



OHIO ETHICS COMMISSION

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

Advisory Opinion Number 89-001
January 20, 1989

Syllabus by the Commission:

- (1) A public official or employee who is required to file a financial disclosure statement pursuant to R.C. 102.02 is deemed to owe a person more than one thousand dollars for purposes of Division (A)(5) of that section where he has made purchases from that person costing more than one thousand dollars and has deferred payment for those items under the terms of a credit agreement, even though the public official or employee subsequently pays the entire amount owed during the grace period allowed under the credit agreement, so that no interest charges are incurred;
- (2) R.C. 102.02(A)(5) requires that a public official or employee disclose the names of all persons residing or transacting business in the state, to whom he has owed, in his own name or in the name of any other person, more than one thousand dollars at any time during the preceding calendar year;
- (3) R.C. 102.02(A)(6) requires that a public official or employee disclose the names of all persons residing or transacting business in the state who owed the public official or employee, either in his own name or in the name of any other person for his use or benefit, more than one thousand dollars at any time during the preceding calendar year.

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Section 102.02 of the Revised Code requires certain public officials and employees to file financial disclosure statements with the Ohio Ethics Commission. The information which is required to be disclosed under Section 102.02 includes the name of the individual who is filing, members of the filer's immediate family, and the names under which the filer and his family do business. Also required to be disclosed are the filer's sources of income and gifts over five hundred dollars, certain real estate interests located in Ohio, and identification of the filer's investments. The filer is also required to disclose his debtors and creditors, where the amount owed exceeds one thousand dollars.

You have asked for clarification of Divisions (A)(5) and (6) of Section 102.02 of the Revised Code which require disclosure of the filer's debtors and creditors. Divisions (A)(5) and (6) require disclosure of the following:

- (5) 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. This division shall not be construed to require the disclosure of debts owed by the person resulting from the ordinary conduct of a business

or profession or debts on the person's residence or real property used primarily for personal recreation (Emphasis added.)

(6) The names of all persons residing or transacting business in the state, other than a depository excluded under division (A)(3) of this section, 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. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code, nor the disclosure of debts owed to the person resulting from the ordinary conduct of a business or profession. (Emphasis added.)

The requirements of these statutory sections are reflected in Items 11 and 12 of the Ethics Commission's current Financial Disclosure Statement. You have asked whether the value of the debt or credit is determined by the amount outstanding on December 31st of the calendar year for which a financial disclosure statement is being filed or whether disclosure is required where the value of the debt or credit has exceeded one thousand dollars at any time during that calendar year.

You have stated by way of history that you are required to file a financial disclosure statement this year with the Ohio Ethics Commission for the preceding calendar year. You have stated that you have a revolving charge card account with a major department store, and have charged purchases exceeding one thousand dollars at several times during the preceding year; however, you have always paid the entire balance due within the "grace period" allowed by the repayment terms, thus incurring no finance charges. You also state that as of December 31st of the preceding calendar year, there was no outstanding balance due on your charge card account.

It must first be determined whether you would "owe" the company with which you have the charge account more than one thousand dollars, where, under the terms of the credit agreement, you have a specified period of time after making the purchase or purchases to pay for the items without incurring interest charges, and have paid the entire balance due within the "grace period." It is a primary rule of statutory construction that words used in a statute must be construed according to rules of grammar and common usage. See R.C. 1.42. Black's Law Dictionary (5th ed. 1979) defines the term "owe" as "to be bound to do . . . something, especially to pay a debt," and defines the term "owing" as "Unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not" (emphasis added). Black's Law Dictionary further defines "debt" as "a fixed and certain obligation to pay money ... either in the present or in the future" (emphasis added), and "debtor" as "anyone liable on a claim, whether due or to become due" (emphasis added). A consumer who purchases goods or services without paying for those goods or services at the time of purchase clearly owes the seller money for those items, regardless of the fact that the seller has agreed to permit the buyer to defer payment until some date in the future. Although the amount owed may not be "due" during the grace period established under the credit agreement whereby no interest is charged, or even thereafter where interest is charged on the unpaid balance, the purchaser has an obligation to pay the seller for the purchased items, and a debt has been created, even though the obligation to pay is at some point in the future. Therefore, you will be deemed to owe a seller money for purchases made even though you have a grace period within which to pay for the purchases, and regularly pay the entire amount owing during the grace period so that no interest charges are incurred.

It must next be determined whether the value of the debt or credit is determined by the amount outstanding at the end of the calendar year or whether disclosure is required where the value exceeds one thousand dollars at any time during the year. R.C. 102.02 does not specifically state at what point in time a debt or credit exceeding one thousand dollars must have existed in order to fall within the disclosure requirements of Divisions (A)(5) and (6). However, it is a fundamental rule of statutory construction that statutes relating to the same subject matter must be read and construed together, especially where such provisions are part of the same statutory chapter. A particular statute should be construed in light of, and with reference to, other statutes which are part of the same scheme. See State ex rel. Pratt v. Weygandt, 164 Ohio St. 463 (1956); Inglis v. Pontius, 102 Ohio St. 140 (1921). Furthermore, statutes "must be construed in light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 1401 144 (1967).

R.C. 102.02, the financial disclosure law, is part of Chapter 102., the Ohio Ethics Law, which governs the conduct of all public officials and employees and prohibits them from using their official position to benefit their private interests or the interests of others with whom they hold certain, personal relationships. The 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.

The Ethics Commission has determined that it is the intent of Section 102.02(A) of the Revised Code that the financial disclosure statement that is required to be filed reflects the calendar year immediately preceding the date on which the statement is required to be filed. See Ohio Ethics Commission Advisory Opinion No. 75-032. In order for the financial disclosure law to be effective in the deterrence or discovery of potential conflicts of interest, it is required that the public official or employee disclose his financial transactions for the entire calendar year. Such transactions would include the disclosure of a debt over one thousand dollars incurred at any time within the calendar year, regardless of the fact that no balance due is outstanding at the end of the calendar year.

For example, R.C. 102.03(D) prohibits a public official or employee from using his official position to secure anything of value for himself or for anyone else if the thing of value is of such character as to manifest a substantial and improper influence upon him with respect to his duties. See generally Advisory Opinion No. 88-004. A situation could arise in which a public official or employee is required to make a decision affecting the interests of a party to which he is personally indebted. Facts could develop showing that the public official or employee acted improperly with regard to deciding the party's interests because of the debtor-creditor relationship between them. It is apparent that the relationship between the official and his creditor must be examined as of the time of the official's decision, and that this time may occur at any point during the year. The fact that no debt exists on December 31st may have no bearing on the issue whether the official had a potential conflict of interest earlier in the year, and whether he acted improperly with regard to that potential conflict. The intent and purpose of the Ethics

Law could be easily circumvented if a filer were required to disclose only those debts or credits existing on the date of December 31st. See R.C. 1.47 (in enacting a statute, it is presumed that a just and reasonable result is intended); R.C. 1.49 (in interpreting a statute, the consequences of a particular construction may be considered.)

Also, it is well established that words not used in a statute may not be inserted in construing that statute. See Dougherty v. Torrence, 2 Ohio St. 3d 69 (1982). In interpreting a statute, reference is also made to the fact that if the legislature intended a particular meaning, it could easily have found apt words or phrases to express that meaning, especially where it has used such words or phrases in another connection. See Shafer v. Streicher, 105 Ohio St. 528 (1922); Swetland v. Miles, 101 Ohio St. 501 (1920). Division (A)(3) of Section 102.02 requires disclosure of "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." (Emphasis added.) Divisions (A)(5) and (6), unlike Division (A)(3), do not establish a specific date for determining the value of debts or credits, and the date of December 31st cannot be read into these provisions. If the legislature had intended that debts and credits be valued on December 31st, it would have specifically so indicated in Divisions (A)(5) and (6), in a manner similar to that utilized in Division (A)(3). Therefore, you are required to disclose debts that exceeded one thousand dollars at any time during the preceding calendar year.

Although your inquiry concerns the application of the financial disclosure requirements to your revolving charge card account, this interpretation is also applicable to all financial transactions creating borrower-lender relationships reported pursuant to Divisions (A)(5) and (6) of Section 102.02.

This advisory 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) A public official or employee who is required to file a financial disclosure statement pursuant to R.C. 102.02 is deemed to owe a person more than one thousand dollars for purposes of Division (A)(5) of that section where he has made purchases from that person costing more than one thousand dollars and has deferred payment for those items under the terms of a credit agreement, even though the public official or employee subsequently pays the entire amount owed during the grace period allowed under the credit agreement, so that no interest charges are incurred; (2) R.C. 102.02(A)(5) requires that a public official or employee disclose the names of all persons residing or transacting business in the state, to whom he has owed, in his own name or in the name of any other person, more than one thousand dollars at any time during the preceding calendar year; (3) Section 102.02(A)(6) requires that a public official or employee disclose the names of all persons residing or transacting business in the state who owed the public official or employee, either in his own name or in the name of any other person for his use or benefit, more than one thousand dollars at any time during the preceding calendar year.


Richard D. Jackson, Chairman
Ohio Ethics Commission