

OHIO ETHICS COMMISSION

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October 27, 2000

Informal Opinion 2000-INF-1027-2

The Honorable John E. Barnes, Jr.
State Representative
Chairman, Ohio Commission on African American Males

Dear Representative Barnes:

In a letter received by the Ohio Ethics Commission on July 24, 2000, you requested that the Ethics Commission review the authority of the Ohio Commission on African American Males and determine whether its members are required to file financial disclosure statements with the Ethics Commission.

Brief Answer

As explained more fully below, in accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, each member of the Commission on African American Males who is not already required to file an FDS and who serves as a member of the Commission as of January 1, 2001, and the Executive Director of the Commission as of that date, will be requested to file an annual FDS, reflecting their financial interests for the complete preceding calendar year, beginning in 2001. The members of the Commission on African American Males will be requested to file a 2000 financial disclosure statement on or before April 16, 2001. Members of the Commission on African American Males who are appointed after April 16, 2001, will be requested to file a financial disclosure statement within 90 days of the date of their appointment. Further, in the future, each person who serves as a member of the Commission on African American Males during a calendar year is requested to file a financial disclosure statement by the appropriate April deadline for the following calendar year.

Financial Disclosure Filing Requirement

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 officer 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 and rules of the state or a county or city, 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 FDS's reflecting their financial interests in the complete preceding calendar year. In making the determination regarding the exercise of administrative discretion by any board or its staff, the Ethics Commission analyzes the statutory and regulatory authority of each board, commission, or, in this case, council.

The Ohio Commission on African American Males

The Commission on African American Males was created pursuant to R.C. 4112.12. The Commission on African American Males is composed of forty-one members, twenty-three of which are appointed by the Governor, and seven of which are the directors or their designees of the Departments of Health, Development, Alcohol and Drug Addiction Services, Job and Family Services, Rehabilitation and Correction, Mental Health, and Youth Services. R.C. 4112.12. The remaining members are the following public officials: Adjutant General or the Adjutant General's designee, Equal Employment Opportunity Officer of the Department of Administrative Services or the Equal Employment Opportunity Officer's designee, Executive Director or the Executive Director's designee of the Ohio Civil Rights Commission, the Director or the Director's designee of the Office of Criminal Justice Services, the Superintendent of Public Instruction, the Chancellor or the Chancellor's designee of the Ohio Board of Regents, two members of the House of Representatives appointed by the speaker of the House of Representatives, and three members of the Senate appointed by the President of the Senate. Id. The members appointed by the governor must include an additional member of the governor's cabinet and at least one representative of each of the following: the national association for the advancement of colored people; the urban league; the black religious community; the black business community; the nonminority business community; organized labor; at least one black medical doctor; one black elected member of a school board; one black educator; and at least two representatives of local private industry councils. Id.

The chief administrative officer of the Commission on African American Males is its Executive Director, who is appointed pursuant to R.C. 4112.12(E):

The commission on African American Males shall appoint an executive director, who shall be in the unclassified civil service. The executive director shall supervise the commission's activities and report to the commission on the progress of those activities. The executive director shall do all things necessary for the efficient and effective implementation of the duties of the commission. The responsibilities assigned to the executive director do not relieve the members of the commission from final responsibility for the proper performance of the requirements of this division.

R.C. 4112.12(D)(4) provides that the Commission on African American Males has the following authority or duties:

- (a) Sole authority to draw funds for any federal program in which the commission is authorized to participate;

- (b) Sole authority to expend funds from accounts for programs and any other necessary expenses the commission on African-American males may incur;
- (c) The duty to cooperate with the Ohio civil rights commission to ensure that the Ohio civil rights commission is fully apprised of all financial transactions.

In a conversation with Ethics Commission staff, Sam Thomas, member of the Commission on African American Males, explained that, in the exercise of the authority set forth in R.C. 4112.12(D)(4), the Commission on African American Males appropriates funds to various public and private entities.

Based upon the powers and duties of the Commission on African American Males as explained above, the Ohio Ethics Commission finds that members of the Commission on African American Males hold positions that exercise the kind of discretion described in OAC 102-5-01 and 102-5-02. As such, the members of the Commission on African American Males, and its executive director appointed pursuant to R.C. 4112.12(E), are required to file annual financial disclosure statements with the Ethics Commission.

Commission Members Serving in Other Public Positions

Based on the statutorily mandated composition of the Commission on African American Males, many of the members of the Commission already hold public positions for which they are required to file FDS's. For instance, the members of the Commission who are also members of the general assembly file annual FDS's with the Joint Legislative Ethics Commission. Also, the members of the Commission who are also directors of state departments file annual financial disclosure statements with the Ohio Ethics Commission.

No person is required to file more than one financial disclosure statement for any given calendar year. R.C. 102.02(A)(10). Any member of the Commission on African American Males who currently files a financial disclosure statement for a calendar year as a result of service in another public position, whether the statement is filed with the Ohio Ethics Commission, the Joint Legislative Ethics Committee, or the Board of Commissioners on Grievances and Discipline, is not required to file another FDS because of service on the Commission on African American Males.

The Ethics Commission requests that the individuals who hold other public positions for which they are already required to file an FDS with the Ohio Ethics Commission indicate all of their filing capacities on each year's filing to clarify their multiple filing capacities. If necessary, the filers are invited to contact the Ethics Commission for assistance in completing the FDS's.

Confidential Financial Disclosure Statements and Filing Fees

Financial disclosure statements filed by members of state commissions who receive no compensation for their service are kept confidential by statutory provision. R.C. 102.02(B). The Ethics Commission is required to examine these confidential filings to determine whether any potential conflict of interest exists for the person who filed the FDS. If the Commission determines that a potential conflict of interest exists, the Commission will make that portion of the statement available for public inspection.

Members of the Commission on African American Males are not compensated for their service on the Commission. See R.C. 4112.12(C). Therefore, the FDS's filed by members of the Commission on African American Males who hold no other public position for which filing is required will be kept confidential. However, the forms filed by members of the Commission on African American Males, for their compensated service in other public positions that they hold, are subject to public inspection. In addition, an FDS filed by the chief administrative officer of the Commission on African American Males is not kept confidential if the chief administrative officer receives compensation for his or her service.

The Commission on African American Males is responsible for paying the FDS filing fees for its chief administrative officer and members of the commission who do not hold other positions for which they are required to file FDS's with the Ethics Commission or Joint Legislative Ethics Committee. See R.C. 102.02(E)(4). For more information regarding the payment of filing fees, please contact the Ethics Commission.

Conclusion

As explained above, in accordance with R.C. 102.02(B) and OAC 102-5-01 and 102-5-02, each member of the Commission on African American Males who is not already required to file an FDS and who serves as a member of the Commission as of January 1, 2001, and the Executive Director of the Commission as of that date, will be requested to file an annual FDS, reflecting their financial interests for the complete preceding calendar year, beginning in 2001. The members of the Commission on African American Males will be requested to file a 2000 financial disclosure statement on or before April 16, 2001. Members of the Commission on African American Males who are appointed after April 16, 2001, will be requested to file a financial disclosure statement within 90 days of the date of their appointment. Further, in the future, each person who serves as a member of the Commission on African American Males during a calendar year is requested to file a financial disclosure statement by the appropriate April deadline for the following calendar year.¹

The Ohio Ethics Commission approved this advisory opinion at its meeting on October 27, 2000. 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 Commission on African American Males. In January 2001, the Ethics Commission will forward blank 2000

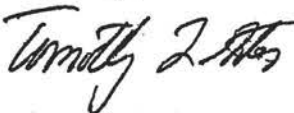
¹ The deadline is April 15th unless April 15th falls on a Saturday or Sunday, in which case the deadline is the first business day after April 15th. In 2001, because April 15th falls on Sunday, the filing deadline is Monday, April 16.

financial disclosure statements for the chief administrative officer of the Commission on African American Males, and the members of the Commission on African American Males who are not already required to file disclosure statements for service in another public position, to complete.

As a final note, the Commission understands that the Commission on African American Males has submitted an additional letter asking questions about the substantive restrictions contained in the Ohio Ethics Law. The Commission will consider those questions at its next meeting.

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 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