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Opinion No. 08-21

Civil Penalties for Personal Use of Campaign Funds

QUESTIONS

1. In determining the maximum amount of Class 2 civil penalties that may be assessed under the Campaign Financial Disclosure Act, is there an "amount in controversy" when the matter involves the assessment of civil penalties for the personal use of campaign funds?

2. If the answer to question one is "yes", would the Registry of Election Finance be limited to assessing a maximum civil penalty of 15% of the total amount of the checks written for the personal use of campaign funds?

3. If the answer to question one is "no", may the Registry of Election Finance consider each check written for the personal use of campaign funds as separate violation subject to Class 2 civil penalties, or should all checks written for the personal use of campaign funds be considered as one violation subject to Class 2 civil penalties?

OPINIONS

1. The statutory definition of "amount in controversy" has no application to the calculation of the amount of Class 2 civil penalties that may be assessed for the personal use of campaign funds in violation of Tenn. Code Ann. § 2-10-114(b).

2. In light of opinion 1, it is not necessary to address question 2.

3. In the instance where multiple checks are written for the personal use of campaign funds, each check would constitute a separate "disbursement of campaign funds" in violation of Tenn. Code Ann. § 2-10-114(b) and thus a separate offense subject to Class 2 civil penalties.

ANALYSIS

1. You have asked how the Registry of Election Finance should determine the maximum amount of Class 2 civil penalties that may be assessed for a violation of the prohibition against the personal use of campaign funds where a candidate or officeholder has written multiple checks from a campaign account for personal financial benefit.

Tenn. Code Ann. § 2-10-114(b)(1) states:

> Except as provided in subsection (a), no candidate for public office shall use any campaign funds for any other purpose other than a contribution or expenditure as defined by this part. The disbursement of campaign funds for a candidate's own personal use is not permitted. For the purpose of this section, "personal use" means any use by which the candidate for public office or elected public official would be required to treat the amount of the expenditure as gross income under 26 U.S.C. § 61, or any subsequent corresponding Internal Revenue Code Section.

Subsection (b)(2) identifies certain expenditures which are specifically prohibited by the statute. Subsection (b)(3) provides that a violation of subsection (b) is a "Class 2 offense as defined in § 2-10-110(a)(2)."

Tenn. Code Ann. § 2-10-110(a)(2) defines a Class 2 offense as follows:

> "Class 2 offense" means failing to file a report required by this part within thirty-five (35) days after service of process or receipt of notice by registered or certified mail of an assessment or any other violation of the requirements of this part. A Class 2 offense is punishable by a maximum civil penalty of not more than ten thousand dollars ($10,000) or fifteen percent (15%) of the amount in controversy, if fifteen percent (15%) of the amount in controversy is greater than ten thousand dollars ($10,000).

The term "amount in controversy" is defined in subsection (a)(2)(C) as follows:

> "Amount in controversy" means, as appropriate to the case, the greater of the total expenditures or total contributions, either of which or both of which are shown on a late report subsequently filed, or the amount of an expenditure or contribution that was not reported or was incorrectly reported.

Your first question asks whether the Registry is required to apply this definition of "amount in controversy" in determining the maximum amount of Class 2 civil penalties that may be assessed

for the personal use of campaign funds in violation of Tenn. Code Ann. § 2-10-114(b). The primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000); *Carson Creek Vacation Resorts, Inc. v. Dep't of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). To determine legislative intent, courts must look to the natural and ordinary meaning of the language used in the statute itself and examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000). In construing statutes, courts must "give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent." *Tidwell v. Collins*, 522 S.W.2d 674, 677 (Tenn. 1975). The courts have a duty to construe a statute so that no part will be inoperative, superfluous, void or insignificant. *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn.Ct.App. 1995). Further, it is a basic rule of statutory construction "that the legislature is presumed to use each word in a statute deliberately and that the use of each word conveys some intent and has a specific meaning and purpose." *Scales v. City of Oak Ridge*, 53 S.W.3d 649, 654 (Tenn. 2001) (quoting *Bryant v. Genco Stamping & Mfg. Co.*, 33 S.W.3d 761, 765 (Tenn. 2000)).

The definition of "amount in controversy" contained in Tenn. Code Ann. § 2-10-110(a)(2)(c) specifically provides that "amount in controversy" is the greater of the total expenditures or total contributions shown on a late filed report or the amount of an expenditure or contribution that was not reported or incorrectly reported. This definition makes no reference to the personal use of campaign funds. Thus, by its very terms, the definition of "amount in controversy" contained in Tenn. Code Ann. § 2-10-110(a)(2)(c) is only applicable in determining the maximum amount of Class 2 civil penalties to be assessed in connection with reporting violations, *i.e.*, the failure to timely file a required campaign financial disclosure report or the failure to report or to correctly report a contribution or expenditure in a required campaign financial disclosure report. Accordingly, it is our opinion that the Registry is not required to apply the definition of "amount in controversy" contained in Tenn. Code Ann. § 2-10-110(a)(2)(c) in determining the maximum amount of Class 2 civil penalties to be assessed for the personal use of campaign funds in violation of Tenn. Code Ann. § 2-10-114(b).

2. In light of opinion 1, it is not necessary to address question 2.

3. Your third question involves the situation where multiple checks are written for the personal use of campaign funds. You have asked whether the Registry of Election Finance may consider each check written for the personal use of campaign funds as a separate violation subject to Class 2 civil penalties, or whether all checks written for the personal use of campaign funds should be considered as one violation subject to Class 2 civil penalties. While Tenn. Code Ann. § 2-10-114(b) does not specifically address this issue, it does state that the "*disbursement* of campaign funds for a candidate's own personal use is not permitted" and that a violation of this subsection is a Class 2 offense as defined in Tenn. Code Ann. § 2-10-110(a)(2). A single check written on a candidate's campaign account for personal use clearly would constitute a "disbursement of campaign funds" in violation of Tenn. Code Ann. § 2-10-114(b). Thus, in the instance where multiple checks are written for the personal use of campaign funds, each check would constitute a

separate “disbursement of campaign funds” in violation of Tenn. Code Ann. § 2-10-114(b) and thus a separate offense subject to Class 2 civil penalties.

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