

OHIO ETHICS COMMISSION

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December 17, 1999 Informal Opinion 1999-INF-1217-5

Mr. Robert E. Portune, Esq.
Gottschlich & Portune, LLP

Dear Mr. Portune:

In a letter received by the Ethics Commission on October 21, 1999, you ask whether several officials of the City of Clayton are required to file financial disclosure statements with the Commission.

As discussed more fully below, the Ohio Ethics Law requires every person who is elected to, or is a candidate for, city office, and every person who is appointed to fill a vacancy for an unexpired term in an elective city office, to file a financial disclosure statement (FDS). The Ethics law requires that the Clayton mayor, and all of the members of Clayton city council, who were appointed by the city charter to fill terms in elective city offices, file FDS's. This includes the council member who did not run for re-election and whose term will expire in 1999. The two members of city council who ran for re-election in November of 1999 were also required to file FDS's as candidates in that election, and have done so. The Ethics law does not require that the acting Finance Director and Clerk of Council file an FDS with the Commission because this individual was not appointed to fill an elective city office.

Based on the special circumstances of this situation, and for good cause shown, the Commission will extend the filing deadline for the mayor and members of city council to January 18, 2000.

Facts

In your letter to the Commission, you provided several background facts regarding the current municipal government structure of the City of Clayton. You noted that prior to January 1, 1998, two public entities existed: Randolph Township and the Village of Clayton. As a result of an election held in 1997, the unincorporated portions of Randolph Township merged into the Village of Clayton. This merger was effective January 1, 1998. Under the terms of the merger, six members of council, one mayor, and one clerk-treasurer were elected in 1997 and took office as village officials on January 1, 1998. Following the November 1998 election, the Ohio Secretary of State declared Clayton to be a city by operation of law based upon the number of electors residing within the municipality of Clayton.

In May of 1999, the electors of Clayton approved the adoption of a city charter, which went into effect shortly thereafter. The charter has changed the structure of the local government offices. Article XIII, Section 13.02 of the charter provided that, upon the effective date of the charter: (1) The person holding the elective office of village mayor was designated to serve as city mayor under the charter through December 31, 2001; (2) The three village council members who received the highest number of votes in the November 1997 election were designated to serve as at-large city council members under the charter through December 31, 2001; (3) The person holding the elective office of village clerk-treasurer was designated to serve through December 31, 2001, as the acting, non-elective Finance Director and Clerk of City Council under the charter; and (4) The remaining three persons elected to village office in November of 1997, or appointed thereafter to council, were designated to serve as city council members under the charter through December 31, 1999. Upon passage, the charter confers upon the mayor and the members of council all powers, duties, and functions of city officials.

Based on the change in the municipal government structure in Clayton, you ask whether several Clayton city officials are required to file financial disclosure statements with the Ohio Ethics Commission.

Effect of Change from Village to City on the Structure and Powers of the Municipality

Municipalities within Ohio are classified as either cities or villages; those with a population under five thousand are villages, and those with a population of five thousand or more are cities. See Ohio Const. Art. XVIII, Sec. 1. A municipality's status as a village or a city is not an optional matter with the municipality; once a municipality reaches the constitutionally specified population, it becomes a city, as a matter of law. See Board of Comm'rs v. City of Elyria, 174 Ohio St. 135 (1962).

In Advisory Opinion No. 90-014, the Ohio Ethics Commission discussed, with respect to the financial disclosure filing requirement, the effect of such a transformation from a village to a city on the officeholders of the former village. See R.C. 102.02(A) and (H) (Elected officials in cities are specifically required to file financial disclosure statements while elected officials in villages are specifically excluded from the requirement.) In that opinion, the Commission noted that the officers of a village that is advanced to a city continue in office until succeeded in office by the proper officials of the new city who are elected at the first regular municipal election held after the proclamation has been filed with the mayor. Ohio Ethics Commission Advisory Opinion No. 90-014, citing R.C. 703.07. The Commission further noted that the powers and duties that officeholders exercise during the remainder of their terms are limited to those of village officers. Id. The Commission cited State ex rel. Heffernan v. Serp, 125 Ohio St. 87 (1932), where the Ohio Supreme Court held, under a predecessor statute to R.C. 703.07, that holdover village officers continue in office with the powers and duties only of village officers and may not exercise the powers of corresponding city officers until they have been elected at the first regular election held after the proclamation of the Secretary of State has been filed with the municipality's mayor. Id. Finally, the Commission noted that the Ohio Supreme Court followed the holding of Heffernan in Christensen v. Hagedorn, 174 Ohio St. 98 (1962) and determined that a holdover mayor under 703.07 has the powers only of a village mayor.

Given this precedent, the Commission concluded that the officials who were elected to village offices and serve in the newly certified city would not be required to file financial disclosure statements until and unless they decide to run for city office. If they run for city office, the candidates for city offices must file FDS's no later than thirty days before the first election at which their respective candidacies are to be voted on. The facts in the situation you have described, however, are somewhat different. Officials in the newly certified city of Clayton will not continue to serve in their elected village positions with the authority of village officials. Instead, the voters of the City of Clayton passed a charter that changed the structure and power of the municipal government at the time the charter became effective. Therefore, the financial disclosure requirements as applied to Clayton public officials must be analyzed in accordance with the provisions of the charter.

Article XIII, Section 13.02 of the Clayton City Charter describes the effect of the charter upon existing village officials. In that section, the charter states that "all such persons holding the offices designated in this Section (Mayor, members of city council, and Finance Director and Clerk of Council) shall have all powers, duties and functions related to their office as provided by or under this Charter." The charter confers the powers, duties and functions of city officials upon each former village official. The charter provides that some of the officials are designated to serve in the city positions through December 31, 2001, and some are designated to serve through December 31, 1999. Article XIII of the charter provides that the charter takes effect upon the date the final result of the May 4, 1999, election is certified by the election authorities. Thus, in effect, the charter appoints the former village mayor and members of village council to fill vacancies for unexpired terms in city elective offices.

Application of the Financial Disclosure Laws to the Mayor and Council Members At-Large

Division (A) of Section 102.02 of the Revised Code provides that "every person who is elected to or is a candidate for a state, county, or city office . . . and every person who is appointed to fill a vacancy for an unexpired term in such an elective office . . . shall file" a financial disclosure statement. The Mayor and council members in Clayton were appointed to city elective office by the city charter. This appointment was effective upon passage of the charter and certification by election officials. Therefore, these officials are required, by virtue of R.C. 102.02(A), to file financial disclosure statements.

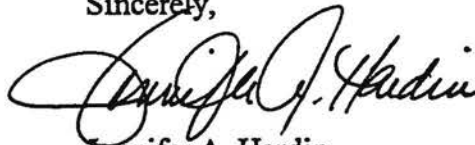
The Ethics law provides that a person who is appointed to fill a vacancy for an unexpired term in an elective city office shall file a financial disclosure statement within fifteen days after the person qualifies for office. Because of the unique situation in the City of Clayton, the Commission will extend the filing deadline for the mayor and council members. The mayor and council members who did not run for re-election in November of 1999 are required to file a financial disclosure statement with the Ethics Commission within thirty days of the date of this opinion, or by January 16, 2000. Because January 16, 2000, is a Sunday, and January 17, 2000, is a state holiday, the actual filing deadline will be Tuesday, January 18, 2000. This filing responsibility applies to the council member whose term ends in December of 1999, even though he decided not to run for re-election in November of 1999. This disclosure statement must contain financial information for the complete 1998 calendar year.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on December 17, 1999. 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 about the financial disclosure filing requirements, the information to be disclosed, or the process to be followed, please contact Sue McVey, Financial Disclosure Coordinator, or Tim Gates, Staff Attorney, for assistance.

Sincerely,

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

Jennifer A. Hardin
Chief Advisory Attorney