

OHIO ETHICS COMMISSION

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February 19, 1999

Informal Opinion 1999-INF-0219-2

H. Samuel Orth, III, Executive Director
Information, Learning and Technology Authority

Dear Mr. Orth:

I am writing in response to your letter inquiring whether the employees of the Office of Information, Learning and Technology Services (OILTS) are required to file financial disclosure statements (FDSs) pursuant to R.C. 102.02. In a subsequent telephone conversation, Deborah Holmes, Fiscal Officer of the OILTS, stated that OILTS also requests that the Commission determine whether the members of the Information, Learning, and Technology Authority (Authority) are required to file FDSs.

In accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, each member of the Authority, who is not already required to file an FDS, will be requested to file an annual FDS beginning in calendar year 1999. Members of the Authority will be required to file within ninety days of the date of the Commission's decision, on or before May 20, 1999. Members who are appointed after May 20, 1999, will have filing deadlines that are dependent upon their appointment dates. In addition, the executive director of OILTS will be required to file an annual FDS beginning in calendar year 1999. The executive director's first statement will be due on or before May 20, 1999. Please note that any other employee of OILTS would be required to file an annual financial disclosure statement if the employee is paid a salary or wage in accordance with schedule C of section 124.15 or schedule E-2 of section 124.152 of the Revised Code.

Pursuant to R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, the Ethics Commission is empowered to examine various statutorily created state boards, commissions, agencies, institutions, bureaus, councils and other instrumentalities of the State to determine whether the members and chief administrative officers (in this case, the OILTS Executive Director) of these public entities 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 any board or its staff, the Ethics Commission analyzes the statutory and regulatory authority of each board on a case-by-case basis.

The Information, Learning and Technology Authority was created pursuant to R.C. 3301.80. The Authority is composed of eleven members, seven of whom are voting members. Of the seven voting members, one is appointed by the Speaker of the House of Representatives and one is appointed by the President of the Senate. The other five voting members are the Superintendent of Public Instruction or a designee, the director of the Office of Budget and Management (OBM) or a designee, the director of the Department of Administrative Services (DAS) or a designee, the chairperson of the Public Utilities Commission (PUCO) or a designee, and the director of the Ohio Educational Telecommunications Network Commission or a designee. The four nonvoting members are two members of the Senate and two members of the House of Representatives. The Authority is the governing board for the Office of Information, Learning, and Technology Services (OILTS), which is under the supervision of an executive director.

The statutory authority of the Authority is detailed in R.C. 3301.80(A)(2), which states:

The information, learning, and technology authority shall monitor and oversee the operations of, and programs administered by, the office of information, learning, and technology services established under division (B) of this section. In addition, the authority may develop and issue policies and directives to be followed by the office of information, learning, and technology services in implementing the programs under its jurisdiction.

The statutory authority of OILTS is detailed in R.C. 3301.80(B), which states:

The office of information, learning, and technology services is hereby established as an independent agency. The office shall be under the supervision of a director who shall be appointed by the information, learning, and technology authority. The director shall serve at the pleasure of the authority and shall direct the office in the administration of all programs for the provision of financial and other assistance to school districts and other educational institutions for the acquisition and utilization of educational technology. The office of information, learning, and technology services shall do all of the following:

- (1) Make grants to institutions and other organizations as prescribed by the general assembly for the provision of technical assistance, professional development, and other support services to enable school districts and other educational institutions to utilize educational technology;
- (2) Contract with the department of education, state institutions of higher education, private nonprofit institutions of higher education holding certificates of authorization under section 1713.02 of the Revised Code, and such other public or private entities, and employ such persons as the director of the office deems necessary for the administration and implementation of the programs under the office's jurisdiction;

- (3) Establish a reporting system to which school districts and other educational institutions receiving financial assistance pursuant to this section for the acquisition of educational technology report information as to the manner in which such assistance was expended, the manner in which the equipment or services purchases with the assistance is being utilized, the results or outcome of this utilization, and other information as may be required by the office;
- (4) Establish necessary guidelines governing purchasing and procurement by participants in programs administered by the office that facilitate the timely and effective implementation of such programs;
- (5) Implement policies and directives issued by the information, learning, and technology authority established under division (A) of this section.

The office of information, learning, and technology services may establish a systems support network to facilitate the timely implementation of the programs, projects, or activities for which it provides assistance. (Emphasis added.)

Further, according to R.C. 3301.801, OILTS:

[S]hall create and maintain a clearinghouse for classroom teachers to easily obtain lesson plans and materials and other practical resources for use in classroom teaching. The office shall develop a method of obtaining submissions, from classroom teachers and others, of such plans, materials, and other resources that have been used in the classroom and that can be readily used and implemented by classroom teachers in their regular teaching activities. The office also shall develop methods of informing classroom teachers of both the availability of such plans, materials, and other resources, and of the opportunity to submit such plans, materials, and other resources and other classroom teaching ideas to the clearinghouse.

The powers and duties of the Authority are to monitor and oversee the operations and programs of OILTS, and to develop and issue policies and directives to be followed by OILTS. The powers and duties of OILTS include the authority to: make grants to institutions and other organizations to utilize educational technology; contract with the Department of Education, state and nonprofit colleges and universities, and other public or private entities as necessary for the administration and implementation of the programs under the jurisdiction of OILTS; establish necessary guidelines governing purchasing and procurement by participants in OILTS programs to facilitate the effective implementation of the programs; implement the policies and directives issued by the Authority; and create and maintain an effective clearinghouse of educational materials for use in classrooms.

Based upon the powers and duties of the Authority and OILTS, the Ohio Ethics Commission finds that the members of the Authority, and the chief executive officer of the office it oversees (OILTS), hold positions that meet the requirements of OAC 102-5-01 and 102-5-02. As such, the members of the Authority, and the Executive Director of OILTS, are requested to file annual financial disclosure statements with the Ethics Commission.

As noted above, five of the voting members of the Authority are the Superintendent of Public Instruction or a designee, the director of OBM or a designee, the director of DAS or a designee, the chairperson of PUCO or a designee, and the director of the Ohio Educational Telecommunications Network Commission or a designee. The four nonvoting members are two members of the Senate and two members of the House of Representatives. The Superintendent of Public Instruction, Directors of OBM and DAS, Chairperson of PUCO, and the director of the Ohio Educational Telecommunications Network Commission are already required to file FDSs. The members of the General Assembly who serve as nonvoting members are also already required to file FDSs. This decision by the Ethics Commission that those administering the OILTS must file FDSs does not require any of these individuals who already file an FDS to file an additional FDS. Any member of the Authority who is already required to file an annual FDS, because of some other public office or employment, is not required to file more than one FDS per calendar year. These individuals should indicate all of their filing capacities on each year's filing, or contact the Ethics Commission for assistance in completing the FDS, to assure that there is no administrative problem in recognizing that the individual holds more than one filing position.

Please note, however, that the Commission has determined that any person who serves on a board, commission, or authority as an authorized representative, or designee, for any member, will be requested to file an annual FDS with the Ohio Ethics Commission. For example, if the Superintendent of Public Instruction designates an individual to serve in his place on the Authority, that designee will also be requested to file an FDS.

There is no provision in the statutory language that empowers the Authority that sets compensation for the Authority members. According to the Fiscal Officer for OILTS, the members of the Authority are not compensated. R.C. 102.02(B) provides that an FDS filed by a member of a sovereign power state board, who is not compensated for his service other than reasonable and necessary expenses, shall be kept confidential. As such, the Authority members' filings will be considered confidential statements, in accordance with R.C. 102.02(B).

Once a statement is filed by an Authority member, with the Commission, R.C. 102.02(B) requires the Commission to review the statement to determine if any "potential conflict[s] of interest" exist for the person who is filing the statement. If the Commission determines that a potential conflict of interest exists, the Commission will send a letter to the filer, notifying him of the potential conflict. The Commission will then make any portions of the statement that indicate a potential conflict of interest a public record "in the same manner as is provided for other disclosure statements." The Commission will keep the remainder of the statement confidential.

An FDS that is filed by any member of the Authority who holds some other public office or employment, for which filing is required, may not be held confidential, if the other FDS is required to be kept public. The statement filed by the Executive Director of OILTS will be a public record.

Employees of OILTS, other than the Executive Director, are not required to file pursuant to the standards set by the Commission in OAC 102-5-01 and 102-5-02. However, if any employee of OILTS is paid a salary or wage in accordance with schedule C of section 124.15 or schedule E-2 of section 124.152 of the Revised Code, R.C. 102.02(A) would require that employee to file an annual financial disclosure statement with the Commission.

This informal advisory opinion was reviewed and approved by the Ohio Ethics Commission at its February 19, 1999 meeting. The Ethics Commission will proceed to amend the list of agencies required to file annual financial disclosure statements under OAC 102-5-02, to include the Authority. Effective February 19, 1999, the Ethics Commission will expect to receive a 1998 FDS from any member of the Authority, appointed on or before that date, by May 20, 1999. Any member of the Authority appointed, in 1999, after February 19, 1999, will be required to file an FDS within 90 days of the date of his appointment.

If you have any questions about the financial disclosure filing requirements, the information to be disclosed, or the process followed, please contact Donna Skaggs, Financial Disclosure Analyst, for assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer A. Hardin".

Jennifer A. Hardin
Chief Advisory Attorney