

1998 ANNUAL REPORT

TENNESSEE REGISTRY OF ELECTION FINANCE

The Registry has just completed one of its busiest election years in the history of the agency. In 1998, not only were there state elections for governor and legislative offices, but the first elections in eight (8) years were held for district attorney generals, district public defenders and judges.

In preparation for these elections and in an attempt to educate affected persons as to the requirements of the campaign finance laws, the Registry staff conducted weekend seminars for state and local candidates for elected public office and their treasurers in early 1998. Those seminars were held in Johnson City, Chattanooga, Knoxville, Nashville and Memphis. Local county election officials were also invited to attend these seminars to enhance their understanding of the disclosure requirements.

1998 ELECTION CYCLE AND ISSUES FACED BY THE REGISTRY DURING THE ELECTIONS

As a result of the 1998 elections, several important campaign finance issues were presented to the Registry for consideration. The Registry had attempted to address some of these issues in advance of the elections through the promulgation of administrative rules. However, those rules were withdrawn or suspended by the board after either comments made by members of the General Assembly at a public hearing on the proposed rules or after the Registry was requested to suspend promulgated rules by the Joint Government Operations Committee.

Some of these issues are ones that have arisen during the 1998 elections and were never addressed by the board through its rulemaking authority. The Registry is of the opinion that all of the pending campaign finance issues would best be resolved through legislation, especially in light of opinions issued by the State Attorney General determining that the campaign laws do not provide specific guidance as to many of the issues.

The campaign issues identified by the Registry as needing resolution are as follows:

- 1.) May incumbent candidates who have previously completed an election year cycle, who do not have any outstanding debts or obligations, continue to accept contributions up to the limits set forth in the Campaign Contribution Limits Act and attribute those monies to the elections in the election cycle already completed?

- 2.) On a related point, there is a question of whether a successful, debt-free candidate may continue accepting contributions for any purpose after an election cycle without filing a new appointment of political treasurer's statement?
- 3.) Questions have arisen during the 1998 election cycle as to whether a candidate who has successfully completed a primary election can accept contributions after that election (where there are no outstanding debts or obligations) and attribute those monies retroactively to the primary?
- 4.) Relying on federal precedent, the Registry has taken the position that candidates may accept contributions for both primary and general elections, even though it is uncertain whether those individuals will actually be involved in a general election campaign. Should such candidates be allowed to spend all of those monies (including monies collected for the general election) during the primary election?
- 5.) Should a candidate who is raising monies to run for both a state and local elected office in the same election year be allowed to transfer monies from one campaign to another during that election year?
- 6.) Are anonymous contributions prohibited by the campaign finance laws? (The State Attorney General has opined in Opinion No. 97-065 that the disclosure laws indirectly prohibit such contributions.)
- 7.) Candidates commonly report a contribution as being from a married couple, frequently based on the names at the top of the check. How should such contributions be attributed for purposes of the Campaign Contribution Limits Act?
- 8.) Questions have been raised as to transfers from a political party's operating account to its PAC. Should a political party be required to disclose the original source of monies donated to its operating account that are ultimately transferred to its PAC account?

Through correspondence from its Chair to the Speakers of both Houses and to the chairs of the legislative caucuses of both parties (copied to all members of the General Assembly), the Registry has requested assistance from the legislature in resolving these issues. Additionally, the board has made its staff available to assist any legislator who is interested in sponsoring legislation to address these issues.

PERFORMANCE AUDIT REVIEW OF THE REGISTRY

During 1998, the Registry participated in a performance audit review conducted by the Comptroller's Office, as part of the sunset review process. (The agency is scheduled to sunset on June 30, 1999, unless the General Assembly determines to continue its existence.)

A legislative auditor for the Comptroller's office spent the first two (2) months of the year in the Registry's office reviewing the agency's records and files to ensure the Registry's compliance with its legislative mandate to enforce the disclosure laws. As part of the performance audit review, the auditor also interviewed the staff members and board members, as well as local county election officials.

On November 24, 1998, the Comptroller issued his office's performance audit review report as to the operations of the Registry. There was no criticism contained in that report of the internal operations of the agency. However, the Comptroller did make several recommendations as to legislative changes that could improve the Registry's enforcement of the disclosure laws. Those recommendations were as follows:

- 1.) The General Assembly may wish to amend the campaign finance laws so that a candidate's allocation of unexpended contributions report is submitted at the same time or after the post-general election campaign disclosure report.
- 2.) The legislature may wish to consider amending state law so that certified or registered violation notices returned as "unclaimed" can be reissued by overnight delivery services and be considered served for purposes of assessing civil penalties.
- 3.) The General Assembly may wish to consider amending state law so that candidates who win the general election are required to file all reports prior to being sworn into office. (This change would prevent elected officials from holding office by not filing the required campaign contribution disclosure reports.)

The Registry is in agreement with the Comptroller's findings and has requested assistance from the legislature in all of these areas over its years of existence.

Additionally, the Comptroller also observed that the Registry's ability to monitor adherence to the campaign finance laws could be improved by giving the agency the authority to conduct random audits and the authority to subpoena records when the Registry suspects a violation has occurred, outside of an administrative contested case hearing proceeding. The Registry concurs with these findings and has recommended that it be given these powers in its annual reports provided to the General Assembly and the Governor in past years.

Finally, the audit report also observes that electronic filing of campaign financial disclosure reports could improve the Registry's efficiency and make disclosure information more accessible. The Registry certainly agrees with this observation and is working with legislators in attempting to obtain the proper legislation and funding for this project.

DISCLOSURE FILINGS

According to campaign disclosure reports filed with the Registry during the 1998 elections, a total of \$14,180,836 was reported as being expended by state candidates on getting elected to elected public office. (For a more detailed financial analysis of the 1998 election cycle, see Appendix A.) Because 1998 was an election year, there were a large number of disclosure reports filed with the Registry. (See Appendix B for statistical summaries of reports.)

Candidates. During the past year, 1,233 campaign financial disclosure reports were required to be filed by candidates for state public office; 89% were filed on time. Certified letters were sent to the remaining 11% to warn of possible assessment of civil penalties. In addition, 17% of the reports were returned for corrections of mathematical errors or incomplete information. Six candidates were assessed civil penalties for late reports. Other cases are pending.

Additionally, the Registry considered nine cases in which candidates reported the acceptance of excess campaign contributions. As of the issuance date of this report, no candidates have been assessed civil penalties for violations of the Campaign Contribution Limits Act. Other cases may be pending, as the staff has not had the opportunity to complete its computer check for excess contributions due to the date that post-general campaign disclosure reports were to be filed.

The Registry considered two cases in which incumbent legislators disclosed the acceptance of campaign contributions during the 1998 legislative session. In one of those cases, the Registry assessed a civil penalty, which was later waived on reconsideration.

PACs. During the past year, 1,425 campaign financial reports were required to be filed by PACs; 94% were timely filed. Certified letters were sent to the remaining 6% to warn of possible civil penalty assessments. In addition, 6% were returned for corrections of mathematical errors or other incomplete information. Five PACs were assessed civil penalties for late reports. Other cases are still pending.

Lobbyists. Of 1,000 lobbying activities reports required to be filed with the Registry, 94% of those reports were timely filed. Certified letters were sent to the remaining 6% to warn of possible civil penalty assessments.

Two lobbyists were assessed civil penalties for the late filing of reports, and in one case a lobbyist was assessed penalties for failing to timely register as a lobbyist.

Statements of Interests. During the past year, 534 candidates for state office and officeholders were required to file statements of interests. Of those individuals required to file those statements, 93% timely filed the reports. Certified letters were sent to the remaining 7% to warn of possible assessment of civil penalties. Three individuals were assessed civil penalties by the Registry for the late filing of their statements.

CIVIL PENALTY ASSESSMENTS

In its effort to ensure compliance with the disclosure laws, the Registry assessed civil penalties against 34 individuals or organizations in 1998 for violations of the campaign finance, lobbying and conflict of interest laws. In two cases, the board waived these civil penalties on reconsideration. (See Appendix C for a statistical summary of civil penalty assessments.) In all of these cases, no civil penalties were assessed by the Registry until the individuals or organizations were provided notice and an opportunity for a hearing through the agency's show cause hearing procedures.

Civil penalties were levied for the late filing of disclosure reports. In 1998, the Registry assessed a total of \$12,750 in civil penalties. The Registry has collected \$5,175 of those penalties. In cases where the Registry's assessment orders are now final and the civil penalties remain unpaid, the cases have been turned over to the State Attorney General's office for collection through the appropriate legal process.

REGISTRY'S RECOMMENDATIONS FOR IMPROVING AND STRENGTHENING THE DISCLOSURE LAWS

The Registry makes the following recommendations to improve and strengthen the disclosure laws that it is charged with administering:

- The General Assembly should address through legislation the pending campaign finance issues presented by the Registry on pages 1 and 2 of the annual report.
- The Registry should be given subpoena authority and random audit authority as part of its investigative powers.
- The General Assembly should delete the inspection notice provision of the Campaign Financial Disclosure Law, which requires persons inspecting or copying candidate's disclosure reports to disclose their names and extensive personal information to the Registry. The effect of this provision has been to deter some citizens from reviewing elected officials' reports.

- The Registry should be authorized to suspend the registrations of lobbyists and PACs where civil penalty assessment orders are final and penalties remain unpaid. Additionally, the Campaign Financial Disclosure Law should be amended to allow for the suspension of PAC registrations where required campaign disclosure reports are not filed.
- The due dates for candidates' allocation reports for unexpended campaign funds should be amended so that reports filed after the November general election are not due before the filing of the post-general election campaign disclosure report.
- The General Assembly should consider deleting the election activity restrictions on Registry members that apply for one (1) year after a member's term on the board has ended.

FUTURE GOALS OF THE REGISTRY

The Registry is attempting to accomplish its goal of providing electronic filing capabilities for those candidates and PACs who wish to file disclosure reports through this type of filing system. At the request of the Registry, the Office of Information Resources (OIR) has conducted a feasibility study for electronic filing. As part of that study, OIR has provided an estimate of the initial cost of establishing an electronic filing system, as well as the costs of annual maintenance of the system. Additionally, some legislators have expressed interest in sponsoring legislation to provide for electronic filing and to provide the monies for the system.

As part of the electronic filing, the Registry also hopes to provide computer software to candidates to use in developing campaign financial disclosure reports. There has been a great deal of demand for such software over the last couple of years, from candidates in particular.

As in past non-election years, the Registry and its staff will also utilize 1999 to evaluate its internal operations prior to the 2000 election year. Revisions of forms and booklets will be considered by staff, especially in light of legislative changes in the disclosure laws that may occur during the 1999 legislative session.