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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Gerald O. Dial
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Fair Campaign Practices Act – Candidates
– Elections – Reporting Requirements –
Clay County

Section 17-22A-8 of the Code of Alabama requires that financial disclosure reports be filed before a primary election by a candidate through his or her principal campaign committee if the candidate, through his or her principal campaign committee, receives contributions or makes expenditures with a view toward influencing the results of an election and the contributions and/or expenditures reach the threshold amount, even if the candidate does not have opposition in the primary election. This opinion is applied prospectively.

A person who fails to file disclosure reports before the election may be subject to forfeiture of the election and criminal penalties under sections 17-22A-21 and -22 of the Code. A person who files a disclosure report after the deadline, but before the election, may be subject only to criminal penalties under section 17-22A-22.

Dear Senator Dial:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Does the Fair Campaign Practices Act, particularly section 17-22A-8 of the Code of Alabama, require a candidate who does not have opposition in his or her party primary and is thus the party's nominee, to file the 45-day and the 10-5 day reports if the candidate makes expenditures either on his or her own behalf or on behalf of another candidate before the primary election for the purpose of influencing the primary election?

FACTS AND ANALYSIS

Section 17-22A-8 of the Code of Alabama, a provision in the Fair Campaign Practices Act ("FCPA"), requires financial disclosure reports to be filed by a candidate's principal campaign committee, by other political committees, and by elected officials. This section provides, in pertinent part, as follows:

(a) The treasurer of *each principal campaign committee or other political committee shall file* with the Secretary of State or judge of probate, as designated in Section 17-22A-9, *reports of contributions and expenditures at the following times in any year in which an election is held:*

(1) Forty-five days before and between 10 and five days *before the date of any election* for which a political committee *receives contributions or makes expenditures with a view toward influencing such election's result;*

(2) Provided, however, that a report shall not be required except between five and 10 days before a run-off election.

ALA. CODE § 17-22A-8 (1995) (emphasis added). This section requires disclosure reports to be filed 45 days and between 10 and 5 days before any election where the principal campaign committee or other political committee receives contributions or makes expenditures with a view toward influencing the results of that election.

Section 17-22A-8 of the FCPA must be read in conjunction with the other provisions of the FCPA to understand the overall scheme of the FCPA. Applicable here, section 17-22A-2(a)(1) of the Code states that a person becomes a candidate by: (1) filing the necessary documents to seek election or nomination to an office or (2) by receiving contributions or making expenditures that reach the threshold amounts set by statute. Based upon preclearance of the FCPA by the United States Department of Justice, this Office has previously stated that a candidate is not required to file the 45-day and 10-to-5 day reports under the FCPA unless the candidate reaches the threshold amounts under section 17-22A-2(a)(1) of the Code. Opinions to Honorable Sherrie R. Phillips, Judge of Probate, dated November 13, 1990, A.G. No. 91-00084; Honorable Mo Brooks, Member, House of Representatives, dated July 16, 1990, A.G. No. 90-00343. This Office has recommended that a waiver report be filed if the candidate does not reach the threshold amount.

Section 17-22A-2(a)(1) states, in pertinent part, as follows:

(1) CANDIDATE. An individual who has done any of the following:

a. *Taken the action necessary under the laws of the state to qualify himself or herself for nomination or for election to any state office or local office* or in the case of an independent seeking ballot access, on the date when he or she files a petition with the judge of probate in the case of county offices, with the appropriate qualifying municipal official in the case of municipal offices, or the Secretary of State in all other cases.

b. *Received contributions or made expenditures, or given his or her consent for any other person or persons to receive contributions or make expenditures, with a view to bringing about his or her nomination or election to any state office or local office. Notwithstanding the foregoing, no person shall be considered a candidate within the meaning of this subdivision until the time that he or she has either received contributions or made expenditures as provided herein in the following amounts:*

1. Twenty-five thousand dollars (\$25,000) or more, with a view toward bringing about nomination or election to any state office other than one filled by election of the registered voters of any circuit or district within the state.

2. Five thousand dollars (\$5,000) or more, with a view toward bringing about nomination or election to any state office, excluding legislative office, filled by election of the registered voters of any circuit or district.

3. Ten thousand dollars (\$10,000) or more, with a view toward bringing about nomination or election to the Alabama Senate and five thousand dollars (\$5,000) or more, with a view toward bringing about nomination or election to the Alabama House of Representatives.

4. One thousand dollars (\$1,000) or more, with a view toward bringing about nomination or election to any local office.

ALA. CODE § 17-22A-2(a)(1) (Supp. 2006) (emphasis added).

Reading section 17-22A-8 along with section 17-22A-2(a)(1), and cognizant of the preclearance determination by the Department of Justice, disclosure reports must be filed before a primary election by a candidate through his or her principal campaign committee if the candidate, through his or her principal campaign committee, receives contributions and/or makes expenditures that reach the threshold amount and the contributions and/or expenditures are made for the purpose of influencing the results of the primary election.

The text of the FCPA does not limit a principal campaign committee's reporting or disclosure requirements to contributions received and/or expenditures made only on behalf of the candidate for which the principal campaign committee was created. The requirement is to report "before the date of any election" contributions and/or expenditures made "with a view toward influencing such election's result." ALA. CODE § 17-22A-8 (1995). Thus, a candidate's principal campaign committee that receives contributions and/or makes expenditures, at or in excess of the threshold amount, to influence the results of the primary election is required to file disclosure reports before the primary

election, whether or not the candidate is running in the election that his or her principal campaign committee intends to influence.

It is possible for a candidate without a primary opponent to receive contributions or make expenditures before the primary that are not required to be reported because they do not reach the threshold amounts that trigger reporting. ALA. CODE § 17-22A-2(a)(1)b (Supp. 2006); *Brooks* at 3.

A candidate with no primary opponent would, however, be required to file disclosure reports if the candidate's principal campaign committee is receiving contributions and/or making expenditures that reach the threshold amount "with a view toward influencing" the results of his or another candidate's election. For example, a candidate may raise money for his or her campaign in anticipation of the primary election and actually receive contributions that reach the threshold amount before the filing deadline for the 45-day report. The candidate must file a 45-day report before the primary election to disclose the contributions received and report any expenditures made during this reporting period. This report must be filed even if the candidate does not have opposition in the primary election. It is the fact that the contributions were received by the candidate for the purpose of influencing the primary election results that triggers the reporting requirement. Similarly, if a candidate expended funds at or in excess of the threshold amount for the purpose of influencing the primary election results, whether to influence the candidate's own election or another candidate's election, that candidate would have to file disclosure reports.

In 1990, this Office issued an opinion, concluding as follows:

If a candidate's name does not appear on the primary ballot or the primary run-off ballot because he has become the party nominee, the candidate is not required to file disclosure reports prior to the primary and/or run-off election but is required to file reports prior to the general election.

Opinion to Honorable Perry A. Hand, Secretary of State, dated April 19, 1990, A.G. No. 90-00224. As part of the reasoning for this conclusion, the opinion stated that voters will have the opportunity to inspect financial disclosure reports for this candidate before the general election when the candidate's name will appear on the ballot. *Id.*; see also, *Davis v. Reynolds*, 592 So. 2d 546 (Ala. 1991) (stating that the primary purpose of the FCPA is to require candidates for public office to disclose campaign contributions and expenditures before the election so that voters may review the reports to determine who is trying to influence the results of the election).

The *Hand* opinion, however, was based on a factual presumption that the candidate's committee was not trying to influence the election results if the candidate had no opponent in the primary. The opinion reasoned that the candidate was only seeking to influence the general election, and the disclosures would be filed before the general election. The factual presumption applied in *Hand* is not applicable here because your question presumes that a candidate's committee is trying to influence the results of an election.

This Office has been informed that some have construed the *Hand* opinion to mean that a candidate who had no opposition in the primary election had no duty to file reports before the primary election, even if the candidate had received contributions and/or made expenditures that reached the threshold amounts, or if contributions were received or the expenditures were made to influence the elections of other candidates. Whether a candidate has opposition in the election is not dispositive of whether a disclosure report must be filed. Instead, the key to whether a disclosure report must be filed is, and always has been, whether the campaign committee is receiving contributions and/or making expenditures in an attempt to "influence the results of the election." Accordingly, it is the opinion of this Office that the factual presumption in the *Hand* opinion may have led to confusion about what the law requires. Because of the possible confusion and the harsh penalties for failure to properly file reports, the current opinion will be applied prospectively.

CONCLUSION

Section 17-22A-8 of the Code of Alabama requires that financial disclosure reports be filed before a primary election by a candidate through his or her principal campaign committee if the candidate, through his or her principal campaign committee, receives contributions or makes expenditures with a view toward influencing the results of an election and the contributions and/or expenditures reach the threshold amount, even if the candidate does not have opposition in the primary election. This opinion will be applied prospectively.

QUESTION 2

What is the effect of the failure of the candidate and/or the principal campaign committee to comply with the requirements of section 17-22A-8 of the Code of Alabama?

FACTS AND ANALYSIS

The applicable penalties are set forth in sections 17-22A-21 (forfeiture of election or nomination) and 17-22A-22 (criminal penalties). Section 17-22A-21 provides as follows:

A certificate of election or nomination shall not be issued to any person elected or nominated to state or local office who shall fail to file any statement or report required by this chapter. A certificate of election or nomination already issued to any person elected or nominated to state or county office who fails to file any statement or report required by this chapter shall be revoked.

ALA. CODE § 17-22A-21 (1995). The Alabama Supreme Court has held that this provision provides that a candidate who fails to file any required report *before* the election forfeits the election. *Davis*, 592 So. 2d at 556. Thus, a certificate of nomination or election shall not be issued to that candidate or, if already issued, it shall be revoked.

A person who violates any reporting requirement of the FCPA, including filing a report late or failure to file, is subject to the criminal penalties in section 17-22A-22(b) of the Code, which states as follows:

(b) A person who violates any reporting requirement of Sections 17-22A-4, 17-22A-5, and 17-22A-8 is guilty of a Class B misdemeanor, and subject to a fine of one thousand dollars (\$1,000) or an amount not to exceed double the amount or value of the contributions or expenditures not reported, whichever is greater, or imprisonment of not more than six months, or both. Notwithstanding the foregoing, this subsection shall not apply to contributions received or to expenditures made before the effective date of this chapter.

ALA. CODE § 17-22A-22(b) (Supp. 2006).

Thus, a person who fails to file before the election may be subject to forfeiture of the election and criminal penalties. A person who files after the deadline, but before the election, may be subject only to criminal penalties.

CONCLUSION

A person who fails to file disclosure reports before the election may be subject to forfeiture of the election and criminal penalties under sections 17-22A-21 and -22 of the Code. A person who files a disclosure report after the deadline, but before the election, may be subject only to criminal penalties under section 17-22A-22.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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