



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

April 10, 1992

Informal Opinion 1992-INF-0410

Elisabeth A. Squeglia
Bricker & Eckler

Dear Ms. Squeglia:

You have asked whether a public official who is filing a financial disclosure statement with the Ethics Commission is required by Section 102.02 of the Revised Code to identify and disclose each investment or other asset held in a "blind trust," or whether disclosure of the trust itself, without referring to the specific assets therein, is sufficient under Section 102.02.

You have stated by way of history that the public official in question executed a blind trust agreement immediately prior to assuming public office. Pursuant to the blind trust agreement, the official transferred to co-trustees the sole power to receive, hold, administer, and distribute all assets coming into the trust. You have stated that "[t]he primary purpose of the trust was to place under the control of the co-trustees all decisions regarding when and to what extent the original assets of the trust are to be sold or disposed of, and in what investments the proceeds of sale are to be invested, without either the participation or knowledge of" the public official. You have also stated that the official "has no knowledge of, participation in, or control over any trust activity so long as the trust remains in existence." It is the understanding of the Commission that the trustees are empowered to distribute part or all of the net income and principal of the trust to the public official, as set forth in the trust.

You have also noted that the official is not required by Section 102.02 of the Revised Code to file a financial disclosure statement, but is filing voluntarily. Ohio Commission Rule 102-1-04 (C) provides for the acceptance of voluntary filings by the Commission. Division (C) further states that such statements "shall be maintained in accordance with paragraph (B) of this rule." Paragraph (B) states that financial disclosure statements "shall be subject to public inspection during normal business hours." Therefore, the Commission is required to make voluntary filings subject to public inspection.

Section 102.02 of the Revised Code, Ohio's Financial Disclosure Law, requires persons who are filing financial disclosure statements to disclose on the statements certain information including sources of income, investments, real property

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holdings, creditors, debtors, and sources of gifts. More specifically, R.C. 102.02 requires a filer to disclose:

[E]very source of income over five hundred dollars . . . received during the preceding calendar year, in his own name or by any other person for his use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. (Emphasis added.) (Division (A)(2) of Section 102.02.)

The name of every corporation on file with the secretary of state which is incorporated in Ohio or holds a certificate of compliance authorizing it to do business in this state, trust, business trust, partnership, or association which transacts business in Ohio in which the person filing the statement or any other person for his use and benefit had during the preceding calendar year an investment of over one thousand dollars at fair market value as of the thirty-first day of December of the preceding calendar year, or the date of disposition, whichever is earlier, or in which the person holds any office or has a fiduciary relationship, and a description of the nature of the investment, office, or relationship. (Emphasis added.) (Division (A)(3) of Section 102.02.)

All fee simple and leasehold interests to which the person filing the statement holds legal title to or a beneficial interest in real property located within the state, excluding the person's residence and property used primarily for personal recreation. (Emphasis added.) (Division (A)(4) of Section 102.02.)

The names of all persons residing or transacting business in the state to whom the person filing the statement owes, in his own name or in the name of any other person, more than one thousand dollars. (Emphasis added.) (Division (A)(5) of Section 102.02.)

The names of all persons residing or transacting business in the state . . . who owes more than one thousand dollars to the person filing the statement, either in his own name or to any other person for his use or benefit. (Emphasis added.) (Division (A)(6) of Section 102.02)

The source of each gift of 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 (Emphasis added.) (Division (A)(7) of Section 102.02.)

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Section 102.02 requires a filer to disclose sources of income and gifts received, and investments held, by the filer or "any other person for his use or benefit." Similarly, a filer is required to disclose the name of any debtor who owes money to the filer, either in his own name or to "any other person for his use or benefit." Thus, it must be determined whether the assets held in a blind trust are held by a person other than the filer "for the use or benefit" of the filer.

There is no statutory definition in Ohio of what constitutes a trust or blind trust, nor is there statutory provision for the establishment of a trust or blind trust. However, a trust has been defined by the Ohio Supreme Court as "[T]he right, enforceable in equity, to the beneficial enjoyment of property, the legal title to which is in another." Ulmer v. Fulton, 129 Ohio St. 323, 339 (1935). Legal title to property which is held in trust is held by the trustee; however, the trust beneficiary retains an equitable interest in the property held in the trust. See In the Matter of the Estate of Bicknell, 108 Ohio App. 51 (Hancock County 1958). In Hill v. Irons, 160 Ohio St. 21, 26 (1953), the Ohio Supreme Court relied on the Restatement of the Law of Trusts and Bogert on Trusts and Trustees, as follows:

A trust, as the term is used in the Restatement of this subject . . . is a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. (Emphasis added.) (Restatement of the Law of Trusts, Chapter 1, page 6) (As quoted in Ethics Commission Advisory Opinion No. 76-011.)

A trust may be defined as a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another. (Emphasis added.) (1 Bogert on Trusts and Trustees, 1, Section 1) (As quoted in Ethics Commission Advisory Opinion No. 76-011.)

See also Black's Law Dictionary, (rev. 4th ed. 1968) at 1680 (defining "trust" as "[a] right of property, real or personal, held by one party for the benefit of another).

Thus, a trust, as it is commonly understood, is a fiduciary relationship whereby one party holds property "for the benefit of another." In this instance, the trustees are holding property in trust for the public official filing the financial disclosure statement. The trustees are empowered to distribute part or all of the net income and principal to the public official. Therefore,

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the trustees are holding investments and other assets for the use and benefit of the public official.

In Advisory Opinion No. 75-036, the Commission addressed the issue whether a public official is required to disclose the sources of her spouse's income. The Commission stated that the test in determining disclosure "is whether the income is received for the use and benefit of the councilwoman, or received by her husband for whatever purpose he desires." The Commission went on to state that an example of income received by a third person which would have to be disclosed by the filer would be income received through a trust, by a trustee, for the use and benefit of the filer, "since, at the time the income is received by the trustee, it is clearly designated for the use and benefit of the filer."

Thus, the Commission has previously recognized that income received by a trustee, in trust for a public official, must be disclosed on a financial disclosure statement.

The assets of a blind trust are held by the trustees for the use and benefit of the public official. Therefore, the public official must disclose sources of income and gifts over five hundred dollars received by the trustees of his blind trust, the names of persons who owe more than one thousand dollars to the trustees, and the names of corporations and other entities specified in Division (A)(3) in which the trustees had investments as specified in that division. The public official is also required to disclose the name of the trust under R.C. 102.02(A)(3), if the trust transacts business in Ohio, and if the public official had an investment of over one thousand dollars in the trust. See Ohio Ethics Commission Advisory Opinion No. 76-011.

Division (A)(4) requires the disclosure of all fee simple and leasehold interests to which the filer holds legal title to "or a beneficial interest in" real property located within the state (excluding the filer's personal residence and recreational property). As discussed above, the public official has a beneficial interest in the assets held in the blind trust, and therefore, he is required to disclose the real property located in Ohio in which the trustees hold a fee simple or leasehold interest. See Advisory Opinions No. 76-011 and 76-012.

Division (A)(5) requires the disclosure of all persons to whom the filer owes in his own name "or in the name of any other person" more than one thousand dollars. Again, the public official has an equitable interest in the property held by the trustees, and the trust property is administered for the benefit of the public official. It is consistent with the foregoing discussion to conclude that debts owed by the trustees are owed by the filer in the name of the trustees. Therefore, the public official is

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required to disclose the names of persons to whom the trustees owe more than one thousand dollars.

You have argued that because R.C. 102.02(A)(3) specifically requires disclosure of trusts, that disclosure of the trust itself, without reference to individual investments, is sufficient, stating, "[b]ecause a trust is a separate legal entity, it is not inconsistent to treat the transfer of assets to a trust the same as an investment in any other legal entity, such as a corporation or a partnership, and to not require a public official to pierce the trust and disclose individual trust investments." In Advisory Opinion No. 76-012, the Commission addressed the issue whether an official must disclose on his financial disclosure statement real property owned by a partnership in which he is a general partner, as well as his interest in the partnership. The Commission first held that an official who has an investment of over one thousand dollars in a partnership which transacts business in Ohio is required to disclose the name of the partnership and describe the nature of the investment pursuant to Division (A)(3) of Section 102.02. However, the Commission went on to hold that the official is also required to disclose real property owned by the partnership pursuant to Division (A)(4) of Section 102.02 since he has a beneficial interest in the partnership property. In so holding, the Commission recognized that the official does not hold legal title to the property as an individual.

Therefore, the Commission has recognized that an official may be required to disclose his interest in a separate legal entity, and in addition, be required to disclose the assets held by that separate legal entity if they are held for the benefit of the filer.

You have also stated that although the law does require the disclosure of investments held by both the filer and any other person for his use and benefit, this language is not intended to include investments by trustees of a blind trust, since such an interpretation would render the term "trust," as used in Division (A)(3) of Section 102.02, meaningless. You have argued that "[i]f individual trust assets must be separately disclosed, there is no purpose or benefit in disclosing the trust itself as an investment." Again, the fact that the name of the trust must be disclosed does not mean that assets within the trust are not required to be disclosed if they otherwise fall within the description of items which must be identified. The filer continues to have an equitable ownership interest in the assets placed in trust, and the mere disclosure of the trust itself, without further identification of the assets therein, is insufficient to fully identify and describe the holdings in which the filer has a personal and financial interest, and which could create a conflict of interest for the filer. See Advisory Opinion No. 89-001 ("[t]he

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financial disclosure requirement of R.C. 102.02 reminds public officials and employees of their responsibility to avoid conflicts of interest and assists the public and the Ethics Commission in monitoring areas of potential conflict of interest"). Indeed, the use of such language as "for the use or benefit" in the Financial Disclosure Law indicates that the General Assembly specifically contemplated the disclosure of assets held in trust. See Dougherty v. Torrence, 2 Ohio St. 3d 69, 70 (1982) (effect must be given to words used in a statute); Dungan v. Kline, 81 Ohio St. 371, 380-81 (the presumption is that every word in a statute is designed to have effect); Advisory Opinion No. 74-001 ("it is to be assumed that the Legislature used the language contained in a statute advisedly and intelligently and expressed its intent by the use of the words found in the statute"). Cf. 5 U.S.C. §102(f)(1) (federal disclosure law requires filer to disclose holdings of, and the income from, a trust in which the filer has a beneficial interest).

You have indicated that the separate disclosure of individual trust assets would force the beneficiary of a blind trust to violate the terms of the trust agreement by acquiring knowledge of the specific trust investments in order to disclose them. Indeed, the Attestation, which must be signed by filers of financial disclosure statements, requires the filer, in signing the completed form, to swear or affirm that the statement and any additional attachments have been "prepared or carefully reviewed" by the filer and constitute a "complete, truthful, and correct disclosure of all required information."

The Commission understands the difficult position of the filer in this instance, but is constrained to interpret the law as it currently stands. Neither the Ohio Ethics Law nor any other statutory provision in Ohio recognizes or provides for the creation of blind trusts, and consequently, the Ethics Law, including the Financial Disclosure Law, does not specifically make exception for a method by which blind trusts and their assets can be disclosed in a way that is consistent with the official's stated purpose of creating a blind trust. With one exception, not relevant herein, the purpose of the Financial Disclosure Law is to compel the open disclosure of the holdings of public officials and to make available to public scrutiny these holdings, so as to assist the public and the Ethics Commission in monitoring conflicts of interest, and to remind the public officials of their responsibility to avoid conflicts. See State v. Morgan, Case No. 2294 (App. Clark County, May 28, 1987); Advisory Opinion No. 89-001. The purpose of a blind trust is to shield the public official from knowledge of his financial interests and to keep such information confidential and unavailable to both the public official and the public. See generally 5 C.F.R. §2634.401. It is apparent that the purposes of the Financial Disclosure Law and the

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establishment of a blind trust do not neatly complement one another.

Federal Law has made provision for the establishment of blind trusts by federal officials, and for maintaining limited confidentiality of the trust assets. A public official who has established a qualified blind trust is not required to report holdings of, or sources of income from holdings of, any qualified blind trust except that he must report as to the amount of income received by him from the trust. See 5 U.S.C. §102(f)(2); 5 C.F.R. §§2634.401(b)(4), 2634.402. See also 5 U.S.C. §102(f)(3)(C)(v). However, the trust instrument and assets transferred by the official to the trust, at the time of the trust's execution and thereafter, must be reported in documents which are subject to public inspection, as do the assets which were placed in trust by the official and which are sold by the trustee. See 5 U.S.C. §102(f)(5) and § 105(a); 5 C.F.R. §2634.407(a). However, in order to be classified as a qualified blind trust for purposes of the less inclusive disclosure requirements, as well as the conflict of interest laws, the trust must be meet very detailed and exacting requirements. See 5 C.F.R. §2634.401. For example, the fiduciaries must be actually and apparently independent of the parties who hold beneficial interests; the assets transferred to the trust must be free of any restrictions as to transfer or sale, except as approved by the Government Ethics Office; the trust instrument must provide minimum standards, including restrictions on communications between the trustee and official, and restrictions against the trust containing anything prohibited by law; the proposed trust instrument and proposed trustee must be approved by the Office of Government Ethics prior to execution of the trust instrument; and various reporting, disclosure, and notification requirements are imposed, including disclosure of the executed trust instrument itself. See 5 U.S.C. §102(f)(3)-(6); 5 C.F.R. §§2634.401, 2634.403, 2634.405, 2634.406, and 2634.407. Civil and administrative sanctions are applicable to any government official or fiduciary for improper communications between the official and trustee, and for reporting violations. See 5 U.S.C. §102(f)(6); 5 C.F.R. §§ 2634.701, 2634.702. Blind trusts are thus highly regulated under federal statute and regulations, and the ability of a blind trust to shield public officials from knowledge of their assets and thus provide relief under federal disclosure law, is dependent upon compliance with these strict requirements.

Federal law recognizes that qualified blind trusts help reduce potential conflicts of interest and prevent public officials from intentionally taking actions to benefit themselves. See 5 C.F.R. §2634.401. However, federal law imposes specific oversight, approval, and reporting requirements prior to the execution of the trust and throughout its duration, as well as substantive standards on the trust instrument itself, in order to assure the trust meets

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the spirit of federal disclosure and conflict of interest provisions. Although the Ethics Commission may support the usefulness of a "blind trust" where similar oversight and reporting are created and required by statute, the Commission is constrained as an administrative body to recognize that no statutory framework similar to the federal law currently exists within Ohio's Financial Disclosure Law, and current law does not permit public officials to omit trust assets from the financial disclosure statement.

To reiterate, the public official is not, in this instance, required by law to file a financial disclosure statement, but rather, is filing voluntarily. He may wish to consider whether the purposes served by the creation of the blind trust outweigh considerations supporting the filing of a financial disclosure statement. If, however, the official decides to file a financial disclosure statement, he will be required to disclose the assets held in the trust, and the filing will be open to public inspection.

This informal advisory opinion was approved by the Ethics Commission at its meeting on April 10, 1992. The 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.

If you have any questions, please feel free to contact this Office again.

Sincerely,



Melissa A. Warheit
Executive Director