

REGISTRY OF ELECTION FINANCE

The Registry of Election Finance for the State of Tennessee met Tuesday, February 9, 1999, at 1614 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee.

Attending were: Samella Junior-Spence (Chair), Greg Duckett, Karen Dunavant, George Harding, Alan Hubbard and Elizabeth Tarpy.

The minutes of the January 12, 1999 meeting were approved on motion by Harding, seconded by Duckett.

Sworn Statements Submitted in Response to Show Cause Hearing Notice:

99-04 – Jim Horner, for reporting the acceptance of excess contributions from an individual. Maximum civil penalty \$10,000 or 115% of the excess contributions accepted, whichever is greater.

Mr. Horner filed a sworn statement for the board's consideration of his case. In that statement, Mr. Horner explained that he had forgotten about the \$1,000 limit on individual contributions when he reported receiving \$1,500 from his wife for his 1998 general election. He has since reallocated \$500 of the excess contributions as having been received from himself and has filed an amended disclosure report listing the reallocation.

On motion by Hubbard, seconded by Duckett, the board voted to take no action.

Approval of Civil Penalty Orders:

99-07 and 99-08 – John Ford, for reporting the acceptance of contributions over \$75,000 from PACs for his 1998 primary election and for disclosing the acceptance of excess contributions from several individuals for both his primary and general elections. Maximum civil penalty \$10,000 or 115% of the excess contributions accepted, whichever is greater.

John Lyell appeared before the board on behalf of Sen. Ford. Additionally prior to the meeting, Sen. Ford filed amended campaign financial disclosure reports related to his 1998 campaign, reattributing some of the excess contributions from his primary election to his general election, and also established a 2002 campaign account and reattributed the rest of the excess contributions to that account.

On motion by Harding, seconded by Duckett, the board voted to take no action.

99-10 – Kathryn Bowers, for failure to timely file a 1998 pre-general campaign financial disclosure report. Class (2), maximum civil penalty \$10,000.

Rep. Bowers personally appeared before the board. She told the members that her treasurer had been hospitalized for an illness and that she had to act as her own treasurer during the general election reporting period. Rep. Bowers also stated that she had been out of town when the report was due to have been filed.

On motion by Harding, seconded by Duckett, the board voted to take no action.

98-61 – John Deberry, for failure to timely file 1998 post-primary campaign disclosure report. Class (1), maximum civil penalty \$400.

Rep. Deberry appeared before the board and apologized for the late filing of his report.

On motion by Duckett, seconded by Dunavant, the board voted to take no action.

99-11 – Timothy Davis, for failure to timely file 1998 pre-general campaign financial disclosure report. He was a candidate for state representative in Murfreesboro. Class (1), maximum penalty \$150.

Mr. Davis made a personal appearance before the board. He stated that the address on file at the Registry was incorrect and that he never received the Registry's original notification that he needed to file a pre-general report.

On motion by Tarpy, seconded by Duckett, the board voted to take no action.

99-09 – Mark Henderson, for failure to file 1998 post-general campaign financial disclosure report with Sumner County Election Commission, as a candidate for circuit court judge in Sumner County. Class (2), maximum civil penalty \$10,000.

Mr. Henderson personally appeared before the board. He informed the members that he has suffered from numerous personal problems and because of those problems has not filed his post-general report. He informed the Registry that he would immediately file his report with the Sumner County Election Commission to correct the situation.

On motion by Harding, seconded by Duckett, the board voted to defer action on this case until the March 9, 1999 meeting, at which time Director Williams will report to the members whether Mr. Henderson has filed his post-general report with Sumner County.

99-01 – Advocates for Better Children and Dads, for failure to file 1998 third quarter campaign financial disclosure report. Class (2), maximum civil penalty \$10,000.

The committee did not respond to the board's show cause hearing notice.

Harding made a motion to assess the PAC a \$10,000 civil penalty, which was seconded by Dunavant. After further discussion by the members, Harding then withdrew his motion. On motion by Harding, seconded by Dunavant, the board voted unanimously to assess the committee \$2,500.

99-02 – Blount County Republican Campaign, for failure to file 1998 third quarter campaign financial disclosure report. Class (2), maximum civil penalties \$10,000.

Blount County Republican Campaign did not respond to the board's show cause hearing notice.

On motion by Hubbard, seconded by Dunavant, the board voted unanimously to assess a \$2,500 civil penalty.

99-03 – Lee Davis, for reporting the acceptance of excess contributions from an individual. Maximum civil penalty \$10,000 or 115 % of the excess contributions accepted, whichever is greater.

A sworn statement was received from Ann Steed, treasurer for Mr. Davis, explaining that a total of \$1,500 was reported as received from Owen Brown for Mr. Davis' general election but that \$500 was actually from Mrs. Owen Brown. An amended post-general report was filed for Mr. Davis disclosing the correct reallocation.

On motion by Dunavant, seconded by Hubbard, the board voted to take no action.

99-05 – Anne Phillips, for disclosing the receipt of excess contributions from an individual. Maximum civil penalty \$10,000 or 115% of the excess contributions accepted, whichever is greater.

A sworn statement was received from Ms. Phillips explaining that she had incorrectly reported a total of \$1,200 in contributions from Lin Phillips for her general election. In her statement, Ms. Phillips stated that a \$200 in-kind contribution should have been attributed to Pam Phillips instead of Lin Phillips. She also filed an amended pre-general campaign disclosure report reporting the correct allocation of the \$200.

On motion by Hubbard, seconded by Dunavant, the board voted to take no action.

99-06 – Mike Whitaker, for reporting the acceptance of excess contributions from a PAC. Maximum civil penalty \$10,000 or 115% of the excess contributions accepted, whichever is greater.

Mr. Whitaker requested that his case be continued until the March meeting, as he was unable to attend the February meeting.

On motion by Harding, seconded by Dunavant, the board voted to defer action on this case until the March 9, 1999 meeting.

Issuance of Show Cause Notices:

Four PAC of FSD Corporation, for late filing of 1998 third quarter campaign financial disclosure report. Class (2), maximum penalty \$10,000.

The new treasurer of the committee has filed the report, along with a new appointment of treasurer statement for the PAC. Additionally, he also sent a letter to the Registry explaining that the previous treasurer had moved, but that no one had notified the Registry of the new treasurer or the new address of the committee.

On motion by Hubbard, seconded by Dunavant, the board voted to take no action.

Wade Farmer, for failure to file 1998 pre-general campaign disclosure report. Class (2), maximum civil penalty \$10,000.

On motion by Harding, seconded by Dunavant, the board voted unanimously to issue a show cause hearing notice in this matter.

Sara Lewis, for failure to file 1998 pre-general election report with the Shelby County election Commission as a candidate for member of the Memphis City School Board. Class (2), maximum civil penalty \$10,000.

On motion by Harding, seconded by Dunavant, the board voted unanimously to issue a show cause hearing notice in this matter.

Jimmy Kyle Davis, for failure to file an amended campaign disclosure report to reallocate excess contributions disclosed by his campaign. Maximum penalty \$10,000 or 115% of the excess contributions accepted, whichever is greater.

Mr. Davis has not responded to the Registry's request that he file amended 1998 campaign disclosure reports disclosing the reallocations.

On motion by Harding, seconded by Hubbard, the board voted unanimously to issue a show cause hearing notice in this matter.

Harry Tindell, for reporting the acceptance of excess contributions from an individual. Maximum penalty \$10,000 or 115% of the excess contributions accepted, whichever is greater..

Rep. Tindell did not respond to the Registry's request for written documentation supporting his reallocation of the monies.

On motion by Hubbard, seconded by Tarp, the board voted unanimously to issue a show cause hearing notice in this matter.

Budget Report:

Assistant Director Rawlins presented the board with a budget report for the first six months of the 1998/99 fiscal year budget. Rawlins reported to the members that expenditures in the "supplies" line item were higher than usual because of the purchase of new conference room chairs to replace the old chairs that are in a state of disrepair.

On motion by Dunavant, seconded by Tarp, the board voted unanimously to approve the budget report as presented.

Executive Director's Report:

Director Williams provided the members a rough draft of a 1998 annual report that is to be presented to the Governor and the Speakers of both Houses. Williams explained to the members that the copies of the draft of the report that she was providing do not contain the statistical information as to filings and civil penalties that will be included in the final version, because those statistics are not available at the present time. She explained that those statistics should be available in time for the next meeting. The

Director requested that the members review the rough draft and be ready to finalize the report at the March meeting.

Harding recommended that the Director include in the report the recommendation that the prohibitions on members of the board as to their involvement in election activity for one year after leaving the Registry be deleted.

Williams informed the members that the Speaker of the House has asked that the House Ethics Committee review the disclosure laws enforced by the Registry, as well as the Registry's enforcement of those laws. The Director provided the members with a copy of the statement read by Speaker Naifeh from the House floor relating to his request. Williams informed the members that she had spoken with the Chairman of the House Ethics Committee, Rep. Matt Kisber, and that a meeting is to be held in the future with Rep. Kisber to discuss the direction of the ethics committee's review and to discuss solutions to the unresolved campaign finance issues confronted by the Registry during the 1998 elections that were relayed to the General Assembly through a letter from the Registry's 1998 chairman, Alan Hubbard.

Sen. Jim Kyle has requested input from the board members as to how they would like to see campaign finance issues that were presented to the board at its December meeting (at Sen. Kyle's request) to be addressed legislatively. Those issues, Sen. Kyle's suggested resolutions to those issues and the members' suggestions for legislative changes to address those issues are as follows:

- 1.) The allocation of surplus campaign funds report is due to be filed by a November general election candidate prior to the post-general campaign report. The Registry has no idea as to which candidates owe such a report until seeing the balances on hand reported on post-general reports.

Sen. Kyle has suggested simply eliminating the filing of the allocation report, since the candidates will be reporting the ultimate expenditure of surplus funds on future disclosure reports.

After further consideration of Sen. Kyle's idea, the members do not oppose the elimination of the report by deleting the requirement under T.C.A. §2-10-114(a) and (c). As an alternative, the members suggest that the report should be due to be filed by the candidate at the same time as the post-general report, if there are surplus contributions, or the report should be due thirty (30) days after the post-general is to be filed.

- 2.) The campaign finance law should be amended to clarify the issue of anonymous contributions. (The Attorney General has issued an opinion to the Registry stating that such contributions are prohibited because of the disclosure requirements and contribution limits set forth in the campaign finance laws.)

Sen. Kyle has suggested that anonymous contributions provided in connection with an event, such as a fish fry or barbecue, should be allowable and reportable as a total amount received for the event.

The Registry members suggest amending T.C.A. §2-10-107 (contents of information to be disclosed in a campaign finance statement) to allow for the reporting as Sen. Kyle has suggested, but also recommended a cap of \$100 that may be accepted by a candidate from an individual per such an event.

- 3.) PACs should be treated like candidates when reports are not filed and penalties are not paid, in that they should not be allowed to participate in the election process until penalties are paid and all required reports are filed.

Sen. Kyle has suggested de-registering PACs under these circumstances.

The Registry supports Sen. Kyle's proposal and offers a suggestion for a possible legislative change to address the issue by amending T.C.A. §2-10-110 to add the following or similar language:

If an assessed civil penalty is not paid within thirty (30) days after the assessment becomes final, the multicandidate political campaign committee against whom the penalty was assessed shall be notified by the Registry of Election Finance that it's registration has been suspended. The committee shall also be notified that until the assessed penalty is paid along with any costs incurred by the State in collecting the penalty that the committee may not re-register in Tennessee or participate in any candidate elections.

A multicandidate political campaign committee that fails to file any statement required by the campaign finance law shall be notified by the Registry of Election Finance that it's registration has been suspended. The committee shall also be notified that until the required report is filed that it shall be ineligible to re-register or participate in any candidate elections in Tennessee.

- 4.) Pre-election reports should be due to be filed prior to the beginning of early voting for public information. (Proposal by Sen. Kyle.)

While the Registry members agree with Sen. Kyle's suggestion, the members expressed their opinion that some filing should also take place immediately prior to election day (at least as to contributions of a certain \$ amount), so that voter ay have access to the latest campaign finance information. A solution suggested by the board would be to amend T.C.A. §2-10-105 to provide for the following filings:

A pre-election report would be due to be filed seven (7) days prior to the early voting, which begins twenty (20) days prior to election day. (The reporting period would begin with the date of the first contribution or first expenditure and run through ten (10) days before early voting.) Then, for any contributions received by the candidate exceeding \$500, the candidate would be required to file an additional supplemental report disclosing those contributions received after the ending date of the pre-election period through three (3) days prior to the election. (The post-election report, which would be due forty-eight (48) days after the election, would include all contributions and expenditures from the ending date of the pre-election report through forty-five (45) days after the election.

- 5.) Should a successful candidate who is debt-free after an election cycle be allowed to continue to accept monies for the previous campaign, for purposes of campaign contribution limits?

Sen. Kyle has suggested that a candidate be allowed to collect monies for up to one year after the last election in which he/she was involved in an election year and count those monies toward the prior election cycle. After the one-year period, any monies received would automatically count toward the candidate's next election cycle.

The Registry members are not comfortable with Sen. Kyle's proposal and suggest amending the Campaign Contributions Limits Act, T.C.A. §2-10-301, et seq., to provide that any monies received by a candidate after an election where there are no outstanding debts or obligations would automatically count toward the candidate's next election cycle.

Williams informed the members that she would convey the Registry's responses to Sen. Kyle.

Other Business:

The next monthly meeting was scheduled for Tuesday, March 9, 1999, to begin at 10:30 a.m.