

[SINGLE VIEW]

For Meeting Of October 23, 2009

RE: Ethics Interpretation EI-2009-002

Following announcement of the questions in a prior public meeting – and a subsequent hearing conducted no earlier than thirty days therefrom – the Ethics Commission [“the Commission”] met on today’s date. In executive session, as required by law, the Commissioners considered your request for an ethics interpretation. You have asked the following questions:

1. *Must board members of Conservation Districts make financial disclosure with the Ethics Commission? If so, under what authority and on which form?*
2. *Where should the loyalty oaths of these members be filed?*

FACTS

You have advised that:

- You are a person who may be subject to the jurisdiction of the Commission.
- Your questions concern the status of the board members of the 88 Conservation Districts of Oklahoma.
- You note that Conservation Districts are established pursuant to Section 3-3-101 of Title 27A of the Oklahoma Statutes.
- You describe these Districts as having “unusual and unique” characteristics, in that they appear to be local entities, but have some attributes of state agencies.
- For instance, the Districts are not mere advisory boards. The members set policy and can spend public funds. But, their policies are limited to their individual Districts; they do not apply statewide.
- Conservation Districts receive public money, but they get no direct appropriations from the state. Instead, their funds are distributed from the Oklahoma Conservation Commission. The latter, you note, is a state agency, whose powers are established under Section 3-2-106 of Title 27A.

- Under Section 3-3-103(B), the legal adviser for the Districts is not the Attorney General, but the local District Attorney. The provision further states that the latter “shall afford the board representation as is now provided for other county officers.” At the same time, these Districts are also permitted “to call upon the Attorney General of the state for such legal services as they may require . . .”
- Several provisions of the Act state, “Districts serve as a local agency.”
- In light of the foregoing, you ask whether Conservation District board members are required to make financial disclosure. If so, you ask whether they will file the Statement of Financial Interests [“Form F-1R”^(compensated filers)/ “Form F-2R”^(non-compensated filers)] under the Constitutional Ethics Rules or the statutory Financial Disclosure Statement [“Form F-1”].
- You also ask where the loyalty oaths of the District Board members are to be filed.

ANALYSIS

The Oklahoma Constitution authorizes the Ethics Commission to interpret its Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch. 62, App.

Ethics Interpretations

Ethics Interpretations. The Ethics Commission may respond, pursuant to its rules, to questions of specific individuals seeking an interpretation of the Commission’s rules governing ethical conduct for campaigns, state officers, or state employees. Any such official interpretation of ethics rules shall be binding on the Commission.
OKLA. CONST. Art. 29, Sec. 5

These provisions govern the ethical conduct of officers, employees and campaigns on the state level of government. The Rules have no application to political or governmental subdivisions.

The Commission nevertheless has partial jurisdiction over the latter. By legislative grant, this body administers the Political Subdivisions Ethics Act [“PSEA”], 51 O.S. 2001, §§ 301-325.

Some of its duties under the PSEA pertain to campaign compliance. For instance, the Commission oversees those on the county level.

Administration of act – Certain clerks not to receive complaint under act

- A. The provisions of the Political Subdivisions Ethics Act shall be administered as follows:

1. The Ethics Commission created in Section 1 of Article XXIX of the Oklahoma Constitution, shall administer the Political Subdivisions Ethics Act with respect to candidates or candidate committees for county office, campaigns for or against county ballot measures and public officials and public employees elected or appointed to service in county government;

* * *

51 O. S. 2001, § 303

The agency also accepts, hears – and , in proper cases, refers for prosecution – complaints for violations.¹ And, it acts as a repository for campaign reports.²

The Commission carries out other PSEA functions, as well. Among them is the duty to issue ethics interpretations on the subdivision levels of government.

Powers and responsibilities of Commission – Promulgation of rules and regulations

A. The Ethics Commission shall:

* * *

6. Issue ethics interpretations pertaining to the provisions of the Political Subdivisions Ethics Act when requested by any person or committee under the jurisdiction of the Commission . . .

* * *

51 O.S. 2001, § 305

That duty is mandatory.

Germane to the instant matter is that the Commission operates a repository for financial disclosure statements. Enforcement likewise falls to the agency. Under the PSEA, this body is charged with assessing fines for filing late the Financial Disclosure Statement [“Form F-1”].

¹The PSEA, at Section 307, sets forth the complaint procedure.

²Municipal and school board campaigns are administered by the clerks of the municipality and school board, respectively. Those officials operate their own repositories.

Persons required to file financial disclosure statement

* * *

Every person failing to file a Financial Disclosure Statement on or before the dates specified in this section shall be assessed by the Commission a late filing fee of up to One Hundred Dollars (\$100.00) for each day the statement remains unfiled; provided, the total amount of such fees assessed per report shall not exceed One Thousand Dollars (\$1,000.00) . . .

* * *

51 O. S. 2004 § 319(E)

Statute makes clear who, on the subdivisions level, must make financial disclosure. It includes not only elected officers and candidates, but also members of boards and commissions.

* * *

A member of a board or commission as created by the Oklahoma Constitution or by statute except members of advisory committees to the legislative, executive, or judicial branches of state government, Foster Care Review Board members appointed pursuant to Section 1116.2 of Title 10 of the Oklahoma Statutes, and board members of guaranty associations created pursuant to state statute, shall file a Financial Disclosure Statement with the Commission . . .

* * *

Id., (C)

The question is whether the instant board members are included.

Conservation Districts were created in Section 3-3-101 of Title 27A of the Oklahoma Statutes. It states:

A district perpetuated by the provisions of the Conservation District Act shall constitute a **governmental subdivision** of this state, and a public body corporate and politic, exercising public powers.

[emphasis added]

While “governmental subdivision” is not defined, the Commission finds that these Districts fall within the definition of a “governmental entity.” The latter is included with this agency’s rules implementing the PSEA. The applicable provision states:

Definitions

* * *

“ Governmental entity” means any department, commission, authority, council, board, bureau, committee, legislative body, agency, public trust, or other establishment of the executive, legislative or judicial branch of the State of Oklahoma or political subdivision thereof.

* * *

OAC 258:1-1-2

The term is broad and inclusive. It furthers the PSEA’s legislative intent to require financial disclosure from those who set policy or spend tax dollars.

The Commission therefore interprets Section 319 of Title 51 to include among those required to make financial disclosure Conservation District board members. As statutory filers, they will submit the Financial Disclosure Statement [“Form F-1”].

As noted, the Commission is the repository for these statements. The time for filing financial disclosure is specified. The F-1 is due upon initial appointment and not later than April 30th of each even-numbered year throughout the term of office.

* * *

A member of a board or commission . . . shall file with the Commission upon initial appointment and not later than April 30 of each even-numbered year thereafter. . .

* * *

51 O.S. 2001, §319(C)

Members, who may incur a filing requirement apart from his or her service on this board, need file no more than one F-1 per calendar year.

* * *

No individual shall be required to file more than one Financial Disclosure Statement in any calendar year.

* * *

51 O.S. 2001, § 319(E)

Your question pertaining to filing of the loyalty oath is outside this agency’s jurisdiction. It is a matter not susceptible to an ethics interpretation.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held October 23, 2009, that:

- 1. Board members of Conservation Districts are neither state officers nor public members in terms of the Constitutional Ethics Rules. They are, instead, members of a governmental entity, defined to include any department, commission, authority, council, board, bureau, committee, legislative body, agency, public trust, or other establishment of the executive, legislative or judicial branch of the State of Oklahoma or political subdivision thereof.**
- 2. As a member of a statutory board or commission, those serving a Conservation District are obligated to make financial disclosure. This is done by filing the Financial Disclosure Statement [“Form F-1”].**
- 3. The F-1 is available from the Ethics Commission. It can be downloaded from the agency website: www.ethics.ok.gov. The completed form may be mailed, faxed or delivered to the agency office, located at 2300 N. Lincoln Boulevard, Room B-5, Oklahoma City, OK 73105. Questions pertaining to the form may be addressed to the agency staff. The office telephone number is: (405) 521-3451.**
- 4. The F-1 is to be filed with the Ethics Commission upon initial appointment to the Conservation District and not later than April 30 of each even-numbered year thereafter.**
- 5. No board member shall be required to file more than one F-1 in any calendar year.**
- 6. Your question regarding the loyalty oath is outside this agency’s jurisdiction.**

While the matter was considered in executive session, the vote to adopt this ethics interpretation was held in open meeting, as required by the Open Meeting Act, 25 O.S. 2001, § 301-314.

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request. While they may shed light on other situations, this opinion does not necessarily control them. To be binding on the future action of this agency, the interpretation must be directed to the individual situation.

The Commission is authorized by Oklahoma Constitution Article XXIX, Section Five and Section 305(A)(6) of Title 51 of the Oklahoma Statutes to interpret the Rules and the Political Subdivisions Ethics Act, 51 O.S. 2001, § 301-325. Questions pertaining to other Oklahoma Statutes, the state and federal Constitutions or federal law cannot be interpreted by the Commission and must be referred to the appropriate authority.

Ethics Interpretations are issued not by staff, but by the Commissioners. Members consider briefs, testimony and input from the public who have prior notice of the issue(s) and an opportunity to be heard on the question(s) presented in the ethics interpretation request. Following consideration in executive session, members then vote in open meeting on which version to adopt.

Ethics Interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.

We trust the foregoing has answered your questions. Please advise if we may be of further assistance.

Respectfully,

Rebecca L. Adams
General Counsel