



OHIO ETHICS COMMISSION

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March 16, 1998

Informal Opinion 1998-INF-0316

Mr. Russell L. Scholl, Deputy Chief
Division of Mines and Reclamation
Ohio Department of Natural Resources

Dear Mr. Scholl:

I am writing in response to your letter, received at the Ethics Commission on January 12, 1998, in which you ask whether James Myer, *ex officio* secretary for the Mine Examining Board (Board), is required to file a Financial Disclosure Statement (FDS) by virtue of serving in that position. The Ethics Commission has determined that Myer is not required to file an FDS as *ex officio* secretary to the Board under the circumstances that you have described.

You have stated that Myer was appointed by Lisa Morris, Chief of the Division of Mines and Reclamation (Division), to serve as the *ex officio* secretary for the Board on September 18, 1997. You have also stated, in correspondence to the Ethics Commission, that Myer was incorrectly identified as a Board member, by the Board, when he replaced the former *ex officio* secretary (who had also been incorrectly identified as a Board member).

Pursuant to R.C. 102.02(A), certain public officials and employees are required to file annual FDSs with the Ohio Ethics Commission. Specifically, the directors, assistant directors, deputy directors, division chiefs, and persons of equivalent rank, of the state administrative departments are required to file annual FDSs. The Department of Natural Resources (Department) is an administrative department of the state. R.C. 121.03(N). As such, the director, assistant directors, deputy directors, division chiefs, and persons of equivalent rank of the Department are required to file annual FDSs with the Ethics Commission.

Additionally, pursuant to R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, the Ethics Commission is empowered to examine state boards to determine whether the members and chief administrative officers (*e.g.*, Executive Director, Executive Secretary, General Manager, President, Administrator or other chief administrative officers) of the boards hold positions that 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 State, or the execution of other public trusts." If the Commission determines that the officials do exercise such discretion, the Commission may require the officials to file annual FDSs. In

making the determination about the exercise of administrative discretion by the members of a board or its staff, the Ethics Commission analyzes the statutory and regulatory authority of the board or position in question on a case-by-case basis.

In examining the Board, we find that it was created pursuant to R.C. 1561.10. On May 17, 1985, the Ethics Commission determined that the Board met the criteria established by R.C. 102.02(B) and required the members of the Board and its chief administrative officer to file annual FDSs.

R.C. 1561.10 also states that the chief of the Division or the chief's designee shall be the *ex officio* secretary to the Board. The term "*ex officio*" is not statutorily defined for purposes of the Ohio Ethics Law. The Ethics Commission, in interpreting statutes that contain words that are not statutorily defined, has consistently followed the rule of statutory construction that words used in a statute must be construed according to rules of grammar and common usage. R.C. 1.42, Ohio Ethics Commission Advisory Opinion No. 96-003. The Commission has also held that, in the same manner as a court, its interpretation of a statute must give effect to the intent of the legislature in enacting the statute. R.C. 1.47 and 1.49; Adv. Op. No. 96-003. Applying these rules of statutory construction, Black's Law Dictionary, Fifth Edition, 1979, West Publishing Co., defines "*ex officio*" as "[f]rom office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office." In analyzing this language, it is clear that the Division chief, or the chief's designee, will serve as the secretary to the Board, solely because he or she is the Division chief or the chief's designee. This is different from the Board members, who are appointed by the governor, with the advice and consent of the senate, based upon their knowledge and experience in fields related to the Board's jurisdiction.

Because the Commission has already determined that the Board and its chief administrative officer are required to file annual FDSs, it is necessary to determine whether the *ex officio* secretary to the Board holds a position that involves "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 State, or the execution of other public trusts," and is, therefore, the equivalent of a chief administrative officer. The secretary's prescribed duties are limited to: keeping a true and complete record of all the proceedings of the board (R.C. 1561.10); employing clerical assistants with the approval of the Board (R.C. 1561.10); and maintaining all lists of persons who have requested notification of the Board's public meetings (Ohio Admin. Code 4101:13-1-18(C)). You have described the *ex officio* secretary's lack of action or authority, stating in your letter that the *ex officio* secretary does not meet with the Board members, does not process minutes, and does not have any vote or say in the actions of the Board. You have also stated that the Board members themselves meet and, on occasion, will request clerical support from the *ex officio* secretary.

The Ethics Commission believes that the duties of the *ex officio* secretary demonstrate that it is not a position that meets the criteria established by R.C. 102.02(B). Mr. Myer, therefore, is not required to file an annual FDS with the Ethics Commission. Please note, that an

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individual who is required to file an annual FDS because of some other filing capacity, such as a Department Division Chief, would still be required to file an annual FDS, even if they were also serving as the *ex officio* secretary to the Board.

This informal advisory opinion was approved by the Ethics Commission at its meeting on March 6, 1998. The opinion is based on the facts presented and 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.

If you have any questions, please feel free to contact this Office again.

Sincerely,

A handwritten signature in cursive script that reads "Sharon A. Mull". The signature is written in black ink and is positioned above the typed name.

Sharon A. Mull
Staff Attorney

cc: William Moody, Assistant Director ODNR
Lisa Morris, Chief DMR
Jim Myer