

**OHIO ARTS COUNCIL  
EXECUTIVE SEARCH MEETING  
FEBRUARY 13, 2014**

Board Chair Jeff Rich called the meeting to order at 10:37 a.m. Meeting was held in Room 1932 of the Riffe Center for Government and the Arts, 77 S. High Street, Columbus, Ohio. Board members present: Jeff Rich, chair; Ginger Warner, vice chair; Jane Foulk, secretary; Juan Cespedes; Jim Dicke; Jon Holt; Sharon Howard; Monica Kridler; Emma Off and Sara Vance Waddell. Absent: Robb Hankins, Darryl Mehaffie, Neal Zimmers, Representative Armond Buddish, Representative Peter Stautberg, Senator Eric Kearney and Senator Gayle Manning. Staff members present: Julie Henahan, Elizabeth Weinstein, Missy Ricksecker, Jim Szekacs and Dan Katona. Also present: Angela Sullivan, assistant attorney general.

Mr. Rich welcomed the board to the meeting and reminded them that board committee meetings are recorded and live-streamed, and also appear as part of the minutes on the OAC website. He counseled that when the board goes into executive session the proceedings are not part of the minutes or live presentation.

After the roll call, Mr. Rich announced that the attending members comprised a quorum and officially started the meeting. He reminded those present to address any comments to the chair and wait until they are called upon to speak. He then thanked board member Monica Kridler for leading the ad hoc committee to plan a retirement party for Executive Director Julie Henahan and Deputy Director Mary Campbell-Zopf. He added that several retired board members were serving on the committee, as well as two staff members. He shared that the committee was considering a date of Thursday, July 10 for the celebration. Ms. Kridler stated that the event would be in the early evening and would consist of a cocktail reception and a smaller dinner to follow.

Mr. Rich turned the board's attention to the day's business, stating that before the group commenced its executive session, Ms. Henahan and Assistant Attorney General Angela Sullivan would review pertinent hiring information that board and staff leadership thought would be appropriate for the board to understand and consider.

Ms. Sullivan turned the board's attention to the packet of materials provided to each of them pertaining to Ohio's code of ethics and conflict of interest provisions for public officials, which she had summarized in a memo sent to the board the previous day. She informed the board that *Ohio Revised Code 2921.42* is a criminal statute, and added that section 42(A) of the statute states that "No public official shall ... authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which an official, member of the public official's family, or any of the public official's business associates has an interest;" and explained that "public contract" includes services. She continued that the board usually sees this with the grants, and explained that an appointment—including the hiring of an executive director—is also a public contract. She advised the board members to take care that they do not have a conflict with themselves, any of the candidates, their family members or business associates and to refrain from participating in the deliberation, discussion, voting or anything on the particular candidate they had a conflict with. She emphasized that violation of this statute is a felony, and of other parts of the statute would be a misdemeanor. Ms. Sullivan

continued that *Ohio Revised Code* 102.03 states that, “(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.” She explained that “anything of value” includes employment, and that the Ethics Commission had concluded that these laws would prohibit a public official who is a member of another organization to participate with regard to that organization if he is an officer, board member or employee of that other organization. She added that the law requires public officers to update their conflict of interest reports, and pointed to the agency’s conflict of interest rule, *Ohio Administrative Code* 3379-9-02. Ms. Sullivan stated that since the agency had not gone through the process of hiring an executive director for eight years, her intent was to provide a timely reminder that the executive director position is a public contract, and to advise them that they should each take care that they do not have any conflict of interest, and make sure that they don’t participate at all—including discussion—about anybody with whom they have a conflict of interest.

Ms. Sullivan asked if anyone had any questions; Mr. Rich interjected that a voting member who is going to benefit directly or indirectly from a vote can’t participate in the vote. He continued that, for example, if a voting member’s brother is one of the applicants, that member will not be able to vote on that; if their business partner in one of your ventures is one of the applicants, they can’t vote on that. He asserted that the mere fact that someone is on the art board or the orchestra board and one of the employees of the orchestra has applied is irrelevant; it doesn’t count as a conflict of interest. He reckoned that, for example, when the board hired Ms. Henahan eight years ago, none of them could have voted because they were on the arts council at the time and had a vested interest in hiring her. He reasoned that such a decision was of economic interest to that board because they were going to give her a promotion and give her more money and would have not been allowed to vote. He added that it was obvious that conflict of interest has nothing to do with whether a voting member is on an organization or not; it has to do with whether the voting member is going to benefit, directly or indirectly, and in fact if someone were on the Cleveland Orchestra board and was going to hire someone from the Cleveland Orchestra, it would be a detriment to the person’s position on the board; it would not be a benefit. He advised the board that if a person under consideration for the executive director position is a relative, if they are a renter from them or a business partner, and by economically hiring them is going to be helpful, the board member would have to recuse themselves from discussion and voting for that person.

Sara Vance Waddell shared her concern about breaking the law and asked for clarification on the statute, specifically if she would be allowed to participate in the discussion and voting on a candidate if she were a board member of the organization whose executive director was applying the position.

Mr. Rich advised the board that whether or not a voting member is on the board of an organization whose executive director is applying for this position is absolutely irrelevant, and stated that any other interpretation of the statute was absolutely wrong.

Ms. Sullivan asked if she could clarify her advice to the board. Mr. Rich denied her request to clarify her advice and gave the floor to board member James Dicke.

Mr. Dicke commented that usually in conflict of interest, the primary duty of a party is disclosure.

Mr. Rich affirmed Mr. Dicke's statement. A discussion about what constituted due diligence with regard to conflict of interest. Mr. Dicke asserted that once a matter is disclosed, and there is opportunity for people to opine about whether there is a conflict, the person has discharged their duty. Ms. Vance inquired if it were the case that once she had revealed a conflict, her duty did not extend to recusing herself from discussing or voting on the person with whom she had a conflict. Mr. Dicke affirmed her statement and added that if a person was unsure about whether or not they had a conflict, simply disclosing the potential conflict fulfilled their ethical and legal duty. Mr. Rich agreed, adding that the only question board members should be concerned about is whether a vote would result in a direct or indirect benefit to the individual board member. He continued that it was also irrelevant if someone is on another board.

Board member Monica Kridler expressed concern that the conversation over this issue was becoming heated. Ms. Vance agreed and stated that she was having a difficult time understanding the legal advice the board was receiving.

Ms. Kridler asked if the board could hear from Ms. Sullivan to gain some clarity on the issue.

Mr. Rich retorted that the board had already heard from Ms. Sullivan, and asked if there were any other questions from the board.

Ms. Kridler repeated her request to hear a follow-up from the assistant attorney general.

Mr. Rich refused Ms. Kridler's request to hear a follow-up from Ms. Sullivan.

Ms. Kridler asked if there were any reason the board couldn't have a follow-up, in order to have total transparency and communication.

Mr. Rich stated that if Ms. Sullivan had something to say [she could], and insisted upon consideration of his hypothetical reasoning about the hiring of Ms. Henahan, asking if he had had something of value when he voted for her eight years ago. He continued, asking if he should have abstained from voting at that time because he was a board member, and postulated that if he should have abstained, nobody on the board should have been able to vote. He insisted that such reasoning doesn't make sense, and added that, as Mr. Dicke had said, once a person has declared they are a member, then the question is if that person is going to benefit in any way, indirectly or directly. He then stated that the conversation about the issue of conflict of interest was over.

Ms. Howard reiterated Ms. Kridler's request to hear a follow-up from the assistant attorney general. Ms. Sullivan stated that she respectfully disagreed with Mr. Rich's interpretation.

Mr. Rich interrupted, asking how he could have voted for Ms. Henahan the last time the board hired an executive director.

Ms. Howard shared that she wanted to hear what Ms. Sullivan had to say about the current issue.

Ms. Sullivan explained that she had not been the legal counsel for the OAC board when Ms. Henahan was hired, and stated that she was solely referencing existing ethics opinions. She cited

Advisory Opinion Number 89-005, which states that these laws “would prohibit a public official or employee who is a member of an organization from participating in deliberations, voting, or otherwise using his official position with regard to the interests of the organization, where: (1) he is an officer, board member, or employee of the organization....”

Mr. Rich inferred from Ms. Sullivan’s statement that if the board were going to promote somebody from within the organization that nobody would be able to vote on it, and declared that Ms. Sullivan was by extension accusing the board members who voted for Ms. Henahan eight years ago had broken the law.

Mr. Dicke disagreed with Mr. Rich’s statement. Mr. Rich reaffirmed his statement that Ms. Sullivan’s statement was wrong and was derived from faulty logic.

Ms. Sullivan stated that she had not seen the list of people who were currently under consideration as candidates, and asked if these conflict of interest laws would be an issue in the current deliberation. Mr. Rich stated that it may well be an issue and repeated his assertion that the advisory was irrelevant unless board members were going to benefit from something of value.

Ms. Vance declared that this disagreement was at the heart of her original question and stated that she wanted clarity because she didn’t want to commit a felony.

Ms. Howard asked for clarification on the advisory and asked Ms. Sullivan to read it again.

Ms. Sullivan explained that it was a section of an Ethics Commission advisory opinion which states that the law, “would prohibit a public official or employee who is a member of an organization from participating in deliberations, voting, or otherwise using his official position with regard to the interests of the organization, where: (1) he is an officer, board member, or employee of the organization....”

Mr. Dicke posited that the opinion referred to an organization separate from the one a person is sitting on at the moment. He offered the example that if Ms. Howard were on the Dayton Art Institute board of directors, and the Dayton Art Institute had an applicant, or is asking for something from this board, it might be legitimate for her to ask if she should abstain from voting.

Ms. Sullivan affirmed that Mr. Dicke’s assessment was correct, and that his example illustrated the point. She repeated the example that if someone from the Dayton Art Institute applied for the position and you are on the board of the Dayton Art Institute... Ms. Howard concluded that in that scenario, she would have to step away.

Mr. Rich strongly disagreed, arguing that there would be no benefit to Ms. Howard in that scenario. Ms. Warner added that the vote would not be a benefit to the Dayton Art Institute, but rather, a detriment. Ms. Off offered that she did not think that person would have to step out, because it’s not a benefit. It would be if it were a grant or something like that.

Mr. Rich affirmed that if the vote were about a grant to the organization in question, there would be no question that it constituted a conflict of interest. He then turned to board member Jon Holt and asked him for his opinion as an attorney.

Mr. Holt agreed that there would be no benefit.

Mr. Rich concluded that the conversation about conflict of interest was over.

Ms. Howard asked Mr. Rich for clarification on the issue, inquiring whether it were the case that if a person does not receive a financial benefit for themselves or their family, such as if she were hiring her brother, conflict of interest did not exist. Mr. Rich stated that Ms. Howard's assessment was correct.

Ms. Sullivan questioned the reference to "benefits" and "detriments," and stated that the statute instead refers to "anything of value." Mr. Rich acknowledged that this was correct.

Ms. Kridler added that a job is "of value." Ms. Sullivan continued that "...anything of value, or the promise or offer of anything of value." She added that "anything of value" includes any promise of future employment. She repeated her confusion as to how the aspect of a "benefit" came in.

Ms. Warner offered that the benefit would be to the arts council when the board hires someone. Mr. Rich affirmed Ms. Warner's statement, and added that it would be a detriment to the people who are losing [their employee].

Ms. Howard asked that the board members' ethics responsibilities be clarified before the group proceeded because the line between Ms. Sullivan's interpretation of the law and Mr. Rich's interpretation was blurred.

Mr. Rich told her she was wrong and that nobody else agreed with her.

Ms. Kridler offered that she agreed with Ms. Howard.

Mr. Rich conceded that, perhaps, she agreed with Ms. Howard, but that nobody else did. He asked whether anybody else at the table agreed with her.

Ms. Off suggested that the larger issue could be clarified if the party whom the statute regarded as "securing something of value" could be identified. She suggested that this party may be the organization on whose board the voting member sits. Mr. Rich asserted that there would be no value to that organization in this situation.

Mr. Dicke offered that the value would be to the board member if, for example, their brother works for an organization, and that brother's job depends on whether or not the organization gets a grant that has come before the board, the board member should recuse themselves. Ms. Off agreed with Mr. Dicke's statement, and Mr. Rich emphasized that the previous line of reasoning was indeed what the law intended. He then asked if anyone aside from Ms. Kridler and Ms. Howard had any problem with that opinion.

Ms. Howard clarified that she didn't have a problem with the opinion, but was concerned because on the one hand, the Attorney General's representative was advising one thing, and on the other hand several attorneys on the board advised the opposite. She emphasized that she was not an attorney and stressed the importance of every board member having clarity on the issue so none of them was in danger of breaking the law.

Ms. Off clarified that she was not representing the Ohio Arts Council. Mr. Rich offered that there were five attorneys present. He named Ms. Off, Ms. Warner, Mr. Holt and himself as the attorneys present from the board, and advised Ms. Howard to do what she was comfortable with in her interpretation of the statute and Ethics Commission advisory opinion. He then asked if there were any other questions to go over.

Ms. Kridler asked if the board could wait to see what Ms. Off's examination of the Ethics Commission's opinion yielded. Ms. Off explained that she was reading the opinion to gain greater clarity for herself.

Ms. Kridler offered an interpretation for the record that if she were on the board of an organization that had a candidate up for this position, that represents a conflict because either way she was going to be making decisions to the financial gain of the individual, whether it's her position on OAC...

Mr. Rich interjected that Ms. Kridler was totally wrong, and added that the financial gain of the candidate had nothing to do with the issue at hand.

When Ms. Kridler continued with her train of thought, Mr. Rich interrupted, stating "No!" and directed attention to the fact that there would be no benefit whatsoever to her. He argued again that no one on the board would have been able to vote for Ms. Henahan if Ms. Kridler's interpretation were correct.

Ms. Kridler continued, sharing that she was almost finished with her statement. She posited that if she were on the board of the organization that has a member up for this job, then her decisions would present a conflict of interest because that individual would stand to either benefit or not from her decision about their future.

A discussion followed as to whom the statute was referring regarding the gain of "something of value." Mr. Dicke suggested that the benefit has to come to the person voting. Ms. Warner and Mr. Rich agreed and added that the board would also never be able promote somebody from within.

Ms. Kridler shared that her understanding of the statute was that you could not benefit an employee, that I would be in conflict if... Mr. Rich interrupted, asking how then it would be possible ever promote from within?

Ms. Kridler tried several more times to turn the discussion to how specifically the statute applied to the process the board was currently engaged in. Mr. Rich asserted that his statements were entirely apropos to the matter at hand and asked Ms. Off for her opinion on the Ethics Commission advisory. Ms. Off replied that she didn't know enough to provide an opinion, as she had only read it briefly, but offered that she didn't think the intent of the opinion was that board members wouldn't be able to deliberate. She surmised that it was instead looking at the interest of the organization and benefitting those interests, not the...

Mr. Rich interjected that this was, indeed, what the opinion intended, and advised that if anybody felt uncomfortable, and they have some organization that they are involved with that the board was going to talk about, they could step aside, if they feel it is appropriate.

Mr. Rich then turned the board's attention to the hiring information that Ms. Henahan had prepared for the board. Ms. Henahan presented a summary of the Equal Employment Opportunities considerations and practices in the State of Ohio. She stated that the State of Ohio is an equal opportunity employer and the board must comply with any federal, state, laws and Gubernatorial Executive Orders prohibiting discrimination, discriminatory harassment and retaliation. Employment decisions that are made in state government must be made on the basis of merit, fitness and equality of opportunity, and not be unlawful discrimination on the basis of all the listed reasons on the EEO handout. She continued that some people are in protected classes and there is legislation that identifies those protected classes, also listed on the handout, such as: The Civil Rights Act of 1964, The Age Discrimination in Employment Act of 1967 (amended in 1986), The American with Disabilities Act of 1990, Fair Labor Standards Act 1938, The Equal Pay Act of 1963, The Fair Pay Act of 2009, and most importantly, Ohio Revised Code 4112.

Ms. Henahan stated that she was not familiar with what process the board was going to use for hiring the new executive director, but reminded them that in their search and interview processes, the Ohio Arts Council was required to follow all the relevant laws and protocols to make sure that the process is fair and neutral. She reviewed the considerations the board should keep in mind as they design the agency's interview process for the next executive director, that interview questions should address, but not be limited to, minimal qualifications and set criteria along with job experience; they should not make reference marital status, gender, sex, race/color, ethnicity, religious or national affiliation, and other considerations listed on the handout. She continued that in the state interview process, during the first-round interviews, questions have to be the same for each candidate, and that the board would also need to keep detailed interview notes. She noted that Mr. Rich had sat in on some interviews with agency staff and has been somewhat familiar with the process that the agency and state uses. All hard-copy and electronic application and interview materials, including notes, must be kept in the personnel files at the arts council. Second-round interview questions may focus more directly on the ability of the candidate to perform required tasks and handle situations; but questions must be linked to qualifications and other legitimate criteria, and neutrality must be maintained. At that time in the second interviews, it is also valid to ask questions regarding perceived weaknesses in the candidate's job experience. She directed their attention to the last page of the handout, which gave advice about what to look for in the job qualifications and what might distinguish one candidate over another one. For example, one candidate might have better job qualifications that fall under the areas of experience, education, intelligence, skills/training, aptitude, or they might have better interview responses. She urged them to ensure that good documentation is kept, to have a clear paper trail, and to ensure that the Ohio Public Records Law and DAS requirements for records handling and retention are fulfilled. She then brought to their attention that when a decision about the new director is ultimately made by the board, that person and their résumé and application as well as a position description must be submitted to the Governor's Office for approval before the person can be officially approved.

Ms. Sullivan reminded the board that all records considered in executive session were presumed to be public records unless they meet the proper exception. Ms. Henahan reminded the board to sign and turn in their conflict of interest sheets before they entered into executive session. Mr. Rich thanked Ms. Henahan for her presentation and noted that OAC deputy director, Mary Campbell-Zopf, was the custodian of the records for the agency.

**MOTION** by Monica Kridler, seconded by Jim Dicke to go into executive session to consider the appointment, employment and compensation of a new executive director.

Mr. Rich asked if there were any further discussion and called for a vote *viva voce*.

Ms. Sullivan reminded Mr. Rich that the vote needed to be by roll call.

Roll call vote was unanimous in favor of convening executive session.

*Council went into executive session at 11:05 a.m.*

Board Chair Jeff Rich reconvened the open session of the meeting at 2:06 p.m. in Room 1932 of the Riffe Center for Government and the Arts, 77 S. High Street, Columbus, Ohio.

He announced that the board had left the executive session and was now back in open session. He stated that although they didn't agree with the Attorney General's opinion as stated by the board's assistant attorney general, and had felt pressure from her on the issue of conflict of interest, the four members of the board of the Ohio Citizens for the Arts (OCA) had faxed their resignation from the board to OCA President Mark Folk. He stated that they did not want there to be any—although they completely disagreed with the opinion—any sense of impropriety that might arise from their membership on that board.

Mr. Rich then turned attention to the selection of an executive director. He stated that since Ms. Henahan had given a 10-month notice of retirement last September, the board had met in November to review the job description Ms. Henahan had provided, determine the requirements for the new executive director and create a position posting, and that they had posted the position the first week of December on the careers.ohio.gov website, the Americans for the Arts website, and several other locations. He continued that he had received a total of 114 applicants, which was far more than the board had anticipated. The board had then decided that a successful candidate would be one who demonstrated strength in five major areas: they must be a proven arts leader; have management experience, planning and implementation experience, and Ohio state government experience; and have good communication skills. Of those 114, only 24 had at least two of those experiences, which narrowed the pool of 24 candidates. A further requirement that made on the posting was that candidates would submit, by the 31<sup>st</sup> of January, not only their résumés and applications, but also at least three references. Of the 24, only 10 candidates submitted three or more letters of reference. (He explained that three of those references came in late, but were considered as well.) He stated that the board had looked over the résumés of those 10 finalists very carefully, and thanked the council for all the hard work they put into this process. He shared that it is never easy, especially when there are so many outstanding candidates from across the country, and that in the end he thought that they looked at those candidates. He then asked if there were anyone who would like to make a motion?

**MOTION**, by James Dicke, seconded by Jane Foulk, to offer the name of Donna Collins into consideration for the executive director position.

Mr. Rich asked if there were any further discussion and asked for a vote *viva voce*. He declared that by unanimity of the board present at the meeting, Donna Collins had been selected as the new executive director.

Ms. Warner suggested that Mr. Rich say something to the public why they had decided Donna was a good choice for executive director.

Mr. Rich stated that the board had found that Ms. Collins, who had been the head of the Ohio Alliance for Arts Education for 16 years and the executive director of the Ohio Citizens for the Arts and its foundation for 12 years, had managed one staff member and had done phenomenal work. He continued that Ms. Collins had become a nationally recognized person who receives regular calls to make presentations around the country and has a tremendous group of followers and advocates. He added that he had received four letters of reference on her behalf; one from the Kennedy Center Vice President Darryl Ayers, who wrote, "She is viewed as someone who gets the job done, but does it in the most professional way possible...If I had a leadership position open at this time, I would seek out Donna as a candidate for the opening. She's the kind of person who works well with other people, can be forceful when needed (though rarely needed because of her work style), is sensitive, but firm with people on accomplishing tasks, and is a go-to person on committees and groups." He then stated that John Abodeely, who worked with her at the committee of the arts and humanities at the White House, had written, "Her experience, expertise in government relations and public policy, and her outstanding integrity as a spokesperson for citizens and school children immediately elevated the [Arts Education] Council [of Americans for the Arts]'s work and brought about the its [sic] high-visibility, national reputation for quality," and that Robert Lynch, president and CEO of Americans for the Arts, had written that, "Leaders like Donna have character traits such as honesty, commitment, confidence, and respect for others. They also have the ability to communicate in ways that inspire others to achieve, along with a sense of curiosity and vision that allows them to see the possibilities within current and future operating and political landscapes... Donna works with two statewide boards of directors, numerous local, state, and national colleagues, and stakeholders, along with her staff, all of whom respect her collaborative work style, ability to hear and bring diverse voices together, and her keen knowledge of issues which enable her to plan and implement effective action. She has also been a successful fundraiser and steward of the dollars... Setting the future course of the state agency's work on behalf of arts and culture through a new strategic plan is a wonderful opportunity for Donna to work hand-in-hand with the Council board and staff to dream big and open the door to new and innovative ways of doing business and serving the constituents of the state."

Mr. Rich then stated that the very respected former state senator Joy Padgett had written in her letter's concluding paragraph, "I have no doubt that Donna's experience, proven abilities and dedication can effortlessly transition her to the position of Executive Director of the Ohio Arts Council. I know the Council would benefit tremendously with Donna as their creative leader." He concluded that Ms. Collins' life experiences, her experiences professionally in Ohio and throughout the nation, the kind of supporting references that the board received on her behalf, and her interview, suggested to the board that she was the right candidate. He thanked the board for their hard work on this.

Mr. Dicke stated that Ms. Collins would have some "big heels" to fill, and invited the board to join him in giving Ms. Henahan a round of applause.

After a round of applause for Ms. Henahan, Mr. Rich asked if there were any further business to come before the council and declared the meeting adjourned.

Approved: April 3, 2014

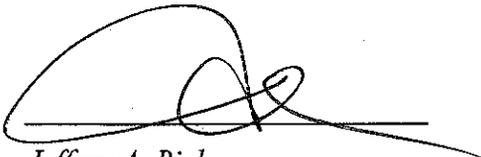
Ms. Sullivan reminded him that he needed a motion to adjourn.

MOTION by Sara Vance Waddell, seconded by Jane Foulk, to adjourn.

**Motion carried.**

Meeting was adjourned at 2:17 p.m.

*An audio recording of the meeting is available upon request.*



Jeffery A. Rich  
OAC Board Chair



Jane Foulk  
OAC Board Secretary