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ETHICS COMMISSION



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August 6, 2008

ADVISORY OPINION NO. 2008-25

The Honorable Don Davis
Judge of Probate
Probate Court of Mobile County
Post Office Box 7
Mobile, Alabama 36601

Filing Statement Of Economic Interests
Form/The Filing Of A Second Statement Of
Economic Interests Form By Candidate
When Current Form Is On File

An incumbent, a public official or a public
employee, who has a current Statement of
Economic Interests form on file with the
Ethics Commission is not required to file a
second form, when qualifying as a candidate
for office.

The five-day period in which an election
official is required to forward the Statement
of Economic Interests forms to the Ethics
Commission applies only to business days,
and does not include weekends or holidays.

Dear Judge Davis:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTIONS PRESENTED

- 1) Must a public official or public employee, who has a current Statement of Economic Interests form on file, file a new Statement of Economic Interests form on the date he/she becomes a candidate for office, or may he/she wait until the April 30th deadline “that applies to public officials and public employees”?
- 2) Does the five-day period set forth in Alabama Code 36-25-15(a) and (c) include weekends and holidays, or only business days?

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

The Honorable Don Davis is the Judge of Probate for Mobile County, Alabama. There have been numerous occasions this election cycle where individuals have either failed to file Statement of Economic Interests forms timely when they qualify as candidates, or have altogether failed to file.

A hearing is scheduled for Friday, August 8, 2008, in Mobile regarding the possible disqualification of certain candidates in the upcoming 2008 General Election. This request for an Advisory Opinion is related to that hearing.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

“(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

Section 36-25-1(23) defines a public employee as:

“(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental

corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-14(a)(1)(2) and (3) states:

"(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

(1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.

(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars (\$50,000) or more annually."

Section 36-25-15(a) and (c) states:

"(a) Candidates at every level of government shall file a completed statement of economic interests for the previous calendar year with the appropriate election official **simultaneously** with the date he or she becomes a candidate as defined in Section 17-22A-2 or the date such candidate files his or her qualifying papers with the appropriate election official, whichever date occurs first. **Such election official shall within five days forward the statement of economic interests of the candidate to the commission. Nothing in this section shall be deemed to require a second filing of the person's statement of economic interests if a current statement of economic interests is on file with the commission.**

(c) Other provisions of the law notwithstanding, **if a candidate does not submit a statement of economic interests in accordance with the requirements of this chapter, the name of the person shall not appear on the ballot and the candidate shall be deemed not qualified as a candidate in that election.**

Notwithstanding the foregoing, the commission may, for good cause shown, allow the candidate an additional five days to file such statement of economic interests.

If a candidate is deemed not qualified, the appropriate election official shall remove the name of the candidate from the ballot.” (Emphasis added.)

The Ethics Law requires certain public officials and public employees to file Statement of Economic Interests forms on an annual basis by April 30th of each year for the preceding calendar year.

In addition, the law requires that candidates at every level of government file a completed Statement of Economic Interests form for the previous calendar year **simultaneously** with the filing of their other qualifying papers with the election official with whom they qualify as a candidate.

The election official then has five days to forward that Statement of Economic Interests form to the Ethics Commission.

Section 36-25-15 clearly states that the form shall be filed simultaneously with the time that individual becomes a candidate. The five-day period is for the election official to forward the form to the Ethics Commission, and does not give the candidate an additional five days in which to file.

For good cause shown, the Commission may grant the candidate a five-day extension. However, that extension may only be granted by the Commission.

Further, the law clearly states that if an individual has not properly filed, he is not deemed to be qualified, and the appropriate election official shall remove that individual's name from the ballot.

The question arises with incumbents, public officials, or public employees, who have a form on file at the time they qualify, and whether or not they are required to file a second form.

Section 36-25-15(a) sets out that if an individual, whether he or she is the incumbent, a public official, or a public employee, already required to file a Statement of Economic Interests form, is not required to file a second form at the time they qualify when they have a current form on file. However, they should, as a practical matter, inform the election official that they have a current form on file.

As to the five days, from a practical perspective, the five days only include business days. They do not include weekends or holidays.

A current form would mean that an individual had filed for the preceding calendar year, and that a new form was not due from him or her until the next April 30th .

Based on the facts as provided and the above law, an incumbent, a public official or a public employee, who has a current Statement of Economic Interests form on file with the Ethics Commission is not required to file a second form, when qualifying as a candidate for office.

The five-day period in which an election official is required to forward the Statement of Economic Interests forms to the Ethics Commission applies only to business days, and does not include weekends or holidays.

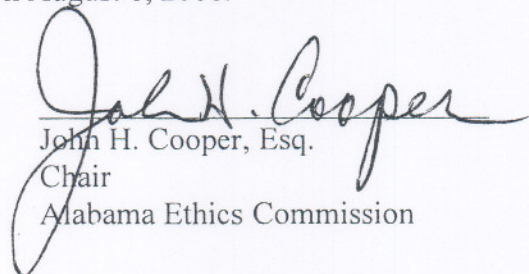
CONCLUSION

An incumbent, a public official or a public employee, who has a current Statement of Economic Interests form on file with the Ethics Commission is not required to file a second form, when qualifying as a candidate for office.

The five-day period in which an election official is required to forward the Statement of Economic Interests forms to the Ethics Commission applies only to business days, and does not include weekends or holidays.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 6, 2008.


John H. Cooper, Esq.
Chair
Alabama Ethics Commission