BEFORE THE TENNESSEE ETHICS COMMISSION

In re:	)	
	)	
Jimmy Fox,	)	No. 2008-72
	)	
Respondent.	)	
	)	

CONDITIONAL ASSESSMENT

This matter came on to be heard informally by the Tennessee Ethics Commission ("Commission") on August 26, 2008 at its regularly scheduled meeting upon Commission staff's presentation of evidence substantiating that Respondent failed timely to 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. Fox, was a local elected official on January 31, 2008, 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. In June 2008, the Commission sent a warning letter to Mr. Fox by first class mail.

3. Respondent did not file a Statement by January 31, 2008. Respondent filed his 2007 Statement on June 20, 2007.

4. On July 11, 2008, the Commission sent Respondent, a Notice of Informal Show Cause Hearing (the "Show-Cause Notice") by certified mail, return receipt requested, and by regular first class mail. The Show-Cause Notice stated that the Commission intended to consider, at its August 26, 2008 meeting, an assessment of civil penalties against Respondent for failure to file his 2008 Statement in a timely manner.

5. The Show Cause 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 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.

6. The certified mail receipt for the Show Cause Notice was returned to the Commission by the United States Postal Service on July 15, 2008 with a receipt signature dated July 14, 2008.

7. Mr. Fox had not filed a Disclosure of Interest Statement as of the date of the Show Cause Hearing.

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

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. Since Respondent received his Show-Cause Notice, notifying him that he was in jeopardy of being assessed a civil penalty, on July 14, 2008, his civil penalty began to accrue on July 19, 2008. It accrued through August 26, 2008. The penalty accrued for over thirty (30) days at twenty-five dollars ($25.00) per day, for a total penalty of seven hundred-fifty dollars ($750.00).

CONDITIONAL 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. Fox 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. Along with the Order, the Executive Director shall provide Respondent a copy of the Commission's draft Rules on Administrative Sanctions.

6. 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 10th day of September, 2008

TENNESSEE ETHICS COMMISSION

By: _____

Bruce A. Androphy
Executive Director