

Merom Brachman, *Chairman*
Megan C. Kelley, *Vice Chair*
Bruce E. Bailey
Julie A. Rutter
Elizabeth E. Tracy
Mark A. Vander Laan



OHIO ETHICS COMMISSION
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

Paul M. Nick
Executive Director

www.ethics.ohio.gov

INFORMATION SHEET: ADVISORY OPINION NO. 2018-01
END OF TERM FINANCIAL DISCLOSURE FILING DEADLINE FOR STATE ELECTED
OFFICERS AND THEIR STAFF

What is the question in the opinion?

At the end of their statutory term, on what date must a state elected officer and their staff file a financial disclosure statement and for what date range should this statement cover?

What is the answer in the opinion?

This opinion expands and clarifies paragraph 3 of the syllabus and related discussion in Ohio Ethics Commission Advisory Opinion No. 75-032 only as it would apply to state elected officers and their staff who: (a) file annual financial disclosure statements with the Ohio Ethics Commission; (b) are subject to Section 102.021 of the Revised Code; and (c) leave office or employment on or before the end of the state elected officer's final term in January.

Section 102.02(A) of the Revised Code requires any state elected officer, and certain staff members, in the year in which the officeholder's final term of office ends the day before the second Monday in January, to file an annual financial disclosure statement with the Ohio Ethics Commission on or before May 15th of that year. This financial disclosure statement shall disclose the items required by R.C. 102.02(A) for the previous calendar year, and the days served from January 1st up to and until their term ends the day before the second Monday in January of that final year. This statement must be filed with the Ethics Commission on or before May 15th of that same calendar year.

Any state elected officer or staff member who files the financial disclosure statement described in paragraph 2 of this syllabus is not required to file a financial disclosure statement the year after leaving office unless they become a candidate for, elected or appointed to, or are simultaneously or subsequently employed in an office or position that would otherwise require them to file a financial disclosure statement for that calendar year.

To whom do these restrictions apply?

This opinion only applies to state elected officials and their staff who: 1) File disclosure statements with the Ohio Ethics Commission; 2) Are subject to Section 102.021 of the Revised Code; and 3) leave office or employment at the end of the state elected officer's term on the second Monday of January of that year. It does not apply if any of these persons are elected or appointed to an office that would otherwise require them to file a financial disclosure statement for that calendar year.

THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2018-01 IS ATTACHED.

Merom Brachman, *Chairman*
Megan C. Kelley, *Vice Chair*
Bruce E. Bailey
Julie A. Rutter
Elizabeth E. Tracy
Mark A. Vander Laan



OHIO ETHICS COMMISSION
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256
Telephone: (614) 466-7090
Fax: (614) 466-8368

Paul M. Nick
Executive Director

www.ethics.ohio.gov

Advisory Opinion
Number 2018-01
August 8, 2018

**End of Term Financial Disclosure Filing
Deadline for State Elected Officers and
Their Staff**

Syllabus by the Commission:

- (1) This opinion expands and clarifies paragraph 3 of the syllabus and related discussion in Ohio Ethics Commission Advisory Opinion No. 75-032 only as it would apply to state elected officers and their staff who: (a) file annual financial disclosure statements with the Ohio Ethics Commission; (b) are subject to Section 102.021 of the Revised Code; and (c) leave office or employment on or before the end of the state elected officer's final term in January.
- (2) Section 102.02(A) of the Revised Code requires any state elected officer, and certain staff members, in the year in which the officeholder's final term of office ends the day before the second Monday in January, to file an annual financial disclosure statement with the Ohio Ethics Commission on or before May 15th of that year. This financial disclosure statement shall disclose the items required by R.C. 102.02(A) for the previous calendar year, and the days served from January 1st up to and until their term ends the day before the second Monday in January of that final year. This statement must be filed with the Ethics Commission on or before May 15th of that same calendar year.
- (3) Any state elected officer or staff member who files the financial disclosure statement described in paragraph 2 of this syllabus is not required to file a financial disclosure statement the year after leaving office unless they become a candidate for, elected or appointed to, or are simultaneously or subsequently employed in an office or position that would otherwise require them to file a financial disclosure statement for that calendar year.

* * *

The Ohio Ethics Commission issued Advisory Opinion No. 75-032 in response to a question asking whether a city council member, who was appointed to city council on December 30, 1974, and resigns four days later, on January 2, 1975, is required to file a financial disclosure statement, and if so, when. The Commission advised, in paragraph three of the syllabus, that he or she is required to file a disclosure statement based on the entire calendar year 1975, on or before April 15, 1976.

The rationale stated by the Commission was that:

This situation is analogous to Federal Income Tax requirements. A person who earns income on January 1, 1975 will be required to file a tax return by April 15, 1976.¹

Since the Commission issued this opinion, the Ethics Law has been amended several times. In particular, effective on May 18, 2005, Sub.H.B. No. 181 of the 125th General Assembly enacted R.C. 102.021,² which requires that for the twenty-four month period immediately following the end of a state elected officer's or staff member's³ service of public employment, each former state elected officer or staff member who filed or was required to file a financial disclosure statement under Section 102.02 with the Ohio Ethics Commission must also file with the Joint Legislative Ethics Committee Office of the Legislative Inspector General a post-employment disclosure (PED) statement.

This law states that those who are required to file a PED statement must report the source of all income received if the source of income was any of the following (a "qualifying source"):

- (a) An executive agency lobbyist or a legislative agent;⁴
- (b) The employer of an executive agency lobbyist or legislative agent that is not a state agency or political subdivision;⁵ or
- (c) Any entity that, during the two immediately preceding years, was awarded contract(s) from state agency/agencies worth an aggregate value of at least \$100,000.⁶

In addition, those who receive income from any of these qualifying sources are required to file an initial disclosure statement and then must submit updated PED statements to the Office of the Legislative Inspector General three times per year.⁷ The PED law subjects state officers and certain of their staff members who filed or were required to file a financial disclosure statement to the same reporting requirements as registered lobbyists.⁸ The PED law also requires the disclosure on the PED statements of any expenditure made for the benefit of a state-level public official or a state employee who is required to file a financial disclosure statement, including gifts, travel, lodging, meals, and beverages which is paid from any account in the PED filer's name, unless it is reimbursed by the recipient.⁹ Failure to file a required initial or updated PED statement is punishable by a late fee of \$12.50 per day up to a maximum of \$100.¹⁰ The failure to file as required is also punishable as a first-degree misdemeanor.¹¹

The Ethics Commission has opined that the purpose of the financial disclosure reporting requirement is to remind public officials and staff of their responsibility to avoid conflicts of interest and to assist the public and the Ethics Commission in monitoring various identified areas of potential conflicts of interest.¹²

Once any public official or employee has left office, among the main areas of potential conflicts of interest is if they used their public role or position to gain future employment or engaged in lobbying activity on behalf of future employers.¹³ Unlike other persons who file financial disclosure statements with the Ohio Ethics Commission, elected state officers and staff members in those offices are also required to file an initial PED statement upon ending their term of office or employment, as well as periodic updated PED statements. This additional requirement serves the public purpose of identifying potential conflicts of interest for two years following the end of the state elected officer's term and provides timely information for the public.

With the Commission's interpretation of the financial disclosure filing deadline as set forth in Adv. Op. No. 75-032, these state elected officers and staff are not required to file their final financial disclosure statement with the Ethics Commission until May 15th of the following year. Currently, neither the public nor the Ethics Commission may be informed about any other potential conflicts of interest until sixteen months have elapsed.

Accordingly, to provide more current disclosures, in the year of an elected officer's final term in office, any state elected officer, or member of their staff, whose term of office or employment ends in January before the second Monday of that year must file a financial disclosure statement that discloses the items required by R.C. 102.02(A) not only for the entire preceding calendar year, but also for the days in January through the day before the second Monday of their final year of service. This statement must be filed no later than May 15th of that same year, or if applicable, by the appropriate deadline as set forth in R.C. 102.02(A)(4).

Any state elected office holder, or member of their staff, who timely files this statement and complies with the PED law is not required to file a financial disclosure statement the year after leaving their office or position unless they are a candidate for, elected or appointed to, or employed in an office or position that would otherwise require them to file a financial disclosure statement for that calendar year.

The requirement of earlier disclosure following a state elected officer's final term in office does not apply to any state elected office holder, or member of their staff, who at the end of the elected officer's final term in office continues to hold any other public office or position that separately would require them to file a financial disclosure statement. It also does not apply to any state elected officer, or member of their staff, who prior to May 15th in the year of an elected officer's final term in office, is appointed to, employed in, or becomes a candidate for any other office or position which would require them to file a financial disclosure statement with any other ethics commission.¹⁴ In these cases, the individual, must comply with the same requirements of all other filers and would be required to file separate financial disclosure statements reporting on

the items required by 102.02 for the entire calendar year of each calendar year served with the appropriate ethics commission and by their appropriate deadlines as set forth in R.C. 102.02(A)(4).

Using the current year as an example, an elected state officer, or member of their staff, whose term or employment ends on Sunday, January 13, 2019, is required to file a financial disclosure statement which discloses the items required by R.C. 102.02(A) for the period January 1, 2018, through January 13, 2019, on a form to be prescribed by the Ohio Ethics Commission. This statement must be filed no earlier than January 14, 2019, and no later than May 15, 2019.

If the elected state officer, or member of their staff, files their statement timely and complies with the PED law, then they would not be required to file a financial disclosure statement the following year unless they are a candidate for, elected or appointed to, or employed in an office or position that would otherwise require them to file a financial disclosure statement for that calendar year.

Conclusion

Limited to questions arising under Chapter 102 and Sections 2921.42 and 2921.43 of the Revised Code, it is the opinion of the Ohio Ethics Commission, and the Commission advises, that: (1) This opinion expands and clarifies paragraph 3 of the syllabus and related discussion in Ohio Ethics Commission Advisory Opinion No. 75-032 only as it would apply to state elected officers and their staff who: (a) file annual financial disclosure statements with the Ohio Ethics Commission; (b) are subject to Section 102.021 of the Revised Code; and (c) leave office or employment on or before the end of the state elected officer's final term in January; (2) Section 102.02(A) of the Revised Code requires any state elected officer, and certain staff members, in the year in which the officeholder's final term of office ends the day before the second Monday in January, to file an annual financial disclosure statement with the Ohio Ethics Commission on or before May 15th of that year. This financial disclosure statement shall disclose the items required by R.C. 102.02(A) for the previous calendar year, and the days served from January 1st up to and until their term ends the day before the second Monday in January of that final year. This statement must be filed with the Ethics Commission on or before May 15th of that same calendar year; and (3) Any state elected officer or staff member who files the financial disclosure statement described in paragraph 2 of this syllabus is not required to file a financial disclosure statement the year after leaving office unless they become a candidate for, elected or appointed to, or are simultaneously or subsequently employed in an office or position that would otherwise require them to file a financial disclosure statement for that calendar year.



Merom Brachman, Chairman
Ohio Ethics Commission

¹ Ohio Ethics Commission Advisory Opinion No. 75-032.

² This bill also enacted R.C. 3.16 (creating a mechanism by which an elected, non-judicial officer of any political subdivision may be suspended from office if the officer is charged with a felony) and R.C. 2961.02 (establishing “disqualifying offenses” for which a person, upon his or her conviction, is incompetent to hold a public office or position of public employment or to serve as a volunteer).

³ “State elected officer or staff member” means any elected officer of this state, any staff, as defined in section 101.70 of the Revised Code, or any staff, as defined in section 121.60 of the Revised Code. R.C. 102.021(G).

⁴ R.C. 102.021(A)(2)(a).

⁵ R.C. 102.021(A)(2)(b).

⁶ R.C. 102.021(A)(2)(c).

⁷ R.C. 102.021(D).

⁸ *Id.*

⁹ R.C. 102.021(B).

¹⁰ R.C. 102.021(D)(3).

¹¹ R.C. 102.99.

¹² Adv. Op. No. 94-003 (citing Adv. Op. No. 89-001).

¹³ *See* R.C. 102.03(A) and (B); R.C. 2921.42(A)(3).

¹⁴ R.C. 102.01(F).