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INFORMATION SHEET: ADVISORY OPINION NO. 2010-02
FINANCIAL DISCLOSURE REQUIREMENT FOR CHARTER COMMISSIONS

What is the question addressed in the opinion?

Are elected members of, or candidates for election to, city or county charter commissions required to file financial disclosure statements?

What is the answer in the opinion?

Members of city and county charter commissions do serve in public offices, and are subject to the Ethics Law and related statutes. However, a specific exception to the financial disclosure law provides that the filing requirement does not apply to any member of a city or county commission who receives less than one thousand dollars per year for serving in that position.

County charter commission members are uncompensated by statute. Therefore, candidates for and members of county charter commissions are not required to file disclosure statements. If city charter commission members receive less than one thousand dollars per year for their service, candidates for and members of city charter commissions are not required to file disclosure statements.

What prompted this opinion?

The number of recently convened charter commissions in various jurisdictions prompted the Commission to consider this question.

When will the conclusions of the opinion become effective?

The opinion became effective upon approval by the Commission.

For More Information, Please Contact:

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2010-02 IS ATTACHED.**

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Advisory Opinion
Number 2010-02
May 25, 2010

Syllabus by the Commission:

- (1) Division (A) of Section 102.02 of the Ohio Revised Code requires that “every person who is elected to or is a candidate for a state, county, or city office” is required to file an annual financial disclosure statement with the Ohio Ethics Commission;
- (2) Because a member of a county or city charter commission serves in an office, any person who is a candidate for or elected to a position on a charter commission would be required to file an annual financial disclosure statement with the Ohio Ethics Commission, unless there is an exception to the contrary;
- (3) R.C. 102.02(H) provides that the financial disclosure filing requirement in R.C. 102.02(A) does not apply to any member of a board, commission, or bureau of any county or city who receives less than one thousand dollars per year for serving in that position;
- (4) Because of the exception in R.C. 102.02(H), a person who is a candidate for or elected to the position of city or county charter commission is not required to file a financial disclosure statement with the Ohio Ethics Commission provided that the member receive less than one thousand dollars per year for serving in that position.

* * *

The Ohio Ethics Commission has been asked whether an elected member of or candidate seeking to serve on a municipal and county charter commission is required to file a financial disclosure statement pursuant to R.C. 102.02(A).

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

R.C. 102.02(A) reads 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 and every person who is appointed to fill a vacancy for an unexpired term in such an elective office. (Emphasis added.)¹

The issue is whether an elected member of a city or county charter commission holds a city or county “office.”²

Section 10 of Article X and Section 8 of Article XVIII of the Ohio Constitution empower counties and cities, respectively, to adopt and amend charters for their government and establishes procedures for the creation of charter commissions. Generally, when considering a charter form of government, the county or city legislative authority provides by ordinance or resolution, that the question of creating a charter commission be submitted to the electorate of the county or city. The ballot containing the question is non-partisan and asks whether a charter commission is to be created and provides for the election of fifteen members from the county or city at large to serve on the commission. The commission members are elected only upon an affirmative vote by a majority of the electors to create a charter commission.

The Court and the Ohio Attorney General have both examined city and county charter commissions. In *State ex rel. Bricker v. Gessner*, the Ohio Supreme Court held that a member of a county charter commission occupies “a public office of trust”:

[A county charter commission member] is chosen by vote of the people. He exercises independent prerogatives and is not amenable to superior authority. His tenure is reasonably definite in that his duties must be fully accomplished within ten months after election. His participation in framing or amending a charter is in the performance of sovereign powers. The nature of his work possesses legislative qualities. His acts are in the public service. While he is not required to take an oath of office, gives no bond, and receives no compensation, these are lesser indicia of public office and lose significance when compared with the other more important criteria that have been noted.

State ex rel. Bricker v. Gessner (1935), 129 Ohio St. 290, 295. Following the Court’s decision in *Gessner*, the Ohio Attorney General opined that a member of a *municipal* charter

¹ R.C. 102.02(A) does not require persons who are elected to or are a candidate for a village office to file a financial disclosure statement. While villages, as well as cities, can create charter commissions, it is unnecessary to address whether members of village charter commissions must file.

² Appointed members of county or city charter commissions would not be subject to the financial disclosure filing requirement.

commission also occupies a “public office of trust.” 1971 Ohio Atty.Gen.Ops. No. 71-017. Because charter commission members occupy a public office, they are public officials.

Therefore, for purposes of R.C. 102.02(A), the Commission concludes that a person serving on a city or county charter commission is elected to a city or county office. For purposes of R.C. 102.02(A), a person who is a candidate for a position on a city or county charter commission is a candidate for a city or county office. R.C. 102.02(A) requires that any person elected to or a candidate for a city or county office is required to file a financial disclosure statement, “[e]xcept as otherwise provided in” R.C. 102.02(H).

Financial Disclosure Filing Exception—R.C. 102.02(H)

R.C. 102.02(H) exempts some of the public offices that are specified in Division (A) from the financial disclosure filing requirement. R.C. 102.02(H) reads, in pertinent part:

Division (A) of this section does not apply to . . . any member of a board, commission, or bureau of any county or city who receives less than one thousand dollars per year for serving in that position. (Emphasis added).

A person who is elected to a city or county charter commission is a person who is elected to, or candidate for, a city or county office for purposes of R.C. 102.02(A). However, the exception set forth in R.C. 102.02(H) applies to a person serving on a county or city commission who receives less than one thousand dollars per year for serving in that position. The only city or county officials who are required to file disclosure statements by R.C. 102.02(A) are elected officials or candidates for elected office. For that reason, in order for the exception to have any meaning, it must apply to individuals who are elected to serve on city or county boards, commissions, or bureaus.

Therefore, the Commission concludes the statutory exception in R.C. 102.02(H) applies to a person who is elected to, or a candidate for, a position on a city or charter commission. A person who is a member of and candidate for a city or county charter commission is not required to file annual financial disclosure statements if the members of the city or county charter commission receive less than one thousand dollars each year for serving in that position.

County Charter Commissions

R.C. 307.70 provides that in any county that elects a county charter commission, the board of county commissioners shall appropriate money for the commission’s expenses but shall not appropriate money to compensate its members. Therefore, because no money can be appropriated for salaries of charter commission members, a person serving as a member of, and a candidate seeking to serve on, a county charter commission would meet the

exception of Division (H). R.C. 102.02(A) would not require members of and candidates for county charter commissions to file financial disclosure statements.

City Charter Commissions

It appears that there is no statute similar to R.C. 307.70 for a city that elects a charter commission. Whether a city legislative authority could legally compensate members of its charter commission is not an issue to be determined by the Ethics Commission and must be decided by the legal authority for the city.

If the city charter or legislative authority provides that charter commission members will serve without compensation or will receive less than one thousand dollars a year in compensation, a person serving as a member of, and a candidate seeking to serve on, a city charter commission would meet the exception of Division (H). R.C. 102.02(A) would not require these officials to file financial disclosure statements.

If the city charter or legislative authority provides that members will be compensated and appropriates more than one thousand dollars a year for their compensation, a person serving as a member of, and a candidate seeking to serve on, a city charter commission would not meet the exception of Division (H). R.C. 102.02(A) would require these officials to file financial disclosure statements.

Conclusion

This advisory opinion 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.

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: Division (A) of Section 102.02 of the Ohio Revised Code requires that “every person who is elected to or is a candidate for a state, county, or city office” is required to file an annual financial disclosure statement with the Ohio Ethics Commission. Because a member of a county or city charter commission serves in an office, any person who is a candidate for or elected to a position on on a charter commission would be required to file an annual financial disclosure statement with the Ohio Ethics Commission, unless there is an exception to the contrary. However, R.C. 102.02(H) provides that the financial disclosure filing requirement in R.C. 102.02(A) does not apply to any member of a board, commission, or bureau of any county or city who receives less than one thousand dollars per year for serving in that position. Therefore, because of the exception in R.C. 102.02(H), a person who is a candidate for or elected to the position of city or county charter commission is not required to file a financial disclosure statement with the Ohio Ethics Commission provided that the member receive less than one thousand dollars per year for serving in that position.

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By my signature below, I certify that Advisory Opinion No. 2010-02 was rendered by the Ohio Ethics Commission at its meeting on May 25, 2010.

A handwritten signature in black ink, appearing to read "Ben Rose", written in a cursive style.

Ben Rose, Chair
Ohio Ethics Commission