

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

April 24, 2006

Informal Opinion 2006-INF-0424-2

Paul Schrader, Area Manager
Corporation for National & Community Service
Ohio State Office
[REDACTED]

Nicola Goren
Associate General Counsel
Corporation for National & Community Service
[REDACTED]

Dear Mr. Schrader and Ms. Goren:

In two letters, you have asked whether Mr. Schrader is required to file a financial disclosure statement with the Ohio Ethics Commission.

By way of history, you have explained that Mr. Schrader is a full-time employee of the Corporation for National & Community Service (Corporation), a federal agency. The Corporation grants funds to the Ohio Community Service Council and, through the Council, to community service programs in Ohio.

The Corporation's authorizing statute requires the establishment of state commissions on community service and specifies the composition and membership of the state commission. 42 U.S.C. § 12638(c). You have explained that the US Code provision requires that a designated Corporation representative will serve on the state commission as an *ex officio* nonvoting member. 42 U.S.C. § 12638(c)(3). The Corporation's policy is that it will not allow any employee to serve as other than an *ex officio* nonvoting member of a state commission.

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In Ohio, the General Assembly has created the Ohio Community Service Council (Council) under 42 U.S.C. § 12638(c). Mr. Schrader serves on the Council as an ex officio nonvoting member on behalf of the Corporation and does not take part in any financial decisions or activities of the Council. As a federal employee, Mr. Schrader is required to file an annual Financial Disclosure Report (Office of Government Ethics Form 450).

In 2004, under its authority described in R.C. 102.02(B), the Ohio Ethics Commission determined that members of the Council are required to file annual financial disclosure statements. R.C. 102.02(B) provides:

The Ohio ethics commission . . . may require any class of public officials or employees under its jurisdiction and not specifically excluded by this section whose positions 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, to file an annual statement.

The Commission determined that members of the Council exercise the kind of authority described in R.C. 102.02(B). The members of more than 150 other state boards and commissions are also required to file disclosure statements in Ohio.

The class of public officials to whom the Commission's decision under R.C. 102.02(B) applies is the twenty-one individuals who were members of the Council as established in R.C. 121.40. Six of the members are the directors of six state agencies, or their designees. Two of the Council members are the Chairpersons of the Committees of the Senate and House dealing with education. The Governor, with the advice and consent of the Senate, appoints the other thirteen Council members.

The position that Mr. Schrader holds on the Council is not one of the twenty-one positions described in R.C. 121.40. Mr. Schrader is not appointed to the Council by the Governor, and does not serve on the Council because of other provisions of R.C. 121.40. Further, Mr. Schrader does not exercise the authority of the other board members. Rather, he serves on the Council as an *ex officio* nonvoting representative of the Corporation.

The term "*ex officio*" is not statutorily defined for purposes of the Ohio Ethics Law. The Ethics Commission, in interpreting statutes that contain words that are not statutorily defined, has consistently followed the rule of statutory construction that words used in a statute must be construed according to rules of grammar and common usage. R.C. 1.42, Ohio Ethics Commission Advisory Opinion No. 96-003. The Commission has also held that, in the same manner as a court, its interpretation of a statute must give effect to the intent of the legislature in enacting the statute. R.C. 1.47 and 1.49; Adv. Op. No. 96-003. Black's Law Dictionary defines

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“*ex officio*” as “[f]rom office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office.”

In the case of Mr. Schrader, he serves on the Council solely because he is an employee of the Corporation and acts as its representative on the Council as required by federal law. For these reasons, his position on the Council and his authority as a Council member differs significantly from the other Council members, who are appointed by the Governor, with the advice and consent of the senate, based upon their knowledge and experience in fields related to the Council’s jurisdiction.

Based on the method by which the Corporation’s representative becomes a member of the Council and the authority of the representative’s position, as it is currently described, this opinion concludes that the position does not meet the criteria established by R.C. 102.02(B). Therefore, Mr. Schrader, or any other Corporation representative who serves as an *ex officio* nonvoting member of the Council in the future, is not required to file a financial disclosure statement with the Ohio Ethics Commission.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on April 21, 2006. 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

cc: Donna Skaggs, Financial Disclosure Analyst