



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

Advisory Opinion Number 92-001
January 31, 1992

Syllabus by the Commission:

- (1) A member of the Ohio Grape Industries Committee who is not otherwise a public officer or employee, is neither "appointed to an office or . . . an employee of any public agency" for purposes of Chapter 102. of the Revised Code nor an "officer or employee . . . of the state" for purposes of Division (A) of Section 2921.01 of the Revised Code;
- (2) A person is an "agent of the state," and thus, a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, when: (a) the person has the power to act on behalf of and bind the state by his actions; (b) the state has the right to control the actions of the person; and (c) the actions of the person are directed toward the attainment of an objective sought by the state;
- (3) A member of the Ohio Grape Industries Committee is an "agent of the state" as that phrase is used in Division (A) of Section 2921.01 of the Revised Code to define the term "public official" and thus is subject to the statutory prohibitions imposed by Sections 2921.42 and 2921.43 of the Revised Code;
- (4) Section 102.02 of the Revised Code does not require a member of the Ohio Grape Industries Committee to file a financial disclosure statement with the Ohio Ethics Commission due to his service on the Committee;
- (5) The executive director of the Ohio Grape Industries Committee is an employee of the state and is, therefore, subject to the prohibitions imposed by Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code; however, Section 102.02 of the Revised Code does not require the executive director to file a financial disclosure statement with the Ohio Ethics Commission unless he is paid in accordance with Schedule "C" of Section 124.15 of the Revised Code.

* * * * *

You have asked whether the members of the Ohio Grape Industries Committee (Committee) and the Committee's executive director are subject to the prohibitions imposed by the Ohio Ethics Law and related statutes. You have also asked whether Committee members and the Committee's executive director are required to file financial disclosure statements with the Ethics Commission.

The Ethics Commission is empowered to administer, interpret, and help enforce Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. See R.C. 102.02, 102.06, and 102.08. These provisions include Ohio's financial disclosure law, as well as prohibitions against public officials and employees misusing their official position for their own personal benefit or the benefit of their family members or business associates or where there is otherwise a conflict of interest. In order to determine whether members of the Committee are subject to these statutes, it is necessary to first examine the Committee's statutorily prescribed powers and duties.

The Ohio Grape Industries Committee is a statutorily created entity within state government. See R.C. 924.51. The Committee is comprised of eight members. See 924.51 (A). The Chief of the Department of Agriculture's Division of Markets, the viticulture extension specialist of the Ohio Agriculture Research and Development Center, and the Director of Agriculture (Director) or his designee are statutorily required to be members of the Committee. Id. The Director, or his designee, serves as chairman of the Committee. Id. Five other members are appointed by the Director and serve three-year terms. Id. Three of the members who are appointed by the Director must receive the major portion of their income from the production of wine and grape products. See R.C. 924.51 (B). The Director may remove any appointed member for cause. Id. The Committee members receive no compensation; however, they are reimbursed for actual and necessary expenses incurred in the conduct of their duties as Committee members. See R.C. 924.51 (D) and 924.54 (A).

The Committee is statutorily required to maintain, expand, and create markets for grapes and grape products by promoting their sale and informing the public of their uses and benefits. See R.C. 924.52 (B). The Committee is self-supporting and is funded exclusively by monies derived from taxes levied on the sale and distribution of wines which are deposited in the Ohio Grape Industries Fund. See R.C. 924.54 (A). See also R.C. 4301.43 and 4301.432. The Director is required to monitor the Committee's conduct to ensure that the Committee is self-supporting. See R.C. 924.53 (2). The Committee is required to submit an activity and financial report to the Director annually. See R.C. 924.54 (B).

The Committee may conduct, and contract with others to conduct, research concerning the marketing, distribution, storage, refrigeration, processing, transportation, and production and product development of grapes and grape products. See R.C. 924.52 (A)(1). The Committee is required to expend no less than thirty and no more than seventy per cent of the monies it receives from the Ohio Grape Industries Fund for this research. Id. The Committee may make, or contract for, market surveys and analyses that it determines are appropriate in order to maintain and expand present markets or create new markets for grapes and grape products, and make, in the name of the Committee, contracts to render service in formulating and conducting plans and programs and such other contracts or agreements as the Committee considers necessary for the promotion and sale of grapes and grape products. See R.C. 924.52 (A)(3). The Committee is statutorily required to expend no less than thirty per cent and no more seventy per cent of the monies it receives from the Ohio Grape Industries Fund for these marketing and promotional activities. Id. The Committee may also provide information concerning the handling and selling of grapes to the wholesale and retail trades, publish and distribute information relating to the grape industry to producers and others, and propose to the Director the adoption, rescission, or amendment of administrative rules necessary to exercise its powers and duties. See R.C. 924.52

(A)(2), (4), and (5). The Committee is also empowered to perform all acts and exercise powers considered reasonably necessary, proper, or advisable, to accomplish its statutory duties. See R.C. 924.52 (B)(2). The Committee has, pursuant to the authority granted by R.C. 924.52 (B)(2), employed an executive director. See Ohio Op. Att'y Gen. No. 85-025.

The issue of whether the Committee members are subject to the prohibitions imposed by the Ohio Ethics Law and related statutes will be addressed first.

As stated above, the Ethics Commission's jurisdiction is limited to Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. See R.C. 102.02, 102.06, and 102.08. These statutes contain definitions which determine whether an individual is subject to the prohibitions imposed by the Ethics Law and related statutes. See R.C. 102.01 (B) and (C), and 2921.01 (A), described below.

R.C. 102.01 (B) defines the term "public official or employee" for purposes of Chapter 102. of the Revised Code as "any person who is elected or appointed to an office or is an employee of any public agency." (Emphasis added.) R.C. 102.01 (C) defines the term "public agency" as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a court, city, village, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include a department, division, institution, board, commission, authority, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated. (Emphasis added.)

Since the Committee is an instrumentality established within state government it is a "public agency" under the statutory definition provided by R.C. 102.01 (C). See Ohio Op. Att'y Gen. No. 85-025 (the Committee is an agency of the state for purposes of R.C. Chapter 124). The exclusion provided by R.C. 102.01 (C) need not be addressed since the Committee expends more than ten thousand dollars per calendar year.

R.C. 2921.42 applies to any "public official" and R.C. 2921.43 applies to any "public servant" which, pursuant to R.C. 2921.01 (B), includes any public official, as well as any person performing ad hoc a governmental function, such as an advisor or consultant. R.C. 2921.01 (A) defines the term "public official" for purposes of R.C. Chapter 2921. as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges and law enforcement officers. (Emphasis added.)

Again, the Committee is an entity established within state government. See Ohio Op. Att'y Gen. No. 85-025.

As stated above, the members of the Committee who serve pursuant to the provisions of R.C. 924.51 include: (1) the chief of the Department of Agriculture's Division of Markets; (2) the viticulture extension specialist of the Ohio Agriculture Research Center of the Ohio State University; and, (3) the Director of Agriculture, or his designee. These Committee members are public officers or employees by virtue of their positions with the Department of Agriculture and the Ohio State University and are, therefore, generally subject to the provisions of Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code. Also, a designee named by the Director to serve in his place on the Committee would be a state official or employee. See R.C. 121.05 (the Director may designate an assistant director or a deputy director to serve in his place on a committee of which the Director is, by law, a member). The Chief of the Division of Markets and the Director of Agriculture are statutorily created offices within the Department of Agriculture. See R.C. 121.04 and 121.03 (D), respectively. See also Ohio Ethics Commission Advisory Opinion No. 75-023. The Ohio Agricultural Research and Development Center is part of the Ohio State University and is under the control, management, and supervision of the Board of Trustees of the Ohio State University. See R.C. 3335.56. See also Advisory Opinion No. 83-003 (employees of a state university are "public officials" for purposes of R.C. 2921.42). Therefore, the three statutory members of the Committee fall within the statutory definition of "public official" set forth in R.C. 2921.01 and "public official or employee" set forth in R.C. 102.01 (B) and (C) due to their service or employment with the state. See Advisory Opinions No. 75-023, 83-003, 89-010, and 90-002.

The issue becomes whether a Committee member who is appointed by the Director and is not otherwise a public official or employee is "appointed to an office . . . of a public agency" for purposes of Chapter 102. or is an "appointed officer . . . of the state" for purposes of R.C. 2921.42 and R.C. 2921.43. (Emphasis added.)

Under Ohio law, a person who holds an "office" is an "officer." In the case of Muskingum County Democratic Executive Committee v. Burrier, 31 Ohio Op. 570 (C.P. Muskingum County 1945), the Court held:

The terms "officer" and "office" are paronymous, and in their original and proper sense, are to be regarded as strictly correlative.

See also Advisory Opinion No. 85-005.

The Ethics Commission, in Advisory Opinion No. 74-007, reviewed existing case law and recognized factors which established a test to determine whether one is "appointed to an office"; which were, whether the person: (1) is appointed; (2) has a title; (3) exercises a function of government concerning the public; and (4) is not subject to a contract of employment. The Ethics Commission modified this test in Advisory Opinion No. 75-004 when it determined that whether the person exercises the "sovereign power" of government, as explained in case law, is an additional and essential criterion for determining whether one is "appointed to an office."

The Commission explained "sovereign power" in Advisory Opinion No. 75-004:

The concept of sovereign power originates with the idea that the office is created by public authority, be it executive order, the Constitution or some statute. Furthermore, it has been held that "if a man is placed in a position which is continuous and permanent and has certain powers which, under the law, only he can exercise; then he has sovereign power delegated to him." Shaw v. Jones, 40 O.N.P. 372 (1897).

In Advisory Opinion No. 77-004 the Commission held:

Sovereign power includes the exercise of a duty entrusted to one by virtue of statute or some other public authority, a duty that is not merely clerical, but that involves discretionary, decision-making qualities.

The Commission quoted from the Ohio Supreme Court case of State ex rel. Landis v. Butler, 95 Ohio St. 157 (1917), in Advisory Opinion No. 85-005, as follows:

If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with the independent power in the disposition of public property or with the power to incur financial obligations upon the part of the county or state, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the state.

The Commission emphasized that no one of the indicia controls and combinations of factors will determine whether a person is deemed to hold an office. See Advisory Opinion No. 75-004.

In Advisory Opinion No. 85-005, the Ethics Commission determined that the Technical Advisory Committee to the Coal Development Office of the Department of Development does not exercise sovereign power since its statutorily authorized function is exclusively to provide non-binding advice on research and development projects to the Coal Development Office and not to exercise final, discretionary decision-making authority. Accordingly, the Ethics Commission held that members of the Technical Advisory Committee are neither "officers" nor "appointed to an office" of the state and are not subject to the prohibitions of R.C. Chapter 102, or Section 2921.42. See Advisory Opinion No. 85-005.

The issue becomes whether the Ohio Grape Industries Committee exercises "sovereign power." As explained above, a determination whether a public agency exercises "sovereign power" depends on whether the public agency has the power to exercise final, discretionary, decision-making authority. As described above, the Committee's principal duty is to promote the grape and grape products industries, and to gather and distribute information for that purpose; however, no statute grants the Committee the power to exercise final, discretionary, decision-making authority.

As explained above, one of the indicia of sovereign power is the ability of the public agency to incur financial obligations upon the part of the state. See Advisory Opinion No. 85-

005. As stated above, the Committee has statutory authority to contract with others for research and information services, and employ an executive director, and expend state monies for those services. It is apparent that the Committee has the authority to incur financial obligations upon the part of the state by contracting for research and information services and employing an executive director. Therefore, it is necessary to ascertain whether a public agency's power to contract for services and hire employees will suffice to determine that the public agency exercises sovereign power.

The Ethics Commission has held that the mere fact that a public agency has the authority to hire employees and contract with independent contractors in order to accomplish its statutorily prescribed duties does not, absent additional factors, indicate that the public agency exercises sovereign power. See Advisory Opinions No. 75-007 and 75-012. In Advisory Opinion No. 75-007, the Ethics Commission held that members of the Cuyahoga County Soldiers and Sailors Monument Commission did not perform functions constituting the exercise of sovereign power despite the fact that the Commission was statutorily authorized to hire a custodian and set his compensation. The Ethics Commission further explained, in Advisory Opinion No. 75-007, that even though a public agency may provide a public service as its principal duty, the nature of the agency's principal duty must be examined in order to determine whether the agency's actions are the exercise of sovereign power, holding:

The principle [sic] duty of the Commission is "caring for the monument and the grounds surrounding the same." To this end the Commission may draft rules and regulations for their internal government, hire a custodian and set his compensation, set restrictions on the use of what is described as the "southeast corner of the public square," make repairs and improvements on the monument and the like. These acts are indeed a public service performed by the members of the Commission; however, they are not an exercise of "sovereign power."

See also Advisory Opinion No. 75-012 (members of the former Ohio Constitution Review Commission did not perform functions constituting the exercise of sovereign power despite the fact that the Constitution Review Commission contracted with attorneys to work as consultants).

As described above, the Committee has the authority to contract with others for research and market surveys, and may make contracts to conduct plans and programs to promote grapes and grape products. The Committee also employs an executive director. These powers to contract are granted to the Committee to enable it to perform the public service of advancing Ohio's grape industry. However, in the instant situation, the Committee's power to contract with others and to employ an executive director are not the exercise of sovereign power since such actions only advance the Committee's limited principal statutory duty to maintain, expand, and create markets for grapes and grape products by promoting their sale and distributing information to producers, the wholesale and retail trades, and the public about grapes and grape products. This duty does not constitute the exercise of sovereign power since the Committee, in performing this duty, neither exercises final discretionary decision-making authority on matters involving the police powers of the state nor renders decisions in situations where the public is required to act through a governmental body such as obtaining a grant, license, or regulatory

decision. Cf. Advisory Opinions No. 87-003, 90-009, and 90-011, respectively. Therefore, the Ohio Grape Industries Committee does not exercise sovereign power; accordingly, a Committee member, who is not otherwise a public official or employee, is neither "appointed to an office" for purposes of R.C. Chapter 102. nor an "officer . . . of the state" for purposes of R.C. 2921.42 and R.C. 2921.43.

Furthermore, Committee members do not hold an employment relationship with the state, since: (1) members receive no salary but only reimbursement for expenses incurred in performing their duties; (2) many appointees are chosen due to their outside employment or interests; and (3) the members serve a limited term. See generally Advisory Opinions No. 75-022 and 85-005. Therefore, a Committee member who is not otherwise a public employee, is neither "an employee of a public agency" for purposes of R.C. Chapter 102. nor an "employee . . . of the state" for purposes of R.C. 2921.42 and 2921.43.

However, R.C. 2921.01 also includes "agents" of the state, as well as officers and employees, within the definition of "public official" for purposes of R.C. 2921.42 and 2921.43. The issue remains, therefore, whether a member of the Committee is an "agent" of the state for purposes of R.C. 2921.42 and 2921.43.

The Revised Code requires that when words and phrases used in a statute have acquired a particular meaning by legislative definition or otherwise they shall be construed accordingly. See R.C. 1.42. The word "agent" is not statutorily defined for purposes of R.C. Chapter 2921; however, an agency relationship has acquired a particular meaning through judicial decisions. An agency relationship is succinctly explained by the Court in Funk v. Hancock, 26 Ohio App. 3d 107 (Fayette County 1985), which states:

An "agency relationship" is a consensual fiduciary relationship . . . where the agent has the power to bind the principal by his actions, and the principal has the right to control the actions of the agent.

A person is an agent of the state for purposes of R.C. 2921.42 when the state has delegated to the person or his public agency authority to act on the state's behalf, and bind the state. See Advisory Opinion No. 85-005. See also Hanson v. Kynast, 24 Ohio St. 3d 171 (1986) (in an agency relationship one party exercises the right of control over the actions of another, and those actions are directed toward the attainment of an objective which the former seeks). Furthermore, when an agent acts outside the scope of his authority, the principal may elect to ratify the agent's unauthorized action and thus become bound. See State v. Executor of Butties, 3 Ohio St. 309 (1854) (agents of the state entered into a contract beyond the scope of their authority; however, since the state could have lawfully made the contract at the time the agents acted, the state became bound to the contract when it ratified the action of the agents).

An agreement creating the agency relationship may be express or implied. See Ross v. Burgan, 163 Ohio St. 211 (1955). In this instance, the relationship between the state and the members of the Committee is expressly one of principal and agent as that relationship has been judicially defined. As stated above, the Committee is funded by the state and has the statutory authority to contract with others for research and market surveys, and to make, "in the name of

the Committee," contracts to render service in formulating and conducting plans and programs for the promotion of grapes and grape products. See R.C. 924.52 (A)(1) and (3), respectively. The state has empowered the Committee, therefore, to act on behalf of the state and bind the state in entering into such contracts. Also, the Department of Agriculture has control over the Committee members and the Committee's incurring of financial obligations by authorizing the Director to appoint members and remove appointed members for cause, and requiring the Director to monitor the Committee's conduct to ensure that the Committee is self-supporting. See R.C. 924.51 (B) and 924.53. Furthermore, the Committee's statutorily prescribed actions are designed to promote the grape industry within the state and thus attain an objective which the state seeks.

Therefore, the appointed Committee members are "agents" of the state and thus "public officials" who are subject to Sections 2921.42 and 2921.43 of the Revised Code since: (1) the Committee has the authority to enter into contracts with others and thus has the authority to act on the state's behalf and bind the state; (2) the state exercises the right of control over the Committee; and (3) the Committee's statutorily prescribed actions are directed toward the attainment of an objective sought by the state.

As stated above, R.C. 2921.43 falls within the Ethics Law and applies to "public servants." R.C. 2921.01 (B) defines the term "public servant" as used in R.C. 2921.43 as: (1) any "public official" as defined in R.C. 2921.01 (A); (2) a candidate for public office; and (3) "[a]ny person performing ad hoc a governmental function, including without limitation a juror, member of a temporary commission, master, arbitrator, advisor, or consultant." As explained above, a Committee member is an "agent" of the state and thus a "public official"; also, the Committee performs a governmental function by maintaining, expanding, and creating markets for grapes and grape products by promoting their sale and informing the public of their uses and benefits. Therefore, Committee members fall within the definition of "public servant" for purposes of R.C. 2921.43.

R.C. 2921.42 (A)(4) prohibits a public official from having a definite and direct personal pecuniary or fiduciary interest in a public contract entered into by or for the use of the governmental agency with which he is connected. See Advisory Opinions No. 81-008 and 89-006. R.C. 2921.42 (A)(1) prohibits a public official from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, any member of his family, or a business associate has an interest. See Advisory Opinions No. 85-001, 80-001, and 86-004, respectively. R.C. 2921.42 (A)(3) prohibits a public official from occupying a position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization and not let by competitive bidding, or where let by competitive bidding is not the lowest and best bid. See Advisory Opinions No. 87-004 and 88-008.

R.C. 2921.43 (A) prohibits a public servant from accepting compensation, other than as allowed by law, to perform his official duties. R.C. 2921.43 (A) also prohibits a person, including an individual, corporation, partnership, association or other similar entity, see R.C. 1.59, from promising or giving to a public servant any compensation, other than as allowed by law, to perform any act in his public capacity or generally perform the duties of his public

position. See Advisory Opinions No. 89-012, 89-013, 89-014, and 90-001. In the instant situation, R.C. 2921.43 (A) prohibits Committee members from accepting, and prohibits private parties from promising or giving to Committee members, any compensation other than as allowed by law. See R.C. 121.51 (B). R.C. 2921.43 (B) and (C) also prohibit a public servant from soliciting or accepting anything of value, or coercing a campaign contribution, in consideration of an appointment to a public position, or other kind of action material to any aspect of a public position.

You have also asked whether the Committee's executive director is subject to the Ohio Ethics Laws and related statutes.

The determination whether a person who is employed by a public agency is subject to Chapter 102. and Sections 2921.42 and 2921.43 is a separate and distinct issue from whether the board members of his employing public agency exercise sovereign power. In order to explain this distinction, it is necessary to closely examine the statutory definitions provided by Chapters 102. and 2921.

As set forth above, R.C. 102.01 (B) defines the term "public official or employee" for purposes of Chapter 102. of the Revised Code as any person who is elected or appointed to an office or is an employee of any public agency." (Emphasis added.) R.C. 102.01 (C) defines the term "public agency" to include "any . . . instrumentality . . . of the state." (Emphasis added.) R.C. 2921.01 (A) defines the term "public official" for purposes of R.C. 2921.42, and thus "public servant" for purposes of R.C. 2921.43, as:

[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges and law enforcement officers. (Emphasis added.)

The first question which was addressed in this opinion was whether a member of the Committee is "appointed to an office" of a "public agency" or is an "appointed officer" of the state. As explained above, a member of the Committee is not an "officer" or "appointed to an office" since the Committee does not exercise "sovereign power." The Committee's executive director does not exercise powers greater than those exercised by the Committee, but, as explained above, is employed in order to assist the Committee in accomplishing its statutory duties. Therefore, the executive director is not an "officer" or "appointed to an office."

However, when a person serves a public agency as an "employee," it is not necessary that the person, or the agency with which he serves, exercise the sovereign power of government in order for him to be deemed an "employee" of the public agency. All that is required is that the person be an "employee" of either a "public agency" for purposes of Chapter 102., or "the state" for purposes of R.C. 2921.01 (A) and (B).

In Advisory Opinion No. 75-012, the Ethics Commission addressed the same issues which are present in the instant situation. In Advisory Opinion No. 75-012, the Ethics Commission determined that members of the Ohio Constitutional Revision Commission were not "appointed to an office" and thus were not subject to R.C. 102.04. However, in the same

opinion, the Ethics Commission was asked whether consultants who were hired by the Ohio Constitution Review Commission were subject to R.C. 102.04.

The Ethics Commission, in Advisory Opinion No. 75-012, used the traditional tests to distinguish employees from independent contractors and determined that consultants who were hired by the Ohio Constitutional Review Commission were not employees but were independent contractors due to the manner in which the consultants were hired, the type of work that they performed, and the degree of control exercised over them by the members of the Ohio Constitutional Review Commission. See Gillum v. Industrial Comm'n, 141 Ohio St. 373, 381-82 (1943). See also Advisory Opinions No. 75-010, 75-016, 77-008, 89-003, and 89-009. By engaging in this analysis, however, it is apparent that the Ethics Commission contemplated that a public agency which does not exercise sovereign power could hire employees who would be subject to provisions found in Chapter 102. of the Revised Code. (Also, it should be noted that, when Advisory Opinion No. 75-012 was issued, the Ethics Commission did not have the statutory authority to determine whether the consultants were subject to the provisions of Sections 2921.42 and 2921.43 of the Revised Code.)

In the instant situation, the Committee's executive director falls within the statutory definition of "an employee of any public agency" for purposes of Chapter 102. and an "employee . . . of the state" for purposes of R.C. 2921.01 (A) and (B) and is subject to the provisions of R.C. Chapter 102. and Sections 2921.42 and 2921.43. See 1985 Ohio Op. Att'y Gen. No. 85-025.

Your second question is whether Committee members and the executive director of the Committee are required to file a financial disclosure statement with the Ethics Commission. The question pertaining to Committee members will be addressed first.

R.C. 102.02, which contains the financial disclosure law, does not use the term "public official or employee" as defined in R.C. 102.01 (B) and (C) to determine the scope of its applicability, but rather uses different standards in setting forth who is subject to its requirement. R.C. 102.02 (A) requires individuals who are elected to state, county, and city office, candidates and appointees for these elective offices to file a financial disclosure statement. Division (A) also requires the director, assistant director, deputy directors, and division chiefs or persons of equivalent rank, of state administrative departments, and state employees who are paid according to Schedule "C" of R.C. Section 124.15, to file a financial disclosure statement with the Ohio Ethics Commission. Accordingly, the Director of Agriculture and the Chief of the Division of Markets are required to file a financial disclosure statement due to their positions with the Department of Agriculture. See R.C. 102.02 (A)(1). Since, as described above, R.C. 924.51 (A) and 121.05 enable the Director of Agriculture to name an assistant director or a deputy director as a designee to serve in his place on the Committee, such designee would also be required to file a financial disclosure statement. The other Committee members do not fall within the group of officials required to file a financial disclosure statement under R.C. 102.02 (A).

However, R.C. 102.02 (B) further provides that the Ethics Commission may require other public officials or employees to file financial disclosure statements if they hold positions involving 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 the

execution of other public trusts." (Emphasis added.) The Ethics Commission has held that a financial disclosure statement is required to be filed by officials of state boards and commissions if the officials exercise such substantial and material discretion.

As described above, the principal statutory duty of the Committee is to maintain, expand, and create markets for grapes and grape products by promoting their sale, and gathering and distributing information to the public and others. As explained above, these duties are limited and do not involve a "substantial and material" exercise of administrative discretion in the formulation of public policy, the enforcement of laws and rules of the state, or the execution of other public trusts. While the Committee has statutory authority to contract with others and employ an executive director, the expenditure of public funds for such purposes does not constitute a "substantial and material" exercise of administrative discretion in the expenditure of public funds since such expenditures are made only to advance the Committee's limited statutory duty. Therefore, members of the Ohio Grape Industries Committee are not required to file a financial disclosure statement with the Ohio Ethics Commission. Of course, a Committee member must file a statement if the member is required to file because of service or employment in another public position where a filing is required, such as the Director of Agriculture and the Chief of the Division of Markets, and, as stated above, any state employee paid according to Schedule "C" of R.C. 124.15.

The issue remains whether the Committee's executive director is required to file a financial disclosure statement with the Ethics Commission. As stated above, R.C. 102.02 (A) requires every state employee who is paid in accordance with Schedule "C" of Section 124.15 to file a financial disclosure statement. Therefore, R.C. 102.02 (A) would require the executive director to file a financial disclosure statement if he is paid in accordance with Schedule "C" of R.C. Section 124.15. See Ohio Op. Att'y Gen. No. 85-025 (the employment of the Committee's executive director must be accomplished pursuant to R.C. Chapter 124).

The issue becomes whether R.C. 102.02 (B) requires the executive director to file if he is not paid in accordance with Schedule "C" of R.C. Section 124.15.


As explained above, R.C. 102.02 (B) does not require Committee members to file a financial disclosure statement since the principal duties exercised by the Committee do not involve a substantial and material exercise of administrative discretion in the formulation of public policy, the expenditure of public funds, the enforcement of laws and rules of the state, or the execution of other public trusts. The Committee's executive director does not have statutory authority to exercise any powers and duties in addition to those exercised by the Committee. In the absence of such express statutory authority, the executive director is unable to exercise greater authority than that which is conferred by statute upon the Committee. Cf. R.C. 164.05 (the director of the Ohio Public Works Commission has the statutory authority to exercise substantial and material discretion in the formulation of public policy, expenditures of public funds, enforcement of laws and rules, and the execution of other public trusts even though the Commission itself does not). Therefore, the Committee's executive director is not required by R.C. 102.02 (B) to file a financial disclosure statement with the Ohio Ethics Commission.

This advisory 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.

In addition, this advisory opinion is based upon review of the current statutory authority of the Ohio Grape Industries Committee. The holding in this advisory opinion would have to be re-examined if the Committee is assigned additional statutory authority, or if the Committee performs additional functions beyond those described by law.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that:

- (1) A member of the Ohio Grape Industries Committee who is not otherwise a public officer or employee, is neither "appointed to an office or . . . an employee of any public agency" for purposes of Chapter 102. of the Revised Code nor an "officer or employee . . . of the state" for purposes of Division (A) of Section 2921.01 of the Revised Code;
- (2) A person is an "agent of the state," and thus, a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, when: (a) the person has the power to act on behalf of and bind the state by his actions; (b) the state has the right to control the actions of the person; and (c) the actions of the person are directed toward the attainment of an objective sought by the state;
- (3) A member of the Ohio Grape Industries Committee is an "agent of the state" as that phrase is used in Division (A) of Section 2921.01 of the Revised Code to define the term "public official" and thus is subject to the statutory prohibitions imposed by Sections 2921.42 and 2921.43 of the Revised Code;
- (4) Section 102.02 of the Revised Code does not require a member of the Ohio Grape Industries Committee to file a financial disclosure statement with the Ohio Ethics Commission due to his service on the Committee; and
- (5) The executive director of the Ohio Grape Industries Committee is an employee of the state and is, therefore, subject to the prohibitions imposed by Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code; however, Section 102.02 of the Revised Code does not require the executive director to file a financial disclosure statement with the Ohio Ethics Commission unless he is paid in accordance with Schedule "C" of Section 124.15 of the Revised Code.


Marguerite B. Lehner, Chair
Ohio Ethics Commission