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David E. Freel,
Executive Director



OHIO ETHICS COMMISSION
8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368

www.ethics.ohio.gov

July 16, 2009

Informal Opinion 2009-INF-0716

G. Michael Payton, Executive Director
Ohio Civil Rights Commission

Dear Mr. Payton:

On January 13, 2009, the Ohio Ethics Commission received your letter requesting an advisory opinion on behalf of Commissioner Eddie Harrell, Jr. (the Commissioner). You have asked whether, on his annual financial disclosure statement, the Commissioner is required to disclose sources of gifts or travel expenses in connection with items provided to him in his private employment. You have also asked whether the Commissioner is required to disclose sources of contributions or services to the organization he serves in his private employment.

The Commission has extended the deadline for Mr. Harrell to file his 2008 financial disclosure statement until August 17, 2009.

Brief Answer

As explained more fully below, the Commissioner is required to disclose sources and amounts of expenses for travel, and sources of more than \$100 in meals, incurred in connection with his "official duties." However, the Commissioner is **not** required to disclose any source of expenses for travel or meals solely related to his private employment.

The Commissioner is required to disclose any source of a gift valued at over \$75, including a ticket to a charitable event, provided directly to him or to any other person for his use or benefit, regardless of the reason for the gift. The Commissioner is not required to disclose sources of contributions or services provided directly to the private organization for its use.

Facts

You have explained that the Commissioner was appointed to the Ohio Civil Rights Commission (OCRC) in July 2008. The mission of the OCRC is to enforce the Ohio Civil Rights Act and to provide comprehensive statewide education and outreach on matters within its authority. OCRC members are paid the salary established in R.C. 124.15(J) for their state service. R.C. 4112.03.

Since April 2006, the Commissioner has served as the President and Chief Executive Officer of the Columbus Urban League. You have explained that the Columbus Urban League is a community service organization whose mission is to provide economic and social empowerment and growth to minority communities. The Columbus Urban League provides activities and programs to empower African American males, enhance career services assistance, improve child development through a Head Start program, expand housing services by eliminating social and legal barriers to fair housing, and strengthen, preserve, and restore families and individuals through education and prevention services. The Columbus Urban League is a member of the National Urban League.

You have explained that the Columbus Urban League receives charitable contributions and in kind services from business and community organizations. In his role as President and CEO of the Columbus Urban League, the Commissioner is routinely invited to participate in in-state and out-of-state community activities in partnership with business and community organizations. You have explained that these organizations sometimes provide travel expenses, meals, tickets to events, and other items to the Commissioner in connection with these activities.

You have asked two questions about the Commissioner's financial disclosure obligations. First, you asked whether the Commissioner is required to disclose sources of travel, meals, and other items provided to him, by business and community organizations, in connection with his role as President and CEO of the Columbus Urban League. Second, you have asked whether the Commissioner must disclose charitable contributions or services provided, by business and community organizations, directly to the Columbus Urban League.

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

Under the authority established in R.C. 102.02(B), the Ohio Ethics Commission has required the members of the OCRC to file annual financial disclosure statements. OAC Rule No. 102-5-05. Because they are compensated for their service, statements filed by members of the OCRC are public records.

Members of OCRC are required to disclose personal financial information, including sources of income, investments, creditors, debtors, real estate interests, gifts, and travel and meal expenses. Your questions concern three of these disclosure requirements: (1) travel expenses; (2) meal expenses; and (3) gifts. Because travel and meal disclosures are similar requirements, the opinion will discuss these matters together, and then discuss gifts.

Travel Expenses and Meals—R.C. 102.02(A)(8) and (9)

A public official who is required to file a financial disclosure statement must identify:

- (8) [T]he source and amount of every payment of expenses incurred for travel to destinations inside or outside this state that is received by the person in the person's own name or by any other person for the person's use or benefit and *that is incurred in connection with the person's official duties*;
- (9) [T]he source of payment of expenses for meals and other food and beverages . . . *that are incurred in connection with the person's official duties* and that exceed one hundred dollars aggregated per calendar year.¹

(Emphasis added.)

R.C. 102.02(A)(8) requires that the Commissioner disclose sources and amounts of expenses for his travel *in connection with* his official duties as a member of the OCRC. Ohio Ethics Commission Advisory Opinion No. 2004-01. Similar language is used in R.C. 102.02(A)(9), regarding disclosure of sources of over \$100 of meals, food, and beverages provided or reimbursed to the filer. The Commissioner is required to disclose any source of meals provided to him or paid for in his behalf in connection with his official duties as a member of the OCRC, if the value of the meals provided by the source exceeds \$100.

R.C. 102.02(A)(8) does not require that the Commissioner disclose sources or amounts of expenses for his travel in connection with his private employment duties as the President and CEO of the Columbus Urban League. Further, he is not required to disclose sources of meals or other food or beverages provided to him in connection with his private employment duties as the President and CEO of the Columbus Urban League.

Therefore, where business and charitable organizations are providing travel expenses or meals to the Commissioner because of his service to the Columbus Urban League, the Commissioner is not required to disclose the sources or amounts. If, while traveling on behalf of the Columbus Urban League, the Commissioner is also performing some act or service on behalf of the OCRC or exercising the scope of his authority as an OCRC Commissioner, he is required to disclose the source and amount of the travel expenses, or the source of any meals, food, or beverages that exceed \$100 in value.

¹ The filer is not required to disclose sources or amounts of expenses for travel to, or meals, food, or beverages provided to the filer at, meetings or conventions of a national or state organization to which any state agency pays membership dues. The filer is also not required to disclose sources of meals, food, or beverages provided to the filer at a meeting where the filer participated in a panel, seminar, or speaking engagement.

The other disclosure requirement you have asked about is gifts. Specifically, you asked whether the Commissioner is required to disclose the source of gifts, including tickets to charitable events, provided to him in his capacity as the President and CEO of the Columbus Urban League.

Gifts—R.C. 102.02(A)(7)

R.C. 102.02(A)(7) provides that a public official who is required to file a financial disclosure statement must include:

[T]he source of each gift of over seventy-five dollars, or of each gift of over twenty-five dollars received by a member of the general assembly from a legislative agent, received by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year.

The filer is not required to disclose most family members as sources of gifts. R.C. 102.02(A)(7).

A "gift" is "a voluntary transfer of property by one to another without any consideration or compensation therefor." Adv. Op. No. 96-003. Where a public official receives a ticket for a cultural, educational, civic, or other function, without paying the value of the ticket, he or she has received a "gift." Regardless of the purpose of the gift, the official is required to disclose the source of the gift on his or her financial disclosure statement. Adv. Op. No. 96-003.

Therefore, if any business or community organization has provided tickets to the Commissioner valued at over \$75, the Commissioner is required to disclose the organization on his financial disclosure statement as the source of a gift. In Advisory Opinion No. 2009-03, the Ethics Commission explained how a public official should determine the value of a ticket to a charitable function for purposes of disclosure. A copy of that opinion will be provided for the Commissioner's use.

It should be noted that a person may be required to disclose the source of a gift on his financial disclosure statement even if the gift is not improper or prohibited. In this situation, although the Commissioner is required to disclose business or community organizations as sources of gifts if they provide the Commissioner with event tickets valued at over \$75, or with meals, food, or beverages valued at over \$100, the organizations are not necessarily prohibited sources of gifts.

Gift or Donation to the Columbus Urban League

You have also asked whether the Commissioner is required to disclose business or community organizations that give contributions or services directly to the Columbus Urban League as sources of gifts. R.C. 102.02(A)(7) requires that a filer disclose the source of any gift, valued at over \$75, received by the filer or "by any other person for the [filer's] use or benefit."

Provided that an organization makes a donation to the Columbus Urban League, for the use of the Urban League, and the donation is not earmarked or designated for the use or benefit of the Commissioner, the gift has not been received by the Commissioner or by the Urban League for the use or benefit of the Commissioner. The Commissioner is not required to disclose an organization that has made a contribution to the Columbus Urban League as the source of a gift unless the donation is earmarked or designated for the Commissioner's use or benefit.

For example, if a business organization donates a car to the Columbus Urban League, the Commissioner is not required to disclose the organization as the source of a gift to him, even if he occasionally uses the car while engaged in the performance of his job duties for the Urban League. However, if the organization designates that the car is being donated for the use of the President and CEO, the Urban League would be receiving a gift *for the use or benefit* of the Commissioner. In that case, the Commissioner would be required to disclose the organization as the source of a gift on his financial disclosure statement. It should be noted that, because the Urban League is his employer and will already be disclosed as a source of income on his financial disclosure statement, the Commissioner need not disclose the Urban League as the source of a gift if an item is purchased by the Urban League for the use or benefit of the President and CEO.

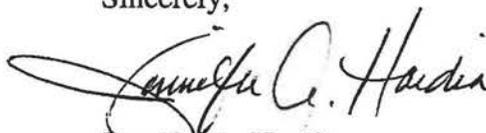
Conclusion

As explained more fully above, the Commissioner is required to disclose sources and amounts of expenses for travel, and sources of more than \$100 in meals, incurred in connection with his "official duties." However, the Commissioner is **not** required to disclose any source of expenses for travel or meals solely related to his private employment.

The Commissioner is required to disclose any source of a gift valued at over \$75, including a ticket to a charitable event, provided directly to him or to any other person for his use or benefit, regardless of the reason for the gift. The Commissioner is not required to disclose sources of contributions or services provided directly to the private organization for its use.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on July 14, 2009. 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