

# OHIO ETHICS COMMISSION

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Advisory Opinion Number 2001-07  
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Syllabus by the Commission:

- (1) A "candidate" for elective office is a person certified by a board of elections for placement on the official ballot of a primary, general, or special election as described in Division (H) of Section 3501.01 of the Revised Code;
- (2) An incumbent who serves in any of the offices for which the filing of a financial disclosure statement with the Ethics Commission is required, and who, at the time of the annual April deadline for the filing of a financial disclosure statement, is not certified by a board of elections for placement on the official ballot of a primary, special, or general election, is not a "candidate" at the time of the deadline. Therefore, the incumbent is required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup>, due to having held office in the prior year, even if the incumbent intends to become a "candidate" later in the year in which the statement is required to be filed;
- (3) The conclusions in this advisory opinion apply to an incumbent elected official who is required to file a financial disclosure statement on or after January 1, 2002.

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The Commission has received several questions regarding the appropriate financial disclosure statement filing deadline for an incumbent elected official who intends to run for re-election in a primary or general election. These questions stem from provisions in the Ethics Law that provide different filing deadlines for "candidates" and officeholders.

## **Brief Answer**

As discussed more fully below, all persons elected to or appointed to the unexpired term of an elective city, county, or state office are required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup> of each year. All elected or appointed members of a school board or educational service center governing board, in districts or educational service centers with a total student count of 12,000 or more students, are required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup> of each year.

All candidates for any of the offices described above, including incumbents who are candidates, must file financial disclosure statements thirty days before the primary, special, or general election at which the person's candidacy is to be voted on, whichever occurs earliest. A "candidate" for elective office is a person certified by a board of elections for placement on the official ballot of a primary, general, or special election.

An incumbent serving in any of the positions described above at the time of the annual April deadline for filing a statement and who is not certified by a board of elections for placement on the official ballot of a primary, special, or general election prior to the annual April deadline is not a "candidate" at the time of the annual April deadline and is required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup>, due to having held office in the prior year, even if the incumbent intends to become a "candidate" later in the year in which the statement is required to be filed.

### **General Filing Deadlines for Financial Disclosure Statements-R.C. 102.02(A)**

Division (A) of Section 102.02 of the Revised Code provides that the following elected officials and candidates for elective office are required to file financial disclosure statements with the Ohio Ethics Commission:

Except as otherwise provided in division (H) of this section, every person who is elected to or is a candidate for a state, county, or city office . . . and every person who is appointed to fill a vacancy for an unexpired term in such an elective office; all members of the state board of education . . . [and] every person who is elected to or is a candidate for the office of member of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district or of a governing board of an educational service center that has a total student count of twelve thousand or more as most recently determined by the department of education pursuant to section 3317.03 of the Revised Code.

Members of, and candidates for positions on, the general assembly, file financial disclosure statements with the Joint Legislative Ethics Committee. Judicial officers, and candidates for judicial office, file financial disclosure statements with the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court. This advisory opinion applies generally to all persons elected or appointed to the unexpired term of an elective city, county, or state office, and candidates for such city, county, or state offices, and to all elected or appointed members of a school board or educational service center governing board and candidates for such board positions, in districts or educational service centers with a total student count of 12,000 or more students.

The filing deadline for a candidate for elective office differs from that of a sitting officeholder who is not a candidate. R.C. 102.02(A)(10) provides that a person who holds any of the listed elective offices shall file the statement on or before the fifteenth day of April of each year unless the person is a candidate for office. R.C. 102.02(A)(10) further provides that a person who is a candidate for any of the listed elective offices must file a financial disclosure statement no later than the thirtieth day before the primary, special, or general election at which the candidacy is to be voted on, whichever election occurs soonest.

Based on these statutory provisions, a person who holds elective office and who is a candidate prior to the annual April filing deadline would be required to file a financial disclosure statement no later than the thirtieth day before the first election at which his or her candidacy is to be voted on. A person who holds elective office and who is not a candidate at the time of the annual April filing deadline would be required to file a financial disclosure statement by April 15<sup>th</sup>, even if the person intends to become a candidate at some time after the annual April filing deadline.

Therefore, in order to resolve the question of the appropriate filing deadline for an incumbent, it is necessary to determine when an incumbent becomes a "candidate."

### **Definition of "Candidate"**

The term "candidate" is defined, for purposes of Ohio election laws, as "any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state." See R.C. 3501.01(H). While the definition does not apply directly to the Ethics Law, it is instructive in determining when an incumbent becomes a candidate for purposes of determining the incumbent's financial disclosure statement filing deadline. 1

### **Determination of Filing Deadline of Elective Officials Based on Definition of "Candidate"**

Where there is a primary election, certificates of nomination to a primary ballot are issued by boards of election by the sixtieth day prior to the primary, or by the forty-fifth day prior to the primary in a presidential election year. See R.C. 3513.05. This certification would precede the annual April filing deadline where a primary is held in May or earlier. For instance, an incumbent whose name would appear on a May primary ballot would be certified for placement on that ballot in March, and would, in that instance, be a candidate prior to the annual April filing deadline. The candidate would be required to file a financial disclosure statement by the thirtieth day before the primary election, which would be a filing deadline prior to April 15<sup>th</sup>. An incumbent whose name would appear on a September primary ballot would be certified for placement on that ballot after the annual April filing deadline, and would not be a candidate at the time of the April 15<sup>th</sup> deadline. Therefore, the incumbent, who is not yet a candidate, and who is serving in the office for which filing is required at the time of the annual April deadline, would be required to file a financial disclosure statement by April fifteenth due to having held office in the prior year.

Section 3513.02 of the Revised Code provides that, in certain circumstances, no primary election shall be held for the purpose of nominating party candidates to offices to be voted for at the general election. In situations where R.C. 3513.02 applies, certificates of nomination are issued to the persons entitled to them as if a primary election had been held and such persons had been nominated at such election. See R.C. 3513.02. Therefore, where R.C. 3513.02 applies, an unopposed incumbent official would not receive certification from the appropriate election official until after the May primary would have been held. These unopposed incumbent officials would not be "candidates" prior to the annual April filing deadline. In that instance, the

incumbent officials would be required to file a financial disclosure statement with the Ethics Commission by the annual April deadline.

An incumbent in a non-partisan race for which no primary is held, who is serving in the office for which filing is required at the time of the annual April filing deadline, would be required to file a financial disclosure statement with the Ethics Commission by April fifteenth due to having held such office in the prior year, because the incumbent would not be certified for placement on a ballot until sixty days prior to the general election. See R.C. 3501.01 and 3513.263.

Finally, R.C. 102.02(A) provides that no person is required to file more than one statement for any one calendar year with the Ethics Commission. Therefore, any incumbent who files a financial disclosure statement for the preceding calendar year with the Ethics Commission by the annual April 15<sup>th</sup> deadline, and who becomes a "candidate" after the deadline, in an election to be held later in the same year, would not be required to file a second financial disclosure statement for that same calendar year with the Ethics Commission.

### **Conclusion**

As explained above, all persons elected to or appointed to the unexpired term of an elective city, county, or state office are required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup> of each year. All elected or appointed members of a school board or educational service center governing board, in districts or educational service centers with a total student count of 12,000 or more students, are required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup> of each year.

All candidates for any of the offices described above, including incumbents who are candidates, must file financial disclosure statements thirty days before the primary, special, or general election at which the person's candidacy is to be voted on, whichever occurs earliest. A "candidate" for elective office is a person certified by a board of elections for placement on the official ballot of a primary, general, or special election.

Generally, an incumbent official serving in any of the positions described above is required to file a financial disclosure statement with the Ethics Commission by the annual April 15<sup>th</sup> deadline unless the incumbent official is certified by a board of elections for placement on the official ballot of a primary, general, or special election on or before the April 15<sup>th</sup> deadline. An incumbent official who is certified by a board of elections for placement on the official ballot of a primary, general, or special election on or before the April 15<sup>th</sup> deadline is required to file a financial disclosure statement with the Ethics Commission no later than the thirtieth day prior to the first election at which his or her candidacy is to be voted on. Therefore, the filing deadline for an incumbent official who is a "candidate" in a primary or special election may, in fact, be earlier than the annual April 15<sup>th</sup> deadline. An incumbent official who is not certified by a board of elections for placement on the official ballot of a primary, general, or special election on or before the April 15<sup>th</sup> deadline is not a "candidate" at the time of the April 15<sup>th</sup> deadline. Therefore, such an incumbent official is required to file a financial disclosure statement with the

Ethics Commission by the April 15<sup>th</sup> deadline even if the incumbent official intends to become a "candidate" later in the year in which the statement is required to be filed.

The conclusions in this advisory opinion apply to an incumbent elected official who is required to file a financial disclosure statement on or after January 1, 2002.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, 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 "candidate" for elective office is a person certified by a board of elections for placement on the official ballot of a primary, general, or special election as described in Division (H) of Section 3501.01 of the Revised Code; (2) An incumbent who serves in any of the offices for which the filing of a financial disclosure statement with the Ethics Commission is required, and who, at the time of the annual April deadline for the filing of a financial disclosure statement, is not certified by a board of elections for placement on the official ballot of a primary, special, or general election, is not a "candidate" at the time of the deadline. Therefore, the incumbent is required to file a financial disclosure statement with the Ohio Ethics Commission on or before April 15<sup>th</sup>, due to having held office in the prior year, even if the incumbent intends to become a "candidate" later in the year in which the statement is required to be filed; and (3) The conclusions in this advisory opinion apply to an incumbent elected official who is required to file a financial disclosure statement on or after January 1, 2002.

  
Merom Brachman, Chair  
Ohio Ethics Commission

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1 Another definition of "candidate" is found in R.C. 2921.01(B)(3), which is part of the definition of "public servant," as that term is used in R.C. 2921.01 to 2921.45. R.C. 2921.01(B)(3) provides that "[a] person is a candidate for purposes of [R.C. 2921.01(B)(3)] if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate in any primary, general, or special election." In the present situation, it is more appropriate to apply the definition of "candidate" in R.C. 3501.01(H) to the question of a financial disclosure statement filing deadline of an incumbent, because the definition of "candidate" in R.C. 3501.01(H) generally applies to election procedures. However, it is important to note that a person who is a "candidate" as that term is defined in R.C. 2921.01(B)(3) is a "public servant" and thereby subject to several criminal statutes contained within R.C. 2921.01 to 2921.45, including the supplemental compensation statute under the Ohio Ethics Commission's jurisdiction (see R.C. 2921.43).

