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Opinion No. 02-082

Effect of unpaid civil penalties and/or unfiled campaign disclosure reports on write-in candidates

QUESTION

1. May an individual who has an unpaid civil penalty assessed by the Registry of Election Finance or a county administrator of elections qualify to win election as a write-in candidate and take office?

2. May an individual who has not filed a required disclosure report qualify to win election as a write-in candidate and take office?

OPINION

1. An individual who has an unpaid civil assessment imposed by the Registry of Election Finance or a county election commission that has been final for more than thirty days may not qualify to win election as a write-in candidate and take office, unless the assessment is paid on or before election day.

2. An individual who has not filed a required disclosure report may not qualify to win election as a write-in candidate and take office, unless the report is filed on or before election day.

ANALYSIS

This opinion addresses whether an individual with unpaid assessments by the Tennessee Registry of Election Finance or a county election commission, or who has failed to file a required disclosure report, may win an election as a write-in candidate. Tenn. Code Ann. §§ 2-10-101, *et seq.*, impose disclosure requirements on candidates for state or local public office. Under Tenn. Code Ann. § 2-10-110, the Registry of Election Finance or, with respect to candidates for local public office in some cases, a county administrator of elections, may impose a penalty on a candidate who fails to comply with applicable disclosure requirements. Subsections (c) and (d) of this statute provide:

> (1) The registry of election finance shall maintain a register of all civil penalties imposed under this part and remaining unpaid.

> (2) If a civil penalty lawfully assessed and any lawfully assessed cost attendant thereto are not paid within thirty (30) days after the assessment becomes final, *the candidate owing such civil penalty shall be ineligible to qualify for election to any state or local public office until such penalty and costs are paid.*
>
> (3) If a civil penalty authorized by this section is imposed, it shall be considered as a personal judgment against the candidate.
>
> (d) A candidate for state or local public office who fails to file any statement or report required by this part *shall be ineligible to qualify for election to any state or local public office until such statement or report is filed with the registry and/or the appropriate county election commission.*

Tenn. Code Ann. § 2-10-110(c) & (d) (emphasis added). Clearly, under this statute, an individual who has an unpaid assessment that has been final for more than thirty days or who has failed to file a required disclosure report cannot qualify to have his or her name printed on the ballot under Tenn. Code Ann. § 2-5-101. Subdivision (f)(6) of that statute provides:

> It is unlawful for a person *to qualify as a candidate for any election* if such person has failed to file any required report for which a civil penalty has been imposed under chapter 10 of this title.

Tenn. Code Ann. § 2-5-101(f)(6) (emphasis added). Of course, a write-in candidate is not required to qualify as a candidate under this statute. But while Tenn. Code Ann. § 2-5-101(f)(6) provides that an individual who has not filed a required report for which the Registry of Election Finance or a county election commission has imposed a civil penalty may not qualify *as a candidate for any election*, Tenn. Code Ann. § 2-10-110(c) and (d) state that an individual with an unpaid assessment or an unfiled disclosure statement may not qualify *for election* to any state or local office until the failure has been corrected. In our opinion, under this provision, the General Assembly intended to include any individual receiving votes in an election, whether that individual's name appeared on the ballot or the individual received votes as a write-in candidate. Because the statutes refer to the individual's ability to qualify *for election* rather than to qualify to take office, we think the requirements must be satisfied on or before election day. Therefore, an individual who has an unpaid civil assessment that has been final for more than thirty days imposed by the Registry of Election Finance or a county election commission may not qualify to win election as a write-in candidate and take office unless the assessment is paid on or before election day. Similarly, an individual who has not filed a required disclosure report may not qualify to win election as a write-in candidate and take office unless the report has been filed on or before election day.

We note that Tenn. Code Ann. § 2-10-110(e) provides that "[i]t is the intent of the general assembly that the sanctions provided in this section shall be the civil penalties enacted into law by Acts 1989, Ch. 585." The present Tenn. Code Ann. § 2-10-110(d) was enacted in 1996. 1996 Tenn. Pub. Acts Ch. 1005, § 3. Because that act expressly amended Tenn. Code Ann. § 2-10-110 to add the penalty in subsection (d), it repealed subsection (e) to the extent the two conflict.

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