



STATE OF ALABAMA ETHICS COMMISSION



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June 1, 2016

ADVISORY OPINION NO. 2016-17

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

Statement Of Economic Interest Filings By
Independent Candidates/Form To Be Filed
Simultaneously With The Time An
Individual Becomes A Candidate

An independent candidate, who has filed a
petition for ballot access with the election
official, is required to simultaneously, on the
date of that filing, file a Statement of
Economic Interests form with the Alabama
Ethics Commission.

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.

QUESTION PRESENTED

For an individual seeking ballot access as an independent candidate, what is the date on which the candidate "qualifies for office" triggering the requirement that he or she simultaneously file a Statement of Economic Interests form?

FACTS AND ANALYSIS

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

Ed Packard is the Chief of the Elections Division for the Office of Secretary of State. He requests this opinion on the above issue. Mr. Packard states that independent candidates' petitions are due no later than the date of the primary election in the year of the general election in which the independent candidate seeks to participate. However, petitions may be submitted in whole or continuously in parts prior to and no later than that date [Section 17-9-3(a)(3), Code of Alabama and Rule 820-2-4-.016(4)(a), Alabama Administrative Code].

In addition, Mr. Packard cites Opinion 88-00306, rendered by the Office of the Attorney General, which states that:

“Individuals seeking ballot access as independent candidates become ‘candidates’ once verification of signatures is sought and actual notification of the determination by the probate judge or the secretary of state is sent to the candidate.”

Our opinions can be prospective in nature only. Therefore, the conclusions reached herein only apply from this date moving forward. The language of the revised sections of the Ethics Act and the FCPA answer the question in terms of the SEI filing requirement.

Ala. Code § 36-25-15(a) states:

“(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)

Ala. Code § 17-9-3 states:

“(a) The following persons shall be entitled to have their names printed on the appropriate ballot for the general election, provided they are otherwise qualified for the office they seek:

(3) Each candidate who has been requested to be an independent candidate for a specified office by written petition signed by electors qualified to vote in the election to fill the office **when the petition has been filed with the judge of probate, in the case of a county office and with the Secretary of State in all other cases, on or before 5:00 P.M. on the date of the first primary election as provided for in Section 17-13-3.** The number of qualified electors signing the petition shall equal or exceed three percent of the qualified electors who cast ballots for the office of Governor in the last general election for the state, county, district, or other political subdivision in which the candidate seeks to qualify.” (emphasis added)

For purposes of the Statement of Economic Interests filing requirement, the Code’s language ties that act to the date of the act of their filing a petition pursuant to 17-9-3. Therefore, even if the candidate is subsequently disqualified for some reason, when an independent candidate files his or her petition pursuant to 17-9-3, whenever that is accomplished, he or she must simultaneously file their Statement of Economic Interests with our office, unless there is a current Statement of Economic Interests on file with the Commission. Ala. Code § 26-25-15(a).

In February of 2016, the Commission rendered Advisory Opinion No. 2016-02, which stated the following regarding the “simultaneous” requirement:

“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.”

CONCLUSION

An independent candidate, who has filed a petition for ballot access with the election official, is required to simultaneously, on the date of that filing, file a Statement of Economic Interests form with the Alabama Ethics Commission.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 1, 2016.



Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission