

OHIO ETHICS COMMISSION

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May 23, 2000

Informal Opinion 2000-INF-0523-1

Ronda Frueauff, Ed. D.
Ross-Pike County Educational Service District

Dear Ms. Frueauff:

In a letter received by the Ethics Commission on February 22, 2000, you ask whether the nine elected and two appointed board members of the Ross-Pike County Educational Service Center (Ross-Pike ESC) are required to file financial disclosure statements.

As explained more fully below, R.C. 102.02(A) requires that each elected member of the Ross-Pike ESC file an FDS by April 15th of each year that the board member holds a position on the board, and by April 15th of the year after the board member leaves his or her board position. R.C. 102.02(A) further requires each candidate for a position on the board of Ross-Pike ESC to file a financial disclosure statement (FDS) with the Ohio Ethics Commission no later than thirty days prior to the first election at which his or her candidacy is voted on.

In addition, each appointed member of a governing board of a joint ESC with a total student count of twelve thousand or more (including the Ross-Pike ESC) who performs the same duties and has the same responsibilities as his or her elected counterparts, will be required, in accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, to file an annual FDS beginning in calendar year 2000. This statement will reflect the board member's financial interests for the complete preceding calendar year. These joint ESC board members will be requested to file an FDS for calendar year 1999 within 90 days of the date the Commission approves this opinion, or on or before August 21, 2000. Joint ESC board members who are appointed after May 23, 2000, will have filing deadlines that are dependent upon their appointment dates.

Facts

In your letter to the Commission, you state that, on June 30, 1999, the Ross County Educational Service Center and the Pike County Educational Service Center merged into one entity. You further state that the newly-created entity (Ross-Pike ESC) services nine local school districts. Based on enrollment figures provided to the Ohio Ethics Commission by the Ohio Department of Education in January of 2000, the Ross-Pike ESC has a total student count

of 12,184 for the fiscal year 2000.¹ Based on the information provided by the Ohio Department of Education, the Ethics Commission mailed FDS's to the Ross-Pike ESC board members for completion. You then contacted the Ohio Ethics Commission to determine whether both elected and appointed board members are required to file FDS's.

You explained that in November of 1999, nine board members were elected to the Ross-Pike ESC governing board. The elected board members appointed two additional board members in January, 2000. You ask whether these elected and appointed board members are required to file FDS's.

Composition of ESC Board Formed By Merger—R.C. 3311.053

R.C. 3311.053(A) provides that the boards of education of up to five adjoining educational service centers may, by identical resolutions adopted by a majority of the members of each governing board, combine such educational service centers into one educational service center. The resolutions must indicate whether the governing board of the new educational service center is to be formed in accordance with R.C. 3311.053(B), 3311.054(A), or 3311.057. See R.C. 3311.053(A). The new educational service center must be created and the governing board of the participating educational service centers must be dissolved and a new governing board established thirty days after the date on which the last resolution was filed with the state board of education. Id.

As stated above, a majority of the members of each governing board may choose to form the new governing board in accordance with R.C. 3311.053(B), which provides the following:

- (B) The initial members of a new governing board established in accordance with this division shall be appointed as follows:
 - (1) If two educational service centers combine, each center's governing board, prior to its dissolution, shall appoint two members to the new governing board and the four members so selected shall select a fifth member within ten days of the date on which the last of the four members is appointed.
 - (2) If three educational service centers combine, each center's governing board, prior to its dissolution, shall appoint one member to the new governing board and the three members so selected shall select the remaining two members of the governing board within ten days of the date on which the last of the three members is appointed.

¹ In January or February of each year, the Ohio Department of Education provides updated information to the Ohio Ethics Commission containing the total student count for the fiscal year. The Ohio Ethics Commission was not notified of the Ross-Pike merger until January 28, 2000, when the Ohio Department of Education sent updated enrollment information to the Ohio Ethics Commission. From the information provided by the Ohio Department of Education in January of 2000, the Commission learned that the Ross and Pike County ESC's merged and that the total student count of the joint ESC had exceeded 12,000. You responded to the Commission's notification sent in February, 2000.

- (3) If four educational service centers combine, each center's governing board, prior to its dissolution, shall appoint one member to the new governing board and the four members so selected shall select the remaining member of the governing board within ten days of the date on which the last of the four members is appointed.
- (4) If five educational service centers combine, each center's governing board, prior to its dissolution, shall appoint one member to the new governing board.

Electors of the new educational service center elect a new governing board at the next general election occurring in an odd-numbered year and more than seventy-five days after the date of the appointment of the last member to the initial governing board.

Next, a majority of the members of each governing board may choose to form the new board in accordance with R.C. 3311.054(A)-(C), which provide the following:

- (A) The initial members of any new governing board of an educational service center established in accordance with this section shall be all of the members of the governing boards of the former educational service centers whose territory comprises the new educational service center. The initial members of any such governing board shall serve until the first Monday of January immediately following the first election of governing board members conducted under division (C) of this section.
- (B) Prior to the next first day of April in an odd-numbered year that occurs at least ninety days after the date on which any new governing board of an educational service center is initially established in accordance with this section, the governing board shall do both of the following:
 - (1) Designate the number of elected members comprising all subsequent governing boards of the educational service center, which number shall be an odd number not to exceed nine.
 - (2) Divide the educational service center into a number of subdistricts equal to the number of governing board members designated under division (B)(1) of this section and number the subdistricts. . . .
- (C) At the next regular municipal election following the deadline for creation of the subdistricts of an educational service center under division (B) of this section, an entire new governing board shall be elected. All members of such governing board shall be elected from those subdistricts.

Finally, a majority of the members of each governing board may choose to form the new board in accordance with R.C. 3311.057(A) and (B), which provide the following:

- (A) Any educational service center that is formed by merging two or more educational service centers or former county school districts after July 1, 1995, but prior to July 1, 1999, may determine the number of members of its board of education and whether the members are to be elected at large or by subdistrict, provided each board shall have an odd number of members.
- (B) If an educational service center described in division (A) of this section is formed on or after the effective date of this section, the board of education of each service center that is merging to form the new service center shall include identical provisions for electing the new service center's board in its resolution adopted pursuant to division (A) of section 3311.053 [3311.05.3] of the Revised Code. If there is any transition period between the effective date of the merger of the service centers and the assumption of control of the new service center by the new board, the resolutions shall include provisions for an interim governing board which shall be appointed to govern the service center until the time the new board is elected and assumes control of the service center.

Regardless of the manner in which the new governing board is formed, each new governing board may, after at least one election of board members has occurred, adopt, by resolution, a plan for adding appointed members to that governing board. See R.C. 3311.056. A plan may provide for adding to the board a number of appointed members that is up to one less than the number of elected members on the board except that the total number of elected and appointed board members must be an odd number. Id. A governing board that adopts a plan under R.C. 3311.056 must submit the plan to the state board of education for approval. Id. A plan takes effect thirty days after approval by the state board and, when effective, appointments to the board must be made in accordance with the plan. Id.

Composition of Ross-Pike ESC

In a telephone conversation, you explained that the Ross-Pike ESC was formed under R.C. 3311.057. One member from each of the nine local school boards served by the ESC was appointed, by resolution, to the interim ESC governing board. Nine members were then elected to the governing board of the Ross-Pike ESC in November, 1999. In January of 2000, the nine elected board members appointed two additional board members in accordance with R.C. 3311.056. These board members were appointed to serve two-year terms.

Filing Requirements of Elected Member of ESC Board of Governors—R.C. 102.02(A)

R.C. 102.02(A) provides that the following individuals, among others, are required to file an FDS with "the appropriate ethics commission":

[E]very person who is elected to or is a candidate for the office of member of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district or of a governing board of an educational service center that has a total student count of twelve thousand or more as most recently determined by the department of education pursuant to section 3317.03 of the Revised Code. (Emphasis added.)

For members of, or candidates for, a governing board of an ESC, the appropriate ethics commission is the Ohio Ethics Commission. See R.C. 102.01(F).

In your letter, you indicated that the Ross and Pike County ESC's merged on June 30, 1999. In November of 1999, nine members were elected to the Ross-Pike County ESC.

R.C. 102.02(A) provides that each individual who is elected to a governing board of an ESC with a total student count of twelve thousand or more is required to file an FDS with the Ohio Ethics Commission each year that the elected member is in office. Therefore, each elected member of the Ross-Pike ESC is required to file an FDS with the Commission by April 15th of each year that the elected member is in office. In addition, each elected member of the Ross-Pike ESC is required to file an FDS with the Commission by April 15th of the year subsequent to the year that each elected member leaves office.

R.C. 102.02(A) also requires that "a person who is a candidate for elective office shall file the statement no later than the thirtieth day before the primary, special, or general election at which the candidacy is to be voted on, whichever election occurs soonest." Therefore, a candidate for the Ross-Pike ESC governing board is required to file an FDS no later than thirty days prior to the first election at which his or her candidacy is voted on. Based on the fact that the Ohio Department of Education first notified the Ethics Commission that the total student count of the Ross-Pike ESC exceeded 12,000 in January of 2000, candidates for the governing board of the Ross-Pike ESC in the November, 1999 election are not required to file FDS's. However, future candidates for the governing board of the Ross-Pike ESC will be required to file FDS's no later than thirty days prior to the first election at which their candidacies are voted on, for so long as the total student count of the Ross-Pike ESC remains above 12,000.

Filing Requirements of Appointed Member of ESC Board of Governors

The final question that must be addressed is whether board members of an ESC with a total student count of twelve thousand or more, who are appointed to non-elective positions on the board by the elected members of the board, pursuant to R.C. 3311.056, are required to file an FDS with the Ohio Ethics Commission.

As noted above, R.C. 102.02(A) requires that each individual who is elected to, or who is a candidate for, a governing board of an ESC with a total student count of twelve thousand or more must file an FDS with the Ohio Ethics Commission. R.C. 102.02(A) does not state, however, that the appointed members of a governing board of an ESC with a total student count of twelve thousand or more are required to file an FDS with the Commission.

The clause of R.C. 102.02(A) that deals with boards of a school district or ESC with a total student count of twelve thousand or more must be interpreted in accordance with its plain meaning. Kiefer v. State, 106 Ohio St. 285, 289; See also Wachendorf v. Shaver, 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948) (it is presumed that the General Assembly uses words in a statutory scheme advisedly). Based on the plain meaning of the applicable clause in R.C. 102.02(A), and as that clause is read in light of the other provisions of R.C. 102.02(A), members who are appointed, pursuant to R.C. 3311.056, to non-elective positions on a governing board of an ESC with a total student count of twelve thousand or more are not required, by R.C. 102.02(A), to file an FDS. While elected and appointed board members perform the same public duties and have the same responsibilities to the public, R.C. 102.02(A), as it has been enacted by the legislature, provides that only elected members of, and candidates for, the office of member of a governing board of an ESC with a total student count of twelve thousand or more, are required to file FDS's.

The Commission has the authority, however, under R.C. 102.02(B), to determine whether members of a governing board of a joint ESC with a total student count of twelve thousand or more hold positions that involve a "substantial and material administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws, rules, and regulations of the state, county, or cities, or the execution of other public trusts." If the Commission finds that the joint ESC board members exercise such discretion, the Commission may use its rule-making powers under Chapter 119. to require these board members to file FDS's. Based on this statutory provision, this Advisory Opinion will now examine whether members of a governing board of a joint ESC with a total student count of twelve thousand or more exercise "substantial and material administrative discretion" such that they should be required to file an FDS pursuant to R.C. 102.02(B).

As discussed above, R.C. 3311.056 provides the statutory framework under which members may be appointed to a governing board of a joint ESC. These appointed joint ESC board members exercise the same statutory duties, and have the same statutory powers, as elected joint ESC board members. Pursuant to R.C. 3313.17, a joint ESC is a body politic and corporate, and, as such, is capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of the joint ESC, any grant or devise of land and any donation or bequest of money or other personal property. Furthermore, each member of the governing board of the joint ESC must take an oath to support the Constitutions of the United States and State of Ohio and further swear that he or she will perform faithfully the duties of his or her office. See R.C. 3313.10.

Based on these statutory provisions, the Ohio Ethics Commission finds that appointed members of a governing board of an ESC with a total student count of 12,000 or more hold positions that exercise the kind of discretion described in OAC 102-5-01 and 102-5-02. As such, the appointed members of the governing boards of joint ESC's with a total student count of 12,000 or more are required to file annual financial disclosure statements with the Ethics Commission. Because the appointed members of a governing board of a joint ESC with a total

student count of 12,000 or more are compensated for their service on the board, the FDS's they file will be available for public inspection pursuant to R.C. 102.02(A) and (B).

For good cause shown, the Ethics Commission will extend the 1999 FDS filing deadline for appointed joint ESC board members, who served on a joint ESC at any time after January 28, 2000, to ninety days after the date on which the Commission approves this opinion, or August 21, 2000. For each year hereafter, each appointed member of a governing board of an ESC with a total student count of twelve thousand or more is required to file an FDS on or before April 15th. In addition, any individual who is appointed to a governing board of a joint ESC with a total student count of twelve thousand or more after May 23, 2000, must file an FDS with the Ohio Ethics Commission within ninety days of his or her appointment.

Conclusion

As explained above, R.C. 102.02(A) requires that each elected member of the Ross-Pike ESC file an FDS by April 15th of each year that the board member holds a position on the board, and by April 15th of the year after the board member leaves his or her board position. R.C. 102.02(A) further requires each candidate for a position on the board of Ross-Pike ESC to file a financial disclosure statement (FDS) with the Ohio Ethics Commission no later than thirty days prior to the first election at which his or her candidacy is voted on.

In addition, each appointed member of a governing board of a joint ESC with a total student count of twelve thousand or more (including the Ross-Pike ESC) who performs the same duties and has the same responsibilities as his or her elected counterparts, will be required, in accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, to file an annual FDS beginning in calendar year 2000. This statement will reflect the board member's financial interests for the complete preceding calendar year. These joint ESC board members will be requested to file an FDS for calendar year 1999 within 90 days of the date the Commission approves this opinion, or on or before August 21, 2000. Joint ESC board members who are appointed after May 23, 2000, will have filing deadlines that are dependent upon their appointment dates.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 23, 2000. The Ethics Commission will proceed to amend OAC 102-5-02, to include members of governing boards of joint ESC's with total student counts of 12,000 or more as those individuals who are required to file FDS's pursuant to R.C. 102.02(B). Effective May 23, 2000, the Ethics Commission will expect to receive a 1999 FDS from any member of a governing board of a joint ESC with a total student count of 12,000 or more, appointed on or before that date, by August 21, 2000. With this letter, the Commission has enclosed blank 1999 FDS's for the appointed members of the Ross-Pike County Educational Service Center to complete and file with the Commission. To determine the filing deadlines for persons appointed after May 23, 2000, please contact this Office.

Ronda Frueauff, Ed. D.
May 23, 2000
Page 8

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

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy L. Gates". The signature is written in a cursive style with a large initial "T".

Timothy L. Gates
Staff Attorney

Enclosures: Blank 1999 Financial Disclosure Statements (2)