

OHIO ETHICS COMMISSION

Sarah M. Brown, *Chairman*
Robert Browning, *Vice Chairman*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

March 23, 2006

Informal Opinion 2006-INF-0323

Edwin P. McCausland, CFA
Investment Perspectives LLC

Dear Mr. McCausland:

On December 6, 2005, the Ohio Ethics Commission received your request for an advisory opinion. You state that you are a member of the Worker's Compensation Oversight Commission (Oversight Commission) and are therefore required to file a financial disclosure statement (FDS). You ask whether you are required to disclose, on your FDS, the amount of income that you received from Nationwide Mutual Insurance (Nationwide) in light of the fact that it owns a company, GatesMcDonald, which does business with the Bureau of Worker's Compensation (BWC).

Brief Answer

As explained below, R.C. 102.02(A)(2)(a) does not require you to disclose the amount of income that you received from Nationwide in 2004 on your 2005 FDS. However, you are required to disclose Nationwide as a source of income. Furthermore, please note that you are subject to the restrictions imposed by the conflict of interest and public contract statutes regarding your relationships with companies that are doing business with the BWC, even if the companies are not doing business directly with the Oversight Commission.

Facts

You state that you were appointed to the Oversight Commission on October 1, 2005. When you left your employment with Nationwide in 2003, you and Nationwide entered into a severance agreement that specified the amount that Nationwide would pay to you under the agreement. You received your last payment under the severance agreement in 2004. The severance agreement contained clauses relative to non-disclosure of its terms or the amounts of the payments that you received. You are still receiving a pension and deferred compensation from Nationwide. GatesMcDonald, which does business with BWC, is owned by Nationwide.

Disclosure of Income—R.C. 102.02

The financial disclosure law, set forth in R.C. 102.02, requires some public officials and employees, including each voting member of the Oversight Commission, to disclose personal financial information in an annual FDS filing. R.C. 102.02(A). The financial information to be disclosed is for the calendar year preceding the year in which the FDS is filed or the year in which the individual is appointed to a position requiring an FDS filing. Ohio Ethics Commission Advisory Opinion No. 75-032.

You were appointed to a position requiring an FDS filing on October 1, 2005. You were required to disclose financial information for the calendar year preceding your appointment (2004) no later than December 29, 2005, which is ninety days after your appointment date. Prior to the filing deadline, you sought the Commission's advice on the question set forth above.

One item of financial information that the filer is required to disclose is every source of income received during the preceding year. The requirement to disclose income was amended in Am. Sub. H.B. 492 (effective May 12, 1994). Prior to 1994, all 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. R.C. 102.02(A)(2) 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 two situations. R.C. 102.02(A)(2)(a).

The first situation, which is irrelevant to your question, is if the source of income is a legislative agent. The second situation, which is relevant to your question, is set forth in R.C. 102.02(A)(2)(a) which reads:

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.

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 commission of the state falls within the definition of "public official or employee"). As stated above, you received income from Nationwide in 2004 and are currently receiving a pension and deferred compensation from Nationwide. GatesMcDonald is owned by Nationwide and does business with BWC.

The issue is whether either Nationwide or GatesMcDonald could be considered to be "doing or seeking to do business" with your "agency"—the Oversight Commission—such that you are required to disclose the amount of income you received from Nationwide in the calendar year preceding your appointment to the Oversight Commission. Therefore, it becomes necessary to examine the statutory powers and duties of the Oversight Commission and BWC.

Workers Compensation Oversight Commission

The Oversight Commission is created by R.C. 4121.12, which provides that the Oversight Commission will consist of eleven members, with five members appointed by the governor with the advice and consent of the senate. R.C. 4121.12(A). The governor selects these five members from a list of names provided by the Workers' Compensation Oversight Nominating Committee. R.C. 4121.12(C). Two additional members are known as investment expert members. One investment expert is appointed by the state treasurer and one is jointly appointed by the speaker of the house and the president of the senate. The remaining four members are legislative members. R.C. 4121.12(E).

The powers and duties of the Oversight Commission are set forth generally in R.C. 4121.12(G), which provides that, among other things, the Oversight Commission is empowered to: (1) review progress of BWC in meeting its cost and quality objectives; (2) issue an annual report on the cost and quality objectives of the BWC to the president of the senate, the speaker of the house of representatives, and the governor; (3) review all independent financial audits of the BWC; (4) study BWC issues as requested by the Governor; (5) contract with an independent actuarial firm to assist BWC in making recommendations to the Administrator of Workers' Compensation (Administrator) regarding premium rates; (6) establish objectives, policies, and criteria for the administration of the investment program of BWC including prohibiting an investment that it finds is contrary to its established objectives, policies, and criteria; (7) vote to allow the Administrator to open an investment class and promulgate administrative rules establishing standards for BWC employees to follow when investing in that class; and (8) provide advice and consent on administrative rules and the overall policy submitted by the Administrator.

The Bureau of Workers' Compensation

BWC is created by R.C. 4121.121, which provides that it be administrated by the Administrator of Workers' Compensation (Administrator). The Governor appoints the Administrator and fixes his or her salary. R.C. 4121.121(A). The Administrator is responsible for the management of BWC and the establishment of the overall administrative policy of BWC except for the acts and the exercise of authority and power that is required of and vested in the Oversight Commission. R.C. 4121.121(B)(1). Some of the Administrator's functions include employing, directing, and supervising all BWC employees required in connection with the statutory duties of BWC; reorganizing the work of the sections, departments, and offices of BWC to achieve the most efficient performance of its functions. R.C. 4121.121(B)(2) and (3). The Administrator is required to prepare and submit specified information to the Oversight Commission. R.C. 4121.121(B)(5). The Administrator is required to exercise his investment powers in accordance with the objectives, policies, and criteria established by the Oversight Commission. R.C. 4121.121(B)(7).

Amount of Income—R.C. 102.02(A)(2)(a)

Two separate statutes establish the Oversight Commission and BWC. While the Oversight Commission is connected with and has authority over BWC, the members of the Oversight Commission are neither officers nor employees of BWC. Even though the Oversight Commission is connected with and has a regulatory role over BWC and the BWC Administrator, and the two agencies have overlapping authority, the enabling statutes for the Oversight Commission and BWC reveal two distinct public agencies. Therefore, for purposes of R.C. 102.02(A)(2)(a), a person “doing or seeking to do business with” BWC is neither doing nor seeking to do business with the Oversight Commission.

As explained above, you are required to disclose the identity of and the amount of income you receive from any person who is doing or seeking to do business with the Oversight Commission. 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. Nationwide and GatesMcDonald are “persons” for purposes of R.C. 102.02(A)(2)(a). You are required to disclose Nationwide as a source of income. However, where neither Nationwide nor GatesMcDonald is “doing or seeking to do business” with your “agency”—the Oversight Commission—R.C. 102.02(A)(2)(a) does not require you to disclose the amount of income that you received from Nationwide in 2004.

Application of Other Restrictions

The conclusion in this opinion—that, for purposes of R.C. 102.02(A)(2)(a), a company is not “doing . . . business” with the Oversight Commission by virtue of doing business with BWC—applies only to the filing requirement in R.C. 102.02. As noted above, the Oversight Commission has regulatory authority over BWC. Further, because of the significant links between the Oversight Commission and BWC, and the scope of the Commission’s authority, a member of the Commission is subject to the limits of the conflict of interest and public contract laws regarding his or her outside relationships with companies that are doing business with BWC, even if the companies are not doing business directly with the Oversight Commission.

For example, the conflict of interest law would prohibit a member of the Oversight Commission from soliciting or accepting anything of value from a company doing business with BWC if the company was interested in matters before or regulated by the Commission. R.C. 102.03(E). Such a company could include an investment company affected by BWC investment policies established by the Oversight Commission. R.C. 4121.12(G). The law would also prohibit a member of the Oversight Commission from using his or her position to secure anything of value, for the member or a person with which the member has a close family, economic, or business connection, from BWC or a company doing business with BWC. R.C. 102.03(D). A member of the Oversight Commission would, therefore, be prohibited from securing contracts from BWC or from a BWC contractor for a family member or business association.

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Further, the public contract law would prohibit a member of the Oversight Commission from having an interest in a contract entered into by BWC. R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract that is "entered into by or for the use of the . . . governmental agency . . . with which he is connected." (Emphasis added.) To be "connected" with an agency is to be related to, or associated with, that entity. Adv. Op. No. 87-002.

A member of the Oversight Commission would be "connected" with both the Commission and BWC, and would be prohibited from having an interest in a Commission contract or a BWC contract. (R.C. 102.02(A)(2)(a) does not use the phrase "with which he is connected" and thus requires a narrower statutory interpretation.) R.C. 2921.42(A)(1) would also prohibit a member of the Oversight Commission from authorizing or using his or her position to secure a public contract, which would include a BWC contract, if the Commissioner, a family member, or a business associate would have an interest in the contract.

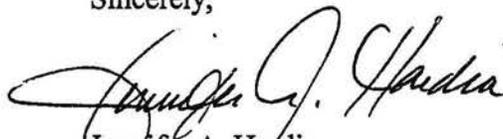
Conclusion

As explained above, R.C. 102.02(A)(2)(a) does not require you to disclose the amount of income that you received from Nationwide in 2004 on your 2005 FDS. However, you are required to disclose Nationwide as a source of income. Furthermore, please note that you are subject to the restrictions imposed by the conflict of interest and public contract statutes regarding your relationships with companies that are doing business with the BWC, even if the companies are not doing business directly with the Oversight Commission.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on March 17, 2006. The Commission commends you for requesting guidance before taking any actions that could be prohibited by law.

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,



Jennifer A. Hardin
Chief Advisory Attorney