BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: TONY BOLES,	)	
	)	
Respondent.	)	No. 2008-47A
	)	
	)	
	)	

CONDITIONAL CLASS 2 ASSESSMENT ORDER

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on November 25, 2008 at its regularly scheduled meeting, upon presentation by staff of documentation in the file tending to show that Respondent had not filed a 2008 statement of disclosure of interests statement ("Statement") as required by Tenn. Code Ann. §§ 8-50-501 - 8-50-502, and that more than thirty-five (35) days had passed since Respondent had received notice by certified mail of an assessment for this failure to file, from all of which the Commission finds as follows:

FINDINGS OF FACT

1. Duty to File. Respondent held the local public office of Commissioner for Macon County in 2008 and thus was required to file a Statement as required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502. This Statement was due to be filed no later than January 31, 2008. In May, 2008, the Commission sent Mr. Boles a warning letter regarding the failure to file.

2. Class 1 Assessment letter. On June 12, 2008, Mr. Boles received by certified mail, return receipt requested, an assessment letter setting forth the factual basis of the violation, the maximum penalty, and the date a response to the letter had to be filed. The letter also stated the Commission intended to consider, at its July 22, 2008 meeting, assessment of Class 1 civil penalties for failure to timely file a Statement. The letter set forth the date, place, and time of the meeting, and informed Mr. Boles of his opportunity to participate in an informal show cause proceeding at the meeting, either by appearing personally or by submitting a sworn statement and documents.

3. Class 1 offense. Mr. Boles did not respond to the notice. At its meeting of July 22, 2008, the Commission found that Mr. Boles had committed a class 1 offense by failing to file a statement on time, and that the maximum penalty of seven hundred fifty dollars

($750) should be imposed pursuant to Tenn. Code Ann. § 3-6-205(a)(1). A conditional order to this effect was issued on July 25, 2008, and received by Mr. Boles by certified mail, return receipt requested, on July 29, 2008.

4. Class 2 assessment letter. On October 9, 2008, Mr. Boles received by certified mail, return receipt requested, an assessment letter setting forth the Commission's intent to consider assessment of a Class 2 civil penalty up to ten thousand dollars ($10,000) during its November 25, 2008 meeting for failure to file a Statement within thirty-five (35) days of receipt of an assessment letter. The assessment letter informed Mr. Boles of the factual basis of the violation, the maximum penalty, and the date a response to the letter had to be filed. The letter set forth the date, place, and time of the meeting, and informed Mr. Boles of his opportunity to participate in an informal show cause proceeding at the meeting, either by appearing personally or by submitting a sworn statement and documents.

5. Class 2 violation. Mr. Boles failed to file his statement within thirty-five (35) days after receipt by certified mail of an assessment letter, thus committing a Class 2 violation as provided by Tenn. Code Ann. § 3-6-205(a)(2).

CONCLUSIONS OF LAW

The Commission has previously found that Mr. Boles had an obligation under the Act to file a Statement for 2008 before January 31, 2008, and failed to do so. The Commission previously imposed a conditional penalty of seven hundred fifty ($750) dollars for failure to timely file.

Although Mr. Boles received notice of the previous order, he has still not filed his Statement with the Commission. The Commission considers Mr. Boles' failure to file his 2008 Statement to be significant. The Commission has taken steps through training, website postings, and notices to help persons required to file Statements to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective. Mr. Boles appear to be ignoring the Commission. More importantly, he is ignoring the General Assembly by not complying with the Act. The Commission finds that the maximum penalty is appropriate in this case.

The Act authorizes the Commission to administratively assess a civil penalty of not more than ten thousand dollars ($10,000) if a local public official fails to file a Statement within thirty five (35) days of receipt of an assessment letter. Tenn. Code Ann. § 3-6-205 (a)(2). Since the Commission has already assessed a fine of seven hundred fifty ($750) dollars for failure to file timely, the Commission will impose the maximum amount of fine remaining, nine thousand two hundred fifty ($9,250) dollars.

This conditional assessment cannot become final until after Respondent has been afforded an opportunity for a contested case hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to his rights to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 - 4-5-325.

ORDER

It is therefore ORDERED that a civil penalty in the amount of nine thousand two hundred fifty dollars ($ 9,250) is assessed against Mr. Tony Boles for failure to file a Statement.

It is further ORDERED that the Executive Director shall issue this order for the Commission and file it in the Commission's offices.

It is further ORDERED that the Executive Director shall cause to be provided to the Respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, and notice of the following:

> Respondent has the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a written request for a contested case hearing in a form that shall be set forth in the notice; and
>
> That in the event of failure to timely file a petition to waive, reduce, or contest the penalty, or a petition for a contested case hearing, the order cannot be appealed to Chancery Court, and will become a final personal judgment against him, and may form a basis for legal action to collect the civil penalty.

It is further ORDERED that this order shall not become final until thirty (30) days after issuance.

SO ORDERED.

Issued this 16th day of December, 2008

TENNESSEE ETHICS COMMISSION

By: _____

Bruce A. Androphy,
Executive Director