

STATE OF TENNESSEE
REGISTRY OF ELECTION FINANCE

IN THE MATTER OF:

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BERLIN BOYD

CASE NO. 02-48

REGISTRY'S ORDER

Comes now, the Registry of Election Finance, and states that:

PARTIES

I.

The Registry of Election Finance is authorized pursuant to T.C.A. §2-10-205(1) to administer and enforce the provisions of the Campaign Financial Disclosure Law, T.C.A. §2-10-101, et seq.

II.

Berlin Boyd was a candidate for the office of state representative in the August 1, 2002 Primary Election.

JURISDICTION

III.

A class two (2) offense includes the failure to file a required disclosure report "within thirty-five (35) days after service of process or receipt of notice by certified mail of an assessment." (T.C.A. §2-10-110(a)(2)). A class two (2) offense "is punishable by a maximum penalty of not more than ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount in controversy, if fifteen percent (15%) of the amount in controversy is greater than ten thousand dollars (\$10,000)." (T.C.A. §2-10-110(a)(2)).

IV.

The Registry may impose civil penalties for a class two (2) violation of the Campaign Financial Disclosure Law by a candidate for either a local or state public office.

V.

While the entire Registry determines whether civil penalties are to be assessed against a person, the Registry has delegated its authority to issue an assessment order to its chairperson or executive director.

FACTS

VI.

The Registry of Election Finance notified Mr. Boyd in a September 3, 2002 letter of the need for him to file a post-primary campaign financial disclosure report with the Registry of Election Finance by September 18, 2002 as a candidate in the August 1, 2002 Primary Election.

VII.

On September 26, 2002, the Registry mailed Mr. Boyd a certified letter notifying him that he had not filed a post-primary campaign financial disclosure report, and that the Registry would commence to assess a civil penalty of twenty-five dollars (\$25) a day to begin five (5) days after his receipt of the assessment letter, if the report was not filed during that five (5) day period. That letter was acknowledged as received on October 1, 2002.

VIII.

Mr. Boyd's post-primary campaign financial disclosure report was not filed with the Registry by the thirty-fifth day after his personal receipt of the board's assessment letter to him, which was November 5, 2002. At that point, Mr. Boyd's failure to file the report became a class two (2) offense. (Mr. Boyd has not filed a post-primary campaign financial disclosure report as of the day of this order.)

IX.

On November 14, 2002, the Registry issued a Notice of Possible Assessment of Civil Penalties and to Provide Opportunity for Informal Show Cause Hearing to Mr. Boyd. This order provided an opportunity for Mr. Boyd to personally appear before the Registry at its December 11, 2002, meeting for an informal hearing as to why the Registry should not assess class two (2) civil penalties against him for failing to file his 2002 post-primary campaign financial disclosure statement. In the alternative to personally appearing before the Registry, Mr. Boyd was provided an opportunity to submit a sworn statement, along with any pertinent attachments, as an explanation as to why civil penalties should not be assessed against him.

X.

Mr. Boyd did not request to personally appear before the Registry, nor did he submit a sworn statement to the Registry for its consideration in determining whether or not to assess civil penalties against him.

VIOLATIONS

XI.

By failing to file his 2002 post-primary campaign financial disclosure report with the Registry, Mr. Boyd has violated T.C.A. §2-10-105(c)(4), which provides the following:

Statements from the last day of the prior report through the forty-fifth (45th) day after the primary election shall be filed not later than forty-eight (48) days after the election.


ORDER

XII.

Pursuant to its authority under T.C.A. §2-10-110(a)(2), the Registry hereby issues the following assessment to Mr. Boyd:

Mr. Boyd is assessed a class two (2) civil penalty of TEN THOUSAND DOLLARS (\$10,000) to be paid to the Registry within thirty (30) days of the issuance date of this order.

Issued this 16th day of December, 2002 by the Registry of Election Finance.



Drew Rawlins
Executive Director
Registry of Election Finance

NOTICE OF RIGHTS

Mr. Boyd is hereby advised that pursuant to T.C.A. §2-10-110(a)(1)(G), he may request a waiver or reduction or may contest the assessment of the civil penalty assessed by this order by filing a petition with the Registry. This order shall become final and not subject to review unless such a petition is filed within thirty (30) days after the issuance date of this order. Any hearing will be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

Additionally, Mr. Boyd is advised that if he wishes to have the Registry reconsider the assessment of civil penalties against him, he may file a request for reconsideration with the Registry. Such request must be written and must be filed with the Registry office within fourteen (14) days of the issuance date of the Registry's civil penalty assessment order. In order to ensure that the Registry reconsiders the assessment of civil penalties against him, Mr. Boyd should include with his request additional information concerning his case, which the board did not have available for its consideration at the Registry's December 11, 2002 meeting.

While a request for reconsideration of a civil penalty order is pending before the Registry, the Registry's order assessing penalties does not become final until a determination is made by the Registry as to the request for reconsideration. If a majority of the Registry members vote to deny a request for reconsideration of an assessment order, the Registry shall issue an order denying the request and provide the person who filed the request ten (10) days after the date of the issuance of the Registry's order to appeal the original assessment order under the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.

Any correspondence concerning this matter should be directed to the Registry of Election Finance, Suite 1614, 404 James Robertson Parkway, Nashville, TN 37243-1360.

STATE OF TENNESSEE
REGISTRY OF ELECTION FINANCE

IN THE MATTER OF:

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BERLIN BOYD
CASE NO. 02-40

REGISTRY'S ORDER

Comes now, the Registry of Election Finance, and states that:

PARTIES

I.

The Registry of Election Finance is authorized pursuant to T.C.A. §2-10-205(1) to administer and enforce the provisions of the Campaign Financial Disclosure Law, T.C.A. §2-10-101, et seq.

II.

Berlin Boyd was a candidate for the office of state representative in the August 1, 2002 Primary Election.

JURISDICTION

III.

A class two (2) offense includes the failure to file a required disclosure report "within thirty-five (35) days after service of process or receipt of notice by certified mail of an assessment." (T.C.A. §2-10-110(a)(2)). A class two (2) offense "is punishable by a maximum penalty of not more than ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount in controversy, if fifteen percent (15%) of the amount in controversy is greater than ten thousand dollars (\$10,000)." (T.C.A. §2-10-110(a)(2)).

IV.

The Registry may impose civil penalties for a class two (2) violation of the Campaign Financial Disclosure Law by a candidate for either a local or state public office.

V.

While the entire Registry determines whether civil penalties are to be assessed against a person, the Registry has delegated its authority to issue an assessment order to its chairperson or executive director.

FACTS

VI.

The Registry of Election Finance notified Mr. Boyd in a July 8, 2002 letter of the need for him to file a pre-primary campaign financial disclosure report with the Registry of Election Finance by July 25, 2002.

VII.

On August 5, 2002, the Registry mailed Mr. Boyd a certified letter notifying him that he had not filed a pre-primary campaign financial disclosure report, and that the Registry would commence to assess a civil penalty of twenty-five dollars (\$25) a day to begin five (5) days after his receipt of the assessment letter, if the report was not filed during that five (5) day period. That letter was acknowledged as received on August 7, 2002.

VIII.

Mr. Boyd's pre-primary campaign financial disclosure report was not filed with the Registry by the thirty-fifth day after his personal receipt of the board's assessment letter to him, which was September 11, 2002. At that point, Mr. Boyd's failure to file the report became a class two (2) offense. (Mr. Boyd's pre-primary campaign financial disclosure report has not been filed with the Registry as of the issuance date of this order.)

IX.

On September 12, 2002, the Registry issued a Notice of Possible Assessment of Civil Penalties and to Provide Opportunity for Informal Show Cause Hearing to Mr. Boyd. This order provided an opportunity for Mr. Boyd to personally appear before the Registry at its October 9, 2002 meeting for an informal hearing as to why the Registry should not assess class two (2) civil penalties against him for failing to timely file his 2002 pre-primary campaign financial disclosure statement. In the alternative to personally appearing before the Registry, Mr. Boyd was provided an opportunity to submit a sworn statement, along with any pertinent attachments, as an explanation as to why civil penalties should not be assessed against him.

X.

Mr. Boyd did not request a personal appearance before the Registry, nor did he submit a sworn statement for the Registry's consideration of his case at its October 9, 2002 meeting.

VIOLATIONS

XI.

By failing to timely file his 2002 pre-primary campaign financial disclosure report with the Registry, Mr. Boyd has violated T.C.A. §2-10-105(c)(1), which provides the following:

Statements for any primary election... from and including the day that the first contribution was received or the first expenditure made, whichever was earlier, through the tenth day before any such election ... shall be filed not later than seven (7) days before the election.

ORDER

XII.

Pursuant to its authority under T.C.A. §2-10-110(a)(1), the Registry hereby issues the following assessment to Mr. Boyd:

Mr. Boyd is assessed a class one (1) civil penalty of TEN THOUSAND DOLLARS (\$10,000) to be paid to the Registry within thirty (30) days of the issuance date of this order.

Re-Issued this 12TH day of November, 2002 by the Registry of Election Finance.



Drew Rawlins
Executive Director
Registry of Election Finance

NOTICE OF RIGHTS

Mr. Boyd is hereby advised that pursuant to T.C.A. §2-10-110(a)(1)(G), he may request a waiver or reduction or may contest the assessment of the civil penalty assessed by this order by filing a petition with the Registry. This order shall become final and not subject to review unless such a petition is filed within thirty (30) days after the issuance date of this order. Any hearing will be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

Additionally, Mr. Boyd is advised that if he wishes to have the Registry reconsider the assessment of civil penalties against him, he may file a request for reconsideration with the Registry. Such request must be written and must be filed with the Registry office within fourteen (14) days of the issuance date of the Registry's civil penalty assessment order. In order to ensure that the Registry reconsiders the assessment of civil penalties against him, Mr. Boyd should include with his request additional information concerning his case, which the board did not have available for its consideration at the Registry's October 9, 2002 meeting.

While a request for reconsideration of a civil penalty order is pending before the Registry, the Registry's order assessing penalties does not become final until a determination is made by the Registry as to the request for reconsideration. If a majority of the Registry members vote to deny a request for reconsideration of an assessment order, the Registry shall issue an order denying the request and provide the person who filed the request ten (10) days after the date of the issuance of the Registry's order to appeal the original assessment order under the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.

Any correspondence concerning this matter should be directed to the Registry of Election Finance, Suite 1614, 404 James Robertson Parkway, Nashville, TN 37243-1360.