specifically designated for the use and benefit of the councilwoman.

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A letter directed to the Ohio Ethics Commission asks whether a city councilwoman, required to file a financial disclosure statement with the Ohio Ethics Commission pursuant to Section 102.02 (A) of the Revised Code, is required to disclose the sources of her spouse's income.

The facts indicate that the councilwoman is not employed and receives no income in her own name. The councilwoman's husband receives a salary, in excess of \$500 per year, from the Ford Motor Company. The councilwoman's husband's salary is the sole support of the couple.

Section 102.02 (A) (2) of the Revised Code requires:

"Identification of every source of income over five hundred dollars received by the person in his own name or by any other person for his use or benefit during the preceding calendar year, and a brief description of the nature of the services for which the income was received . . . " (Emphasis added)

In an attempt to interpret the above statute, it is necessary to refer to rules of statutory construction. Section 2901.04 (A) of the Revised Code provides rules of construction for criminal statutes:

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

Neither Section 102.02 (A) (2) of the Revised Code nor any other section of Chapter 102 of the Revised Code defines or explains the phrase "income . . . received . . . by any other person for his (the filer's) use or benefit . . . " Nor can a single interpretation logically be derived from the phrase itself, the context of the section, or Chapter 102 of the Revised Code. When a word or phrase is ambiguous and without clear meaning, as here, the rules of construction must be applied to determine which of the varying interpretations of the phrase is required. The construction of the ambiguous phrase is compulsory since those who are required to conduct themselves in accordance with an ambiguous statute must have notice of exactly what is required of them.

Section 102.99 (A) of the Revised Code provides that knowingly failing to file a financial disclosure statement is a fourth degree misdemeanor. Since Section 102.02 (A) of the Revised Code is a statute which is criminal in nature, it must be construed in light of Section 2901.04 (A) of the Revised Code.

In construing Section 102.02 (A) of the Revised Code strictly against the state and liberally in favor of the accused a literal reading of the phrase "income . . . received . . . by any other person for his (the filer's) use or benefit . . ." is appropriate, because a literal reading reflects the most common interpretation given the phrase by those affected by it. Thus, the phrase must be read as those filing would commonly understand the phrase, thereby providing adequate notice of exactly what must be disclosed in order to comply with the law. A reading in this manner would be a liberal reading in favor of the accused, in that the accused would be responsible for disclosing only that which a reasonable person believes the statute requires him to disclose and no more. If the state wanted more to be disclosed, under the rules of statutory construction, the state would have to specifically and unambiguously require such further disclosure.

Applying this construction of Section 102.02 (A) (2) of the Revised Code the councilwoman would not be required to disclose income received by the husband in the form of a salary. A salary is commonly understood to be received for the performance of a service, for his employer, by the councilwoman's husband; it is not received by the husband for the councilwoman's use and benefit, but rather may be used in any manner he so desires. The fact that the councilwoman's husband may decide to use some or all of the income received in the form of a salary for the councilwoman's use or benefit is irrelevant.

The test, therefore, is whether the income is received for the use and benefit of the councilwoman, or received by her husband for whatever purpose he desires.

Thus, the fact that the husband's salary provides for the couple's sole support is not determinative, nor is the fact the husband spends some or all of his salary for his wife's use and benefit determinative. The point of determination for disclosure purposes is the point of receipt. To fall within the disclosure requirement, income when received must be clearly designated for the use and benefit of the filer. An example of income received by a third person which must be disclosed would be income received through a trust, by a trustee, for the sole use and benefit of the person required to file a financial disclosure statement since, at the time the income is received by the trustee, it is clearly designated for the use and benefit of the filer. The councilwoman's husband's salary, although providing the couple's sole support, is clearly not income received and designated in this manner.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised that Section 102.02 (A) (2) of the Revised Code does not require a councilwoman, who must file a financial disclosure statement, to disclose sources of income of her husband which are over \$500 unless the income, as initially received by the husband, is specifically designated for the use and benefit of the councilwoman.