

BEFORE THE TENNESSEE ETHICS COMMISSION

In re:)
)
Kenneth Cheatham) No. 2009-050
)
Respondent.)
)

CONDITIONAL ORDER ON SHOW CAUSE

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on August 20, 2009 at its regularly scheduled meeting upon Commission staff's presentation of evidence substantiating that Respondent failed to timely file a Statement of Disclosure of Interests, Form SS-8005 ("Statement"), as required by Tenn. Code Ann. §§ 8-50-501, 8-50-503 or 8-50-504.

FINDINGS OF FACT

Based on the entire record in this matter, the Commission finds as follows:

1. Respondent, Mr. Kenneth Cheatham, was a Commissioner for Obion County on January 31, 2009, and was required to file a Statement as required by Tenn. Code Ann. §§ 8-50-501-502.
2. The Commission has taken steps through training, website postings, and notices to help persons required to file Statements do so in a timely manner.
3. Respondent did not file a Statement by January 31, 2009. On April 17, 2009, the Commission sent a late notice to Mr. Cheatham by certified and first class mail. The certified late notice was received on April 20, 2009. The first class mail was not returned.
4. On June 11, 2009, the Commission sent Respondent, a class one civil penalty hearing notice by certified mail, return receipt requested, and by regular first class mail. The notice stated that the Commission intended to consider, at its July 27, 2009 meeting, an assessment of civil penalties against Respondent for failure to file his 2009 Statement in a timely manner.
5. The June 11, 2009 notice set forth the allegations, the maximum amount of civil penalties that could be assessed, and the date, place, and time of the hearing. The notice also informed Respondent of his opportunity to participate in the hearing either by appearing personally or by submitting a sworn statement and any supporting documents.
6. The Commission received the certified notice from the United States Postal Service marked delivered on June 13, 2009. The first class mailing was not returned to the Commission.

7. On June 22, 2009, the Commission notified the Respondent, by certified mail, return receipt requested, and by regular first class mail, that the class one civil penalty hearing had been cancelled and would be rescheduled for a later date. The certified notice was delivered on June 25, 2009. The first class mailing was not returned to the Commission.

8. On August 4, 2009, the Commission notified the Respondent, by certified mail, return receipt requested, and by regular first class mail, that the class one civil penalty hearing had been scheduled for August 20, 2009. The certified notice was received on August 7, 2009. The first class mailing was not returned to the Commission.

9. Mr. Cheatham filed his Statement of Interest on June 19, 2009.

CONCLUSIONS OF LAW

1. Respondent had a duty under Tenn. Code Ann. § 8-50-501(a)(19) to file a Statement as a local elected official.

2. Respondent's 2009 Statement was required under Tenn. Code Ann. § 8-50-504 to be filed on or before January 31, 2009.

3. Tenn. Code Ann. § 3-6-205(a)(1)(A) authorizes the Commission to administratively assess a civil penalty of not more than twenty five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750.00) if an official fails to timely file a Statement within five (5) days of receipt of an assessment letter.

4. Respondent did receive his certified hearing notice, notifying him that he was in jeopardy of being assessed a civil penalty. His civil penalty began to accrue on April 25, 2009. The maximum class one civil penalty that may accrue is seven hundred-fifty dollars (\$750.00), thirty (30) days at twenty-five dollars (\$25.00) per day. On May 25, 2009, thirty (30) days of class one (1) civil penalties had accrued and the Statement was filed on June 19, 2009, fifty-five (55) days late.

ORDER

It is therefore ORDERED as follows:

1. A civil penalty in the amount of seven hundred-fifty hundred dollars (\$750.00) is assessed against Mr. Kenneth Cheatham for failure to file a Statement in a timely manner.

2. The Executive Director shall enter this Order.

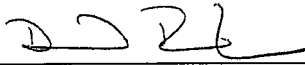
3. The Executive Director shall cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail return receipt requested, or overnight delivery.

4. As provided by Tenn. Code Ann. § 3-6-107(8), this assessment cannot become

final until after Respondent has been afforded an opportunity for a notice and a hearing. This includes the right, under Tenn. Code Ann. § 3-6-205(a)(1)(B) as follows: "To request a waiver, reduction, or to in any way contest a penalty imposed by the Tennessee ethics commission for a Class 1 offense, a person shall file a petition with the commission," and to such other or additional rights as may be afforded to him to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 - 4-5-325.

5. If Respondent does not timely file a Petition, this Order shall become final and shall form the basis for legal action to collect the civil penalty.

SO ORDERED this 2nd day of September, 2009

By: 
Drew Rawlins, Executive Director
Bureau of Ethics and Campaign Finance