

BEFORE THE TENNESSEE ETHICS COMMISSION

In re:)
)
Donald Evans) No. 2009-058A
)
)
Respondent.)
)

CONDITIONAL ORDER ON SHOW CAUSE

This matter came to be heard by the Tennessee Ethics Commission ("Commission") on October 15, 2009 at its regularly scheduled meeting upon Commission staff's presentation of evidence substantiating that Respondent failed to timely file a Statement of Disclosure of Interests, Form SS-8005 ("Statement"), as required by Tenn. Code Ann. § 8-50-504.

FINDINGS OF FACT

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

1. Respondent, Mr. Donald Evans, was Sheriff for Van Buren County on January 31, 2009, and was required to file a Statement as required by Tenn. Code Ann. § 8-50-504.
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.
3. The Commission has previously found that Respondent had an obligation under the Act to file a Statement before January 31, 2009, and failed to do so. The Commission previously imposed a conditional penalty of seven hundred fifty (\$750) dollars for failure to timely file.
4. On September 2, 2009, the Commission sent a Class 1 civil penalty order and a hearing notice to Respondent by certified and first class mail. The notice stated that the Commission intended to consider, at its October 15, 2009 meeting, an assessment of a Class 2 civil penalty against Respondent for failure to file his 2009 Statement in a timely manner. The certified hearing notice was received on September 4, 2009. The first class mail was not returned.
5. The September 2, 2009 notice set forth the allegations, the maximum amount of civil penalty that could be assessed, and the date, place, and time of the hearing. The 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. Although Respondent filed his Statement on June 12, 2009, he was forty three (43) days late in filing his Statement. The Commission considers Respondent's failure to timely file his statement to be significant.

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 2009 Statement was required under Tenn. Code Ann. § 8-50-504 to be filed on or before January 31, 2009.

3. Respondent failed to file his Statement within thirty five (35) days after receipt by certified mail of hearing notice notifying him that he was in jeopardy of being assessed a civil penalty. Respondent is subject to Class 1 and Class 2 civil penalties.

4. Respondent did receive his certified hearing notice, notifying him that he was in jeopardy of being assessed a civil penalty. The failure to file his Statement became subject to Class 2 civil penalties on May 30, 2009. The maximum Class 2 civil penalty that may accrue is nine thousand two hundred fifty dollars (\$9,250).

ORDER

It is therefore ORDERED as follows:

1. A civil penalty in the amount of six thousand seven hundred fifty dollars (\$6,750) is assessed against Mr. Donald Evans for failure to file a Statement in a timely manner.

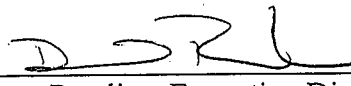
2. The Executive Director shall issue this Order on behalf of the Commission, and cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery, along with a notice of Respondent's rights described below.

3. 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 issuance of this Order. If Respondent timely files a petition for reconsideration and it is denied, Respondent will have an additional ten (10) days from issuance of the Order of denial within which to file a request for a contested case proceeding.

4. Respondent may obtain a contested case hearing by filing, within thirty (30) days of issuance 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. 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 27th day of October, 2009

By: 
Drew Rawlins, Executive Director
Bureau of Ethics and Campaign Finance

TENNESSEE ETHICS COMMISSION

Your rights after receiving a conditional penalty order

If the Commission has entered a conditional civil penalty assessment order against you, and you would like to have the penalty set aside or modified, you have the following two choices:

1. You may seek to have the Commission informally reconsider its action by filing with the Commission, within fifteen (15) days of the date of issuance of the conditional civil penalty assessment order, a request for reconsideration.
2. You may initiate a formal contested case proceeding by filing with the Commission, within thirty (30) days of the date of issuance of the conditional civil penalty assessment order, a request for a contested case hearing. If you wish to make this choice now please go to the next page.

You don't have to take either action. However, if you don't take at least one of these two (2) actions within the time allowed the conditional order will become final, and cannot be appealed. Once the order becomes final, it will become a civil debt which you owe.

Instructions and information regarding requests for reconsideration

If you think there is additional information that was not available at the Commission meeting when the conditional penalty was decided, you may ask the Commission to consider that information by filing a written request for reconsideration within fifteen (15) days of issuance of the conditional penalty order. Please follow these instructions:

- (1) The written request for reconsideration must be *received* in the Commission's office within fifteen (15) days of issuance of the Commission's conditional order.
- (2) Requests received more than fifteen (15) days after issuance of the conditional order will be denied.
- (3) The request must include your name and address, your case number, and the date and nature of the conditional order you are asking the Commission to reconsider.
- (4) The request for reconsideration must include additional information that was not available at the Commission meeting at which the Commission voted to enter the conditional civil penalty assessment order.

If you timely request reconsideration of a conditional civil penalty order, the Commission's order will not become final during the time the reconsideration request is pending. Instead, the Commission will place the request for reconsideration on its next available meeting agenda for a decision. The Commission will send you notice of where and when that meeting will occur and you may attend if you so choose.

The Commission may decide to modify the order as you request or the Commission can let the order stand as originally entered. Either action will require the vote of four (4) of the Commission members and either action will result in an order from the Commission.

You will be sent a copy of the Commission's order. If the Commission denies reconsideration, you may file a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act within ten (10) days from issuance of the order denying your request for reconsideration.

Please contact the Commission staff at 615.741.7959 if you have further questions.

PLEASE SEE NEXT PAGE FOR INFORMATION AND INSTRUCTIONS REGARDING REQUESTS FOR CONTESTED CASE HEARINGS.

TENNESSEE ETHICS COMMISSION

Instructions and information regarding requests for contested case hearings

Within thirty (30) days from issuance of a conditional civil penalty assessment order, or within ten (10) days from issuance of an order denying a timely motion to reconsider a conditional civil penalty assessment order, you may initiate a contested case proceeding by filing a written request for a hearing. Please follow the instructions below:

- 1) The written request must be *received* in the Commission's office within the time allotted.
- 2) Requests received in the Commission's office after the time has expired will be denied.
- 3) The request must include your name and address, your case number, and the date and nature of the conditional order that you would like to have a formal hearing on.
- 4) Though not required, it would be helpful if your request includes the following:
 - a) A short and plain statement saying why the penalty should be waived or reduced, or otherwise modified in any way. Tenn. Code Ann. § 4-5-307(b)(3).
 - b) If you rely on any facts that are not from your first-hand personal knowledge, you should say why you believe the facts to be true.

You may file your request by hand delivery, or you may forward it by first class mail, by certified mail, or by facsimile transmission. It is your obligation to ensure timely receipt of the request by the Commission. The risk of non-delivery is on you.

If you wish to receive a file-stamped copy of the request as proof of timely filing, you should file a second copy of the request. If the request was filed by means other than by hand delivery, you should provide a self-addressed, stamped envelope with sufficient postage prepaid to ensure we can mail you a file stamped copy as proof of timely filing.

Upon timely filing of a request for a hearing, the Executive Director or his designee will request the assignment of an administrative judge from the Administrative Services Division of the Office of the Secretary of State, and the Commission will cause the notice required by law to be sent to you. Tenn. Code Ann. § 4-5-307(b). You will have the right to appear in the formal proceedings and to be represented by counsel. You may also represent yourself.

For questions about this form, please contact the Commission staff at 615.741.7959.