



TENNESSEE REGISTRY OF ELECTION FINANCE

Contribution Audit of Ken Wilber's 2011 Pre-General Campaign Finance Disclosure



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January 11, 2012

Members of the Registry of Election Finance
404 James Robertson Parkway, Suite 1614
Nashville, TN 37243-1360

Ladies and Gentlemen,

Transmitted herewith is the agreed upon procedures for the un-itemized contribution audit of Mr. Ken Wilber's 2011 Pre-General Campaign Financial Disclosure Statement for his 2011 election campaign for Senate. This audit was conducted pursuant to the requirements of T.C.A. §2-10-212.

The procedures were developed to aid the Registry of Election Finance in its responsibilities to monitor and enforce Tennessee's Campaign Financial Disclosure Law and Campaign Contribution Limit Laws. The candidate is responsible for complying with campaign finance laws and the accuracy of campaign financial disclosures. The sufficiency of these procedures is solely the responsibility of the Registry's internal audit group. Consequently, we make no representation regarding the sufficiency of the agreed upon procedures described in the report for any other purpose than aiding the Registry.

This report is intended for the information and use of the Members of the Tennessee Registry of Election Finance as outlined; and is not intended to be and should not be used by anyone other than the Registry without understanding the objectives, purposes, and underlying assumptions. This report, however, is a matter of public record.

Sincerely,

Jay Moeck, CPA, CFE
Audit Director

STATE OF TENNESSEE
REGISTRY OF ELECTION FINANCE

Audit Highlights

Ken Wilber

2011 Pre-General Contribution Audit

AUDIT OBJECTIVES

The objectives of the audit were to determine Ken Wilber's compliance with certain provisions of campaign finance disclosure laws and regulations; compliance with certain provisions of campaign contribution limit laws and regulations; accuracy and completeness of the un-itemized contribution disclosures on his 2011 Pre-General Campaign Financial Disclosure Statement; and to recommend appropriate actions to correct any deficiencies.

FINDINGS

- 1. Mr. Wilber violated T.C.A. § 2-10-105(a) by failing to report \$290 in campaign contributions.**
- 2. Mr. Wilber violated T.C.A. § 2-10-311(a) by receiving \$100 in cash contributions over the cash limit.**
- 3. Mr. Wilber violated T.C.A. §2-10-107(a)(2)(A)(i) by failing to itemize \$365 in campaign contributions from contributors who contributed in excess of \$100 during the Pre-General reporting period.**
- 4. Mr. Wilber failed to properly maintaining his campaign records for \$265 in cash contributions.**

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INTRODUCTION

AUDIT AUTHORITY

Tennessee Code Annotated (T.C.A.) §§2-10-206 and 2-10-212 authorize the Registry of Election Finance (Registry) to conduct audits of campaign financial disclosure statements filed with the Registry. The audit was initiated based on T.C.A. §2-10-212(i), which requires the Registry to audit any candidate that files a disclosure statement with more than 30% of the candidate's contributions reported as un-itemized contributions and the aggregate un-itemized contributions reported are greater than \$5,000.

AUDIT PURPOSE

The Registry's contribution audits are to assist and encourage candidate compliance with campaign disclosure laws. The audit process assists the Registry in providing timely and accurate campaign information to government officials and the public. The Registry's audits provide a tool to the Registry to evaluate the effectiveness of the campaign financial disclosure process. In addition, the audits assist the Registry with the enforcement of campaign finance limit laws and campaign finance disclosure laws. Finally, the audit reports are prepared to assist the candidate and the State of Tennessee with promoting governmental accountability and integrity.

AUDIT SCOPE

In non-election years, Tennessee's campaign financial disclosure law requires candidates to make biannual financial disclosures as of the date of the first contribution or first expenditure, whichever occurs earlier. The biannual report periods are from January 16 to June 30 and July 1 to January 15 of each year. During an election year, the disclosures expand to quarterly reports, pre-primary reports, and pre-general reports. Mr. Wilber's audit relates to a special election held for Senate District 18 during 2011. Unlike the biannual election years, the District 18, 2011 special election dates for the primary and general election were both during the first quarter of the year. Therefore, the first report filed by candidates was the pre-primary report, which was followed by the pre-general. Then the normal quarter reports followed. This audit relates to only disclosure reports that meet the requirements listed in T.C.A. §2-10-212(i). Therefore, the audit reviewed only Mr. Wilber's 2011 Pre-General report disclosures.

CAMPAIGN OVERVIEW

CAMPAIGN ORGANIZATION

Mr. Ken Wilber was a candidate in the March 8, 2011 general election for the Senate in District 18. Mr. Wilber filed an Appointment of Political Treasurer Statement with the Registry on December 15, 2010 appointing Bonnie Fussell as political treasurer.

The candidate's first financial disclosure for the 2011 campaign was the 2011 Pre-Primary report filed on January 10, 2011. The candidate's latest financial disclosure report for the 2011 election was the 2011 Second Quarter report filed on August 1, 2011. The 2011 Second Quarter report indicated \$246.35 in cash on hand, no outstanding obligations, and no outstanding loans. The candidate has not completed his 2011 election campaign reporting requirements. The candidate's next report will be the 2011 fourth quarter report due January 25, 2012.

OVERVIEW OF FINANCIAL ACTIVITIES

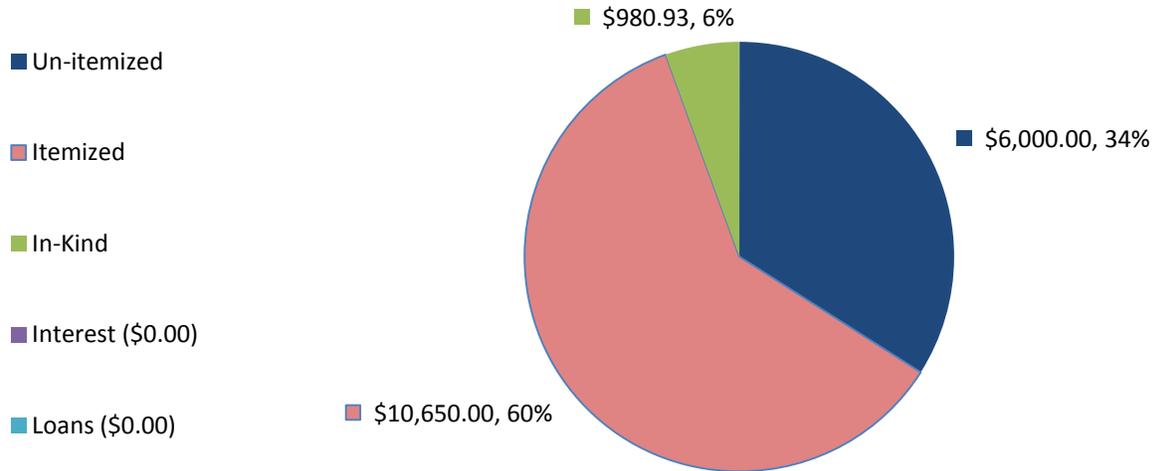
The following financial amounts are a summary of the financial disclosures made by the candidate. The summarized amounts are from the following disclosure reports: 2011 Pre-Primary, 2011 Pre-General, 2011 First Quarter and 2011 Second Quarter reports. As noted in the finding, we were unable to audit the candidate's disclosures. The amounts displayed are for informational purposes only.

<u>Summary of Financial Activity</u>		
<u>(Un-audited Amounts)</u>		
Cash on hand at January 10, 2011		\$0.00
Receipts		
Itemized	\$7,070.00	
Un-itemized	17,993.07	
Interest	0.00	
Loans received	0.00	
Total receipts		<u>\$25,063.07</u>
Disbursements		
Itemized	402.66	
Un-itemized	24,414.06	
Loans principal payments	0.00	
Total disbursements		<u>\$24,876.72</u>
Cash on hand at June 30, 2011		<u>\$246.35</u>
Loans outstanding at June 30, 2011		\$0.00
Obligations at January June 30, 2011		\$0.00
Total in-kind contributions received		\$1,108.34

CHARTS

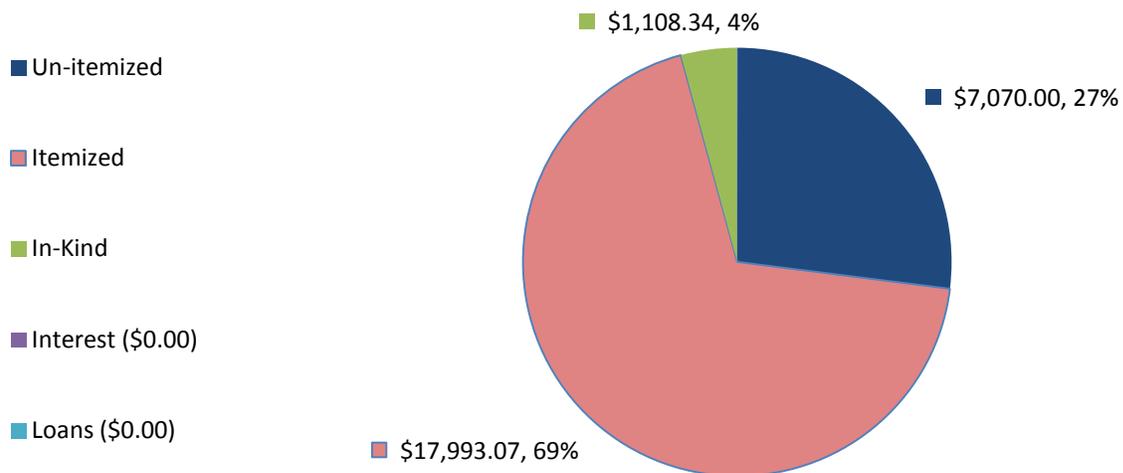
2011 PRE-GENERAL CONTRIBUTIONS

The following chart shows the contributions reported by the candidate in the 2011 Pre-General report.



2011 ELECTION CAMPAIGN CONTRIBUTIONS

The following chart shows the contributions reported by the candidate for the 2011 election campaign.



OBJECTIVES, METHODOLOGIES, CONCLUSIONS

UN-ITEMIZED CONTRIBUTIONS AND RECEIPTS

Audit Objectives:

The objectives of our audit of un-itemized contributions were to determine whether:

- campaign contributions from individuals and Political Action Committees (PACs) were within limits;
- all contributions were from non-prohibited sources;
- all contributions received were reported, reported in the proper period, reported in compliance with T.C.A. §§2-10-105 and 2-10-107, and reported in compliance with the Registry's rules; and
- all contributions were supported by bank statements and deposit slips.

Audit Methodology:

The Registry reviewed Mr. Wilber's 2011 Pre-General Campaign Financial Disclosure Statement to verify that the un-itemized contributions were greater than \$5,000 and 30% of the total contributions reported. We requested Mr. Wilber provide supporting documentation for the un-itemized contributions reported on his 2011 Pre-General report. Mr. Wilber's campaign records included bank statements, photocopied contributor checks, and a campaign contribution lists. The following steps were performed on Mr. Wilber's campaign documentation:

- The documentation was reviewed to determine if the candidate's un-itemized contributions received from January 11, 2011 thru February 26, 2011 totaled \$6,000.
- A list of un-itemized contributions was prepared and compared to the candidate's bank statements to determine if the candidate deposited all funds into a campaign bank account and properly recorded the funds.
- A list of un-itemized contributions was prepared and compared to the candidate's itemized contributions reported during the election to determine if campaign contributions from individuals and PACs complied with campaign contribution limits, T.C.A. §2-10-301, et seq.
- A list of un-itemized contributions was prepared to determine if all contributions were reported, all receipts received were reported, all contributions were reported in the proper period, all contributions were in compliance with T.C.A. §§2-10-105 and 2-10-107, and all contributions were in compliance with the Registry's rules.

Audit Conclusion:

Mr. Wilber's 2011 Pre-General Campaign Financial Disclosure Statement reported un-itemized contributions greater than \$5,000 and 30% of the total contributions. The audit indicated that Mr. Wilber failed to report \$290 in contributions (Finding 1). The campaign records indicate, Mr. Wilber received \$100 over the cash limit from one contributor (Finding 2). The candidate's campaign records also indicate Mr. Wilber improperly included in his un-itemized contributions \$365 from contributors who contributed in excess of \$100 during the reporting period (Finding 3). Mr. Wilber failed to properly maintain his campaign records to verify compliance for \$265 in cash contributions (Finding 4). Except for the findings noted, the un-itemized contributions reported by the candidate appeared to be supported by campaign records and compliant with campaign finance laws and Registry Rules.

FINDINGS

1. Mr. Wilber violated T.C.A. §2-10-105(a) by failing to report \$290 in campaign contributions.

Mr. Wilber reported \$6,000 in un-itemized contributions on his 2011 Pre-General report; however, the audit and campaign records indicated the amount was \$6,290. (The amount determined by audit includes the improperly reported amount of \$365 noted in finding 3). The campaign bank records indicated Mr. Wilber failed to report \$200 in cash deposited on January 28, 2011 (The \$200 is also noted in Finding 2). The additional \$90 relates to an improperly reported contribution check. The candidate received a \$200 check, which the candidate split between two donors. The candidate's contribution list incorrectly showed the amounts of the contributions as \$100 and \$10 respectively. The failure to report \$290 is a violation of T.C.A. §2-10-105(a).

2. Mr. Wilber violated T.C.A. §2-10-311(a) by receiving \$100 in cash contributions over the campaign limits.

When asked about the \$200 unreported cash deposit on January 28, 2011, Mr. Wilber stated the contribution was from one contributor. Since the contribution was cash and came from one contributor, Mr. Wilber could only receive \$100 (\$50 for the primary and \$50 for the general election). The excess cash contributions violated T.C.A. §2-10-311(a) which states, "No person shall make cash contributions to any candidate with respect to any election that, in the aggregate, exceed fifty dollars (\$50.00)."

3. Mr. Wilber violated T.C.A. §2-10-107(a)(2)(A)(i) by failing to itemize \$365 in campaign contributions from contributors who contributed in excess of \$100 during the year-end reporting period.

Mr. Wilber included in un-itemized contributions \$365 in contributions that he received from two organizations that were required to be itemized as the contributor gave more than \$100 during 2011 Pre-General reporting period. T.C.A. §2-10-107(a)(2)(A)(i) requires contributions of more than \$100 from one source received during a reporting period to be itemized. The itemized information for an organization includes name, address, date of receipt, and amount of

the contribution. The \$365 in contributions represented approximately 6% of the un-itemized contributions reported on Mr. Wilber's 2011 Pre-General Campaign Financial Disclosure Statement.

4. Mr. Wilber failed to properly maintain his campaign records for \$265 in cash contributions.

Mr. Wilber did not maintain or obtain sufficient contribution campaign records to verify compliance with all campaign finance statutes for cash contributions. Mr. Wilber's campaign records indicated that he received cash contributions totaling \$2,015. Included in the amount was \$265 which the candidate's campaign contributor list shows coming from anonymous contributors. The campaign records show the cash was deposited into the campaign account. Without the specific contributor's names and amounts contributed, we could not determine Mr. Wilber's compliance with the following campaign finance statutes for the cash contributions:

- T.C.A. §2-10-107(a)(2)(A)(i) requires contributions of more than \$100 from one source received during a reporting period to be itemized. The itemized information for each contributor must include name, address, occupation, employer, date of receipt, and amount of contribution.
- T.C.A. §2-10-311(a) limits cash contributions to \$50 per election for each contributor.

RECOMMENDATION TO CANDIDATE

Mr. Wilber should amend his report to include all contributions received. Mr. Wilber should return to the contributor all funds in excess of the campaign limits. In addition, Mr. Wilber should amend his 2011 Pre-General Campaign Financial Disclosure Statement to ensure that he itemized all contributions from contributors who gave more than \$100 during the reporting period. In subsequent reporting or future elections, Mr. Wilber should maintain contributor data for all campaign contributions received and reconcile the campaign records to his campaign disclosures to ensure all disclosures are complete, accurate, and properly supporting by the campaign records.

RECOMMENDATION TO REGISTRY

We recommend the Members of the Registry consider the findings for possible further action. We recommend the Registry approve the audit performed as being sufficient and complete. Finally, we recommend the Registry post the audit report to the Registry's web site notwithstanding whether a significant penalty is assessed, as outlined in T.C.A. §2-10-212(f). The report and related findings will assist current and future candidates in understanding the audit process, the purposes of Registry rules, and types of procedures needed to comply with campaign finance laws.

RESOLUTIONS

CANDIDATE'S CORRECTIVE ACTIONS

After discussing the above findings with Mr. Wilber, he chose to take corrective action on his report prior to the Registry's approval of the audit. Mr. Wilber amended his 2011 Pre-General Quarter Campaign Financial Disclosure Statement on November 14, 2011. In addition, he provided copy of the check returning funds over the campaign limits. Finding 4 is not listed below since the finding cannot be corrected by amended report.

Correction Action - Finding 1:

On his amended 2011 Pre-General report, Mr. Wilber increased un-itemized contributions by \$290. The corrections properly amended the second quarter report for the contributions in Finding 1.

Correction Action - Finding 2:

Mr. Wilber provided a copy of the check refunding the \$100 to the contributor who provided more than \$100 cash during the campaign. The refund corrects the contribution over the limit noted in Finding 2.

Correction Action - Finding 3:

On his amended 2011 Pre-General report, Mr. Wilber reduced un-itemized contributions by \$365. Also, he added \$365 in itemized contribution from two organization. The corrections properly amended the second quarter report for the contributions in Finding 3.

REGISTRY OF ELECTION FINANCE ACTIONS

The Members of the Registry of Election Finance reviewed the 2011 contribution audit of Mr. Wilber during the January 11, 2011 regular monthly meeting. The report contained four finding for corrective actions. The Registry voted to accept and approve the audit report with no further action.