

**BEFORE THE ETHICS COMMISSION FOR THE STATE OF TENNESSEE
AT NASHVILLE**

In re:

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No. 2009-036

BENNY SPENCER

Respondent

INFORMAL CLASS ONE ASSESSMENT ORDER

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on May 18, 2008 at its regularly scheduled meeting, for informal consideration of whether to impose civil penalties against Respondent for a Class One offense under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act").

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

1. Respondent, Mr. Spencer, is a commissioner of Dickson County. Respondent was therefore required to file a Statement of Disclosure of Interests, Form SS-8005 ("Statement"), pursuant to Tenn. Code Ann. § 8-50-501 on or before January 31, 2009.
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. In April 17, 2009, the Commission sent an assessment letter to Mr. Spencer by both certified mail, return receipt requested, as required by Tenn. Code Ann. § 3-6-205(a)(1)(A), and by first class mail, advising that his Statement had not been received. The assessment letter set forth the allegations and the maximum amount of civil penalties that could be assessed. This letter was received on April 18, 2009.
4. On April, 30, 2009, Respondent filed his Statement with the Commission.
5. On May 1, 2009, Commissioner sent Respondent a letter, by both first class mail and certified mail return receipt requested. The letter set forth the allegations, the maximum amount of civil penalties that could be assessed, and the date, place, and time of the informal proceeding. The letter also informed Respondent of his opportunity to participate at the meeting either by appearing personally or by submitting a sworn statement and any supporting documents, and of his right to a

contested case proceeding. The certified mail was returned "unclaimed." The first class mail was not returned.

6. On May 18, 2009, Respondent did not appear at the Commission's regularly scheduled meeting.

The Commission conditionally reaches the following conclusions of law:

1. Respondent filed the required Statement more than five (5) days but less than thirty-six (36) days after receiving the Assessment letter. Thus, Respondent committed a Class 1 violation of the Act pursuant to Tenn. Code Ann. § 3-6-205(a) (1) (A).
2. Pursuant to Tenn. Code Ann. § 3-6-205(a)(1)(A), the Commission has authority to assess civil penalties of twenty-five dollars (\$25) a day up to a maximum penalty of seven hundred fifty dollars (\$750) for a Class 1 Offense of failure to file a Statement. Penalties accrue from five (5) days after receipt of the assessment letter on April 18, 2009, which is a total of seven (7) days, for a total penalty of one hundred seventy five dollars (\$175).
3. Pursuant to Tenn. Code Ann. §§ 3-6-107(8) and 3-6-308(a)(10), no penalty imposed by the Commission may become final until after the Respondent is given notice and an opportunity to be heard as provided by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101- 4- 5-325.

ORDER

It is therefore **CONDITIONALLY ORDERED** that a **CIVIL PENALTY** of one hundred seventy five dollars (\$175) is imposed against Respondent for failure to file, within five (5) days of receipt of an Assessment Letter, a Statement as a Commissioner for Dickson County, Tennessee.

It is further **ORDERED** that:

1. 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. The Executive Director will also cause to be delivered with this order a cover letter conveying in general terms Respondent's rights as set forth herein.
2. Respondent may file a request for reconsideration within fifteen (15) days of the date of issuance of this order. A timely request will toll the deadline for filing a petition for a contested case proceeding until such time as the Commission grants or denies the request. If the Commission denies Respondent's request for reconsideration, Respondent will then have ten (10) days from the date of issuance

of the order of denial within which to file a request for a contested case proceeding.

3. Respondent may initiate a contested case proceeding, as provided by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101-4-5-325, by filing a petition for such a proceeding with the Commission within thirty (30) days of the date of issuance of this order.
4. If Respondent fails to timely file a request for a contested case proceeding, the right to a contested case proceeding will be waived, and this Order shall become final.
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

Issued this 22nd day of May 2009.

TENNESSEE ETHICS COMMISSION

By: Rebecca Bradley
Rebecca Bradley
Interim Executive Director