

Ohio Ethics Law Reforms: Tracing the Political and Legal Implications

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Introduction

During the past few years, Ohio's Ethics Laws have been the subject of intense scrutiny, analysis, and political debate. The purpose of this article is to review the significant legal and political impact of recent ethics reforms passed by the Ohio legislature in 1994. These reforms, which were the product of a long process of debate and compromise, represent the most comprehensive revision of Ohio's Ethics Laws and related statutes since their enactment in 1973. The importance of Ethics Laws to the public, elected office holders, and government employees makes it essential to understand the implications of the revisions to Ohio Ethics Laws.

To provide a comprehensive understanding of ethics reforms, this article will consist of four major sections. First, the article will explore Ohio's Ethics Laws and the agencies responsible for their enforcement prior to 1994. Second, the article will discuss the factors which contributed to calls for reform, as well as early reform efforts. Third, the article will explore and analyze legislative and media responses to the call for ethics reform. Finally, the article will summarize the outcome of the reform process and provide a review of the implications of the reformed Ethics Law.

History and Overview

The Watergate scandal and subsequent hearings of the 1970s led to a national reform movement aimed at regulating the conduct of public officials and employees. Congress and state legislatures reacted by passing laws designed to promote ethical conduct.¹ With passage of H.B. 55 in 1973, Ohio became one of the early states to pass laws governing the conflicts of interest of public officials.²

The 1974 Ethics Law divided enforcement authority and jurisdiction among three entities. First, it established the House and Senate Legislative Ethics Committees to regulate "members of the general assembly, employees of the general assembly, and candidates for the office of member of the general assembly" ³ Second, it created the Board of Commissioners on Grievances and Discipline of the Supreme Court to regulate "judicial officers and employees, and candidates for judicial office" ⁴ Third, the General Assembly created the Ohio Ethics Commission (OEC) to regulate "all other

persons" covered by the Ethics Law.⁵ Thus, the OEC has jurisdiction over most public officials and employees, including state elected officials and their employees, and local officials, such as mayors, county commissioners, members of council, and county prosecutors.⁶ As of 1994, the OEC had jurisdiction over an estimated 16,000 elected officials and half-million public employees.⁷

The originally enacted Ethics Law imposed a number of restrictions on public office holders and employees, ostensibly to encourage public confidence in government.⁸ The Ethics Law created a series of ethical standards to protect against conflicts of interest,⁹ the improper influence of gifts and other things of value,¹⁰ nepotism,¹¹ and "revolving door" post-employment activities.¹² These standards largely attempted to prohibit factors of economic self-interest from creating conflicts in the actions of public officials or employees. In addition, violations of Ohio's Ethics Laws were made criminal offenses, generally first degree misdemeanors.¹³ However, certain provisions of the related statutes are treated as fourth degree felonies.¹⁴

In addition to new ethical standards, the Ethics Law instituted public financial disclosure for many public officials to require the identification and reporting of sources of potential financial conflict.¹⁵ Officials were required to file annual statements that account for and disclose sources of economic interest, including income, investments, gifts, real estate, creditors, and debtors.¹⁶ The OEC was charged with administering these annual financial disclosure requirements for candidates for state, county, and city offices, current holders of these offices, and many high-ranking state officials and employees.¹⁷ In 1994, approximately 7,200 individual financial disclosure forms were filed with the Ethics Commission.

The Ethics Law also provided unique authority to agencies charged with administering it. The OEC was given authority to issue advisory opinions construing the law and to investigate potential violations.¹⁸ In an early challenge to Ohio's Ethics Law, the Tenth District Court of Appeals of Ohio upheld the advisory process because it encouraged the resolution of ethical questions *prior* to an official's action, instead of encouraging potentially unethical conduct and litigating the issue after the fact.¹⁹

Ethics Reform

The General Assembly created the OEC as one of three enforcement entities. The OEC is a bipartisan agency consisting of six members, "three of whom shall be members of each of the two major political parties, to be appointed by the governor with the advice and consent of the senate."²⁰ Members of the Commission are appointed to staggered, six-year terms.²¹ The OEC's statutory authority allows it to receive and review disclosure statements, receive and investigate allegations and complaints, initiate complaints, render advisory opinions, and "recommend legislation relating to ethics, conflict of interest, and financial disclosure . . ."²²

The OEC's authority to recommend legislation has served as a major catalyst for ethics reform. In fact, major changes to the Ethics Law in 1978 and 1986 resulted from OEC

recommendations. These changes, for example, authorized the OEC to require state board and commission members to file financial disclosure through administrative rule, and interpret and investigate restrictions on public contract and supplemental compensation that are contained in O.R.C. Sections 2921.42 and 2921.43.²³ This authority to recommend legislation is a power that has always resided with the OEC, but has rarely been exercised. However, the unique social dynamics of the early 1990s again prompted the OEC to exercise its authority to recommend numerous changes to Ohio's Ethics Law.

In 1990, George Voinovich won election as Governor of Ohio. As a candidate, Voinovich advocated a host of social reforms. One of the issues which he repeatedly stressed during his 1990 campaign was an efficient and ethical state government. Shortly after Governor Voinovich took office, the OEC realized four vacancies as a result of resignations, expiring terms, and the death of one of its member's. In fact, these vacancies created such a void in the OEC's operations that it did not have a quorum of members from January through May of 1991; a circumstance which barred decisive action on issues presented before it. These circumstances enabled Governor Voinovich to appoint all of the members of the OEC within his first two years as Governor. Unfortunately, none of these appointees had previously served on the OEC, and few had any experience with the law. Thus, from 1991 to 1992, these newly appointed members struggled to learn their jobs while attempting to exercise their responsibilities.

Devoid of any prior context, this group endeavored, with the assistance of an experienced staff, to conduct its own de novo analysis of the appropriate role of the OEC and the Ethics Law. This task gained added importance for the members of the OEC because of a volley of criticism directed toward the OEC by a number of newspapers.²⁴ In a series of editorials, the OEC was characterized as a "toothless tiger," "lap dog," and a "do nothing body."²⁵

As a result of their frustrations in dealing with the Ethics Law and its perceived deficiencies, the members of the OEC established a Subcommittee on Legislation in January of 1992. This subcommittee consisted of two OEC members and was delegated the original task of examining the Ohio Ethics Law and suggesting reforms to strengthen its provisions. At about this time, the OEC was contacted by Representative Vernon Sykes, who had been pursuing his own independent efforts to reform and strengthen Ohio's Ethics Law. After several discussions with the OEC, Representative Sykes agreed not to introduce his legislation, pending the OEC's review efforts.

After reviewing the legislative changes suggested by Representative Sykes, the media, and OEC members and staff, the OEC's Subcommittee on Legislation met to discuss ideas for reform. On April 10, 1992, the Subcommittee issued a memorandum outlining areas identified as "essential" for reform. The major objectives of the reform proposal were: (1) to increase the funding of the Ohio Ethics Commission to meet the overwhelming public demand upon its limited resources; (2) to provide for increased public accountability in the enforcement of Ohio's Ethics Law; (3) to consider the benefits to the public of independent prosecutorial power granted to the Commission; (4) to institute alternative dispute resolution strategies, (5) to provide additional authority to

render advice; and (6) to promote the uniform application of the Ethics Laws and related statutes.²⁶ The proposal served to stimulate significant debate among the members of the OEC. As a product of this debate, and aided by the input of OEC staff members, the OEC developed and agreed upon a comprehensive legislative reform proposal addressing these issues.

The issue of increased funding was viewed as essential to the effective operation of the OEC. During the 1992 fiscal year, the OEC had a budget of about \$660,000,²⁷ which was sufficient to employ only eleven staff positions,²⁸ the lowest level of staffing since 1977.²⁹ In fact, the OEC had authority to employ a staff of fifteen, a power that had resulted from early efforts to bolster ethics administration from the last ethics reform enacted in 1986.³⁰ However, the effect of successive budget cuts had reduced the staff by nearly one-third since 1990.³¹ The subsequent loss of sufficient staff and resources clearly hampered the efforts of the Commission to perform its obligations a fact recognized by some newspaper editorials.³²

In an effort to remedy these financial problems, the OEC proposed an independent operating fund that would not be dependent upon general revenue financing. This fund was to be created from a \$25 filing fee to accompany the financial disclosure filings of those compensated for service in public office or public employment, a late filing fee for those who did not file on time, the ability of a court to impose and collect fines from individuals who violated the ethics law, and the right to recover the costs of investigation and prosecution from individuals convicted of ethics violations.

It was estimated that a \$25 filing fee would generate approximately \$200,000 in additional revenue for the OEC. The late filing fee would act to both conserve OEC funds and to generate revenue from delinquent financial disclosure filings. The OEC was also concerned with the administrative costs incurred in enforcing compliance with financial disclosure requirements. For example, at the time of this legislative proposal in 1992, the OEC had mailed over 1,300 reminder letters by regular mail, and 331 warning letters by certified mail, to delinquent financial disclosure filers. If a late fee reduced the number of delinquent filers, the OEC would have saved money in 1992, reflected by the cost savings of copying charges, mailings, and personnel time. For those individuals who continued to be delinquent, the late filing fee would reimburse the OEC for the extra costs associated with processing the delinquent filings. Furthermore, the OEC believed that the resources saved could be more appropriately applied to the performance of other public responsibilities.

The proposed legislation would have also granted the OEC the right to recover investigative costs. A significant Ethics Law prosecution is similar to any other white-collar criminal prosecution, requiring hundreds of hours of investigation and the production and analysis of thousands of pages of documents and statements. The right to recover the costs of investigation would provide for the payment of the reasonable expenses of investigation and prosecution. In short, the OEC's sought after amendment would have provided for the recovery of investigative costs in a manner similar to that of other law enforcement and administrative agencies.³³

A primary legislative consideration for OEC members was the issue of public accountability for investigative and enforcement responsibilities. The OEC believed that it was essential that it be empowered to comment publicly once a final disposition was reached in an investigation, or when a case was referred to a local prosecutor for prosecution. This authority was necessary, the OEC reasoned, in order to assure the public that ethical issues were thoroughly addressed. The OEC also believed that a person bringing a complaint to the OEC should be notified if the complaint were dismissed. However, then existing statutory authority did not authorize the OEC to respond to public or media inquiries about whether the OEC had performed its responsibilities;³⁴ nor did the OEC possess any independent prosecutorial powers.³⁵ In fact, then existing Ethics Laws specifically prohibited any disclosure of information regarding investigations and prosecutions, except in very limited circumstances.³⁶ The OEC, unlike most other investigative agencies, was barred from public disclosure of a referral for prosecution unless the prosecutor took action.³⁷ If a prosecution did not occur, the OEC had no authority to notify the general public that the Commission had in fact performed its responsibilities.³⁸ Any violation of these confidentiality restraints was subject to criminal penalty.³⁹

The OEC's inability to comment promoted the perception that ethics violations were not investigated or referred for prosecution. Violators could deny wrongdoing and prosecutors were relieved of the responsibility of publicly justifying the failure to prosecute an evidenced referral. The significance of this problem was demonstrated by the fact that 34% of the OEC's referrals in the prior ten years were not prosecuted. OEC staff had experienced responses to referrals for prosecution, supported by sufficient probative evidence, that were summarily declined for prosecution in view of the inability of the OEC to publicly comment upon the referral. In one case, private party litigants were successful in removing an elected official from office, on the basis of an appellate court's specific finding of nepotism related misconduct, even though the same official had not been prosecuted.⁴⁰

In response to these difficulties, the OEC proposed to modify existing ethics authority to permit public comment by the OEC when a final disposition was reached in an investigation, or at the time when the OEC referred an ethics case for prosecution. The OEC believed that these reforms would allow public scrutiny of public officials and, in turn, promote public accountability among public officials. These provisions were viewed as consistent with processes whereby other law enforcement agencies have been given authority to comment upon their referral of a case for prosecution. The OEC noted that its standard for referral a preponderance of the evidence was even more demanding than the probable cause test used by other enforcement agencies. These proposed ethics reforms were also consistent with the approaches of other states which permit their ethics commissions to make their findings public upon final action of the commission.⁴¹

The OEC's proposal to acquire independent prosecutorial power was also a product of its past experience. Based upon past case referrals, the OEC saw a significant number of its cases end in dismissal for lack of prosecution by local prosecutors. This phenomena occurred despite the OEC's extensive investigations and collection of significant evidence

in support of the referral for prosecution. In fact, a full one-third of the OEC's referrals were not prosecuted. Despite prosecutorial inaction, then-existing law precluded the OEC from publicly commenting that it had investigated and referred these matters to local prosecutors.⁴²

Even the cases in which local prosecutors wished to proceed presented difficulties with regard to OEC involvement in the prosecution. On occasion, local prosecutors had requested that OEC staff, due to their expertise in the subject, consider serving as the special prosecutor to prosecute referred cases. However, this option was unavailable to the OEC, which only had the authority to conduct investigations throughout the state, not authority to remedy alleged violations.⁴³ As a result, the OEC and the public were dependent upon local prosecutors for remedying ethics violations. This structural arrangement often proved difficult for prosecutors due to competing time demands, lack of expertise, and pre-existing personal, professional, and legal relationships between the prosecutors and those accused of an ethics violation.

In an attempt to promote the public's interest in prosecuting cases that were supported by objective, factual evidence, the OEC suggested a number of reforms. Based upon an analogous provision in a Nebraska statute,⁴⁴ the Ethics Commission requested the authority to, upon the request of the local prosecutor, assign its staff to assist in the presentation and prosecution of an Ethics Law referral. In addition, under the OEC's proposal, the prosecutor would retain the right to determine whether to prosecute a referral. However, if the local prosecutor refused to prosecute, or failed to prosecute within 120 days, the OEC would then have the authority to prosecute the referral.

Recognizing that certain ethics violations are less egregious than others, the OEC also sought to establish alternative dispute resolution strategies to resolve less serious charges. The OEC's inability to distinguish between egregious and non-egregious Ethics Law violations arose under then existing law, which required that if the OEC found that the allegations were not supported by a preponderance of the evidence, "it shall dismiss the complaint" ⁴⁵ On the other hand, if the OEC found that "the facts alleged in the complaint are true . . . , it shall report its findings to the appropriate prosecuting authority for proceedings in prosecution of the violations" ⁴⁶ This approach provided the OEC with only two options do nothing, or prosecute. These options did not allow the OEC to distinguish between cases based upon the severity of the alleged violation. In other words, the OEC was required to prosecute first-time, non-continuing, non-serious violations in the same manner as multi-million dollar, continuing public contract frauds. Although none of the cases among the 34% of unprosecuted referrals by the Commission involved a violation of such lower level severity, these less serious, first-time breaches of the Ethics Law had few viable remedies.

In an effort to more effectively, equitably, and efficiently resolve alleged violations arising under the Ethics Law, the Ethics Commission sought to institute a variety of alternative resolution procedures, including mediation, restitution, rescission of affected contracts, forfeiture of benefits, and resignation of office.⁴⁷ As a safeguard against the arbitrary application of these proposed resolution procedures, the OEC mandated that

imposing these strategies required the agreement of the party against whom the complaint was made. The OEC believed that settlement authority, including alternative dispute resolution, would promote a more expeditious and equitable resolution of alleged ethics violations. In addition, less serious cases would not require the massive expenditures attendant to the then existing law, which imposed mandatory prosecution of all Ethics Law violations, no matter how trivial.

The OEC's last major recommendation was to provide for the uniform application of ethics laws to all public officials. This recommendation was directed at rescinding a recent amendment to public contract restrictions of ethics-related provisions, which was written to provide an unqualified exemption for law directors and prosecutors to hire their private practice business associates to provide legal services for their city or county.⁴⁸ This exemption, passed in late 1992 as part of a budget correction bill, directly contradicted the language of O.R.C. § 2921.42, which prohibited any public official from using their authority or influence to secure the services of a business associate.⁴⁹ The Ohio Prosecuting Attorneys Association and the Ohio Municipal Attorneys Association promoted this exemption in response to an earlier OEC advisory opinion,⁵⁰ which applied the restrictions of O.R.C. § 2921.42 to law directors and prosecutors in a fashion similar to the public contract section's application to other public officials.⁵¹ The legislative response and resulting amendment exempted prosecutors and law directors entirely from having to satisfy the limited pre-existing exemptions that were contained in Section 2941.42. In other words, these officials no longer had to affirmatively demonstrate that the services were necessary, that the services were unobtainable elsewhere for the same or lower cost, that the provider treated the political subdivision in a similar or preferential fashion as other clients, or that the transaction was conducted at arm's length, with full knowledge by the political subdivision involved with the public servant.⁵²

In response to passage of this exemption, a number of other public servants lobbied for the same exemption. As a result of these developments, the OEC believed that unlimited exemptions to ethics laws did not promote good public policy. In response, the OEC called for uniform application of the law by the elimination of exemptions for specific public employees. Thus began the road to reform.

Introduction of Ethics Reform Legislation

Once the OEC agreed upon its reform proposal, it contacted Representative Sykes and the leadership of the Ohio General Assembly. The OEC's objective was to discuss this proposal with all interested parties in an effort to promote bipartisan support. Initial discussions with key political figures such as House Speaker Vern Riffe and Minority Leader Jo Ann Davidson proved very productive. With minor modifications, most of the General Assembly members the OEC contacted indicated that they supported the reforms.

In April of 1993, bipartisan co-sponsors Representative Sykes and Representative Batchelder introduced the reform legislation with the support of over forty members of the Ohio House.⁵³ Newspapers throughout the state hailed the proposal as "good

bipartisan thinking"⁵⁴ that "deserves applause;"⁵⁵ and a shining example of "good legislation that could lead to good government."⁵⁶

The legislation, introduced as H.B. 285, was assigned to the House Ethics and Standards Committee. This committee consisting of eight members and chaired by Representative Katherine Walsh and Vice-Chaired by Representative Sykes seemed encouraged by the favorable public reaction to the bill. On April 27, 1993, OEC members testified in support of their legislative reform proposal before the committee.⁵⁷ However, as a result of these proceedings and subsequent meetings with some members of the Legislative Committee, it became apparent that OEC-proposed reforms would be very difficult to enact.

Members of the Legislative Committee and public lobbyists especially the Ohio Prosecuting Attorney Association strongly objected to many of provisions in the legislation.⁵⁸ The Prosecuting Attorney Association (PAA) attacked the legislation even though some of its members provided written support for some of the proposed changes. The opposition groups attacked the provision granting independent prosecutorial power to the OEC as a violation of the separation of powers doctrine, arguing that this type of authority should rest with a locally-elected prosecutor, whom the voters could hold publicly accountable at the ballot box. The opposition groups also challenged the OEC's request for authority to publicly comment on its referrals for prosecution because of fears that such authority would both unduly prejudice public officials accused of ethics violations and lead to trials conducted by the press. As to the conflict of interest provisions, the PAA opposed the elimination of the general exceptions which allowed public officials to hire business associates. Lobbyists and legislators argued that exempting prosecutors from the conflict of interest provision would both address the personnel shortages that many counties face, and ultimately lead to financial savings. Finally, the opposition groups alleged that the provision allowing independent funding of the OEC was an undesirable delegation of legislative authority over financial appropriations.

Meetings between the Chair of the OEC and the Chair of the House Ethics and Standards Committee were held to determine whether there was room for legislative compromise. The chair of the Legislative Committee maintained that the changes sought were non-negotiable and that it would be helpful for the OEC to assist in reformulating its proposal to promote the objectives of the Legislative Committee. In response to these requests, the Chair of the OEC met with other commission members to elicit their response. Although members were concerned about the prospect of alienating those in control of the governmental processes, they believed that most of the reforms sought were essential to the operation and administration of effective government. As a result, the Commission agreed that the best response would be to accept some of the Legislature's demands, suggest compromises to others, and hold steadfast in their opposition to those they considered destructive to the spirit of the reform proposal. The OEC drafted a letter to the Chair of the Legislative Ethics Committee, which attempted to clearly communicate the rationale of the OEC's position.⁵⁹

In its correspondence, the OEC agreed to drop its request for independent prosecutorial powers. However, the OEC restated its position that this power did not violate the separation of powers doctrine. In fact, the OEC believed that the legislature could delegate authority to prosecute to any executive entity and that such prosecutorial authority was not the exclusive province of the county prosecutor.⁶⁰ However, recognizing the strength of the argument that prosecutorial power should rest with locally-elected prosecutors, the OEC agreed to eliminate the provision. Furthermore, in accord with the Ohio Legislature's stated political concerns, the OEC argued that its ability to publicly comment on a case referral was even more important, in light of its concessions with regard to prosecutorial powers. In short, the legislative committee's supposed benefits of being able to hold local elected prosecutors accountable could not be realized without the OEC's power of public comment. Under then existing law, the OEC could not comment on any referral of an Ethics Law violation and any informed judgment about the cooperation of the accused officeholder was forbidden.⁶¹

The legislature's strong pre-disposition to provide exemptions to the conflict of interest provision resulted in the OEC's concession to submit language permitting a public official to hire a business associate or partner. While the OEC reasserted its belief that these exemptions were not sound public policy, it offered a compromise provision which allowed public officials to hire business associates under the conditions of appropriate safeguards, which were similar to then existing exemptions under the law. The proposed language required OEC oversight of such hiring arrangements, a demonstration of need, and other regulatory factors.

Finally, the OEC reasserted its desire for increased and independent funding in order to fulfill its statutory functions. The OEC argued that the requested funding would help recoup personnel and resource losses, provide salaries for additional staff members, and facilitate the computerization of OEC's functions.

The OEC never received a formal response to this letter. Moreover, concerns about following the Ohio Legislature's direction of Ethics Law reform mounted as rumors of significant revisions circulated throughout Ohio.⁶² The OEC's worst fears were realized when the Legislative Ethics Commission's staff informed OEC members that the House of Representatives had drafted and ultimately passed Substitute H.B. 285.⁶³

Many OEC members believed that Substitute H.B. 285 was weak legislation. In an article published in the *Cleveland Plain Dealer* on June 17, 1993, the author pointed out that the "bill originally aimed at strengthening Ohio's Ethics Commission may instead weaken state law . . ."⁶⁴ Further, the article chronicled how the House Ethics and Standards Committee had added:

amendment after amendment that removed many of the new powers and independent budget authority the watchdog group had sought. The Commission wanted authority to prosecute and comment publicly on cases, but the committee rejected that. The Commission wants to hire more investigators and to close a loophole, created by the legislature last year, that allows county prosecutors to hire their business partners. But

another amendment would have the effect of allowing not just prosecuting attorneys to hire their business partners, but other public officials as well.⁶⁵

The extent of the political opposition that the OEC faced was also revealed by an interview with Representative Patrick Sweeney, a member of the Ethics and Standards Committee and a powerful leader in the House.⁶⁶ The *Cleveland Plain Dealer* reported that Representative Sweeney offered a half-dozen amendments, many of which would purportedly weakened the bill.⁶⁷ Moreover, Sweeney stated that the OEC's request to prosecute cases was "at the height of arrogance" and jokingly suggested that an amendment be offered to get the members of the OEC "fired for malfeasance."⁶⁸

A review of the contents of Substitute H.B. 285 by the OEC staff confirmed the several significant legal disparities existed between the legislation as originally proposed and the substitute bill. First, instead of providing for public comment on investigation referrals, Substitute H.B. 285 further restricted the OEC's ability to publicly comment on cases. In addition, language in the OEC's bill which would have allowed the OEC to notify complainants and the public about the results of an ethics investigation was removed. Second, instead of providing independent funding to the OEC, the bill would have imposed filing fees and late costs that would have gone directly to the general revenue fund. Third, instead of eliminating exemptions to hiring business partners, the law would have broadened the exemptions to include all local government officials and would not require any approval or cost comparison.⁶⁹ Finally, the substitute bill eliminated the provision granting independent prosecutorial authority to the OEC.

Members of the House Ethics Committee also added two other major provisions. While these provisions arguably had strong public policy roots, they created additional opposition to eventual passage of the bill.⁷⁰ At the recommendation of one House Ethics Committee member, the bill, for the first time, would have incorporated a requirement for elected school board members to file financial disclosure statements with the OEC. The Legislature incorporated a similar bill, H.B. 201, into H.B. 285 to create this requirement.⁷¹ However, the General assembly had failed to pass legislation proffering this requirement in previous sessions.⁷²

Another member of the House Ethics Committee suggested adding a requirement for continuing ethics education for all elected public officials. This requirement, as it evolved and was incorporated into H.B. 285, would have required an extensive certification and sanction process for all of the approximate 16,000 elected officeholders in the state. Though not proposed by the OEC, this mandatory ethics training was to be formulated and administered by the OEC. Both of these new provisions were added to the version of Substitute H.B. 285 as referred from the House Ethics Committee.

The House Ethics Committee referred H.B. 285 to the House Finance Committee since it contained an appropriation for the OEC. This general revenue appropriation was provided to the OEC to increase its advisory and investigative resources, and enhance its computer system. However, the Finance Committee again amended the bill several times on substantive issues that had nothing to do with the appropriation of funds. For example,

the Finance Committee amended the requirement for filing financial disclosure statements by members of the board of education of larger school districts by changing the level of student attendance, referred to as the "average daily membership," within the school district. This change expanded the number of school districts whose school board members would be required to file disclosure statements. Another member of the Finance Committee proposed that school district superintendents, treasurers, and clerks (later changed to business managers) should have to file a financial disclosure statement. With the large expansion in the number of financial disclosure filers and the requirement to administer compulsory ethics training to all elected officials, the additional funding provided to the OEC would have been dissolved by these new rather than existing responsibilities.

Another amendment, sponsored by Representative Michael Shoemaker, created an additional exemption within O.R.C. § 2921.42 which would have allowed township officials to do business with their own township in transactions involving \$5,000 or less.⁷³ This amendment did not require the application of pre-existing exemptions.⁷⁴ Shoemaker stated that this exemption was created on behalf of a gas station owner serving as a Township Trustee within his district. The bill, which included all of these amendments, passed by vote of the full House of Representatives and was sent to the Senate for action.

Prior to consideration of H.B. 285 in the Senate, a new ethics issue which was not addressed in H.B. 285 captured the attention of the Legislature. Examining the practice of giving "honorarium" to legislators, the press began exploring the relationship of individual members of the General Assembly to lobbyists, and their clients.⁷⁵ Payments of honoraria to leadership and committee chairs had reportedly become prevalent in the Legislature.⁷⁶ These payments were unrelated to campaign contributions.⁷⁷ The OEC had advised that honoraria was generally prohibited to those officials subject to the OEC's authority, where the honoraria was provided by those doing business with public officials.⁷⁸ Yet, the Legislature had exempted itself from prohibitions on the receipt of honoraria.⁷⁹

The alleged honoraria abuses subsequently identified by the press,⁸⁰ and increased media scrutiny of this practice,⁸¹ led to the introduction of H.B. 492, after the House had considered H.B. 285. The purpose of H.B. 492 was to respond to growing media attention and public perception of honoraria by banning its receipt and significantly changing financial disclosure provisions to require the increased disclosure of all sources of income.⁸² H.B. 492 subjected lobbyists to new disclosure requirements and placed the jurisdiction for these requirements in a new Joint Legislative Ethics Committee (JLEC).⁸³ The JLEC combined the formerly separate House and Senate Ethics Committees.⁸⁴ H.B. 492 also created an Office of Legislative Inspector General to staff the JLEC and administer these new responsibilities.⁸⁵ Due to continuous negative media coverage of events involving receipt of honoraria, the House passed H.B. 492 and referred it, along with Substitute H.B. 285, to the Senate.⁸⁶

The Senate referred both H.B. 285 and 492 to the Senate Task Force on Campaign Finance Reform (STFCFR), Chaired by Senator Robert Cupp. After the STFCFR conducted hearings on both bills, the bills moved through a series of final legislative action in rapid succession. After a Senate Campaign Task Force Subcommittee redrafted major portions of both bills, they proceeded quickly through the full STFCFR and to the Senate floor for passage.⁸⁷

By the time the Senate first addressed H.B. 492, the Senate Subcommittee had created major changes to the legislation. Different types and levels of increased financial disclosure, arguably included as a response to the prior receipt and non-disclosure of honoraria were now included in the bill. These changes not only barred honoraria for members of the General Assembly, but required that many state and local officials would be barred from receiving honoraria as well, and would have to meet lower income thresholds for the disclosures of income from the original level of \$500 to \$75.⁸⁸ In addition, these individuals would also be required to disclose expenses received for travel, lodging, and meals and beverages.⁸⁹

The Subcommittee's version of H.B. 492 also changed the uniform application of one level of disclosure for all filers.⁹⁰ Instead of flat disclosure levels, the substitute legislation created different levels of disclosure for members of the General Assembly, state officials and county office holders, and local elected officials.⁹¹ In response to the growing honoraria scandal, H.B. 492 imposed the highest of these levels of disclosure on House and Senate members.⁹² For the first time ever, H.B. 492 also differentiated the level of disclosure required for local officials holding similar positions based upon whether their political subdivision or governmental agency paid them less than \$16,000.⁹³

After passage of Sub. H.B. 492, the Senate, led by Senator Cupp, chair of the Senate Task Force on Campaign Finance Reform, restored the OEC's original statutory language to H.B. 285. The unfolding honoraria scandal and the attendant media attention to the provisions of Substitute H.B. 285 allowed the OEC and its staff to re-focus attention to the substance of the OEC's original proposals.

With respect to the funding proposals originally proposed by H.B. 285 to support and enhance the OEC's jurisdiction, the Senate amended the House bill to earmark funds received through filing fees, late fees and related expenses, to an independent fund controlled by the OEC.⁹⁴ The Senate substituted a flat filing fee with a schedule of fee payments based upon the costs charged to file for candidacy for elected office.⁹⁵

The Senate also authorized the OEC to provide advice to public officials by issuing both formal advisory opinions and providing written staff opinions.⁹⁶ In addition, the Senate removed House amendments to H.B. 285 which prohibited the OEC from assisting prosecutors in pursuing ethics violations.⁹⁷ It also moderated H.B. 285's requirement for financial disclosures by school district superintendents, treasurers, and business managers by mandating that the disclosures be filed confidentially, subject to review and confidential audit examination for potential conflicts.⁹⁸

The Senate also struck a compromise with the House on its proposal to create a mandatory continuing ethics education program for elected officials.⁹⁹ In lieu of a mandatory program, the Senate created a temporary provision within H.B. 285 requiring the OEC to conduct a study of the concept of mandatory ethics education and training, and to report the results of that study to the General Assembly for further consideration.¹⁰⁰ The Senate also retained the increased appropriation for the OEC to bolster its efforts to meet its advisory and investigation mandates, and increase its computer resources.¹⁰¹ As a result, the press generally applauded the Senate's efforts in strengthening H.B. 285.¹⁰²

Due to the press and public's focus on ethics and the continued exposure of honoraria practices in the General Assembly, Sub. H.B. 285 and 492 proceeded quickly to final consideration and passage.¹⁰³ With minor floor amendments in the Senate, the General Assembly passed Sub. H.B. 492 in late January, 1994. The Governor signed the bill on May 12, 1994. The General Assembly passed Sub. H.B. 285, which became effective with the Governor's signature on March 2, 1994.

Outcome of Ohio's Ethics Reform

Sub. H.B. 285

The combined effects of Am. Sub. H.B. 285 and 492 resulted in the most comprehensive reform of ethics-related provisions in the twenty-year history of the Ethics Law. H.B. 285 largely resulted in much needed change in the authority and processes of administering the Ethics Law, and passage of the bill helped the OEC achieve many of its reform goals.

To better able the OEC to advise public officials and investigate allegations of ethical misconduct, the General Assembly substantially increased the OEC's funding through a continuing increase in the OEC's general revenue appropriation. This funding increase included a one-time appropriation for the enhancement of computer resources in order to improve financial disclosure administration and general operations. However, expanded disclosure requirements resulted in more than 10,000 financial disclosure filings in 1994.

Funding for Fiscal Years 1995 and 1996 enabled the OEC to re-create and expand lost public information and education efforts. In Fiscal Year 1995, the OEC conducted 145 separate educational and training sessions throughout the State of Ohio. In August of 1994, the OEC also completed and returned to the General Assembly an examination of Continuing Ethics Education. The Commission concluded that the voluntary use of existing networks of public officials and employees could reach most elected officeholders to provide effective ethics training and education, without the bureaucracy necessary to support a compulsory system of certification. Funding provided by Am. Sub. H.B. 285 replenished the investigative staff of the OEC and allowed it, for the first time since 1988, to expand its advisory and education staff.¹⁰⁴ An independent fund under control of the OEC was generated and funded by filing fees, fines, costs, and the like.¹⁰⁵

The OEC's efforts to obtain more consistent enforcement of alleged ethics violations through the enactment of independent prosecutorial authority, conditioned upon the first refusal of local prosecutors to prosecute, did not pass the General Assembly. However, other significant changes were enacted. For instance, Sub. H.B. 285 authorized the OEC to publicly comment, in a limited manner, on the fact that a criminal ethics referral had been made to a prosecutor, who did not subsequently follow through on the referral.¹⁰⁶

In several major ethics cases referred since the enactment of H.B. 285, special prosecutors have been readily appointed to review and prosecute ethics-related referrals. In three such cases, members of the OEC staff have been appointed to assist the local prosecutor.¹⁰⁷ Sub. H.B. 285 enabled the OEC to resolve, with the agreement of a potential respondent, allegations that may not have been previously addressed under the law. First-time, non-serious, non-continuing ethics violations may now be addressed through the use of remedial processes such as mediation, alternative dispute resolutions, restitution, resignation from office, contract invalidation, or other options that do not require the time and resources inherent in criminal prosecutions.¹⁰⁸

In order to expedite replies to officials who request informal opinions from the OEC, H.B. 285 also authorizes the OEC to issue written staff advisory opinions that provide the same reliability to the requester as a formal OEC opinion.¹⁰⁹ This authority allows the OEC to focus upon issues of new and unique advisory construction under the law, while staff can apply existing OEC precedent to more routine and fact-specific requests. In addition, H.B. 285 provides the OEC with the resources necessary to examine educational efforts for public officials such as continuing ethics education.

H.B. 285 also embodies significant changes to financial disclosure requirements. At the OEC's recommendation, a new category of state officials was created to encompass those individuals who were appointed to exempt state positions and paid according to a specified salary schedule.¹¹⁰ Individuals falling within this category were required to file public financial disclosures.¹¹¹ H.B. 285 also requires members of and candidates for the board of education in school districts with an average daily student population of over 12,000 students to file public disclosure statements.¹¹² The superintendents, treasurers, and business managers for all school districts within the state are also required to file confidential financial disclosure statements, subject to review by the OEC and state audit examiners.¹¹³ In total, these requirements added an estimated 2000 to 2100 new financial disclosure filers in 1995. To expedite filings, H.B. 285 authorizes the filer to comply with the required deadline by mailing the disclosure form.¹¹⁴

Am. Sub. H.B. 492

Am. Sub. H.B. 492 significantly changes the substance of the Ethics Laws as well. In an attempt to remedy past abuses of financial disclosure requirements regarding honoraria, this legislation bans honoraria and changes disclosure standards for public officials and lobbyists, to require more detailed disclosure of sources and amounts of income. The bill also changes previous disclosure provisions by mandating disclosure according to a sliding scale.¹¹⁵ These different levels and types of disclosure are required for income

first received after April 15th of 1994.¹¹⁶ Legislators are required to meet the highest level of disclosure, with many state officials required to provide the most extensive amount of information.¹¹⁷ For the first time, H.B. 492 divides the level of required disclosure among local officials based upon whether the official was compensated more than \$16,000 by his or her political subdivision for the performance of official duties.¹¹⁸ H.B. 492 also requires the presidents of colleges and universities to file confidential financial statements.¹¹⁹ However, this requirement changes the result of existing administrative rules originally put in place by the OEC in 1978, which had required college and university file public disclosures.¹²⁰

For many public officials who are required to comply with financial disclosure, H.B. 492 adds new requirements. These new requirements were largely the result of the OEC's efforts to require increased public exposure of all types of income. Sources of income, regardless of amount, are required to be disclosed, replacing the previous standard of limiting disclosure of income to amounts excess of \$500.¹²¹ The identity and amount of incomes received from sources doing business with a public agency served by the public official are now subject to disclosure.¹²² Incomes from lobbyists and clients, under certain circumstances and subject to exceptions protecting the confidentiality of the client, are also subject to disclosure.¹²³ Legislative and executive agent lobbyists expenditures on behalf of public officials must now be listed on disclosure statements,¹²⁴ as are most sources of gifts.¹²⁵ Expenses received for official travel, meals and lodging are subject to disclosure, subject to minimum amounts.¹²⁶ The origin of funds for meals and beverages above a minimum amount were also required to be disclosed.¹²⁷ However, college and university trustees, and local officials compensated less than \$16,000 annually are exempt from these new requirements and remained subject to the old standards.¹²⁸

H.B. 492 bans honoraria for those filing financial disclosure statements. The bill, for the first time, defines "honorarium"¹²⁹ and creates exceptions allowing the payment of travel, meal and lodging expenses for speeches given by public officials where the public official participates in a panel discussion or belongs to a national organization to which the public agency pays dues.¹³⁰ H.B. 492 bars voting by legislators on legislation supported by a lobbyist who is employed by the legislator.¹³¹ It also changes the reporting requirements for legislative and executive lobbyists.¹³² H.B. 492 combines the House and Senate Ethics Committees into a single Joint Legislative Ethics Commission (JLEC) with jurisdiction over members of the General Assembly, and creates an Office of Legislative Inspector General to administer the lobbyists' filings.¹³³

Despite the benefits of both bills, each continues to foster exemptions to the applicability of the Ethics Laws. For instance, H.B. 285 creates two new exemptions in the Ethics Laws' public contract restrictions.¹³⁴ One exemption authorizes prosecutors and law directors to hire private law practice business associates, subject to controls that were less demanding than previous exemptions.¹³⁵ Township trustees were removed from the application of these same public contract provisions in transactions under \$5,000, without the protection to the public provided by the previous exemptions under the statute.¹³⁶ College and university presidents are no longer required to file public financial disclosure

under H.B. 492 in comparison to the approximately 100 other chief administrative officers compensated less than that of their academic counterparts.¹³⁷ College and university presidents and their trustees, are also exempted from the newly enacted ban on "honoraria."¹³⁸ While H.B. 492 exposes members of the Legislature and their staff to portions of the revolving door prohibition, it exempts those currently serving from the application of these restrictions until after December 31, 1995.¹³⁹

Conclusion

The convergence of a unique set of factors provided the impetus for passage of the most comprehensive reform of Ohio's Ethics Laws in their twenty year history. Newspaper editorial criticisms of the OEC, a new Governor, and a Commission composed of entirely new and inexperienced members lead the OEC to investigate (and ultimately propose) significant changes with regard to Ethics Law enforcement and funding, as well as public accountability for Ethics Law violations. At its inception, this reform proposal brought intense and protracted political debate. Initially, Ohio House Representatives rejected most of the OEC's proposals and proposed a substitute bill. However, highly visible investigative reports initiated by the press served to stimulate renewed public interest in Ethics Law reforms, and the Ohio General Assembly eventually reinstated most of the OEC's original proposals.

While a decisive evaluation of many of the aspects of these reforms is premature, it is clear that the reforms have significantly changed the character of Ethics Law in Ohio. The OEC is now a more proactive and less reactive body than it was previously.

There are many reasons behind the OEC's transformation. First, additional funding has facilitated the hiring of additional staff members who can carry out educational, investigatory, financial disclosure, and opinion writing responsibilities. Second, public comment provisions allow the OEC to publicly comment on criminal referrals and, in turn, inform the public of the OEC's activities. Finally, the OEC's new-found alternative dispute resolution authority will allow it to deal with minor ethics violations in a more flexible and less costly manner. The OEC now has, for the first time, the authority to resolve ethics violations in a manner commensurate with the alleged transgression. Moreover, these reforms will work to insure that public officials and employees serve the interests of the citizens of Ohio.

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** Executive Director, Ohio Ethics Commission (Counsel, 1983 -1987; Associate Director, 1987-1993); President Elect, Steering Committee, Counsel of Governmental Ethics Laws (COGEL); B.S., Ohio State University; J.D., Capital University.

Before joining the Ohio Ethics Commission, Mr. Freel was a faculty member of The Ohio State University College of Law, where he served as a Clinical Teaching Fellow and Staff Attorney in the College of Law's Clinical Programs from 1979 to 1983. In addition, Mr. Freel is co-author of *Ethics for Public Officials, Public Employees, and Attorneys in Administrative Practice* (1995).

1. H.B. 55, 104th General Assembly (Ohio 1974), presently codified as Ohio Rev. Code Ann. § 102 (Anderson 1996) (hereinafter "Ethics Law").

2. *Id.*

3. *See* Ohio Rev. Code Ann. § 102.01(F)(1) (Anderson 1993) (amended 1994).

4. Ohio Rev. Code Ann. § 102.01(F)(2) (Anderson 1996).

5. *Id.* at (F)(3).

6. *Id.* at (F)(1)-(3).

7. Ohio Secretary of State, *Ohio Official Roster of Federal, State and County Officers and Departmental Information and Ohio Municipal and Township Roster* (1994).

8. *State v. Nipps*, 419 N.E.2d 1128 (Ohio Ct. App. 1979).

9. Ohio Rev. Code Ann. § 102.03 (Anderson 1996).

10. Ohio Rev. Code Ann. § 102.01(D) (Anderson 1996); Ohio Rev. Code Ann. § 102.04 (Anderson 1996).

11. Ohio Rev. Code Ann. § 2921.42 (Anderson 1996).

12. § 102.03(A)(1)-(4).
13. Ohio Rev. Code Ann. § 102.99(B) (Anderson 1996). These first degree misdemeanors are punishable by a maximum fine of \$1,000 or a maximum sentence of 6 months in jail or both. Ohio Rev. Code Ann. § 2929.21 (Anderson 1996).
14. Ohio Rev. Code Ann. § 2921.42(A)(1)-(2), (E) (Anderson 1996). These fourth degree felonies are punishable by a maximum fine of \$5000 or a maximum prison sentence of 18 months, or both. Ohio Rev. Code Ann. § 2929.14 (Anderson 1996).
15. Ohio Ethics Comm'n Op. 89-001 (1989); Ohio Ethics Comm'n Op. 94-003 (1994).
16. Ohio Rev. Code Ann. § 102.02(A) (Anderson 1996).
17. § 102.02 (A)-(B); *see also* State v. Morgan, No. 2294, 1987 WL 11809 (Ohio Ct. App. May 28, 1987) (finding that the requirements of public financial disclosure for candidates, as well as office holders, is constitutionally permissible due to the state's compelling interest in providing disclosure of sources of income).
18. Ohio Rev. Code Ann. § 102.08 (A) (Anderson 1996).
19. State v. Nipps, 419 N.E.2d 1128 (Ohio Ct. App. 1979).
20. Ohio Rev. Code Ann. § 102.05 (Anderson 1996).
21. *Id.*
22. Ohio Rev. Code Ann. § 102.08(A) (Anderson 1996).
23. *See* Ohio Rev. Code Ann. §§ 2921.42, 2921.43 (Anderson 1996); H.B. 285, 120th General Assembly (Ohio 1994); H.B. 300, 114th General Assembly, (Ohio 1986).
24. *See* Editorial, *From Squeak to Bark?*, Akron Beacon J., April 14, 1993, at A12; Editorial, *Million-Dollar Stamp*, Clev. Plain Dealer, Nov. 21, 1991.
25. *Id.*
26. Memorandum from the Ohio Ethics Commission Subcommittee on Legislation (April 10, 1992) (on file with author).
27. Lee Leonard, *House Getting Senate Version of Ethics Bill*, Columbus Dispatch, Jan. 20, 1994, at C6; Editorial, *Giving Ethics a Boost*, Youngstown Vindicator, April 15, 1993.
28. Leonard, *supra* note 27, at C6; *Giving Ethics a Boost*, *supra* note 27.

29. Leonard, *supra* note 27, at C6; *Giving Ethics a Boost*, *supra* note 27.
30. Leonard, *supra* note 27, at C6; *Giving Ethics a Boost*, *supra* note 27.
31. Leonard, *supra* note 27, at C6; *Giving Ethics a Boost*, *supra* note 27.
32. *From Squeak to Bark?*, *supra* note 24, at A12; *Giving Ethics a Boost*, *supra* note 27.
33. See Ohio Rev. Code Ann. § 2913.40(F) (Anderson 1996) (Medicaid Fraud); Ohio Rev. Code Ann. § 2913.48(C) (Anderson 1996) (Worker's Compensation); Ohio Rev. Code Ann. § 2923.32(B) (Anderson 1996) (R.I.C.O.).

34. See Ohio Rev. Code Ann. § 102.06 (Anderson 1993) (amended 1994), which provided:

All papers, records, affidavits, and documents upon any complaint, inquiry, or investigation related to the proceedings of the commission shall be sealed and are private and confidential, except as otherwise provided in this section.

Ohio Rev. Code Ann. § 102.07 (Anderson 1993) (amended 1994) provided further that:

No member, employee, or agent of the Ohio ethics commission, board of commissioners on grievances and discipline of the supreme court, or senate or house ethics committee shall divulge any information . . . without the consent, in writing, of the appropriate ethics commission, unless [the information was] presented at a public hearing

See also Ohio Rev. Code Ann. § 102.02(B) (Anderson 1993) (amended 1994) (requiring financial disclosure statements to be kept confidential); James B. Recchie and Cynthia E. Wayland, *Ohio's Privacy Act: An Analysis*, 10 Toledo L. Rev. 159 (1978).

35. See §§ 102.02(B), 102.06, 102.07 (amended 1994).

36. See §§ 102.02(B) (subjecting to public inspection of disclosure statements where the commission determines that a potential conflict of interest exists), 102.06 (by reporting violations to a prosecuting authority where allegations are found true, or where allegations are found not true but defendant requests that such findings be made public), 102.07 (written consent of the appropriate ethics commission required) (amended 1994).

37. See Ohio Rev. Code Ann. § 102.02(B) (Anderson 1996); Ohio Rev. Code Ann. § 102.06 (Anderson 1996); Ohio Rev. Code Ann. § 102.07 (Anderson 1996); Ohio Rev. Code Ann. § 102.99(B) (Anderson 1996).

38. §§ 102.02(B), 102.06, 102.07, 102.99(B) (1996).

39. § 102.99(B).

40. *In re* Removal of Steed, No. 1909, 1989 WL 411471 (Ohio Ct. App. July 27, 1989).
41. See Ala. Code § 36-25-4(c) (1996); Conn. Gen. Stat. § 1-82a(e) (1996); Md. Code Ann. art. 40A § 2-105(e) (1995), *repealed by* Acts 1995, ch. 533, effective Oct. 1, 1995, and recodified at Md. Code Ann. [State Government]§ 15-407 (1996); W.Va. Code § 6B-2-4 (1996).
42. See Ohio Rev. Code Ann. § 102.02(B) (Anderson 1993) (amended 1994); Ohio Rev. Code Ann. § 102.06 (Anderson 1993) (amended 1994); Ohio Rev. Code Ann. § 102.07 (Anderson 1993) (amended 1994).
43. Ohio Rev. Code Ann. § 102.06 (Anderson 1996).
44. Neb. Rev. Stat. § 84-913.04 (1995).
45. Ohio Rev. Code Ann. § 102.06 (Anderson 1996).
46. *Id.*
47. These resolution procedures were modeled after section 19.545 of the Wisconsin Statutes (Code of Ethics for Public Officials and Employees). See Wis. Stat. § 19.545 (West 1996).
48. S.B. 359, 118th General Assembly (Ohio 1992); Roger Snell, *Not So Fast, Ohio Legislature: Tax Measure Rushed Through Columbus Thursday Night Likely To Be Challenged On Several Legal Fronts*, Akron Beacon J., Dec. 12, 1992, at C1; Mark Tatge, *Ohio Bottlers Popping Mad*, Clev. Plain Dealer, Dec. 24, 1992, at 3B.
49. Ohio Rev. Code Ann. § 2921.42 (Anderson 1996).
50. See Ohio Ethics Comm'n Op. 92-003 (1992) (opinion issued in response to the request of a judge examining the business associate hiring practice).
51. See § 2921.42.
52. *Id.* at (C).
53. See Joe Hallet, *Bill to Give More Power to Ethics Panel on Rise*, Toledo Blade, April 9, 1993; Mike Rutledge, *Bill Would Put Teeth in Ethics Commission*, Canton Repository, April 9, 1993; Editorial, *Ethics Measure Needs Help*, News Herald, April 10, 1993; *From Squeak to Bark?*, *supra* note 26, at A12; *Giving Ethics a Boost*, *supra* note 29; Mark Tatge, *New Board, Power for Ethics Commission*, Clev. Plain Dealer, May 10, 1993, at 5B.
54. *Ethics Measure Needs Help*, *supra* note 53.

55. *From Squeak to Bark?*, *supra* note 24, at A12.
56. *Giving Ethics a Boost*, *supra* note 27.
57. Gonger News Service, *House Activity Report*, April 27, 1993, at 6.
58. See Newsletter (Ohio Municipal Attorneys Association), May/June 1993; *House Activity Report*, *supra* note 57, at 6; Thomas Suddes, *Pending Ethics Bill is Touchy; Attorney General's Role Signifies Fight*, Clev. Plain Dealer, April 28, 1993, at 7B.
59. Letter from Ohio Ethics Commission to Chair, Legislative Ethics Committee (1993) (on file with author).
60. See *State ex. rel. Doerfler v. Price*, 128 N.E. 173 (Ohio 1920); see also *Miller Properties v. Ohio Civil Rights Comm'n*, 296 N.E.2d 300 (Ohio Ct. App. 1972); *Waspe v. Ohio State Dental Bd.*, 499 N.E.2d 337 (Ohio Ct. App. 1985); 20 O. Jur. 3d *Separation of Powers of Government* § 17 (1996).
61. Ohio Rev. Code Ann. § 102.07 (Anderson 1993) (amended 1994); see *supra* note 34 (quoting the relevant text of the statute).
62. Editorial, *Toothless Watchdog*, Akron Beacon J., May 30, 1993, at G2.
63. Sub. H.B. 285, 120th General Assembly (Ohio 1994).
64. Mark Tatge, *Committee Chips Away at Ethics Bill*, Clev. Plain Dealer, June 17, 1993, at 5B.
65. *Id.*
66. *Id.*
67. *Id.*
68. See also Mark Tatge, *Charges Outrage Ethics Members*, Clev. Plain Dealer, July 3, 1993, at 5B; Editorial, *All Kidding Aside*, Akron Beacon J., June 21, 1993, at A8; Editorial, *Closing the Loophole*, Clev. Plain Dealer, June 24, 1993; Editorial, *Stricter Ethics Bill is Needed*, Warren Tribune Chronicle, July 5, 1993.
69. Mark Tatge, *Ethics Loophole for Partners Attacked*, Clev. Plain Dealer, June 22, 1993, at 3B.
70. See Gonger News Service, *House Activity Report*, June 3, 1993, at 6.
71. See H.B. 201, 119th General Assembly (Ohio 1993).

72. See S.B. 268, 143rd General Assembly (Ohio 1991).
73. See Ohio Rev. Code Ann. § 2921.42(F) (Anderson 1996).
74. Gina O'Brien, *Ethics Bill on Crash Diet*, Akron Beacon J., July 2, 1993, at C3; Mark Tatge, *Ethics Bill Loses Prosecutorial Teeth*, Clev. Plain Dealer, July 1, 1993, at 5B.
75. T.C. Brown, *Maybe I Made a Mistake*, Clev. Plain Dealer, Sept. 28, 1993, at 7B; Tim Miller, *McLin Paid \$500 to Speaker, Jones Asked for Payment*, Dayton Daily News, Sept. 30, 1993, at 1A; Mark Tatge, *Jones Wants to 'Clear the Air'*, Clev. Plain Dealer, Oct. 1, 1993, at 5B.
76. Lee Leonard, *Rules to Change on Speaker's Fees; Ohio House Ethics Scandal*, Columbus Dispatch, Oct. 3 1993, at 1A; Thomas Suddes, *Rep. Jones at Center of Storm Over Ethics Reform*, Clev. Plain Dealer, October 17, 1993, at A1; Dennis Willard and Mike Rutledge, *Our State Lawmakers Speak Freely*, Ohio Week, Nov. 5-11, 1993, at 5.
77. Editorial, *Riffe Pleads Guilty*, Akron Beacon J., July 3, 1996, at A12.
78. Ohio Ethics Comm'n Op. 94-006 (1994).
79. Vindu P. Goel, *Lawmakers Ride Fine Print on Ethics*, Clev. Plain Dealer, October 31, 1993, at 3B; see also Ohio Rev. Code Ann. § 102.03(H) (Anderson 1993) (amended 1994); H.B. 300, 114th General Assembly (Ohio 1986).
80. Marry Ann Sharkey, *Even Lobbyists Were Offended by Jones*, Clev. Plain Dealer, October 10 1993, at 2C.
81. Lee Leonard, *Panicked State Lawmakers Fight Over Who's Cleaner*, Columbus Dispatch, October 4, 1993, at 5A.
82. See Vindu P. Goel, *Ethics Reform Bill Passes, Has Surprises; GOP Amendment Cuts Into Democratic Power*, Clev. Plain Dealer, Oct. 8, 1993, at 5B; Tim Miller, *House OK's Ethics Reform, Restricts Lobbyists*, Dayton Daily News, Oct. 18, 1993; Thomas Workman, *What Lawyers Should Know About Ohio's New Governmental Ethics Reform Laws*, Daily Reporter, July 20, 1994; see also Ohio Rev. Code Ann. § 102.03(G) (Anderson 1996); Op. 94-006, *supra* note 78.
83. Ohio Rev. Code Ann. § 102.01(F) (Anderson 1996).
84. *Id.*
85. *Id.*
86. *Id.*

87. *Id.*
88. *See* Ohio Rev. Code Ann. § 102.02(A)(2)(a), (A)(7), (H) (Anderson 1996); Op. 94-003, *supra* note 15.
89. § 102.02(A)(8)-(9); Ohio Ethics Comm'n Op. 94-004 (1994).
90. *See* § 102.02.
91. § 102.02(A); Ohio Rev. Code Ann. § 102.022 (Anderson 1996).
92. § 102.02(A)(2)(a).
93. § 102.022.
94. § 102.02(G)(2).
95. § 102.02(E)(2).
96. Ohio Rev. Code Ann. § 102.08 (Anderson 1996).
97. *Id.*
98. § 102.02(B).
99. *See* Ohio Rev. Code Ann. § 102 (Anderson 1996).
100. *See* Am. Sub. H.B. 285, 120th General Assembly, (Ohio 1994); Ohio Ethics Comm'n, Findings, Conclusions, and Recommendations on Continuing Ethics Education in Ohio, Report to Legislative Leadership, August 1, 1994.
101. Am. Sub. H.B. 285, 120th General Assembly (Ohio 1994).
102. Lee Leonard, *House Getting Senate Version of Ethics Bill*, Columbus Dispatch, Jan. 20, 1994, at 6C; Thomas Suddes, *Senate OK's Tougher Ethics Bill*, Clev. Plain Dealer, Jan. 20, 1994, at 3B.
103. David Adams, *Senate Approves Ethics Laws*, Akron Beacon J., Jan. 13, 1994, at A1; Editorial, *Ethical Reform a Plus for Ohio*, Alliance Review, Jan. 28, 1994.
104. According to the author, the authorized staff of the OEC now numbers 20 members with various responsibilities.
105. Ohio Rev. Code Ann. § 102.02(G)(2) (Anderson 1996). The Commission received its first court-ordered penalty of \$10,000 in January of 1995 as a result of an ethics violation. *State v. Ridgeway*, No. 95-CRB-26478 (Franklin Mun. Ct. 1995).

106. Ohio Rev. Code Ann. § 102.06(C)(1)(b) (Anderson 1996). Public discussion of the historical non-prosecution of substantiated ethics referrals also drew the attention of some prosecutors toward re-evaluating their decisions to prosecute future ethics referrals.

107. *State v. Cox*, No. CR 96-03-0762, (C.P. Summit 1996); *State v. Strabala*, No. 93-CR-212 (C.P. Columbia 1994); *Ridgeway*, No. 95-CRB-26487.

108. § 102.06(G).

109. Ohio Rev. Code Ann. § 102.08(A) (Anderson 1996).

110. Ohio Rev. Code Ann. § 102.02(A) (Anderson 1996).

111. *Id.*

112. *Id.*; Ohio Ethics Comm'n Op. 94-005 (1994); Ohio Ethics Comm'n Op. 95-002 (1995); Ohio Ethics Comm'n Op. 93-003 (1993).

113. § 102.02(A); Op. 94-005, *supra* note 112; Op. 95-002, *supra* note 112; Op. 93-003, *supra* note 112.

114. § 102.02(A)(10).

115. *See* § 102.02(A)(2)(a); Ohio Rev. Code Ann. § 102.022 (Anderson 1996).

116. § 102.02(A); Op. 94-003, *supra* note 15; Op. 94-006, *supra* note 78.

117. § 102.02.

118. § 102.022.

119. § 102.02(A)-(B) (disclosure statements kept confidential).

120. Ohio Admin. Code § 102-5-01 (1996). *But cf.*, H.B. 182, 121st General Assembly (Ohio 1996).

121. § 102.02(A)(2)(a).

122. *Id.*

123. *Id.* at (A)(2)(b)-(c).

124. *Id.* at (A)(10).

125. *Id.* at (A)(7); Op. 94-003, *supra* note 15.

126. *Id.* at (A)(8).

127. *Id.* at (A)(9).

128. Ohio Rev. Code Ann. § 102.022 (Anderson 1996).

129. Ohio Rev. Code Ann. § 102.01(H) (Anderson 1996). The statute provides that:

"Honorarium" means any payment made in consideration for any speech given, article published, attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering. "Honorarium" does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value; or earned income from any person other than a legislative agent, for personal services that are customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to his office or position of employment.

Id.

130. *Id.*; *see also* Ohio Rev. Code Ann. § 102.03(H) (Anderson 1996).

131. Ohio Rev. Code Ann. § 102.031 (Anderson 1996).

132. *See* Ohio Rev. Code Ann. § 101.70 (Anderson 1996); Ohio Rev. Code Ann. § 121.60 (Anderson 1996).

133. § 102.01(F); Ohio Rev. Code Ann. § 101.34 (Anderson 1996).

134. Ohio Rev. Code Ann. § 2921.42(E) (Anderson 1996); Ohio Rev. Code Ann. § 2921.421 (Anderson 1996).

135. § 2921.42(E); § 2921.421.

136. § 2921.42(F).

137. Ohio Rev. Code Ann. § 102.02(B) (Anderson 1996). *But cf.*, *supra* note 120 and accompanying text.

138. Ohio Rev. Code Ann. § 102.022 (Anderson 1996); Ohio Rev. Code Ann. § 102.03(H) (Anderson 1996).

139. § 102.03(A)(4)-(5).