



OHIO ETHICS COMMISSION

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March 29, 1994 Informal Opinion 1994-INF-0329-2

Jonathan W. Marshall, Secretary
The Supreme Court of Ohio
Board of Commissioners on Grievances and Discipline

Dear Mr. Marshall:

You have asked whether a member of the Board of Commissioners on Grievances and Discipline of the Supreme Court (Board) who has completed his term of office but continues to perform official duties for the Board and receives compensation must continue to file a financial disclosure statement with the Ohio Ethics Commission.

The Board consists of twenty-eight members. Gov. Bar R. V (1)(A). The Board is empowered with the exclusive jurisdiction to make findings in grievances involving alleged misconduct by justices, judges, and attorneys and other matters regarding the practice of law within the State. See generally Gov. Bar R. V (2) (A) and (B). A Board member serves a three-year term which begins on the first day of January next following the member's appointment. Gov. Bar R. V (1)(C). However, a former Board member may continue to serve in order to conclude an uncompleted assignment. Id. In such an instance, the successor member shall take no part in the Board's proceedings concerning the uncompleted assignment. Id.

The Ethics Commission is empowered to administer, interpret, and help enforce Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. See R.C. 102.02, 102.06, and 102.08. These provisions include prohibitions against public officials and employees misusing their official position for their own personal benefit or the benefit of their family members or business associates, as well as Ohio's financial disclosure law.

R.C. 102.02 (A) mandates that members of the Board of Commissioners on Grievances and Discipline file an annual financial disclosure statement with the Ohio Ethics Commission. You have asked whether a former Board member who continues to serve, in accordance with Rule V Section 1 (C) of the Supreme Court Rules for the Government of the Bar of Ohio for the purpose of concluding an uncompleted assignment, is subject to the same requirement imposed by R.C. 102.02 (A) upon a Board member who has not completed his three-year term.

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At first glance, it appears that a Board member, upon completion of his three-year term, is no longer subject to the mandate of R.C. 102.02 (A); however, the fact cannot be overlooked that a former Board member who continues to serve, in accordance with Rule V Section 1 (C) of the Supreme Court Rules for the Government of the Bar of Ohio, for the purpose of concluding an uncompleted assignment, is performing an official duty as a Board member. The Ethics Commission has consistently examined the duties which a person performs in his public capacity in order to determine whether the person is subject to the provisions of the Ethics Law. For example, in Advisory Opinion No. 77-004, the Ethics Commission held that a part-time village engineer is subject to the Ethics Law even though he is engaged as an independent contractor. In that opinion, the Ethics Commission explained:

Whether a person is a public official subject to the Ethics Law depends on the amount and kinds of authority and discretion he exercises, and not on the . . . arrangement under which he serves.

The Commission held in Advisory Opinion No. 77-004 that the essential criterion for determining whether a person is subject to the Ohio Ethics Law is whether the person exercises "sovereign power," holding:

Sovereign power includes the exercise of a duty entrusted to one by virtue of statute or some other public authority, a duty that is not merely clerical, but that involves discretionary, decision-making qualities.

The Commission explained "sovereign power" in Advisory Opinion No. 75-004:

The concept of sovereign power originates with the idea that the office is created by public authority, be it executive order, the Constitution or some statute. Furthermore, it has been held that "if a man is placed in a position which is continuous and permanent and has certain powers which, under the law, only he can exercise; then he has sovereign power delegated to him." Shaw v. Jones, 40 O.N.P. 372 (1897).

See also Ohio Ethics Commission Advisory Ops. No. 85-005, 92-001, and 92-011. The Commission has held that combinations of other factors may also be considered in determining whether an individual is subject to the provisions of the Ethics Law and related statutes, such as whether the person: (1) is appointed; (2) has a title; (3) exercises a function of government concerning the public; and (4) is not subject to a contract of employment. See Advisory Op. No. 92-011. See also Advisory Ops. No. 74-007, 75-004, 77-004, 85-005, 92-001, and 93-005.

As explained above, the Board is created by the Supreme Court Rules for the Government of the Bar of Ohio and is vested with exclusive jurisdiction to make findings concerning grievances involving alleged misconduct by justices, judges, and attorneys and other matters regarding the practice of law within the State. Thus, it is apparent that a former Board member who continues to serve, in accordance with Rule V Section 1 (C) of the Supreme Court Rules for the Government of the Bar of Ohio, for the purpose of concluding an uncompleted assignment, exercises the sovereign power of the State since he serves in a position which involves discretionary, decision-making qualities which, under the law, only the Board can exercise. Also, it is apparent that, a former Board member who continues to serve exercises a function of government concerning the public and is not subject to a contract of employment.

The Ethics Commission has recognized that statutes, "must be construed in light of the mischief they are designed to combat." City of Mentor v. Giordano, 9 Ohio St. 2d 140, 144 (1967). In Advisory Opinion No. 89-001, the Commission explained:

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 intent and purpose of the financial disclosure law may well be circumvented if a former Board member did not file a financial disclosure statement and continued to perform the same discretionary, decision-making duties as Board members who had not completed their three-year term. See R.C. 1.49 (in interpreting a statute, the consequences of a particular construction may be considered); R.C. 1.47 (in enacting a statute, it is presumed that a just and reasonable result is intended).

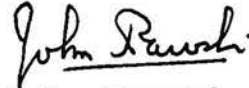
Therefore, a former member of the Board of Commissioners on Grievances and Discipline of the Supreme Court who continues to serve, in accordance with Rule V Section 1 (C) of the Supreme Court Rules for the Government of the Bar of Ohio, for the purpose of concluding an uncompleted assignment, is subject to the same requirement imposed by R.C. 102.02 (A) upon a Board member who has not completed his three-year term and must file a financial

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disclosure statement with the Ohio Ethics Commission. A Board member who has completed his three-year term and has no uncompleted assignments to conclude is not subject to this requirement.

This informal advisory opinion was approved by the Ethics Commission at its meeting on March 29, 1994. The 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. If you have any further questions, please feel free to contact this Office again.

Very truly yours,



John Rawski
Staff Attorney