



OHIO ETHICS COMMISSION

8 East Long Street, 10th Floor

Columbus, Ohio 43215

Telephone: (614) 466-7090

Fax: (614) 466-8368

April 9, 1998

Informal Opinion 1998-INF-0409

Linda S. Connors

Dear Ms. Connors:

I am writing in response to your letter, received at the Ethics Commission on October 27, 1997, in which you requested information on the financial disclosure reporting requirements of the Ohio Ethics Law. Specifically, you asked whether you were required to report your child's father as a source of money that you received from him, which you have said he provides to you to fulfill a moral, but not legal, child support obligation. Finally, if you are required to disclose your child's father as a source of the money, you ask whether the money should be classified as a gift.

As set forth more fully below, you are required to identify your child's father as the source of the money that you received from him. Whether the money you received was income or a gift is beyond the Ethics Commission's ability to determine. This letter will provide you with criteria for you to make that determination. As described below, however, you should consult with your attorney or accountant to make a final determination.

Facts

You have stated that you are the Sandusky County Clerk of Courts, and that you have been filing annual Financial Disclosure Statements (FDSs) since your election in 1992. In 1994 and 1995, you reported gifts valued in excess of \$75.00 from John E. Meyers. You have stated that he is the father of your child. The child was born during your marriage to another man. You have stated, further, that your ex-husband is the legal father of your child, and has a legal obligation to pay child support, which he fulfills. According to your letter, Meyers "has felt a moral obligation to pay 'child support' although he has no legal obligation to do so." As a result, he has given money to you, which you state was "intended for [your] son's benefit and support." You have stated that you reported the money as a gift on your 1994 and 1995 FDSs because you do not consider it to be "child support." You stated that you did not report the money on your 1996 FDS, based upon advice from Meyers. You now wish to know whether you are required to report this money on future FDSs.

The Ethics Commission has the authority to render advisory opinions with regard to issues that arise under Chapter 102. and sections 2921.42, 2921.421, or 2921.43 of the Ohio Revised Code. While the financial disclosure provisions of the Ohio Ethics Law are within the jurisdiction of the Ethics Commission, much of the answer to your question depends upon if, or how, you reported this money on your state and federal income tax forms. Because of this, whether the money was income or a gift is beyond the Commission's ability to determine. Criteria for you to consider when making the determination is stated below.

Disclosure of Sources of Income - Generally

Pursuant to R.C. 102.02(A), elected county officials are required to file annual FDSs with the Ohio Ethics Commission. Generally, the financial disclosure requirements of the Ohio Ethics Law will require the filer to identify sources of income, gifts, travel expenses, and other personal financial interests that she may have during the course of a year. With regard to sources of income, R.C. 102.02(A)(2)(a) requires filers subject to that section, including county elected officials who receive more than \$16,000 in compensation, to identify every source of income received during the preceding calendar year, and provide a brief description of the nature of the services for which the income was received. If the money that you received from your child's father as support for your child is reported as income on your federal or state income tax forms, then you must disclose the source of the income on your FDS.

"Income," for purposes of the financial disclosure requirements, includes gross income as defined and used in the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, and interest and dividends on obligations or securities of any state or political subdivision. R.C. 102.01(E). The Internal Revenue Code specifically excludes gifts, devises, bequests, and inheritances from the definition of "gross income." 26 U.S.C.A. §102.

In Commissioner v. Duberstein, 363 U.S. 278, 80 S.Ct. 1190, (N.Y. 1960), the United States Supreme Court stated that whether a gift is included or excluded from gross income for purposes of the federal income tax laws is a question of fact to be determined on a case-by-case basis. The Court stated:

. . . [T]he [federal income tax] statute does not use the term "gift" in the common-law sense, but in a more colloquial sense. This Court has indicated that a voluntarily executed transfer of his property by one to another, without any consideration or compensation therefor, though a common-law gift, is not necessarily a "gift" within the meaning of the [federal income tax] statute. For the Court has shown that the mere absence of a legal or moral obligation to make such a payment does not establish that it is a gift. *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716, 730, 49 S.Ct. 499, 504, 73 L.Ed. 918. And, importantly, if the payment proceeds primarily from "the constraining force of any moral or legal duty," or from "the incentive or anticipated benefit" of an economic nature, *Bogardus v. Commissioner*, 302 U.S. 34, 41, 58 S.Ct. 61, 65, 82

L.Ed. 32, it is not a gift. And, conversely, “[w]here the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it.” *Robertson v. United States*, 343 U.S. 711, 714, 72 S.Ct. 994, 996, 96 L. Ed. 1237. (Footnotes omitted.)

As the Supreme Court went on to explain in Duberstein, the determining factor in deciding whether a “common law” gift is included under gross income, for federal income tax purposes, or whether it is a “gift,” is the intention with which the payment has been made. If the payments were intended by Meyers to be “gifts,” they may be disclosed as gifts. If, as you have stated, the payments to you stemmed from a perceived “moral obligation,” and were intended for your son’s benefit and support, the payments may fall within the Internal Revenue Service definition of “gross income.” If the payments meet the Internal Revenue Service definition of “gross income” then, pursuant to R.C. 102.02(A)(2)(a), you must disclose Meyers as the source of the income on your FDS.

Disclosure of Sources of Gifts - Generally

With regard to gifts, R.C. 102.02(A)(7) requires a filer, including a county elected official who receives more than \$16,000 in compensation, to disclose the source of each gift of over seventy-five dollars, received by the filer in the filer’s own name or by any other person for the filer’s use or benefit during the preceding calendar year. Exempted from the disclosure requirement are those gifts received by will or by virtue of section 2105.06 of the Revised Code, or received from spouses, parents, grandparents, children, grandchildren, siblings, nephews, nieces, uncles, aunts, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, or any person to whom the person filing the statement stands in loco parentis, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor. R.C. 102.02(A)(7).

The word “gift” is not statutorily defined for purposes of the Ohio Ethics Law. The Ethics Commission addressed the definition of the word “gift” in Advisory Opinion No. 94-003. The issue in that opinion was whether the value of multiple gifts from a single source were counted alone or together for purposes of meeting the seventy-five dollar financial disclosure reporting requirement threshold. The Commission discussed the definition of the word “gift,” and quoted the Black’s Law Dictionary definition of the word as: [a] voluntary transfer of property to another without consideration . . . [e]ssential requisites of “gift” are capacity of donor, intention of donor to make gift, completed delivery to or for donee, and acceptance of gift by donee.” The Commission noted that Ohio courts have relied upon this definition to conclude that a gift is a voluntary transfer of property by one to another without any consideration or compensation therefor. Advisory Op. No. 94-003.

In the situation that you presented, Meyers’ intent may control the issue of whether the money that he gave to you was income or a gift. If the payments were given to you and were not intended to be consideration or compensation, or to fulfill a moral or other obligation, then they

may be gifts. If the payments were gifts, and if the amount received during the year was greater than seventy-five dollars, then R.C. 102.02(A)(7) requires that you identify Meyers as the source of the gifts on your FDS. You do not have to disclose the actual value of a gift or the nature of a gift.

Summary and Conclusion

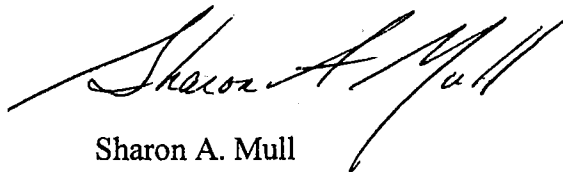
As explained above, the Ethics Commission cannot determine for you whether the money that you received was income or a gift. If, after applying the above criteria, you determine that the money was income, then you will be required to disclose Meyers as the source of the income. If you determine that the money was a gift, then you are required to disclose only the source of the gift.

Because the FDSs that you filed in 1994, 1995, and 1996 are public records, they cannot now be changed. If, however, you have information that you wish to add to those earlier filings, you may request that the Commission attach any additional documentation to those earlier filings. If attached, that documentation will also be public record.

This informal advisory opinion was approved by the Ethics Commission at its meeting on April 9, 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 dark ink and is positioned above the typed name and title.

Sharon A. Mull
Staff Attorney