

REGISTRY OF ELECTION FINANCE

The Registry of Election Finance met Wednesday, August 10, 2005, at Suite 1614 of Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee.

Attending the meeting were board members Darlene McNeece, William Long, Lee Anne Murray, Karen Dunavant, George Harding and John McClarty.

On motion by Harding, seconded by Long, the minutes from the July 13, 2005 meeting were approved unanimously.

Requests for Reconsideration

02-72 Jefferson County Democratic Party, for failure to file a 2002 3rd quarter campaign financial disclosure report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. The organization has had previous matters before the board.

The board voted at its January 8, 2003 meeting to assess the organization a \$10,000 civil penalty for their failure to file the required report. The organization requested a reconsideration of the assessment at the July 13, 2005 meeting. The board voted at the July 13, 2005 meeting not to reconsider the civil penalty assessment. The organization requested to appear at the Registry's August meeting for a reconsideration of the civil penalty assessment.

Betty Watkins, County Chair of the Jefferson County Democratic Party, personally appeared before the board and explained that the organization's failure to file was not deliberate. She stated that the organization was unaware that the required reports had not been filed and that a civil penalty had been assessed against them. In addition, she stated that there was a miscommunication between the former treasurer and the organization. The treasurer never informed the organization of the missing reports and penalty assessments. Ms. Watkins noted that a CPA has been elected as treasurer to maintain and timely file all records in the future.

A motion was made by Harding, seconded by Long, to reconsider the \$10,000 civil penalty assessment against the organization. The motion to reconsider passed the board unanimously. A motion was made by Harding, seconded by Long, to assess the organization a \$500 civil penalty. A friendly amendment was made by Long, accepted by Harding, to combine cases 02-72 and 03-07 and assess the organization a \$500 civil penalty for Case No. 02-72 and \$1,000 for Case No. 03-07. A friendly amendment was made by Dunavant to assess the organization a \$750 civil penalty for Case No. 02-72. Dunavant then withdrew her motion. The motion to assess the organization \$500 for Case No. 02-72 and \$1,000 for Case No. 03-07 passed the board unanimously. (see below)

03-07 Jefferson County Democratic Party, for failure to file a 2002 4th quarter campaign financial disclosure report. Class two (2), no report filed, maximum ten

thousand (\$10,000) civil penalty. The organization has had previous matters before the board.

The board voted at its April 9, 2003 meeting to assess the organization a \$10,000 civil penalty for their failure to file the required report. The organization requested a reconsideration of the assessment at the July 13, 2005 meeting. The board voted at the July 13, 2005 meeting not to reconsider the civil penalty assessment. The organization requested to appear at the Registry's August meeting for a reconsideration of the civil penalty assessment.

Betty Watkins, County Chair of the Jefferson County Democratic Party, personally appeared before the board and explained that the organization's failure to file was not deliberate. She stated that the organization was unaware that the required reports had not been filed and that a civil penalty had been assessed against them. In addition, she stated that there was a miscommunication between the former treasurer and the organization. The treasurer never informed the organization of the missing reports and penalty assessments. Ms. Watkins noted that a CPA has been elected as treasurer to maintain and timely file all records in the future.

A motion was made by Harding, seconded by Long, to reconsider the \$10,000 civil penalty assessment against the organization. The motion to reconsider passed the board unanimously. A motion was made by Harding, seconded by Long, to assess the organization a \$500 civil penalty. A friendly amendment was made by Long, accepted by Harding, to combine cases 02-72 and 03-07 and assess the organization a \$500 civil penalty for Case No. 02-72 and \$1,000 for Case No. 03-07. A friendly amendment was made by Dunavant to assess the organization a \$750 civil penalty for Case No. 02-72. Dunavant then withdrew her motion. The motion to assess the organization \$500 for Case No. 02-72 and \$1,000 for Case No. 03-07 passed the board unanimously. (see above)

04-43 Jeff Hagood Fund for a Better Tennessee, for failure to file a 2004 2nd quarter campaign financial disclosure report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. The organization has had previous matters before the board. (see below)

The board voted at its November 10, 2004 meeting to issue the organization a \$10,000 civil penalty for their failure to file the required report. The organization requested a reconsideration of the assessment. The board voted at its July 13, 2005 meeting to postpone any action in this case until the next regularly scheduled meeting to allow the organization an opportunity to personally appear before the board.

Jeff Hagood and Lynn Tarpy, treasurer for the organization, personally appeared before the board and explained that the notices to file were sent to a friend and that they assumed that the friend was timely filing the required reports. Mr. Hagood further explained that he had no idea that the PAC had not been closed out and stated that if he had known about the problem he would have fixed it immediately. Mr. Hagood stated that no political activity ever occurred and that he intends to close the PAC. Mr. Hagood asked the board to reconsider the civil penalty assessment against the organization and waive the fine. Mr. Tarpy noted that the required reports were filed as soon as they discovered that they had not been completed.

A motion was made by Murray, seconded by Long, to reconsider the \$10,000 civil penalty assessment. The motion to reconsider passed the board unanimously. A motion was made by Murray, seconded by Long, to dismiss the \$10,000 civil penalty against the organization based on the fact that the PAC was inactive from the beginning and that they intend to close. The motion to dismiss the \$10,000 civil penalty passed the board unanimously.

05-22 Jeff Hagood Fund for a Better Tennessee, for failure to file a 2004 4th quarter campaign financial disclosure report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. The organization has had previous matters before the board. (see above)

The board voted at its June 8, 2005 meeting to issue the organization a \$10,000 civil penalty for their failure to file the required report. The organization requested a reconsideration of the assessment. The board voted at its July 13, 2005 meeting to postpone any action in this case until the next regularly scheduled meeting to allow the organization an opportunity to personally appear before the board.

Jeff Hagood and Lynn Tarp, treasurer for the organization, personally appeared before the board and explained that the notices to file were sent to a friend and that they assumed that the friend was timely filing the required reports. Mr. Hagood further explained that he had no idea that the PAC had not been closed out and stated that if he had known about the problem he would have fixed it immediately. Mr. Hagood stated that no political activity ever occurred and that he intends to close the PAC. Mr. Hagood asked the board to reconsider the civil penalty assessment against the organization and waive the fine. Mr. Tarp noted that the required reports were filed as soon as they discovered that they had not been completed.

A motion was made by Murray, seconded by Long, to reconsider the \$10,000 civil penalty assessment. The motion to reconsider passed the board unanimously. A motion was made by Murray, seconded by Long, to dismiss the \$10,000 civil penalty against the organization based on the fact that the PAC was inactive from the beginning and that they intend to close. The motion to dismiss the \$10,000 civil penalty passed the board unanimously.

04-50 Joe Towns, Jr., for failure to file a 2004 post-primary campaign financial disclosure report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. Rep. Towns has had previous matters before the board.

The board voted at its December 14, 2004 to assess Rep. Towns a \$10,000 civil penalty. Rep. Towns requested a reconsideration of the assessment. The board voted at its May 11, 2005 meeting to reconsider the \$10,000 assessment and reduce it from \$10,000 to \$5,000. Rep. Towns requested a reconsideration of the \$5,000 civil penalty assessment.

Rep. Towns submitted a statement for the board's consideration. In this statement Rep. Towns stated that the civil penalty was a tremendously oppressive amount of money for anyone to pay. Rep. Towns further stated that he didn't think it was a wise idea for fines to be imposed in a manner that creates hardship for citizens to pay them regardless to the frequency of late filings.

On motion by Dunavant, seconded by McNeece, the board voted unanimously not to reconsider the \$5,000 civil penalty assessment against Rep. Towns.

05-01 Joe Towns, Jr., for failure to file a 2004 pre-general campaign financial disclosure report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. Rep. Towns has had previous matters before the board.

The board voted at its May 11, 2005 to assess Rep. Towns a \$3,000 civil penalty. Rep. Towns requested a reconsideration of the assessment.

Rep. Towns submitted a statement for the board's consideration. In this statement Rep. Towns stated that the civil penalty was a tremendously oppressive amount of money for anyone to pay. Rep. Towns further stated that he didn't think it was a wise idea for fines to be imposed in a manner that creates hardship for citizens to pay them regardless of the frequency of late filings.

On motion by Dunavant, seconded by McNeece, the board voted unanimously not to reconsider the \$3,000 civil penalty assessment against Rep. Towns.

05-11 John Ford, for possible use of campaign funds for personal expenses.

The board voted at its May 11, 2005 meeting to assess a \$10,000 civil penalty against Sen. Ford for personal use of campaign funds (the civil penalty order included the appearance of fraud in the completion of the campaign financial disclosure statement). Sen. Ford filed a petition for waiver or withdrawal of penalty.

In his petition, Sen. Ford requested that the fine be waived or withdrawn because he was not properly notified of any allegations of fraud, the issue of whether he used campaign funds for non-political purpose was moot by operation of law and that he is not guilty of fraud. Sen. Ford stated that there was no intentional misrepresentation to a material fact but instead a minor error in his financial disclosure.

A motion was made by Dunavant, seconded by Murray, not to reconsider the \$10,000 civil penalty against Sen. Ford. The motion not to reconsider passed the board 4 to 2, with Long and McClarty voting "no."

Show Cause Hearing

05-39 Larry Miller, for possible violation of the lobbying law.

The board voted at its July 13, 2005 meeting to issue Rep. Miller a show cause notice for accepting a gift that is prohibited under the lobbying statutes. Rep. Miller requested to appear before the board at its August meeting.

Rep. Miller personally appeared before the board and stated that he did not attend a lunch or dinner with Osbie Howard in Memphis. Rep. Miller provided the board with a handout of the House Roll Call for the General Assembly for the day in question. The handout showed that Rep. Miller was present in Nashville at the legislature on May 4, 2004.

On motion by Harding, seconded by Dunavant, the board voted unanimously to take no further action in this matter.

Sworn Statements Submitted

05-33 Michael Hooks, for failure to file a 2005 post-primary/pre-general campaign financial disclosure report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. Mr. Hooks has had previous matters before the board.

The board voted at its July 13, 2005 meeting to issue Mr. Hooks a show cause notice. Mr. Hooks and Othello Robinson, treasurer for Mr. Hooks, submitted sworn statements for the board's consideration.

Mr. Hooks stated that due to reasons beyond his control (referred to Mr. Robinson's statement) the report was not filed. Mr. Hooks further stated that he was providing the Registry a check for \$1,275 that would represent \$25 dollars a day for the number of days that his report was late. Mr. Hooks noted that he hoped that Mr. Robinson's explanation and the advancement of civil penalties would be considered by the board and that no more penalties would be assessed.

Mr. Robinson stated that the notices to file the required report were received by his office prior to the due date but that he was out of town on business. Mr. Robinson further stated that he was away from his office for three weeks on sick leave and vacation and when he returned to work he was unaware that the notices were in his office. Mr. Robinson apologized for the oversight and asked the board to be understanding in this matter.

Directed Rawlins informed the board that a check in the amount of \$1,275 was received at the Registry but that it has been returned to Mr. Hooks because the check appeared to have been written out of his campaign account. Director Rawlins further informed the board that the Attorney General has opined that civil penalty assessments can not be paid out of a candidate's campaign fund.

A motion was made by Dunavant, seconded by McNeece, to assess Mr. Hooks a \$1,275 civil penalty. The motion to assess Mr. Hooks a \$1,275 civil penalty passed the board 5 to 1, with McClarty voting "no."

05-37 Osbie Howard, for possible violation of the lobbying law.

The board voted at its July 13, 2005 meeting to issue a show cause notice to Mr. Howard for providing prohibited gifts to members of the general assembly. Mr. Howard had requested reimbursement from OmniCare (who had a registered lobbyist) for meals he reported providing to Rep. Armstrong, Rep. Miller, former Sen. Ford and former Sen. Dixon.

Mr. Howard provided a sworn statement for the board's consideration. In this statement Mr. Howard explained that he does not believe that he violated provisions of the lobbying law. Mr. Howard further explained that he is not now nor has ever been a lobbyist and that he was not the employer of a lobbyist but a supervisor of a lobbyist. Mr. Howard stated that all of the individuals in question are personal friends of his and that he has relationships with all of the individuals outside of their positions as State Legislators. Mr. Howard noted that it was his understanding that the lobbying law allows for an exception to the gift rule if the recipient is a friend of long standing. Mr. Howard explained that any expenses paid on behalf of Sen. Ford were not gifts but ordinary business and travel expenses paid by OmniCare in furtherance of the company's business, as Sen. Ford had a contract with his OmniCare. Mr. Howard noted that if any

technical violations of the lobbying law occurred, they were unintentional on his part and that he never viewed his relationship with these individuals as a lobbyist.

After discussion, a motion was made by Long, seconded by McClarty, to assess Mr. Howard a \$123.94 civil penalty, 200% of the meals provided for former Sen. Dixon. The motion passed the board 5 to 0, with Dunavant “abstaining.”

Cases Subject to Approval for Civil Penalty

05-34 Citizens Watch 2000 PAC, for failure to timely file a 2005 1st quarter campaign financial disclosure report. Class one (1), 13 days late, maximum three hundred twenty-five (\$325) civil penalty. The organization has had previous matters before the board.

The board voted at its July 13, 2005 meeting to issue the organization a show cause notice. Director Rawlins informed the board that there has been no response to the show cause notice.

On motion by McClarty, seconded by McNeece, the board voted unanimously to assess the organization a \$325 civil penalty.

05-35 Mary Taylor-Shelby, for failure to file a 2005 statement of interests report. Class two (2), no report filed, maximum ten thousand (\$10,000) civil penalty. Ms. Shelby has had no previous matters before the board.

The board voted at its July 13, 2005 meeting to issue Ms. Taylor-Shelby a show cause notice. Director Rawlins informed the board that there has been no response to the show cause notice and that the report still has not been filed.

On motion by Long, seconded by McClarty, the board voted unanimously to assess Ms. Taylor-Shelby a \$1,000 civil penalty.

05-36 Kathryn Bowers, for accepting a campaign contribution during legislative session. Class two (2), maximum ten thousand (\$10,000) civil penalty. Rep. Bowers has had previous matters before the board.

The board voted at its July 13, 2005 meeting to issue Sen. Bowers a show cause notice.

Sen. Bowers submitted a sworn statement for the board’s consideration. In this statement, Sen. Bowers explained that it was not her intent to willfully violate the Contribution Limits Law in reporting the use of a van during legislative session as an in-kind contribution. Sen. Bowers further explained that it was not the understanding from the owner that it was considered an in-kind contribution because the campaign committee paid for the maintenance, driver and gas. Sen. Bowers noted that she changed the in-kind contribution of \$570 from David Acey to an obligation of \$570 to Mr. Acey on her disclosure report, but that the owner does not anticipate being paid because the committee repaired the van.

David Acey, the person listed as in-kind contributor of a van on Sen. Bower’s disclosure report, submitted a statement to the board stating that he loaned Sen. Bowers his van and that all expenses related to the use of the van were paid for by Sen. Bower’s campaign.

A motion was made by Harding, seconded by McClarty, to assess Sen. Bowers a \$100 civil penalty. The motion to assess Sen. Bowers a \$100 civil penalty failed the board 3 to 3, with Long, McNeece and Murray voting “no.” A motion was then made by Long, seconded by Murray, to assess Sen. Bowers a \$570 civil penalty. The motion to assess Sen. Bowers a \$570 civil penalty passed the board unanimously.

05-40 Roscoe Dixon, for possible violation of the lobbying law.

The board voted at its July 13, 2005 meeting to issue Sen. Dixon a show cause notice for accepting a gift that is prohibited under the lobbying statutes.

Director Rawlins informed the board that he spoke with Sen. Dixon by phone and that Sen. Dixon stated that he was going to fax a response to the show cause notice to the Registry for the board’s consideration. Director Rawlins further informed the board that the Registry never received a fax or further response to the show cause notice.

After discussion, a motion was made by Murray, seconded by Harding, to assess Sen. Dixon a \$123.94 civil penalty, 200% of the meal provided by Osbie Howard. The motion passed the board 5 to 0, with Dunavant “abstaining.” (see Osbie Howard matter)

05-41 John Ford, for possible violation of the lobbying law.

The board voted at its July 13, 2005 meeting to issue former Sen. Ford a show cause notice for accepting a gift that is prohibited under the lobbying statutes. Osbie Howard had received reimbursement from OmniCare for meals and travel expenses for Sen. Ford.

Director Rawlins informed the board that there has been no response to the show cause notice.

After discussion, a motion was made by Murray, seconded by Long, to take no further action in this matter based on the fact that Sen. Ford had a contract to work for OmniCare and therefore the meals and travel were not a gift from Osbie Howard. The motion to take no further action passed the board 5 to 0, with Dunavant “abstaining.”

Dismissal of Show Cause Notice

05-38 Joe Armstrong, for possible violation of the lobbying law.

The board voted at its July 13, 2005 meeting to issue Rep. Armstrong a show cause notice for accepting a gift that is prohibited under the lobbying statutes.

Rep. Armstrong provided the board with a statement and explained that the alleged luncheon with Osbie Howard never took place. On the date in question, a Saturday, he was in Knoxville attending the UT vs. Notre Dame football game (UT football schedule was included). Rep. Armstrong further explained that he is a season ticket holder and that he attended every home game during the season. Additionally, Rep. Armstrong had reimbursed Mr. Howard to take care of the situation and provided the board with a copy of a check showing reimbursement to Osbie Howard in the amount of \$14.16 (half of the stated meal amount - \$28.32).

Director Rawlins informed the board that T.C.A 3-6-114(d) provides that if you reimburse any provider of a prohibited gift within 10 days of knowledge that it is a violation then the gift it is not considered a violation.

On motion by Long, seconded by Murray, the board voted 5 to 0 to take no further action in this matter, with Dunavant voting “abstaining.”

Cases Considered for Issuance of Show Cause Notices

Charles Love, for possible failure to report campaign contributions over \$100 on his 2004 year-end lobbying activities report.

This case was deferred from the June 8, 2005 meeting to be placed back on the August meeting agenda.

Director Rawlins requested that the board defer any action in this case as it is still part of an ongoing investigation.

A motion was made by Murray, seconded by Dunavant, to defer any discussion or decision on this matter and to place it back on the agenda for the December meeting. The motion as amended passed the board unanimously.

Timothy Willis, for possible failure to report campaign contributions over \$100 on his 2004 year-end lobbying activities report.

This case was deferred from the June 8, 2005 meeting to be placed back on the August meeting agenda.

Director Rawlins requested that the board defer any action in this case as it is still part of an ongoing investigation.

A motion was made by Murray, seconded by Dunavant, to defer any discussion or decision on this matter and to place it back on the agenda for the December meeting. The motion as amended passed the board unanimously.

Golden Rule Financial PAC, for possible violation of the campaign financial disclosure law.

Director Rawlins informed the board that when the organization filed their 2005 2nd quarter campaign financial disclosure statement it showed contributions in the amount of \$200 to Rep. Larry Turner and \$200 to Sen. Kathryn Bowers both made on April 11, 2005. Director Rawlins further informed the board that these contributions were given during session and that contributions are not allowed during legislative session.

The organization submitted a statement for the board’s consideration. In this statement Sherry Hopkins, lobbyist for the organization, explained that the checks were issued to her department April 12 but were not mailed to the recipients until June. Ms. Hopkins further explained that she instructed her secretary to hold the checks because the contribution window was closed but failed to notify their accounting department of the date change and failed to change her records for reporting.

On motion by Long, seconded by Murray, the board voted unanimously to take no action in this matter.

Sworn Complaints on Expenditures

Director Rawlins provided the board with 18 sworn complaints, filed by Barry Schmittou, against legislators over the disclosure of expenditures.

Harding made a motion to defer all complaints until the next meeting to have Mr. Schmittou notarize each complaint. Director Rawlins informed the board that he gave Mr. Schmittou permission to notarize the first sworn complaint and attach the remaining complaints. The motion to defer all complaints until the next meeting died for a lack of a second.

Director Rawlins informed the board that the following six (6) legislators listed in the complaints are all based on expenditures that are on reports that are considered final absent a showing of fraud:

- Steve Cohen
- Jerry Cooper
- Joe Haynes
- Edith Langster
- Gary Odom
- John Wilder

On motion by Long, seconded by Harding, the board voted unanimously to dismiss complaints involving expenditures over 180 days old, as they are considered final absent a showing of fraud.

Director Rawlins informed the board that the following twelve (12) legislators have some expenditures listed in the complaints that are on reports that are not final. Director Rawlins noted that at the time these reports were filed, the Registry staff did not return any of these reports for correction of these expenditures.

- Lois DeBerry
- Jerry Hargrove
- Roy Herron
- Doug Jackson
- Sherry Jones
- Tommy Kilby
- Steve McDaniel
- Larry Miller
- Jimmy Naifeh
- Curtis Person
- Ron Ramsey
- Randy Rinks

On motion by Long, seconded by Murray, the board voted unanimously to dismiss the complaints based on inadequate disclosure of payee and ask that the board adopt a resolution instructing the Executive Director to dialogue vigorously with the legislature about the inadequacy of the statute regulatory scheme and to dismiss these complaints without prejudice so that they may be re-filed.

Sworn Complaint against Lois DeBerry

Director Rawlins informed the board that the Registry received a sworn complaint, from Barry Schmittou, alleging that Rep. DeBerry received \$200 “from a person who she thought was an employer of a lobbyist doing business in the State of Tennessee”. Director Rawlins further informed the board that apparently, the person who gave Rep. DeBerry the \$200 was an undercover FBI agent posing as a representative of E-Cycle. Director Rawlins noted that E-Cycle does not have a registered lobbyist with the State of Tennessee. Therefore, Rep. DeBerry would not have known if E-Cycle had a lobbyist by checking with the Registry or reviewing the lobbyist list on-line.

On motion by McClarty, seconded by Harding, the board voted unanimously to take no action in this matter.

Sworn Complaint against Lobbyists and Legislators over Meal

Director Rawlins informed the board that the Registry received a sworn complaint, from Barry Schmittou, against two lobbyists and all legislators who were at a dinner at Mario’s restaurant (some legislators are mentioned by name others are not). Mr. Schmittou alleges that all legislators attending the dinner meeting received items of value from a lobbyist. Mr. Schmittou further alleges that the complaint shows evidence of acceptance of gifts and the agreement to exchange lobbyist support for legislative support.

On motion by McClarty, seconded by Long, the board voted unanimously to request information about the dinner and to table this matter until the next regularly scheduled meeting.

Sworn Complaint against Sen. Mike Williams

The board voted at its July 13, 2005 meeting to issue Sen. Williams a show cause notice based on a sworn complaint alleging that Sen. Williams may have mistakenly or fraudulently misused campaign funds by purchasing Season Bristol Speedway tickets with campaign money and then using them as a final payment on a personal loan to Denise Davenport. (An affidavit from Ms. Davenport was included with the sworn complaint.)

Director Rawlins informed the board that when preparing the show cause notice to Sen. Williams it was discovered that the expenditure for the tickets was on a campaign financial disclosure statement that was over 180 days old. Director Rawlins further informed the board that he did not issue the show cause notice because the board would have to find fraud in order to issue the show cause notice.

On motion by Harding, seconded by McClarty, the board voted unanimously to withdraw the show cause notice.

Reported Financial Expenses

Director Rawlins provided the board members with a list of civil penalties that have been paid year to date.

Director Rawlins presented the expenditure reports for the 2004/2005 fiscal year through June 30, 2005.

Executive Director's Report

Director Rawlins informed the board that he had spoken to the Legislative Ethics Commission and presented information from the Registry's annual report. In addition, Director Rawlins informed the board that he would be attending the Governor's Ethics meetings that were going to be held throughout the state.

Other Business

Long, seconded by Murray made a motion, to adjourn the meeting until the next regularly scheduled meeting. The motion passed unanimously.