

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

In re: ) No. 2008-42A  
)  
FRED WILCOXON, )  
)  
Respondent. )

---

**CONDITIONAL ORDER**

---

This matter came on to be heard by the Tennessee Ethics Commission (Commission) on April 6, 2009, at its regularly scheduled public meeting for informal consideration whether to impose civil penalties on Mr. Fred Wilcoxon (Respondent) for a violation of the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 (Act), upon due consideration of the records of the Commission showing that Respondent failed to file a Disclosure of Interest Statement (Statement) as required by Tenn. Code Ann. §§8-50-501 and 8-50-502, and upon due consideration of records of the Commission showing Respondent did not file his Statement within thirty five (35) days of his receipt of the Class 2 assessment letter and has not filed his Statement to date, the Commission conditionally found a Class 2 civil penalty in the amount of nine thousand two hundred fifty dollars (\$9,250) should be imposed, subject to Respondent's right to request a contested case proceeding.

**FINDINGS OF FACT**

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

1. Respondent was a local elected official in 2007. As required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502, he was required to file a Statement with the Commission by January 31, 2008.
2. The Commission has taken steps through training, website posting, and notices to help persons required to file Statements do so in a timely manner.
3. Respondent did not file a Statement by January 31, 2008. In May 2008 the Commission sent a warning letter to Mr. Wilcoxon by first class mail. The warning letter was not returned to the Commission.
4. On June 6, 2008 the Commission sent Respondent a Notice of Informal Show Cause Hearing (Show Cause Notice) by certified mail, return receipt requested and by regular, first class mail. The Show Cause Notice stated that the Commission intended to consider, at its July 22, 2008 meeting, an assessment of civil penalties against Respondent for failure to file his Statement in a timely manner.

5. The Show Cause Notice set forth the allegations, the maximum amount of civil penalties that could be assessed, and the date, place, and time of the informal hearing. The Show Cause notice also stated that Respondent could participate in the in the hearing either by appearing personally or by submitting a sworn statement and any supporting documents.

6. The Commission received the certified Show Cause Notice from the United States Postal Service on July 3, 2008 marked "unclaimed" after two (2) delivery attempts. The First Class mailing was not returned to the Commission. Respondent did not accept his certified Show Cause Notice, notifying him of the Commission's consideration of whether to assess Class 1 civil penalties against him. His civil penalty began to accrue on June 22, 2008. It accrued through July 22, 2008. The penalty accrued for thirty (30) days at twenty five dollars (\$25) a day, for a total possible penalty of seven hundred fifty dollars (\$750).

7. At its July 22, 2008 meeting, the Commission voted to conditionally assess Respondent a Class 1 civil penalty of seven hundred fifty dollars for failure timely complete the required Statement. Respondent did not appear at the meeting or submit a statement.

8. On January 22, 2009, the Commission sent, by certified mail, return receipt requested, and by first class mail, an assessment letter setting forth the Commission's intent to consider assessment of Class 2 civil penalties of up to ten thousand dollars (\$10,000) during its March 10, 2009 meeting for failure to file a Statement within thirty five (35) of receipt of the assessment letter. This Class 2 assessment letter informed Respondent 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 Respondent 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. The certified mail was returned to the Commission after three (3) delivery attempts. The first class mail was not returned.

9. At its April 6, 2009 meeting, the Commission voted to conditionally assess Respondent a Class 2 civil penalty in the amount of nine thousand two hundred fifty dollars (\$9250) for his failure to file his statement within thirty five (35) days after receipt by certified mail of the assessment letter, this committing a Class 2 civil penalty as provided by Tenn. Code Ann. §3-6-205(a)(2). Respondent has not filed his Statement to date.

### **CONCLUSIONS OF LAW**

1. Respondent was a local elected official in 2007. As required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502, he was required to file a Statement with the Commission by January 31, 2008.

2. Respondent did not file the required Statement by January 31, 2008 as required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502 and has not filed the required Statement to date. Respondent was conditionally assessed a Class 1 civil penalty in the amount of seven hundred fifty dollars (\$750) on July 22, 2008. Failure to file the Statement within thirty five (35) days of

Respondent's receipt of the Class 1 assessment letter subjected Respondent to Class 2 civil penalties.

3. Pursuant to Tenn. Code Ann. § 3-6-205(a)(2), the Commission has authority to assess Class 2 civil penalties in an amount not more than ten thousand dollars (\$10,000).

4. The Commission finds that under the facts and circumstances of this case a civil penalty of nine thousand two hundred fifty dollars (\$9,250) should be imposed. Respondent has not responded to any of the notices, has not appeared at any of the above-referenced meetings, either in person or by submitting a statement, and has not submitted his Statement to date.

### **ORDER**

For the reasons set forth above, the Commission conditionally ORDERS that a CIVIL PENALTY in the amount of nine thousand two hundred fifty dollars (\$9,250) is imposed against Respondent for failing to file a Statement as required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502. The Commission further ORDERS 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, along with a notice of Respondent's rights described below.

2. 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. This conditional Order will not become final until after Respondent has been afforded an opportunity to request a contested case proceeding.

3. Respondent may obtain a contested case hearing by filing, within thirty (30) days 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.

4. In the alternative, and without waiving the right to timely request a contested case proceeding at a later time, 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 receipt of this Order. If Respondent timely files a petition for reconsideration and it is denied, Respondent will have an additional thirty (30) days from receipt of the Order of denial within which to file a request for a contested case proceeding

5. If Respondent does not timely file a request for a contested case proceeding, either within thirty (30) days of receipt of this order, or with ten (10) days of the receipt of an order denying a timely motion for reconsideration, the right to a contested case proceeding will be waived, and this Order shall become final.

6. 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 16<sup>th</sup> day of April 2009.

TENNESSEE ETHICS COMMISSION

By:   
Bruce A. Androphy  
Executive Director