

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

March 10, 2005

Opinion No. 05-022

Sworn Complaints Filed with the Registry of Election Finance

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**QUESTIONS**

1. Under Tenn. Code Ann. § 2-10-108(a), “[a] registered voter of Tennessee may file a sworn complaint alleging that a statement filed regarding an election for which that voter was qualified to vote does not conform to law or to the truth or that a person has failed to file a statement required by law.”

a. Does this statute require that a sworn complaint, filed against a member of the General Assembly, be filed by a registered voter in the member’s district in order for the Registry to consider the complaint?

b. Would the Registry be prohibited from considering a complaint filed against a legislative member by someone who was not a registered voter in the member’s district?

2. May a sworn complaint be filed with the Registry in relation to a possible violation of the conflict of interest disclosure rules, Tenn. Code Ann. §§ 8-50-501, *et seq.*?

3. If the answer to Question 2 is yes, must the person filing the complaint be a registered voter in the district of the person against whom the complaint was filed?

**OPINIONS**

1.a. & b. No. Under Tenn. Code Ann. § 2-10-206(a)(7), the Registry has the duty to investigate *any* alleged violation upon sworn complaint or upon its own motion. We think a court would conclude that this statute, which was first passed in 1989 when the Registry was created and which was last amended in 1991, broadened the Registry’s enforcement authority to act with regard to any sworn complaint or any other information on its own motion, whether or not that complaint meets the narrow requirements of Tenn. Code Ann. § 2-10-108(a). For this reason, the Registry is not prohibited from considering a sworn statement regarding a legislator’s compliance with disclosure and other statutory requirements even if it is not filed by a qualified voter of that legislator’s district.

2. Yes, but some statutes impose penalties for filing a statement with the Registry that is false or for the purpose of harassment. It is generally a criminal offense to make a false statement under oath.

3. No.

### **ANALYSIS**

#### 1. Sworn Complaints under Tenn. Code Ann. § 2-10-108(a)

This opinion concerns the authority of the Registry of Election Finance to review and investigate sworn complaints filed with it. The Registry of Election Finance (the “Registry”) was created and operates under Tenn. Code Ann. §§ 2-10-201, *et seq.* The Registry originated with the Registry of Election Finance Act of 1989, 1989 Tenn. Pub. Acts Ch. 585. Under Tenn. Code Ann. § 2-10-205, the Registry has the jurisdiction to administer and enforce the provisions of the campaign finance disclosure laws, Tenn. Code Ann. §§ 2-10-101, *et seq.*; the lobbyist registration and disclosure laws, Tenn. Code Ann. §§ 3-6-101, *et seq.*; the conflict of interest disclosure laws, Tenn. Code Ann. §§ 8-50-501, *et seq.*; and the campaign contribution limits, Tenn. Code Ann. §§ 2-10-301, *et seq.* Under Tenn. Code Ann. § 2-10-206(a)(7), the duties of the Registry include the duty to “[i]nvestigate any alleged violation upon sworn complaint or upon its own motion.” In determining whether an actual violation has occurred, the Registry is authorized to conduct a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.* Tenn. Code Ann. § 2-10-207(4).

The request focuses on Tenn. Code Ann. § 2-10-108(a) and (b). That statute provides:

(a) A registered voter of Tennessee may file a sworn complaint alleging that a statement filed regarding an election for which that voter was qualified to vote does not conform to law or to the truth or that a person has failed to file a statement required by law.

(b) All sworn complaints on a statement of a candidate for state public office or a political campaign committee for such candidate must be filed in the office of the registry of election finance.

This statute was originally part of the Campaign Financial Disclosure Act of 1980, 1980 Tenn. Pub. Acts Ch. 861, § 9. Under that act, the State Librarian and Archivist was required to prescribe requirements for and accept campaign disclosure statements for state candidates and political campaign committees. The act, however, did not expressly authorize the librarian to investigate complaints or impose penalties for violations of the disclosure requirements. Section 9(b) of the 1980 act, now codified at Tenn. Code Ann. § 2-10-108(b), provided that, “[a]ll sworn complaints on a statement of a candidate for state public office or a political campaign committee for such candidate must be filed *in the office of the Attorney General.*” (Emphasis added). Under Section

10(a)(2), the Attorney General was required “to investigate any sworn complaint filed in accordance with Section 9(b) of this Chapter[.]” Under Section 10(a)(3), the Attorney General was required:

To seek injunctions or fines in the Chancery Court of this state to enforce the provisions of this Act against any candidate or political campaign committee about whom a sworn complaint has been filed; if such action is justified.

These provisions were codified at Tenn. Code Ann. § 2-10-109(a)(3) and (4) before the 1989 act was passed. Tenn. Code Ann. § 2-10-109 (1985). Section 16 of the 1989 act substituted the Registry for the Attorney General in § 2-10-108(b). Section 18 deleted (3) and (4) from Tenn. Code Ann. § 2-10-109(a) and provided instead that the Attorney General is required “[t]o represent the registry of election finance in any action or lawsuit in any court of this State.” As originally drafted, therefore, Tenn. Code Ann. § 2-10-108(a) and (b) described the investigatory authority of the Attorney General with regard to violations of the campaign disclosure laws. *See Op. Tenn. Att’y Gen.* 81-99 (February 13, 1981) (the Attorney General can investigate and enforce violations of the disclosure laws only if a sworn complaint is filed by a voter pursuant to Tenn. Code Ann. § 2-10-108).

We think a court would conclude that the authority of the Registry of Election Finance is not limited to investigating complaints that meet the narrow technical requirements of Tenn. Code Ann. § 2-10-108(a) and (b). This is based on two considerations. First, and most importantly, the Registry is now authorized to “[i]nvestigate *any* alleged violation upon sworn complaint or upon its own motion.” Tenn. Code Ann. § 2-10-206(a)(7) (emphasis added). This is broader enforcement authority than that accorded under either the 1980 act or Tenn. Code Ann. § 2-10-108. Second, Tenn. Code Ann. § 2-10-206, containing the broader enforcement authority, was last amended in 1991, while Tenn. Code Ann. § 2-10-108 was last amended in 1990. Where different sections of a statute are apparently in conflict, they should be harmonized if practicable, and the construction that will render every word operative should be favored. *Bible & Godwin Construction Co., Inc. v. Faener Corp.*, 504 S.W.2d 370, 371 (Tenn. 1974). Where there is an irreconcilable conflict between two sections of the statute, the one last mentioned will control. *Id.* at 372. Further, Tenn. Code Ann. § 2-10-108 refers to a “statement regarding an election.” Under the 1980 act, this expression clearly referred to the campaign finance disclosure statements required under Tenn. Code Ann. §§ 2-10-101, *et seq.* By contrast, the Registry has jurisdiction over four different statutory schemes: those governing campaign financial disclosure, lobbying registration, conflict of interest disclosure, and campaign contribution limits. We conclude that Tenn. Code Ann. § 2-10-108 was never intended to limit the Registry’s authority to enforce any of these schemes.

For the same reasons, the Registry is free to consider any sworn complaint filed with it concerning violations of any of the four statutory schemes it has jurisdiction to administer and enforce.

## 2. and 3. Sworn Complaint Regarding Violations of Conflict of Interest Disclosure Rules

The last two questions concern whether a sworn complaint may be filed with the Registry in relation to a possible violation by a legislator of the conflict of interest disclosure rules, Tenn. Code Ann. §§ 8-50-501, *et seq.*, and, if so, whether the person filing the complaint must be a qualified voter in that legislator's district. No statute prohibits any citizen from filing a sworn complaint with the Registry regarding any matter. For the reasons discussed above, Tenn. Code Ann. § 2-10-108 was not intended to impose such a prohibition. Further, Tenn. Code Ann. § 3-6-109, which appears in the lobbying registration laws, provides that it is unlawful for any person to file with the Registry a sworn complaint which is false or for the purpose of harassment. This statutory scheme contains no other limitations on filing a sworn complaint with the Registry. For these reasons, any citizen may file a sworn complaint with the Registry in relation to a possible violation by a legislator of the conflict of interest disclosure rules. The person filing the complaint need not be a qualified voter in the legislator's district. It should be noted that Tenn. Code Ann. § 2-10-108(d) imposes civil penalties for filing a sworn complaint alleging disclosure violations that is false or for the purpose of harassment. Further, it is generally a criminal offense to make a false statement under oath. Tenn. Code Ann. § 39-16-702.

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PAUL G. SUMMERS  
Attorney General

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MICHAEL E. MOORE  
Solicitor General

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ANN LOUISE VIX  
Senior Counsel

Requested by:

Honorable Drew Rawlins  
Executive Director, Registry of Election Finance  
404 James Robertson Parkway, Suite 1614  
Nashville, TN 37243-1360