

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

May 19, 2003

Informal Opinion 2003-INF-0519

Stephen M. Millett, Ph.D.



Dear Dr. Millett:

The Ohio Ethics Commission received your letter on March 3, 2003. In your letter, you ask whether the Ohio Ethics Law requires you to disclose the amount of income you receive from your employer, Battelle Memorial Institute (Battelle), on your annual financial disclosure statement because Battelle is doing business with the Department of Education (Department) and you are a member of the State Board of Education (Board).

Brief Answer

As explained more fully below, as long as Battelle is doing or seeking to do business with the Department, R.C. 102.02(A)(2)(a) requires you to disclose the total amount of income you receive from Battelle on your annual financial disclosure statement.

Facts

By way of history, you have explained that you were recently appointed to the State Board of Education (Board). R.C. 102.02(A) requires that each member of the Board files an annual financial disclosure statement (FDS). You have explained that you are employed by Battelle and receive an annual salary from Battelle. You have explained that Battelle bids for and receives contracts from the Department. You ask whether the fact that Battelle is doing business with the Department requires you to disclose the amount of income you receive from Battelle.

Disclosure of Income—R.C. 102.02

The financial disclosure law, set forth in R.C. 102.02, requires certain public officials and public employees to file an annual statement disclosing personal financial information. The filer discloses financial information for the complete year preceding the year in which the FDS is filed. For example, an FDS disclosing information for calendar year 2002 is filed in 2003. Among other things, the filer is required to disclose every source of income received during the preceding year.

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R.C. 102.02(A) requires that each member of the State Board of Education file an FDS each year. You have stated that you have filed your 2002 FDS, and disclosed Battelle as a source of income.

The income disclosure requirement in the financial disclosure law was amended in Am. Sub. H.B. 492 (effective May 12, 1994). Prior to 1994, all financial disclosure filers were required to disclose sources of income of over \$500, with no requirement that a filer disclose the amount of income received from any source. The law was amended to lower the threshold for disclosure of income and gift sources for some filers, and to require that the amount of income be disclosed in some situations. The law was amended to eliminate activity described as "pancaking," which occurred when a public official or employee received compensation from multiple sources to appear at a meeting or reception.

As a result of the amendment in Am. Sub. H.B. 492, the law requires a filer to disclose the amount of income received from a source in two situations. R.C. 102.02(A)(2)(a). The first, which is not relevant to your question, is if the source of income is a legislative agent. The second, which is relevant to your question, is set forth below:

A person who files the statement under this section shall disclose the identity of and the amount of income received from a person who the public official or employee knows or has reason to know is doing or seeking to do business of any kind with the public official's or employee's agency.

R.C. 102.02(A)(2)(a).

As stated above, you are a person who files a statement under R.C. 102.02(A), and a "public official or employee." See R.C. 102.01(B) and (C) (a person who is appointed to an office of a board of the state falls within the definition of "public official or employee"). You have stated that Battelle is both doing and seeking to do business with the Department. The question is whether Battelle is "doing or seeking to do business" with the Board for purposes of R.C. 102.02(A)(2)(a).

State Board of Education and Department of Education

The State Board of Education is created in R.C. 3301.01, which provides that the Board will consist of nineteen members, with eleven elected and eight appointed members. Two members of the General Assembly serve as ex officio members of the Board.

R.C. 3301.01 provides that the Board shall exercise general supervision of the system of public education in Ohio. The powers and duties of the Board are set forth generally in R.C. 3301.07, which provides that, among other things, the Board is empowered to:

(1) Exercise policy forming, planning, and evaluative functions for the public schools in Ohio, and for adult education, except as provided by law;

(2) Exercise leadership in the improvement of public education in Ohio, and administer the educational policies relating to public schools, and relating to instruction and instructional material, building and equipment, transportation of pupils, administrative responsibilities of school officials and personnel, and finance and organization of school districts, educational service centers, and territory;

(3) Administer and supervise the allocation and distribution of all state and federal funds for public school education;

(4) Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality;

(5) Prepare and submit annually to the Governor and the General Assembly a report on the status, needs, and major problems of the public schools of the state, with recommendations for necessary legislative action and a ten-year projection of the state's public and nonpublic school enrollment, by year and by grade level;

(6) Prepare and submit to the Director of Budget and Management the biennial budgetary requests of the state board of education, for its agencies and for the public schools of the state;

(7) Cooperate with federal, state, and local agencies concerned with the health and welfare of children and youth of the state; and

(8) In accordance with Chapter 119. of the Revised Code, adopt procedures, standards, and guidelines for the education of handicapped children.

The Department of Education is created in R.C. 3301.13, which provides in pertinent part:

The department of education hereby created, shall be the administrative unit and organization through which the policies, directives, and powers of the state board of education and the duties of the superintendent of public instruction are administered by such superintendent as executive officer of the board.

The department of education shall consist of the state board of education, the superintendent of public instruction, and a staff of such professional, clerical, and other employees as may be necessary to perform the duties and to exercise the required functions of the department.

The department of education shall be organized as provided by law or by order of the state board of education. The superintendent of public instruction shall be the chief administrative officer of such department, and, subject to board policies, rules, and regulations, shall exercise general supervision of the department.

...

The superintendent of public instruction shall recommend, for approval by the board, the organization of the department of education, and the assignment of the work within such department. The appointment, number, and salaries of assistant superintendents and division heads shall be determined by the state board of education after recommendation of the superintendent of public instruction. Such assistant superintendents and division heads shall serve at the pleasure of the board. The superintendent of public instruction may appoint, fix the salary, and terminate the employment of such other employees as are engaged in educational or research duties.

It is clear, therefore, that the Department exists to carry out the authority of the Board. The Department consists of the Board, the Superintendent of Public Instruction (Superintendent), and other employees as necessary. The Department is organized by order of the Board. The Superintendent of Public Instruction is the Chief Administrative Officer of the Department, subject to Board policies, rules, and regulations. The Superintendent is appointed by the Board and serves at the pleasure of the Board. R.C. 3301.08. Assistant superintendents and division heads within the Department are also appointed by the Board, based on the recommendation of the Superintendent, and serve at the pleasure of the Board.

Based on the provisions of the Revised Code, including R.C. 3301.13 and 3301.08, among others, it is clear that the Department and the Board are inextricably linked. Therefore, for purposes of R.C. 102.02(A)(2)(a), if a person is "doing or seeking to do business with" the Department, the person is also doing or seeking to do business with the Board.

As noted above, R.C. 102.02(A)(2)(a) provides:

A person who files the statement under this section shall disclose the identity of and the amount of income received from a person who the public official or employee knows or has reason to know is doing or seeking to do business of any kind with the public official's or employee's agency.

Because you are a member of the Board, you are required to disclose the identity of and amount of income you receive from any person who is doing or seeking to do business with the Board, including the Department. A "person," for purposes of R.C. 102.02, includes individuals, corporations, business trusts, estates, trusts, partnerships, and associations. See R.C. 1.59(C) and Adv. Ops. No. 82-002 and 89-003. Battelle is a "person" for purposes of R.C. 102.02(A)(2)(a).

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The law provides that the filer must disclose "the amount of income received from a person" doing business with the public agency he serves. The law does not limit the disclosure requirement to the amount of income attributable to the business between the source and the public agency. Therefore, you are required to disclose the total amount of income you received from Battelle in the year for which you are filing your FDS.

You have stated that you have disclosed Battelle as a source of income on your 2002 FDS. You have further stated that, if the Commission concludes that the law requires you to disclose the amount of income you received from Battelle, you will provide the additional information. In order to fully comply with the law, you should submit the amount of income you received from Battelle to the Commission in a letter that the Commission will attach to your 2002 FDS. In the future, you should disclose Battelle as a source of income, and the full amount of your income in the year for which you are filing, on each FDS you file with the Commission.

Conclusion

As explained more fully above, R.C. 102.02(A)(2)(a) requires you to disclose the total amount of income you receive from Battelle on your annual FDS.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on May 8, 2003. The Commission commends you for seeking its assistance.

This opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions about the opinion or desire additional information, please contact this office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney