

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

April 24, 2006

Informal Opinion 2006-INF-0424-3

Frances I. Dettwiller
[REDACTED]

Dear Ms. Dettwiller:

On April 10, 2006, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you asked whether you are required to file a financial disclosure statement for 2005. Even though you were elected to a city council position in November 2005 and were sworn in to office in January, the other council members voted to unseat you at the first council meeting in January 2006.

Brief Answer

As explained more fully below, because you were not seated to a position on council, did not exercise the authority of that position, and did not receive any compensation for service in the position, you never held the position and are not required to file a financial disclosure statement for 2005.

Facts

You have explained, in your letter and a telephone conversation with Commission staff, that you were elected to the position of city council member for the City of Greenfield. You filed a financial disclosure statement in April 2005, when you were a candidate for the City position.

After you were sworn in to office, the other council members voted 4 to 3 not to allow you to be seated in the position. Following that action, you sued the city and the council asking that you be allowed to take the seat to which you were elected and sworn in. Thereafter, you were also appointed to the council position by the Democratic Party in the city, if it were to be determined that the position was vacant following council's action to unseat you.

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Newspaper clippings attached to your letter represent that you were not given the opportunity to participate at any of the council meetings you attended. Reportedly, the council president directed that your name would not be read when council roll was called. You have stated that you received no compensation for service in the council position.

On April 5, 2006, you entered into a settlement agreement with the city of Greenfield and the Greenfield city council. As a part of that settlement, you agreed that you would decline to be seated as an at-large member of the Greenfield city council. The council has agreed to appoint, seat, and recognize any person, other than you, appointed by the Democratic Party to the at-large seat.

Financial Disclosure Law—R.C. 102.02(A)

R.C. 102.02(A) provides, in pertinent part:

Except as otherwise provided in division (H) of this section, all of the following shall file with the appropriate ethics commission the disclosure statement described in this division on a form prescribed by the appropriate commission: every person who is elected to or is a candidate for a state, county, or city office

A person who holds elective office shall file the statement on or before the fifteenth day of April of each year unless the person is a candidate for office. (Emphasis added.)

Because you were elected to a seat on city council, the requirement in R.C. 102.02(A) would apply to you if you held the office.

However, even though you were elected and sworn in to the council seat, and were later appointed to the seat, you were unable to perform the duties of that position because of the council's action. You were never compensated for service in that position. The only matter on which you voted was the decision to unseat you, which you voted against along with two other council members.

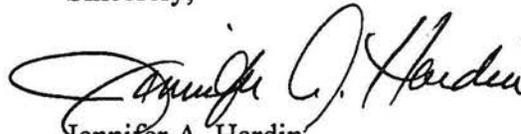
R.C. 1.47 provides that, when a statute is enacted, it is presumed that a just and reasonable result is intended. In most cases, where a person is elected to a city office, he or she will then hold the office. By requiring individuals elected to a city office to file a financial disclosure statement, the General Assembly intended that individuals holding city offices would file disclosure statements. Because of the actions of council, you never held the position to which you were elected.

Therefore, the Commission concludes that you are not required to file a financial disclosure statement for calendar year 2005.

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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,

A handwritten signature in black ink, appearing to read "Jennifer A. Hardin". The signature is fluid and cursive, with a large initial "J" and "H".

Jennifer A. Hardin
Chief Advisory Attorney

cc: Sue McVey, Financial Disclosure Coordinator