



# STATE OF ALABAMA ETHICS COMMISSION



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February 3, 2016

## ADVISORY OPINION NO. 2016-02

Mr. Ed Packard  
Director, Elections Division  
Office of Secretary of State  
Alabama State Capitol  
600 Dexter Avenue, Suite S-105  
Montgomery, Alabama 36130

Statement Of Economic Interests Filings By  
Candidates/Form To Be Filed  
Simultaneously With The Date The  
Candidate Qualifies For Office

The Ethics Law requires that all candidates file with the Alabama Ethics Commission a completed Statement of Economic Interests form simultaneously with the date that candidate qualifies for office.

A filing that is properly addressed, postage prepaid, postmarked and mailed on the date the candidate qualifies complies with the statute.

A candidate may file a Statement of Economic Interests form online.

For the purpose of satisfying the requirements of Section 36-25-15(a) and (b), the "election official" is the individual or office accepting a candidate's qualifying papers, Declaration of Candidacy, or petition for ballot access.

Dear Mr. Packard:

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

### QUESTIONS PRESENTED

- 1) Does a Statement of Economic Interests form that is postmarked and mailed the date of qualifying meet the requirements of Section 36-25-14(a)(3) and 36-25-15(a)?
- 2) Since the Code of Alabama, 1975 does not define the term "election official," who is the responsible election official for forwarding to the Alabama Ethics Commission the name of a candidate and the date on which they become a candidate in a primary election, the chair of the County political party or the judge of probate?

### FACTS AND ANALYSIS

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

Ed Packard is the Director of the Elections Division of the Office of Secretary of State. Because of changes in the filing requirements affecting candidates, Mr. Packard asks these questions.

Prior to the regular session of 2015, Ala. Code § 36-25-15(a) required candidates at every level of government to file a completed Statement of Economic Interests form with the appropriate election official simultaneously with the date that individual filed their qualifying papers or otherwise became a candidate. The election official then had five days in which to forward the form to the Ethics Commission. The old statute read:

“(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.”

In 2015, the statute was revised. The current version of that statute reads:

“(a) Candidates at every level of government shall file a completed statement of economic interests for the previous calendar year **with the State Ethics Commission simultaneously with the date such candidate files his or her qualifying papers** with the appropriate election official or in the case of an independent candidate, the date the person complies with the requirements of Section 17-9-3. 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.” (emphasis added)

Likewise, Section 36-25-14(a)(3) was revised in 2014. The prior and current sections of that statute read:

The former version read:

“(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:

(3) All candidates, simultaneously with the date he or she becomes a candidate as defined in Section 17-22A-2, or the date the candidate files his or her qualifying papers, whichever comes first.”

The revised version reads:

“(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:

(3) All candidates, **provided the statement is filed on the date the candidate files his or her qualifying papers or, in the case of an independent candidate, on the date the candidate complies with the requirement of Section 17-9-3.**” (emphasis added)

The questions arise due to the use of “simultaneous” with respect to when the SEI must be filed with our office. Some individuals will qualify for office in parts of the state outside of Montgomery and may not have the opportunity or means to personally hand-deliver a copy of that form to the Ethics Commission on the same date they qualify. Some may not have the ability to file online.

A form that is properly addressed, postage prepaid, postmarked and mailed on the date the candidate qualifies complies with the statute. Consistent with this interpretation is Section 17-5-10(b) which deals with reports/statements filed with the Secretary of State or the Judge of Probate. That section states:

“(b) The date of filing of a report or statement filed pursuant to this chapter shall be deemed to be the date of receipt by the Secretary of State or judge of probate, as the case may be; provided, **that any report or statement filed by certified or registered mail shall be deemed to be filed in a timely fashion if the date of the United States Postmark stamped on such report or statement is the required filing date, and if such report or statement is properly addressed with postage prepaid.**” (emphasis added)

Because requiring a hand-delivered copy on the same date an individual qualifies may produce an undue hardship on some candidates, and because the Fair Campaign Practices Act already contains a “mailbox rule,” it is the Commission’s opinion that a Statement of Economic Interests form that is correctly addressed, postage prepaid, postmarked and mailed on the same calendar day that the individual files his or her qualifying papers or otherwise becomes a candidate is in compliance with the Alabama Ethics Law.

A second question has been asked regarding Section 36-25-15(b), which requires an “election official,” who receives a Declaration of Candidacy or a petition for ballot access, to within five days, notify the Ethics Commission of the name of that candidate and the date on which the person becomes a candidate.

In addition, Section 36-25-15(a) requires the “election official” with whom a candidate has filed his qualifying papers to likewise notify the Commission of that filing.

The term “election official” is not defined in the Ethics Law, nor is it defined in the Fair Campaign Practices Act.

In each of these subsections the responsibility of reporting falls on that individual with whom the candidate files or who accepts the papers. Therefore, if the candidate qualifies, files a Declaration of Candidacy or petition for ballot access with the state or county Party chair, it is the state or county Party chair’s responsibility to forward that information to the Commission. Likewise, if the candidate files with the probate judge, that responsibility falls on the probate judge. If they file with the Secretary of State, that responsibility falls on the Secretary of State.

**CONCLUSION**

The Ethics Law requires that all candidates file with the Alabama Ethics Commission a completed Statement of Economic Interests form simultaneously with the date that candidate qualifies for office.

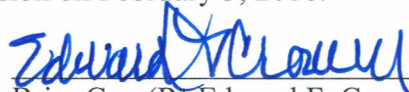
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**AUTHORITY**

By 3-0 vote of the Alabama Ethics Commission on February 3, 2016.

  
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Brig. Gen (R) Edward F. Crowell (USAF)  
Chair  
Alabama Ethics Commission