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Advisory Committee Minutes

Friday August 14, 2020

Present:

Bruce Bailey, Megan Kelley, Julie Rutter, Commission Members

Paul Nick, Executive Director
Karen King, Chief Advisory Attorney
Jed Hood, General Counsel
John Rawski, Staff Attorney
Tim Gates, Staff Attorney

The meeting began at 11:00 a.m. by teleconference.

Mr. Nick noted that there were two guests from the Ohio County Auditor's Association attending the meeting by telephone who were interested in the third item on the agenda, the reconsideration request received from the County Auditor's Association. Mr. Nick asked the Committee members if that agenda item could be addressed first and the members agreed.

Mr. Hood reviewed his memorandum on the reconsideration request received from the County Auditor's Association regarding whether or not a county auditor is prohibited from receiving compensation from a private person or entity who owns property in the county in which he serves as auditor. Mr. Hood stated that he had reviewed his memo with Mr. Bailey prior to the meeting. Mr. Hood explained that two former staff opinions issued to County Auditor's Nolan and Stinziano stated that a county auditor is prohibited from receiving compensation from a private person or entity who owns property in the county in which he serves as auditor because the auditor is unable to withdraw from his or her statutory duties as auditor. The County Auditor's Association provided new facts that a specific statutory authority exists that permits a county auditor, with the approval of the tax commissioner, to appoint an employee or enter into a contract with a professional appraisal firm to perform the auditor's duties as assessor. Mr. Hood stated that these provisions make it possible for a county auditor to withdraw from his or her public duties to avoid a conflict of interest. Mr. Bailey asked for clarification of the withdrawal requirement. Mr. Hood discussed the statutory authority to appoint an employee or to enter into a contract with a professional appraisal firm and noted that the Commission received information from the Ohio Attorney General that approximately 80% of county auditors enter into contracts with professional appraisal firms in this manner. Mr. Bailey moved, and Ms. Rutter seconded the motion, to recommend to the full Commission that the reconsideration request be granted. Mr. Bailey also stated that the new opinions should be reviewed and voted on by the Commission. Mr. Nick agreed and said that Mr. Hood would draft the opinions for the Commission's consideration.

Mr. Gates reviewed the draft of Formal Opinion No. 2020-03 regarding public officials serving with chambers of commerce. Mr. Bailey had submitted his comments, questions, and suggestions regarding the draft prior to the meeting. Mr. Gates noted that one of the issues that he and Mr. Bailey discussed was whether or not a municipality's payment of membership dues to a chamber of commerce created a public contract. Mr. Gates stated that the definition of a public contract is the purchase or acquisition of goods or services by or for the use of a public agency. He said that regular membership in a chamber of commerce where the chamber does not provide goods or services to the member would not be a public contract. Mr. Rawski noted an Ohio Attorney General Opinion (2003-036) that stated that group medical insurance provided through a chamber of commerce that is a small employer health care alliance is procured from an insurance company or a health insuring corporation, not from the chamber of commerce. Mr. Bailey added that membership dues are very small amount of a municipalities budget. Mr. Bailey noted, however, that even if there is no public contract, a public official who serves in a fiduciary capacity with the chamber of commerce could still have a conflict of interest requiring his or her withdrawal from certain matters. Mr. Nick suggested that staff continue working on the draft opinion and present the new draft at a future Committee meeting. Ms. Kelley asked if the new draft would include the language that Mr. Bailey suggested prior to the meeting. Mr. Nick said yes. The Committee members agreed.

Ms. King reviewed a draft of a formal advisory opinion regarding public officials attending ceremonial events. Ms. King explained that the draft is a restatement of two informal advisory opinions previously issued by the Commission. Ms. King stated that the purpose of the formal opinion is to provide context, further clarification, and guidance to other similarly situated public officials and employees by creating criteria that will help identify when attendance at a ceremonial event is objectively related to the public official's or employee's public position. Mr. Nick noted that the draft was provided to the Joint Legislative Ethics Committee, the Governor's Office, and the Board of Professional Conduct of the Ohio Supreme Court for their input and feedback. Mr. Nick also suggested replacing the last criteria regarding paying the fair market value for a family member's admission to a ceremonial event with one stating that the attending public official should not stay beyond the time that is reasonably necessary to perform his or her ceremonial functions at the event. Ms. Kelley and Ms. Rutter also suggested adding a clearer definition of what is a ceremonial event. Mr. Nick said that staff will work on the draft and bring it back to the Committee at a future meeting.

The meeting was adjourned at 11:45 a.m.