

OHIO ETHICS COMMISSION

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May 23, 2000

Informal Opinion 2000-INF-0523-2

Scott W. Sigel, Executive Director
State and Local Government Commission of Ohio
Vern Riffe Center



Dear Mr. Sigel:

In a recent telephone conversation, you asked whether you, as the Executive Director of the State and Local Government Commission, or the members of the Commission, are required to file Financial Disclosure Statements (FDS's) with the Ohio Ethics Commission. In response to your call, the Commission is addressing your question in this advisory opinion, to provide you and your Commission prospective advisory guidance.

Brief Answer

As explained more fully below, in accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, each member of the State and Local Government Commission of Ohio who is not already required to file an FDS, and the Executive Director of the Commission, will be requested to file an annual FDS, reflecting their financial interests for the complete preceding calendar year, beginning in 2000. The members and Executive Director of the Commission will be requested to file within ninety days of the date of this opinion, on or before August 21, 2000. Members who are appointed after May 23, 2000, will be required to file within 90 days of their appointment dates or, if appointed between January 1 and April 15, by April 15.

Financial Disclosure Filing Requirement

Pursuant to R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, the Ethics Commission is empowered to examine various statutorily created state boards, commissions, agencies, institutions, bureaus, councils, and other instrumentalities of the State to determine whether the members and chief administrative officer (in this case, the Executive Director) of these public entities hold positions that involve "a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or a county or city, or the execution of other public trusts." If the

Commission determines that the officials do exercise such discretion, the Commission may require the officials to file annual FDS's reflecting their financial interests in the complete preceding calendar year. In making the determination regarding the exercise of administrative discretion by any board or its staff, the Ethics Commission analyzes the statutory and regulatory authority of each board or commission.

State and Local Government Commission

The State and Local Government Commission was created pursuant to R.C. 105.45. The Commission is composed of thirteen members. The lieutenant governor is the Chairperson of the Commission. The board is further composed of two members who are members of the house of representatives and who are appointed by the speaker of the house, two members who are members of the senate and who are appointed by the president of the senate, six members who are appointed by the governor, and two members who are representatives of the public and who are appointed by the chairman. Of the six members appointed by the governor, two are representatives of county government selected from a list of five names submitted by the county commissioners association of Ohio, two are representatives of municipal government selected from a list of five names submitted by the Ohio municipal league, and two are representatives of township government selected from a list of five names submitted by the Ohio state association of township trustees and clerks.

The statutory authority of the State and Local Government Commission is detailed in Section 105.46 of the Revised Code, which provides the following:

- (A) The state and local government commission of Ohio shall:
- (1) Serve as a forum for the discussion and resolution of problems associated with the relationship between local, state, and federal governments;
 - (2) Engage in a continual study of the relationships between state and local governments, the services provided by the various units and levels of government within the state, the division of responsibility in providing and financing governmental services, possibilities for improving the organizational structure and operational efficiency of the governmental units of the state, the state and local tax structure, and the revenue requirements and fiscal policies of the state and its political subdivisions;
 - (3) Give critical attention to the conditions and controls involved in the administration of federal and state grant programs and the effects and impact of proposed and existing federal and state grant programs on the various units and levels of government within the state;

- (4) Report annually to the governor, general assembly and appropriate departments and agencies of the state the results of its studies during the preceding year and recommend legislation and constitutional amendments concerning the subjects within the jurisdiction of the commission. The commission may also submit additional reports to the governor, general assembly, and any unit of government or organization the commission determines appropriate. The commission shall report on December 31, 1996, and every fourth year thereafter to the governor, the speaker of the house of representatives, and the president of the senate on existing mandates affecting school districts, counties, townships, and municipal corporations and the cost of such mandates, and shall evaluate the need for eliminating or modifying old or outdated mandates and provide suggestions for funding mandates. Notices that copies of the annual report, the quadrennial report, and any additional reports prepared by the commission are available upon request shall be sent to each county, township, and municipal corporation within the state.
- (5) Encourage and, where appropriate, coordinate studies on the relationships between local, state, and federal governments conducted by colleges and universities, state, local, and federal agencies, and research and consulting organizations.
- (B) The commission may apply for, contract for, receive, and expend for the purposes described in this section appropriations, gifts, or grants from the state, its political subdivisions, the federal government, or any other public or private source.
- (C) The commission may hold hearings in any part of the state.
- (D) Each officer, board, commission, bureau, or department of the state or any of its political subdivisions shall make available to the commission all facts, records, information, and data requested by the commission and in all ways cooperate with the commission in carrying out its duties.
- (E) Political subdivisions of the state may appropriate funds to the commission to assist in the cost of its operations.

Based upon the powers and duties of the State and Local Government Commission to serve as a forum for resolution of problems associated with the relationship between local, state, and federal governments, apply for, contract for, receive, and expend appropriations, gifts, or grants to perform the Commission's authority, hold hearings, and receive funds appropriated to the Commission by local political subdivisions, the Ohio Ethics Commission finds that members of the State and Local Government Commission hold positions that exercise the kind of discretion described in OAC 102-5-01 and 102-5-02. As such, the members of the State and Local Government Commission, and its Executive Director, are required to file annual financial disclosure statements with the Ethics Commission.

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Board Members Serving in Other Public Positions

Based on the statutorily-mandated composition of the Commission, at least five, and as many as nine, of the thirteen members of the Commission already hold public positions for which they are required to file FDS's. The four members of the Commission who are also members of the general assembly file annual FDS's with the Joint Legislative Ethics Commission. The Lieutenant Governor files an annual FDS with the Ethics Commission. The four members of the Commission who are "representatives" of county and municipal government may be required to file FDS's if they are elected county or city officials.

No person is required to file more than one financial disclosure statement for any given calendar year. R.C. 102.02(A)(10). Any member of the State and Local Government Commission who currently files a financial disclosure statement for a calendar year as a result of service in another public position, whether the statement is filed with the Ohio Ethics Commission or the Joint Legislative Ethics Committee, is not required to file another FDS because of service on the State and Local Government Commission.

The Ethics Commission requests that the individuals who hold other public positions for which they are already required to file an FDS with the Ohio Ethics Commission indicate all of their filing capacities on each year's filing to clarify their multiple filing capacities. If necessary, the filers are invited to contact the Ethics Commission for assistance in completing the FDS's.

Confidential Financial Disclosure Statements and Filing Fees

Financial disclosure statements filed by members of state boards and commissions who receive no compensation for their service are kept confidential by statutory provision. R.C. 102.02(B). The Ethics Commission is required to examine these confidential filings to determine whether any potential conflict of interest exists for the person who filed the FDS. If the Commission determines that a potential conflict of interest exists, the Commission will make that portion of the statement available for public inspection.

Members of the State and Local Government Commission are not compensated for their service on the Commission. Therefore, the FDS's filed by members of the State and Local Government Commission who hold no other public position for which filing is required will be kept confidential. However, the forms filed by members of the State and Local Government Commission, for their service in other public positions that they hold, are subject to public inspection. The FDS filed by the Executive Director of the State and Local Government Commission is not kept confidential because the Executive Director is not a member of the Commission who receives no compensation for his service.

The State and Local Government Commission is responsible for paying the FDS filing fees for its Executive Director and members of the Commission who do not hold other positions for which they are required to file FDS's with the Ethics Commission or Joint Legislative Ethics Committee. See R.C. 102.02(E)(4). For more information regarding the payment of filing fees, please contact the Ethics Commission.

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Conclusion

As explained more fully above, in accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, each member of the State and Local Government Commission of Ohio who is not already required to file an FDS, and the Executive Director of the Commission, will be requested to file an annual FDS, reflecting their financial interests for the complete preceding calendar year, beginning in 2000. The members and Executive Director of the Commission will be requested to file within ninety days of the date of this opinion, on or before August 21, 2000. Members who are appointed after May 23, 2000, will be required to file within 90 days of their appointment dates or, if appointed between January 1 and April 15, by April 15.

The Ohio Ethics Commission approved this advisory opinion at its meeting on May 23, 2000. The Ethics Commission will proceed to amend the list of agencies required to file annual financial disclosure statements under OAC 102-5-02, to include the State and Local Government Commission. With this letter, the Ethics Commission has enclosed blank 1999 financial disclosure statements for the Executive Director of the State and Local Government Commission, and the members of the Commission who have not already filed disclosure statements for service in another public position, to complete.

If you have any questions about the financial disclosure filing requirements, the information to be disclosed, or the process followed, please contact Donna Skaggs, Financial Disclosure Analyst, for assistance.

Sincerely,



Timothy L. Gates
Staff Attorney

Enclosures: Ten (10) 1999 Financial Disclosure Statements