

# REGISTRY OF ELECTION FINANCE

---

---

The Registry of Election Finance for the State of Tennessee met Monday, May 11, 1998, at 1614 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee.

Attending were: Alan Hubbard (Chair), George Harding, Samella Junior-Spence, Herman Reviere and Elizabeth Tarpay.

The minutes of the April 13, 1998 meeting were approved on motion by Reviere, seconded by Harding.

## **Sworn Statement:**

98-24 – **M.S. Carriers, Inc. PAC**, for failure to timely file fourth quarter 1997 campaign financial disclosure report. Class one (1), maximum civil penalty \$300. The assistant controller of the PAC submitted a sworn statement for the Registry's consideration of its case at the board's April 13 meeting. Because the statement was not informative as to why the PAC's report was filed late, the board voted to continue this case. The members instructed staff to contact the PAC to request that it provide more information as to the tardiness of the report.

Upon contacting the controller of the PAC, staff was informed that the PAC would stand by its sworn statement previously filed with the Registry. On motion by Reviere, seconded by Junior-Spence, the board voted unanimously by roll call vote to assess a \$300 class one (1) civil penalty.

## **Approval of civil penalty orders:**

98-26 – **Colman Hoffman**, for failure to file 1997 year-end lobbying activities report. Maximum civil penalty \$750. Staff reported that Mr. Hoffman filed his report on April 24 and indicated in a telephone conversation with Director Williams that he was going to file a sworn statement with the Registry. At the time of the meeting, no statement had been received.

On motion by Reviere, seconded by Junior-Spence, the board voted to assess a \$750 civil penalty.

98-25 – **Jill Maxfield**, for failure to file 1997 year-end lobbying activities report. Maximum civil penalty \$750. Staff reported that Ms. Maxfield filed her report on May 7, along with a sworn statement. She explained in the statement that she had been on maternity leave from January – April 6, 1998 and had not received the Registry's notices.

On motion by Reviere, seconded by Harding, the board voted unanimously by roll call vote to assess a \$100 civil penalty.

98-27 – **Pamela Taylor**, for failure to file 1997 year-end lobbying activities report. Maximum civil penalty \$750. Ms. Taylor did not respond to the board’s show cause notice.

On motion by Reviere, seconded by Junior-Spence, the board voted unanimously by roll call vote to assess a \$750 civil penalty.

98-28 – **William Cotton**, for failure to file 1997 year-end lobbying activities report. Maximum civil penalty \$250. Mr. Cotton did not submit a response to the Registry’s show cause notice.

On motion by Harding, seconded by Reviere, the board voted unanimously by roll call vote to assess a \$100 civil penalty

98-29 - **Rickey Peete**, for failure to timely file 1997 year-end lobbying activities report. Maximum civil penalty \$375. The only response received from Mr. Peete was a telephone call to staff concerning the amount of the penalty and the intention of his employer, the Beale Street Merchants Association, to pay the penalty.

On motion by Reviere, seconded by Junior-Spence, the board voted unanimously by roll call vote to assess a \$375 civil penalty.

98-30 – **Rep. Joe Towns**, for failure to timely file annual statement of interests. Class one (1), maximum civil penalty \$350. Rep. Towns did not respond to the board’s show cause hearing notice.

On motion by Reviere, seconded by Junior-Spence, the board voted unanimously by roll call vote to assess a \$350 class one (1) civil penalty.

98-31 - **Rep. Joe Towns**, for failure to timely file 1997 supplemental annual campaign financial disclosure report. Class one (1) maximum civil penalty \$350. Rep. Towns did not submit a response to the board’s show cause hearing notice.

On motion by Reviere, seconded by Junior-Spence, the board voted unanimously by roll call vote to assess a \$350 class one (1) civil penalty.

#### **Issuance of Show Cause Notices:**

**Hamilton County PAC for Education**, for failure to timely file first quarter 1998 campaign financial disclosure report. Class one (1), maximum civil penalty \$25. On motion by Reviere, seconded by Junior-Spence, the board voted to take no action.

**Sen. Roscoe Dixon**, for failure to timely file 1997 supplemental annual campaign financial disclosure report. Class one (1), maximum civil penalty \$725. On motion by Harding, seconded by Junior-Spence, the board voted to issue a show cause notice.

**Ray Holt**, failure to timely file 1998 lobbyist registration for the Department of Education and failure to file lobbyist registrations for the department for the 1995-97 registration years. Maximum civil penalties \$30,750. Additionally, Mr. Holt’s lobbying privileges could be suspended for a maximum of two (2) years.

On motion by Harding, seconded by Junior-Spence, the board voted unanimously by roll call vote to issue a show cause notice to Mr. Holt, specifying the amount of civil penalties that could be assessed against him.

### **Update on Tennessee Conservative Union Court Case:**

On May 8, Director Williams attended the rescheduled civil contempt court hearing for Tennessee Conservative Union's PAC's, John Davies and Lloyd Daugherty. Prior to that hearing, Mr. Davies filed what were allegedly all the campaign disclosure reports that were not filed by the Conservative Union's PACs and itemized contributors information that had not been disclosed on some reports that had been filed.

On all the delinquent reports filed by Mr. Davies, he indicated that the PACs were entitled to file "short forms," because during none of the reporting periods did the PACs' contributions or expenditures exceed \$1,000. However, no outstanding balance information was disclosed, as required by the campaign finance law for short form reporting. Additionally, with respect to the itemized contribution disclosures, Mr. Davies did not provide any information as to which PAC reporting period that the itemized contributions related.

Because of the incomplete reporting in the reports filed prior to the hearing, the State Attorney General's Office asked the Chancellor for a continuance of the civil contempt petition hearing. Then the Attorney General asked the court to order Davies to provide the locations of all bank accounts, names of banks accounts and all bank account numbers used by Tennessee Conservative Union's PACs, so that the Attorney General could subpoena those records for purposes of determining the veracity of the reports filed by Davies and to determine if any monies exist to satisfy the court's judgment.

After some argument and discussion, the Chancellor pressured Mr. Davies into agreeing to provide the requested bank information to the Attorney General by May 18. Additionally, the Chancellor set July 17 at 1:30 p.m. as the next date for the civil contempt hearing.

### **Legislative Update:**

Director Williams disseminated copies of HB 1402 and HB 3241 to the Registry members as the bills that passed the General Assembly affecting the Registry.

The first section of HB 1402 would allow board member Reviere, who held an appointed city judgeship when becoming a member of the Registry in 1990, to resign from the Registry and run as a 1998 candidate for that same judgeship which is now an elected position. Presently, the law would disallow him from running as a candidate for that position for up to one (1) year after leaving the Registry.

Director Williams reviewed the rest of HB 1402 with the members and explained that some of the sections simply codified some Registry lobbying rules already in existence and that the rest of the sections were general housekeeping changes under the lobbying and campaign finance laws.

As to HB 3241, Director Williams explained that this bill, which contains identical language as section 1 of HB 1402 relating to Reviere's situation, was passed as a precautionary measure, in the event that HB 1402 is later found to be unconstitutional.

Finally, Director Williams passed out copies of HR 229, which would appoint Greg Duckett of Memphis to the Registry, in the event that a vacancy occurs on the board for the position required to be filled by the House Democratic Caucus. That position is currently held by Reviere.

### **Budget:**

Drew Rawlins, Assistant Director, presented the budget statistics through March 31, 1998 for the 1997/98 fiscal year. Additionally, he disseminated a list of persons paying civil penalties during April and the amount paid by each.

### **Executive Director's Report**

Director Williams provided the members a copy of sworn complaint filed with the Registry by Hoyt Ownby against Rep. Don Bird, David Gilbert (Republican candidate for Bradley County Executive) and Duane Gilbert (Bradley County Republican Party Chairman). Mr. Ownby is a resident of Cleveland, Tennessee.

In the complaint, Mr. Ownby alleges that on January 13, 1997, he gave David Gilbert five \$100 bills in the presence of Duane Gilbert and asked that the contribution be given to Governor Don Sundquist's campaign. Mr. Ownby states that he later discovered that Rep. Bird had disclosed a \$500 contribution from him on Rep. Bird's 1997 supplemental campaign disclosure report. The contribution was reported as having been made by Mr. Ownby on June 1, 1997.

Mr. Ownby claims that Rep. Bird falsely claimed a contribution from him and asks that the Registry investigate this matter. After discussion of the complaint, the board asked Director Williams to send a letter to Rep. Bird as an initial inquiry to seek information he may have relating to the contribution, in particular as to the date that the contribution was made.

Director Williams then presented a memorandum that she had composed for the board members relating to an oral complaint made with the Registry by Rep. Mike Williams, as to a contribution made to his non-incumbent opponent by a PAC during the 1998 legislative session. Specifically, BellSouth Employees Tennessee PAC gave Kathryn Seiver a \$500 contribution on March 24, 1998. BellSouth employed several lobbyists during the 1998 legislative session.

Rep. Williams alleges that the making of this contribution during session violates T.C.A. § 3-6-108(i) of the lobbying law, which prohibits a PAC controlled by a lobbyist or employer of a lobbyist from making a campaign contribution to a legislative candidate during session. However, Director Williams expressed concern as to the constitutionality of that provision as applied to non-incumbent candidate because of the Emison court case, in which a federal district

judge struck down a similar provision of the Campaign Contribution Limits Act as applied to non-incumbent legislative candidates.

Director Williams suggested to the board that it might want to delay consideration of the complaint until its June meeting and ask for informal legal advice from the Attorney General as to the enforceability of T.C.A. § 3-6-108(i). On motion by Junior-Spence, seconded by Reviere, the board voted to delay action on this matter and directed Williams to seek an informal opinion from the Attorney General.

Director Williams disseminated copies of an informal Attorney General's opinion that she requested, relating to the payment of civil penalties by personal check. Specifically, she asked the Attorney General whether the Registry could refuse to accept a personal check from a person who had bounced a check in the past. Also, she asked whether a person could be disqualified as a primary candidate, if the person paid a penalty by personal check prior to the primary qualifying deadline but the check then bounced after the person had qualified for that election.

The Attorney General advised that the Registry may specify the form in which a penalty is to be paid and may refuse to take a personal check. If a personal check is accepted as payment of assessed civil penalties and the check subsequently bounces after the primary election qualifying deadline, the individual is still eligible to be on the primary ballot.

Harding made a motion that the Registry only accept payment of civil penalties by cash, cashier's check or money order. On motion to amend by Reviere, seconded by Junior-Spence, the board voted to not accept personal checks for payment of civil penalties within sixty (60) days of any qualifying deadline.

Director Williams presented the members copies of a memorandum from Janet Kleinfelter, Assistant Attorney General, recommending that the court judgment obtained on behalf of the Registry against Floyd Roysdon be considered uncollectible and that his file be closed. On May 21, 1992, Mr. Roysdon, who was a candidate for city alderman in Oneida, failed to file a post-election report with the Scott County Election Commission and was eventually assessed a \$5,000 civil penalty by the Registry. According to the paralegal in the Attorney General's office who investigated Mr. Roysdon's financial status, Mr. Roysdon's only source of income is from disability and social security. Additionally, he owns very little property.

On motion by Reviere, seconded by Junior-Spence, the board voted not to collect on the outstanding judgment against Mr. Roysdon.

Copies of another memorandum from Ms. Kleinfelter relating to three active Registry cases were disseminated to the board members. The first case addressed in the memorandum concerns Marcus Murrell, who has been assessed a total of \$1,250 for late filings of campaign disclosure reports in cases forwarded to the Registry by Shelby County. A court judgment has been obtained against Mr. Murrell but the Attorney General has been unable to obtain service on Mr. Murrell through the Shelby County Sheriff's office. The Attorney General has asked for authorization from the Registry to obtain a private process server to attempt to serve Mr. Murrell.

On motion by Harding, seconded by Junior-Spence, the Registry voted to authorize the Attorney General to pay a private process server to obtain service on Mr. Murrell.

The second case addressed in the memorandum concerns New Light for Unity PAC, which is now defunct. The PAC had been assessed a total of \$1,150 in civil penalties for the late filing of campaign disclosure reports in 1990. A court judgment was obtained in 1993 and the

president of the PAC, Ms. C.E. McGruder, had agreed to enter into a payment plan agreement to pay the penalties. However, Ms. McGruder passed away in December, 1993. In light of the fact that the only individual with whom contact had been made in this case is deceased and that the PAC has no funds, the Attorney General has asked to close the file.

On motion by Reviere, seconded by Harding, the board voted not to pursue collection of the judgment against New Light for Unity PAC.

The third case relates to total assessments of \$5,075 against Amusement and Music Operators of Tennessee for failing to timely file campaign disclosure reports in 1993. In the memorandum, Ms. Kleinfelter recommends that this case be closed because the PAC is defunct and the treasurer cannot be held personally liable in this case for payment of the penalties under the old law. However, the Attorney General's Office has never attempted to pursue the collection of the assessed penalties in court.

On motion by Reviere, seconded by Harding, the board voted to notify the Attorney General that the Registry wishes to have this file remain open and to continue to pursue collection of the assessed penalties.

Director Williams distributed a memorandum faxed to all county election commissions with a list of persons who are ineligible to qualify as candidates in upcoming elections because of outstanding penalties and/or outstanding campaign disclosure reports.

The Attorney General's Office has still not issued an opinion that was requested in January, 1998 relating to questions raised in the sworn complaint filed by the Tennessee State Democratic Party against the Tennessee State Republican Party. Director Williams stated that she will continue to stay in contact with both parties as to the status of the opinion request and the board's consideration of the complaint.

The next regularly scheduled board meeting will be at 10:30 a.m. on Monday, June 8, 1998.

## **REGISTRY OF ELECTION FINANCE**

---

---

The Registry of Election Finance held a special meeting by telephone conference call on Thursday, April 23 1998, at 9:00 a.m. for the sole purpose of considering the suspension of the board's Campaign Contribution Limits Rules (Those rules became effective March 27, 1998.)

Participating in the telephone conference call were members Alan Hubbard (Chair), Gail Vaughn Ashworth, Karen Dunavant, George Harding, Samella Junior-Spence and Herman Reviere. Director Peggy Williams and Assistant Director Drew Rawlins were also participants in the call.

Director Williams reported to the members that the Joint Government Operations Committee had requested at its April 13 meeting that the Registry suspend its Campaign Contribution Limits Rules. The committee asked that Williams report back to it by Monday, April 27 as to the board's action on the committee's request.

Williams also informed the board that Sen. Jim Kyle from Memphis had volunteered to meet with the Registry staff over the summer to discuss the Registry's concerns relating to its enforcement of various statutory provisions of the campaign finance laws. Sen. Kyle also expressed interest in sponsoring legislation to address the board's concerns.

After discussion and consideration of the Joint Government Operations Committee's requests, Harding made a motion to suspend the rules effective immediately. His motion was seconded by Junior-Spence. On a roll call vote, the board voted 4-2 to suspend the rules, with Ashworth and Dunavant voting "no."

Director Williams informed the board that she would file the necessary paperwork immediately with the Secretary of State's Office to effectuate the board's decision to suspend the rules.

The meeting was then adjourned, without consideration of any other matters.