



**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

STATE ETHICS COMMISSION,	:	
	:	
Plaintiff,	:	
	:	ADMINISTRATIVE ACTION NO:
v.	:	OSAH-SEC-CAN-0918646-68-JBG
	:	
LAUREN W. MCDONALD JR.,	:	
	:	
Defendant.	:	

INITIAL DECISION

COUNSEL: Thurbert E. Baker, Attorney General, Dennis R. Dunn, Deputy Attorney General, Ann Brumbaugh, Assistant Attorney General, Rebecca Mick, Assistant Attorney General, for Plaintiff.

Lauren W. McDonald Jr., *Pro se*, for Defendant.

JUDGE: Gatto, J.

I. INTRODUCTION

This matter comes before this Court pursuant to a complaint filed by Plaintiff State Ethics Commission’s (“Commission”) against Defendant Lauren “Bubba” McDonald charging him with alleged violations of the Ethics in Government Act (the “Act”), O.C.G.A. § 21-5-1 *et seq.*, and seeks \$28,300 in civil penalties. This Court has jurisdiction to hear this matter pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." For the reasons indicated below, the decision of the Commission to sanction Defendant is **AFFIRMED** but the amount of the civil penalty is **MODIFIED**.

II. FINDINGS OF FACT¹

1.

In 2002, Defendant was a candidate for Public Service Commissioner. Candidates for public office are required to file Campaign Contribution Disclosure Reports (hereinafter “Campaign Contribution Disclosure Reports”) with the State Ethics Commission² throughout the year. In non-election years, the candidates must file a Campaign Contribution Disclosure Reports on June 30 and December 31. In years when the candidate qualifies to run for office, candidates must file Campaign Contribution Disclosure Reports five times: on March 31, June 30, September 30, October 25 and December 31 in addition to other requirements. O.C.G.A. §21-5-34(c).

2.

Defendant failed to file his last 2002 Campaign Contribution Disclosure Reports by the December 31, 2002 due date. Instead, he filed it on February 17, 2004. This failure to file a timely Campaign Contribution Disclosure Reports constitutes a violation of the Ethics in Government Act. (hereinafter “Act”). O.C.G.A. § 21-5-34 (a)(1)(A) and (c). Defendant showed a zero balance on his December 31, 2002 Campaign Contribution Disclosure Reports but bank statements show over \$8,000.00 remained in the campaign account. This inaccurate statement constitutes a violation of O.C.G.A. § 21-5-34 (b)(1)(D).

¹ Defendant did not dispute the Statement of Matters Asserted. *See* Trial Tr., 9-10, March 23, 2009. The Court also took judicial notice of the Defendant’s relevant campaign contribution reports publicly available for review on the Commission’s website at http://ethics.georgia.gov/Reports/Campaign/Campaign_Name.aspx?NameID=2871&FilerID=C2009000045&Type=candidate.

² In 2006, the State Ethics Commission became the filing office for certain candidates, including candidates for the Public Service Commission. Prior to 2006, all Campaign Contribution Disclosure Reports were filed with the Secretary of State.

3.

Defendant filed the first four 2002 Campaign Contribution Disclosure Reports in a timely fashion. However, after a complaint was filed with the Commission on June 10, 2004 alleging violations of the Act, Defendant filed amended Campaign Contribution Disclosure Reports for the first four reporting periods in addition to filing an amended Campaign Contribution Disclosure Reports for the December 31, 2002 reporting period. The five amended 2002 Campaign Contribution Disclosure Reports filed by Defendant on May 25, 2005 showed that in the original 2002 Campaign Contribution Disclosure Reports, Defendant failed to properly list over 80 individual contributions totaling \$46,000 and 14 individual expenditures totaling over \$76,000.00. These omissions constitute violations of O.C.G.A. § 21-5-34 (b)(1)(A), (B) and (D). Nonetheless, the Original and Amended October 25 Campaign Contribution Disclosure Reports indicate that Defendant properly listed the individual contributions and individual expenditures.

4.

Defendant failed to list the end recipients on two American Express payments listed on the original September 30, 2002 and December 31, 2002 Campaign Contribution Disclosure Reports totaling \$618.30. These omissions constitute violations of SEC Rule 189-3-.04(1). Defendant failed to list the end recipients on three listed reimbursements to himself totaling \$2,928.70 on his original December 31, 2002 Campaign Contribution Disclosure Reports. These omissions constitute violations of SEC Rule, 189-3-.05.

5.

Defendant failed to file timely Campaign Contribution Disclosure Reports for 2003 and 2004 totaling four Campaign Contribution Disclosure Reports owed. All Campaign Contribution Disclosure Reports required for those years were filed on May 25, 2005. This failure to file

timely Campaign Contribution Disclosure Reports constitutes violations of the Act. O.C.G.A. § 21-5-34 (a)(1)(A) and (c). In those Campaign Contribution Disclosure Reports, Defendant identified six expenditures not timely reported which constitutes a violation of the Act. O.C.G.A. § 21-5-34 (b)(1)(B).

6.

In Defendant's 2002, 2003, and 2004 original Campaign Contribution Disclosure Reports, Defendant failed to list employer, occupation, and/or address information on approximately 50 contributions or expenditures. The failure to report this information constitutes technical violations of the Act. O.C.G.A. § 21-5-7.

7.

Defendant does not contest that he violated the Act as asserted by the Commission; however, he objects to the amount of civil penalties that the Commission seeks to impose. (Tr. 10.) The State Ethics Commission originally initiated this action in 2004. No action was taken on this case between 2004 and 2008 until a newly constituted Commission filed the present action.

8.

The methodology used by the Commission to calculate civil penalties has changed since the initiation of this case in 2004. Whereas the staff of the current Commission has created a loose formula for the calculation of a penalty for each violation, prior to 2007, there was no formula for the assessment of penalties and the Commission would determine a lump sum penalty per case. (Tr. 28.) Although still within the parameters of the law, the penalties assessed by earlier Commissions tended to be much lower. (Tr. 33.)

The Commission recommended the following civil penalties for Campaign Contribution

Disclosure Reports violations in this case:

December 2002 late filing	\$ 500
December 2002 improper amount filing	\$ 500
57 contributions above \$101 not reported in original Reports (\$250 each)	\$14,250
12 contributions above \$101 not reported in March 2002 Reports (\$250 each)	\$ 3,000
14 expenditures not reported in original Reports (\$250 each)	\$ 3,500
6 expenditures not reported in 2003 & 2004 reports (\$100 each)	\$ 600
June/December 2003 & 2004 late filing (4 total) (\$500 each)	\$ 2,000
Reimbursement to Defendant without end recipient (3) (\$100 each)	\$ 300
Payments to American Express without end recipient (2) (\$100 each)	\$ 200
Technical violations (69 violations found in amended reports (\$50 each)	<u>\$ 3,450</u>
Total Civil Penalty	\$28,300

(Pl.'s Ex. 19.)

III. CONCLUSIONS OF LAW

The Ethics in Government Act (the "Act") was enacted to "protect the integrity of the democratic process and to ensure fair elections..." O.C.G.A. § 21-5-2. See also, *State Ethics Comm'n v. Long*, 223 Ga. App. 621, 625 (1996). To accomplish this goal, the Act establishes a requirement for public disclosure of campaign contributions and expenditures relative to seeking publicly elected office. *State Ethics Comm'n v. Maddox*, 592 OSAH 259 [*2] (Mar. 26, 2009). Specifically, the Act requires candidates to file Campaign Contribution Disclosure Reports with the Commission. O.C.G.A. § 21-5-34(a)(4). In non-election years, the candidates must file Campaign Contribution Disclosure Reports on June 30 and December 31. During an election year, these reports are due on March 31, June 30, September 30, October 25, and December 31. See O.C.G.A. § 21-5-34(c)(2).

Campaign Contribution Disclosure Reports must include specific information regarding both contributions and expenditures. *Id.* The Act requires candidates to identify individual expenditures of \$101.00 or more, including the amount and date of the expenditure, the name and mailing address of the recipient receiving the expenditure, the general purpose of the

expenditure, and if the recipient is an individual, that individual's occupation and employer. *Id.* The Act also requires that candidates identify the amount and date of receipt of any contribution of \$101.00 or more along with the name, mailing address and occupation or place of employment of any contributor. See O.C.G.A § 21-3-34(b)(1)(A).

If a violation of the Act occurs, the Commission has the authority to require the violator to: make corrected public statements or report; make public the conclusion that a violation occurred; or issue an order that the violator cease and desist from further violations. O.C.G.A. § 21-5-6-(b)(14)(A)-(B). The Commission may also assess a civil penalty not to exceed \$1,000 per violation for each violation. See O.C.G.A § 21-5-6(b)(14)(C)(i).³ However, since the proceeding is de novo in nature,⁴ the Court must determine all matters of law and fact and render its decision approving, setting aside, or modifying the Commission's proposed action.

Under *Reheis v. Drexel Chemical Co.*, the Georgia Court of Appeals held that “[when] deciding whether to impose a civil penalty and, if so, in what dollar amount, this Court was required to take into account any factors it found relevant, including, but not limited to those specified in the statute. 237 Ga. App. 87, 90 (1999). The only guidance in the Act on this question is the requirement that the Commission post all of its orders on the Commission's website and the provision that “such orders shall serve as precedent for all future orders and opinions of the commission.” O.C.G.A. § 21-5-6(b)(14)(C)(v).⁵

³ In 2006, the Georgia Legislature enacted a new version of the Act, which included a five-year statute of limitations on the adjudication of claims, starting from the date of conduct. Defendant raised as an affirmative defense the five-year statute of limitations. However, the Court concludes that the five-year limitation period does not act as a bar to this action since Ga. L. 2005, p. 859, § 28, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

⁴ See A.R.P. Rule 21(3); see also *Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res.*, 282 Ga. App. 302, 304 (2006).

⁵ The Commission has not adopted a formal regulatory schedule of penalties for violations of the Act. However, the Commission's investigator testified that the Commission has implemented an informal penalty schedule where it assesses \$500.00 per violation for late filings, \$250.00 per

“In this matter, in the absence of specific statutory or regulatory provisions or precedent on the appropriate dollar amount for violations of the Act, the Court concludes that election sensitive reporting violations warrant the most severe penalties since they have a “great ... potential impact on the integrity of the election process.” *State Ethics Comm’n v. Maddox*, 592 OSAH 259 [*7] (Mar. 26, 2009). During an election, these reports include the 48 Hour Report due prior to the Primary Election (when applicable), the October 25 Report due prior to the General Election, and the 48 Hour Report due prior to the General Election (when applicable).

The Court concludes that none of the violations were election sensitive reporting violations and therefore do not warrant severe penalties since they did not have a great potential impact on the integrity of the election process. There is no indication in the record that the Defendant intentionally violated the Act and the Defendant has no history of violations of election reporting requirements. The Court therefore concludes that for these non-election sensitive violations, \$100.00 fines per violation are appropriate. The Court also concludes that a \$50.00 fine for each technical violation is appropriate. The total civil penalty is calculated as follows:

December 2002 late filing	\$ 100
December 2002 improper amount filing	\$ 100
57 contributions above \$101 not reported in original Reports (\$250 each)	\$ 5,700
12 contributions above \$101 not reported in March 2002 Reports (\$250 each)	\$ 1,200
14 expenditures not reported in original Reports (\$250 each)	\$ 1,400
6 expenditures not reported in 2003 & 2004 reports (\$100 each)	\$ 600
June/December 2003 & 2004 late filing (4 total) (\$500 each)	\$ 400
Reimbursement to Defendant without end recipient (3) (\$100 each)	\$ 300
Payments to American Express without end recipient (2) (\$100 each)	\$ 200
Technical violations (69 violations found in amended reports (\$50 each)	<u>\$ 3,450</u>
Total Civil Penalty	\$13,450

violation for unreported contributions and expenditures, and \$100.00 per violation for technical violations.

V. CONCLUSION

IT IS HEREBY ORDERED THAT the decision of the Commission to sanction Defendant is **AFFIRMED** but the amount of the civil penalty is **MODIFIED** to \$13,450. Such payment may be made through periodic payments at the times and under the conditions set by the Plaintiff.

IT FURTHER ORDERED THAT the Defendant shall **CEASE** and **DESIST** from any further violations of the Ethics in Government Act and shall comply with all provisions thereof.

SO ORDERED THIS 6th day of May, 2009.



JOHN B. GATTO, Judge