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Advisory Committee Minutes

Tuesday, November 10, 2020

Present:

Bruce Bailey, Megan Kelley, Julie Rutter, Commission Members

Karen King, Chief Advisory Attorney
Tim Gates, Staff Attorney
Susan Willeke, Education Coordinator
Jed Hood, General Counsel
Paul Nick, Executive Director

The meeting began at 1:01 p.m. by teleconference.

Ms. King introduced a draft of an information sheet regarding public officials serving with chambers of commerce. Ms. King noted that at the last committee meeting, the members decided that an information sheet rather than a formal opinion would be the most effective way to communicate information on this issue in a concise and uncomplicated manner. Ms. King also noted that the tone of the information sheet was intended to sound helpful and positive rather than punitive and prohibitive even as the information sheet outlines restrictions under the criminal law. Ms. King stated that the information sheet was a collaborative effort between the Advisory and Education sections and invited Ms. Willeke to comment. Ms. Willeke said that she believed the information sheet strikes an effective balance between legal accuracy and easy-to-understand language for the traditional public servant. The committee members agreed that they appreciated the format.

Before the meeting, Mr. Bailey had emailed questions and concerns he had about the content of the information sheet. Ms. King reviewed some of those concerns and the staff's emailed response. Mr. Bailey said that the statute is complicated and it should be the Commission's mission to provide simple answers to public officials and employees that make sense. Ms. Kelley suggested that the distinctions between R.C. 2921.42(A)(3) and (4) be made clearer in the information sheet, noting the analysis in Advisory Opinion No. 2016-01. Mr. Bailey noted that the information sheet does not discuss whether or not membership dues are a public contract. He stated that if a municipality pays ordinary membership dues to a chamber of commerce, that alone should not constitute a public contract. Mr. Nick noted that the Commission did not have precedent addressing this specific issue. Ms. Kelley suggested writing an advisory opinion solely on whether

membership dues are public contracts. Mr. Nick said staff would work on a draft stating that regular membership dues are not a public contract.

Mr. Hood reviewed his discussions with Mr. Bailey regarding the format of staff's responses to requests for advice. He referred to OAC 102-3-4, the rule for advisory processes for telephone and electronic mail guidance, and the examples of email guidance included in the committee packet. He stated that staff's responses adhere to the current rule. He also noted that the 5-year rule review for OAC 102-3-4 would be next year. Mr. Nick also reviewed the examples of email guidance provided by staff and noted that the guidance was comprehensive and relevant and the replies from the recipients were positive. Mr. Nick noted that in the past three months, the advisory staff has responded to about 100 phone calls and 100 emails each month. Mr. Bailey said that because the statute is so complicated, the responses are also often complicated. He asked if, under the current rule, there is a way to provide a simple "yes or no" answer by email without giving the requester the immunity of an advisory opinion. Mr. Nick said, under the current rule, staff can and does provide email guidance that does not provide immunity. Mr. Gates said that he gives direct guidance when possible, but requesters still often ask for advisory opinions because they want immunity. Ms. King noted that most of the emails that the staff sends are initiated by a phone call from the requester. She said the staff spends a lot of time explaining the law and its application to the caller then follows up the conversation with an email providing Commission precedent and other relevant information. Mr. Nick said the staff would consider this issue further.

Mr. Nick reviewed some of the matters that would be discussed at the next Commission meeting.

The meeting was adjourned at 1:54 p.m.

These Minutes were prepared by Chief Advisory Attorney Karen R. King.