

# OHIO ETHICS COMMISSION

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March 21, 2005

Informal Opinion 2005-INF-0321-2

Bruce R. Madson, Assistant Director  
Ohio Department of Job and Family Services  
Office of Workforce Development

[REDACTED]

Dear Mr. Madson:

The Ohio Ethics Commission received your request for an advisory opinion on November 3, 2004. In your letter, you ask whether a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A), is subject to the Ohio Ethics Law and related statutes.

### **Brief Answer**

As explained below, except for the financial disclosure requirement of R.C. 102.02, a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A) is subject to the Ohio Ethics Law and related statutes.

### **Facts**

Under the Workforce Investment Act of 1998 (Workforce Act), Public Law 105-220, 29 U.S.C. 2801, the U.S. Department of Labor provides federal funds to the states for the purpose of training and employing individuals for local business needs. In Ohio, the General Assembly has appointed the Director of the Ohio Department of Job and Family Services (ODJFS) to receive Workforce Act funds and operate the Workforce Act program. R.C. 6301.02. See also R.C. 6301.04 (establishing a State Workforce Policy Board comprised of members appointed by the Governor).

R.C. Chapter 6301. authorizes and governs the formation of "Local Areas" that are authorized to administer the Workforce Act. See R.C. 6301.01 and 6301.06. A Local Area may be either a consortium of political subdivisions or a single municipality or county. R.C. 6301.01(A). The Chief Elected Officials of the political subdivision or subdivisions that comprise the Local Area are required to enter into a written grant agreement with the ODJFS Director. R.C. 6301.05. The municipal corporations and the board of county commissioners are accountable to ODJFS for the use of the funds provided to their Local Areas through the Workforce Act. R.C. 6301.05. See also R.C. 6301.03 (describing the requirements for the allocation and use of Workforce Investment Act funds).

The Chief Elected Officials of a Local Area are statutorily required to create a Local Workforce Policy Board. R.C. 6301.06(A). The Workforce Policy Board can include individuals whom the Chief Elected Officials deem necessary, but it must be comprised of a specific number of individuals who represent private sector businesses, organized labor, local educational entities, and consumers of workforce development activities. R.C. 6301.06(A). The Chief Elected Officials may provide office space, staff, and administrative support for the Workforce Policy Board. R.C. 6301.06(B). Members of a Workforce Policy Board serve at the pleasure of the Chief Elected Officials and are uncompensated for their service, but may be reimbursed for expenses from funds allocated pursuant to R.C. 6301.03. R.C. 6301.06(B).

With respect to the Ohio Ethics Law and related statutes, R.C. 6301.06(B) provides: "For purposes of section 102.02 of the Revised Code, members of [a Local Area Workforce Policy] board are not public officials or employees." R.C. 102.02 is one of several statutory sections within the Ethics Law. Section 102.02 specifically enumerates which of those public officials and employees subject to the Ethics Law must also file an annual financial disclosure statement.

### **Individuals Subject to R.C. Chapter 102.—Statutory Definitions**

The Ethics Commission is statutorily empowered to administer, interpret, and enforce Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. See R.C. 102.02, 102.06, and 102.08. The statutes under the jurisdiction of the Ethics Commission include Ohio's financial disclosure law (R.C. 102.02), as well as prohibitions against public officials and employees misusing their public position for their own personal benefit or the benefit of their family members or business associates (R.C. 102.03, 102.04, 2921.42, and 2921.43).

R.C. Chapters 102. and 2921. contain statutory definitions that determine the individuals who are subject to the Ohio Ethics Law and related statutes (R. C. Chapter 102., and Sections 2921.42 and 2921.43). The definitions found in R.C. Chapter 102. will be examined first.

R.C. 102.01(B) defines the term "public official or employee" for purposes of Chapter 102. of the Revised Code as "any person who is elected or appointed to an office or is an employee of any public agency." (Emphasis added.) R.C. 102.01(C) defines the term "public agency" and reads in pertinent part:

“Public agency” means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity.

### **Exception to R.C. Chapter 102. Provisions Requiring Financial Disclosure**

As stated above, R.C. 6301.06(B) provides a statutory exception from the provisions of R.C. 102.02, which requires specified public officials and employees to file financial disclosure statements with the Ohio Ethics Commission. R.C. 6301.06(B) reads in pertinent part: “For purposes of section 102.02 of the Revised Code, members of the [Local Workforce Policy] board are not public officials or employees.” A copy of the text of R.C. Section 102.02 is included for your reference.

By enacting this portion of R.C. 6301.06(B), the General Assembly provided a statutory exception for members of a Local Workforce Policy Board from one section of R.C. Chapter 102.—the requirement that public officials and employees file financial disclosure statements with the Ethics Commission. However, the General Assembly limited the exception to R.C. 102.02.

The statutory language of R.C. 6301.06(B) reflects the General Assembly’s intent to confine the exception to R.C. 102.02, rather than include all of the provisions of the Ethics Law and related statutes. See generally State v. Droste, 83 Ohio St.3d 36, 39 (1998) (“[u]nder the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded”). Also, it is well established that words not used in a statute may not be inserted in construing that statute. Dougherty v. Torrence, 2 Ohio St. 3d 69 (1982). In addition, in interpreting a statute, reference is made to the fact that if the legislature intended a particular meaning, it could easily have found apt words or phrases to express that meaning, especially where it has used such words or phrases in another connection. Shafer v. Streicher, 105 Ohio St. 528 (1922); Swetland v. Miles, 101 Ohio St. 501 (1920). In the instant situation, if the General Assembly had intended to exempt members of a Local Area Workforce Policy Board from all provisions of R.C. Chapter 102., then it could have specifically so indicated in R.C. 6301.06(B). See R.C. 167.07 (which specifically exempts “an officer or member of the council” of a regional council of governments from “any section of the Revised Code” that applies to individuals holding “public offices or employment.”)

Therefore, R.C. 6301.06(B) cannot be construed to provide a statutory exception for members of a Local Workforce Policy Board from the remaining sections of R.C. Chapter 102. other than R.C. 102.02. Except for the financial disclosure requirement of R.C. 102.02, a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A) is a public official, subject to all provisions of R.C. Chapter 102., the Ohio Ethics Law.

The Commission notes that Section 117(g) of the Workforce Investment Act provides a conflict of interest restriction for members of the local workforce investment corporation board. Further, Section 8.04(b) of the Code of Regulations for the Central Ohio Workforce Investment Corporation provides: "All Directors (of the Central Ohio Workforce Investment Corporation) must adhere to all of the Ohio Ethics Laws, specifically Ohio Revised Code Chapter 102." (Emphasis added.) This suggests recognition by the boards that they are subject to the Ethics Law.

### **Individuals Subject to R.C. 2921.42 and 2921.43—Statutory Definitions**

The next issue is whether a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A), is a public official subject to the restrictions contained in R.C. 2921.42 and 2921.43. R.C. 2921.42 provides protections to the public related to public contracts. R.C. 2921.43 contains restrictions on receipt of supplemental compensation and coercion of campaign contributions. R.C. 2921.01(A) defines the term "public official" for purposes of R.C. Chapter 2921. as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges and law enforcement officers. (Emphasis added.)

As stated above, a Local Area may be either a consortium of political subdivisions or a single municipality or county. For purpose of interpreting a statute, "the singular includes the plural and the plural includes the singular." R.C. 1.43(A). Therefore, R.C. 2921.01(A) includes individuals who are appointed to the Local Workforce Policy Board by the Chief Elected Officials of the consortium of political subdivisions that comprise the Local Area.

Under Ohio law, a person who holds an "office" is an "officer." Muskingum Co. Democratic Exec. Comm. v. Burrier, 31 Ohio Op. 570, 572 (C.P. Muskingum County 1945). See also Ohio Ethics Commission Advisory Opinion No. 85-005. The Ethics Commission has established five elements that, in combination, will determine whether a person is "appointed to an office." The Commission determines whether the person: (1) is appointed; (2) has a title; (3) exercises a function of government concerning the public; (4) is not subject to a contract of employment; and (5) exercises the "sovereign power" of government. See Adv. Ops. No. 74-007, 75-004, and 77-004. In Advisory Opinion No. 77-004, the Commission held that sovereign power "includes the exercise of a duty entrusted to one by virtue of statute or some other public authority, a duty that is not merely clerical, but that involves discretionary, decision-making qualities." See Adv. Op. No. 75-004. See also State ex rel. Landis v. Butler, 95 Ohio St. 157 (1917).

In Advisory Opinion No. 85-005, the Ethics Commission held that members of a public agency which functions exclusively for advisory purposes and does not exercise the sovereign powers of government are not deemed to be "appointed to an office" or "officers." In that opinion the Ethics Commission held that members of the Technical Advisory Committee to the Coal Development Office do not exercise sovereign power and thus are not appointed to an office of the

state and are not subject to the prohibitions of R.C. Chapter 102. or Section 2921.42, because the statutes establishing the Committee and defining its duties do not confer upon its members the power to exercise final decision-making authority.

As explained above, a determination of whether a public agency exercises "sovereign power" depends on whether the public agency has the power to exercise final, discretionary decision-making authority. The duties of a Local Workforce Policy Board are established in R.C. 6301.07. One duty assigned to a Local Workforce Policy Board is to prepare a workforce development plan that will, among other mandated goals, "[d]etermine the distribution of workforce development resources and funding to be distributed for each workforce development activity to meet the identified needs [in its workforce development plan], utilizing the funds allocated pursuant to the 'Workforce Investment Act of 1998,' 112 Stat. 936, 29 U.S.C.A. 2801, as amended." R.C. 6301.07(A)(3).

Therefore, a Local Workforce Policy Board is a statutorily created public body that is invested with independent power to exercise a duty that involves discretionary, decision-making authority in the disposition of public funds. Accordingly, a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A) is subject to the public contract prohibitions imposed in R.C. 2921.42.

R.C. 2921.01(B) also defines the term "public servant" for purposes of the supplemental compensation restrictions contained in R.C. 2921.43 to include "[a]ny public official." Because a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A) is a public official, he is also subject to the prohibitions related to supplemental compensation and coercion of campaign contributions contained in R.C. 2921.43.

The specific application of the prohibitions imposed by the Ohio Ethics Law and related statutes upon a member of a Local Workforce Policy Board would depend upon the facts and circumstances of the individual situation. Generally, a member of a Local Workforce Policy Board is prohibited, by the Ohio Ethics Law and related statutes, from misusing his public position for his own personal benefit or the benefit of his family members or business associates. If members of a Local Workforce Policy Board were not subject to these provisions, there would be no accountability for them despite the fact that they have discretionary, decision-making authority to determine the distribution of workforce development resources and funding. See R.C. 1.49 (in interpreting a statute, the consequences of a particular construction may be considered) and *City of Mentor v. Giordano*, 9 Ohio St. 2d 140, 144 (1967) (statutes "must be construed in light of the mischief they are designed to combat").

### **Conclusion**

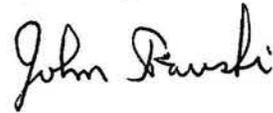
As explained below, except for the financial disclosure requirement of R.C. 102.02, a member of a Local Workforce Policy Board that is created pursuant to R.C. 6301.06(A) is subject to the Ohio Ethics Law and related statutes.

Bruce R. Madson  
March 21, 2005  
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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 18, 2005. The Commission commends ODJFS for requesting guidance on behalf of the Workforce Policy Boards.

The 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 or desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in cursive script that reads "John Rawski".

John Rawski  
Staff Attorney

Enclosures: R.C. 102.02