



OHIO ETHICS COMMISSION

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Advisory Opinion No. 75-001

January 28, 1975

Syllabus by the Ohio Ethics Commission:

Employees of county boards of elections are not required by Section 102.02 (A) of the Revised Code to file financial disclosure statements.

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Your request for an advisory opinion asks whether members and employees of county boards of elections are required to file a financial disclosure statement with the Ohio Ethics Commission. Your question as to whether members of county boards of elections are required to file a financial disclosure statement has been answered directly in an earlier opinion rendered by the Ohio Ethics Commission. Advisory Opinion No. 74-003 states in its syllabus:

"Members of county boards of elections are not required, by reason of their membership on such board, to file financial disclosure statements under the requirements set out in Section 102.02 (A) of the Revised Code."

The reasoning set forth in that Advisory Opinion was that only "members" of the Board of Commissioners on Grievances and Discipline of the Supreme Court and the Ethics Commission created under Section 102.05 of the Revised Code are required to file financial disclosure statements. "Members" who are appointed to non-elective office are not required to file a financial disclosure statement unless they are later included under the procedure set forth in Division (B) of Section 102.02 of the Revised Code.

Likewise, employees of county boards of elections are not required by Section 102.02 (A) of the Revised Code to file financial disclosure statements. Section 102.02 (A) of the Revised Code reads as follows:

"Every person who is elected to or is a candidate for a state, county, or city office, or the office of member of the United States congress, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office, and the director and deputy directors of any department or agency of the state, all members of the board of commissioners on grievances and discipline of the supreme court and the ethics commission created under Section 102.05 of the Revised Code, and every other public official or employee who is designated by the ethics commission pursuant to division (B) of this section, excluding any presidential elector or delegate to a national convention shall file with the appropriate ethics commission on a form prescribed by the commission . . ."

Employees of county boards of elections are not (1) elected, (2) appointed to an elective office, (3) members of the Ohio Ethics Commission, or of the Board of Commissioners on Grievances and Discipline of the Supreme Court, and (4) are not directors or deputy directors of a department or agency of the state.

Section 3501.09 of the Revised Code states that the clerk of the board of elections shall be, ex-officio, the director of elections in his county and the deputy clerk of the board of elections shall be, ex-officio, the deputy director of elections in his county. 'The Second College Edition of Webster's New World Dictionary of the American Language defines the term "ex-officio" as "by virtue of one's office or position." By that definition the statute can be reread as "the clerk of the board of elections shall be, by virtue of his office, the director of elections in his county, and the deputy clerk of the board of elections shall be, by virtue of his office, the deputy director of elections in his county." No statutory or case law definition has been found for the term "ex-officio."

The question, therefore, becomes whether the director and deputy director of county boards of elections are required to file under the phrase "the director and deputy director of any department or agency of the state." A close reading of the language indicates that persons required to file financial disclosure statements because their title is "director" or "deputy director" are those who are serving as director or deputy director of a state department or agency. It is the opinion of the Ohio Ethics Commission that a county board of elections is not a department or agency of the state but rather a lesser unit of organization under the Secretary of State's office.

The clerk and deputy clerk of the county board of elections are appointed by the county board. Section 3501.11, Division (D), of the Revised Code states that each board of elections shall:

"appoint and remove its clerk, assistant clerks, and employees and all registrars, judges, clerks and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve . . ."

Thus, the clerks and deputy clerks serve ex-officio as director and deputy director of elections in their county, and are appointed by county boards of elections. Members of the county boards of elections, in turn serve as representatives to the Secretary of State. Section 3501.06 of the Revised Code states:

"There shall be in each county of the state a board of elections consisting of four qualified electors of the county, who shall be appointed by the secretary of state, as his representatives, to serve for the term of four years." (Emphasis added)

The members of the county board of election, as representatives of the Secretary of State, operate the county boards and hire the clerk and deputy clerk to assist them.

Thus, the county boards of elections are the organizational units of the office of the Secretary of State. The clerks and deputy clerks of county boards of election are ex-officio the

directors and deputy directors of those organizational units of the Secretary of State's office and are not the director or deputy director of a state agency.

It is the opinion of the Ohio Ethics Commission that it was the intention of the legislature, when using the phrase "director and deputy director of any department or agency of the state" in Section 102.02 (A) of the Revised Code, to include only the independent departments or agencies of the state and therefore those whose directors and deputy directors exercise the highest independent administrative discretion at the state level.

Since the clerk and deputy clerk of the county boards of election are exofficio the director and deputy director of an organizational unit of the office of the Secretary of State, they are not serving in positions in which they exercise the highest independent administrative discretion at the state level and thus, are not included in the filing requirement by use of the language "director and deputy director of any department or agency of the state" as that phrase is found in Section 102.02 (A) of the Revised Code.

Your attention is directed to Division (B) of Section 102.02 of the Revised Code wherein the Ohio Ethics Commission is granted authority to extend the financial disclosure filing requirement to additional classes of public officials or employees. And, it is only through the rule making procedure provided for in Section 102.02 (B) of the Revised Code that the Ohio Ethics Commission can extend the financial disclosure filing requirement to other classes of public officials or employees. Division (B) of Section 102.02 of the Revised Code provides, in part:

"(B) The ethics commission may, using the rule-making procedures of Chapter 119. of the Revised Code, require any class of public officials or employees whose positions involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the state, county, or cities or the execution of other public trusts to file an annual statement . . ."

To date, the Ohio Ethics Commission has not used this procedure to include employees of any board of elections.

It is the opinion of the Ohio Ethics Commission, and you are so advised, that employees of county boards of elections are not required to file financial disclosure statements pursuant to Section 102.02 (A) of the Revised Code.



THE OHIO ETHICS COMMISSION

By (Mrs.) Barbara Rawson, Chairman