

**BEFORE THE TENNESSEE ETHICS COMMISSION
AT NASHVILLE**

In re:)
)
Wicky Shepherd,) No. 2008-31A
)
Respondent.)
)

ORDER ON CLASS 2 CIVIL PENALITIES

This matter came on to be heard by the Tennessee Ethics Commission (Commission) on April 6, 2009 at its regularly scheduled meeting, upon a report from Commission staff regarding Mr. Shepherd's status as an Alderman for Tellico Plains as well as Mr. Shepherd's medical status, from all of which the Commission found that Respondent failed to file a statement of disclosure of interests (Statement) within thirty-five (35) days of receipt of an assessment letter and thus committed a class 2 offense in violation of Tenn. Code Ann. § 3-6-205(a)(2), but that no penalty should be imposed.

FINDINGS OF FACT

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

1. Respondent, Mr. Wicky Shepherd, was an Alderman for the City of Tellico Plains in 2007, and was required to file a 2007 Statement by January 31, 2008 as required by Tenn. Code Ann. §§ 8-50-501-8-50-502. Respondent did not file a Statement by January 31, 2008.
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. In April 2008, the Commission sent a warning letter to Mr. Shepherd.
3. On May 5, 2008, the Commission sent Respondent a Notice of Informal Show Cause Hearing (Show-Cause Notice) by certified mail, return receipt requested, and by regular, first class mail. The Show-Cause Notice stated the Commission intended to consider, at its June 24, 2008 meeting, an assessment of civil penalties against Respondent for failure to timely file his 2007 Statement.
4. The Show Cause Notice set forth the allegations, the maximum amount of class 1 civil penalties that could be assessed, and the date, place, and time of the hearing. The Show-Cause 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.
5. The Commission received a return receipt substantiating that Mr. Shepherd received the Show-Cause Notice on May 12, 2008.

6. On June 24, 2008 the Commission voted to assess class 1 civil penalties against Mr. Shepherd in the amount of seven-hundred fifty dollars (\$750).

7. On October 7, 2008 the Commission sent Respondent a class 2 Show-Cause Notice by certified mail, return receipt requested, and by regular, first class mail. The Show-Cause Notice stated that the Commission had still not received Mr. Shepherd's 2007 Statement and intended to consider, at its November 25, 2008 meeting, an assessment of class 2 civil penalties against Respondent for failure to file his 2007 Statement in a timely manner.

8. The Show Cause Notice set forth the allegations, the maximum amount of civil penalties that could be assessed for the class 2 violation, and the date, place, and time of the hearing. The Show-Cause 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.

9. Commission staff received a telephone call from Mr. Shepherd on October 30, 2008 in which Mr. Shepherd indicated he suffered from a severe medical condition, and staff relayed this information to the Commission. After receiving direction from the Commission on November 25, 2008, Commission staff contacted several persons in Tellico Plains and sent a letter to Mr. Shepherd asking him to document his medical condition.

10. On February 23, 2009, the Commission received a letter from Mr. Shepherd's medical provider documenting his medical condition and advising that the condition would make it very difficult for Mr. Shepherd to fill out and file an accurate Statement.

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 2007 Statement was required to be filed on or before January 31, 2008 under Tenn. Code Ann. § 8-50-504.

3. Despite Respondent's continued failure to file his 2007 Statement, the Commission takes into consideration Mr. Shepherd's severe medical condition and, after due deliberation, determines not to assess Class 2 civil penalties for Respondent's continued failure to file.

ORDER

The Commission FINDS that Respondent failed to timely file his 2007 Statement as required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502. The Commission further FINDS that Respondent has committed a class 2 violation of the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 as more than thirty-five (35) days have passed since Respondent received the Show Cause Notice and the Statement has still not been filed. However, the Commission declines to impose a penalty. It is therefore ORDERED as follows:

1. No class 2 civil penalty shall be assessed against Mr. Shepherd for his continued failure to file his 2007 Statement.

2. The Executive Director shall issue this Order on behalf of the Commission, and cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery, along with a notice of Respondent's rights described below.

3. Pursuant to Tenn. Code Ann. §§ 3-6-107(8) and 3-6-308(a)(10), no penalty imposed by the Commission may become final until after the Respondent is given notice and an opportunity to be heard as provided by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101- 4- 5-325. This conditional Order will not become final until after Respondent has been afforded an opportunity to request a contested case proceeding.

4. Respondent may obtain a contested case hearing by filing, within thirty (30) days of this order, a written request with the Commission. By timely filing such a request, Respondent will be entitled to all rights afforded to participants in a contested case proceeding as provided by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101- 4- 5-325.

5. In the alternative, and without waiving the right to timely request a contested case proceeding at a later time, Respondent may ask the Commission to reconsider this Informal Assessment Order by filing a petition for reconsideration with the Commission within fifteen (15) days of receipt of this Order. If Respondent timely files a petition for reconsideration and it is denied, Respondent will have an additional thirty (30) days from receipt of the Order of denial within which to file a request for a contested case proceeding


6. If Respondent does not timely file a request for a contested case proceeding, either within thirty (30) days of receipt of this order, or with ten (10) days of the receipt of an order denying a timely motion for reconsideration, the right to a contested case proceeding will be waived, and this Order shall become final.

7. If this Order becomes final, the finding of a violation may be considered an aggravating factor by the Commission in making penalty determinations as to any future violations of the Ethics Reform Act by Respondent.

SO ORDERED this 15th day of April, 2009

TENNESSEE ETHICS COMMISSION

By: _____


Bruce A. Androphy
Executive Director