



State Ethics Commission of Georgia

ADVISORY OPINION NO. 2002-33

June 14, 2004

REAL OR HYPOTHETICAL SET OF CIRCUMSTANCES

The following is an Advisory Opinion concerning the appropriate interpretation of O.C.G.A. § 21-5-34(c)(2)(C) dealing with the 48 hour campaign contribution disclosure reports. The language of that provision is as follows:

“During the period of time between the last report due prior to the date of any state-wide primary or state-wide election for which the candidate is qualified and the date of such primary or election, all contributions of \$1,000.00 or more must be reported within 48 hours of receipt to the location where the original disclosure report for such candidate or committee was filed and also reported on the next succeeding regularly scheduled campaign contribution disclosure report.”

ADVISORY OPINION

Early reading of the provision gave some the impression that the 48 hour report requirement applied to only candidates for statewide office. However, once the staff began a section by section review of the legislation it was clear that such a narrow application was not the import of the language involved.

As context it is essential to understand that subsection (c) sets forth the schedule of filings of campaign contribution disclosure reports for all candidates. (c)(1) lists the reports required in each non-election year. (c)(2) lists the reports required in each year in which the candidate qualifies to run for public office. There is nothing in (c)(2) which calls for any requirement to be for anything less than of general application[1].

So how could anyone suggest that the requirements of (c)(2)(C) apply only to candidates for state-wide office? Well, they latch on to the terms “state-wide primary” and “state-wide election.” As used in this provision there is no difference between “state-wide primary” and “primary election” or between “state-wide election” and “general election.”

As to the significance of these terms it is instructive to examine the language of the provision which had previously controlled the filing of candidate disclosure reports. O.C.G.A. § 21-5-34(c) as it was through December 31, 2000, read (in relevant part) as follows:

...a candidate shall file campaign contribution disclosure reports 45 days and 15 days before the primary election and 10 days after the primary election. Candidates in a general or special election campaign shall make such reports 15 days prior to the general or special election ...[emphasis added]

Under prior law the reports were required so many days before or after a particular election. Under current law reports are due on specific dates irrespective of when a particular election is held (the exceptions being for special elections and runoffs as under the prior law).

So is there a difference of meaning between the current language “state-wide primary” and “state-wide election” and the prior section’s use of “primary election” and “general election”? For purposes of this issue the answer is no[2]. As to filing the 48 hour report “state-wide primary” has the same meaning as “primary election” under the prior law. Likewise “state-wide election” has the same meaning as the prior law’s “general election” for purposes of filing the 48 hour report.

THE TERM “STATE-WIDE” IS ONLY INCLUDED TO INDICATE THE TIME PERIOD COVERED

The first three lines of (c)(2)(C) concluding with the first comma (after the word election) merely describe the periods in which the 48 hour report rule applies. There are only two such periods.

One period runs between the date of the last report scheduled prior to the primary (the date of which is June 30) and the actual date of the primary election (scheduled this year on August 20).

The other 48 hour report period is between the last report scheduled prior to the general election (October 25 report) and the actual date of the general election – November 5.

THE PURPOSE OF THE 48 HOUR REPORTS IS TO EXPAND DISCLOSURE

By adding this new reporting requirement the General Assembly provided that all contributions of \$1,000.00 or more (except for those coming in less than 48 hours before the opening of the polls) would be made known to the public prior to the primary and general elections.

Under prior law such contributions, if they came in after the reports due 15 days before the primary and general election, would not be known to the public until after these elections had been held. This enhanced disclosure provision was one of several resulting from the 1999 meetings of the Governor’s Commission on Campaign Finance Reform.

An obvious flaw in the argument that the 48 hour reports are only required of candidates for state-wide office is that such interpretation would result in the vast bulk of Georgia’s campaign finance activities for almost the last two months prior to the primary being kept secret from the public until over 40 days AFTER the primary[3].

Rather than reform, such an interpretation would result in a major degradation of the level of disclosure available to the public as recently as the year 2000. Under the prior law, in 2000 the public received a full report of all campaign finance activities – all contributions and all expenditures – 45 days prior to the primary and again 15 days prior to the primary.

If the 48 hour report is not required of all candidates on the primary and general election ballots then, except for candidates for statewide office, the public will be completely in the dark with nothing disclosed during the last fifty days prior to the primary election on August 20, 2002.

In other words the public got full disclosure until two weeks before the primary in 2000. Without the 48 Hour Reports there is no disclosure for seven weeks before the primary in 2002!

CONCLUSION

The staff submits that the language and purpose of the 48 hour report provision demand that such reports be required from all candidates on the state-wide primary ballot as well as from all candidates on the state-wide general election ballot. This interpretation is further bolstered by contemplation of the massive loss of disclosure which would be occasioned by a more restrictive application of the 48 hour report requirements.

[1] There are some provisions of subsection (c) specifically set out for limited application. These are (c)(3) – applying only to candidates in special primaries and special primary runoff – and (c)(4) – applying to candidates in special elections or special election runoffs.

[2] As to the question “why then was different language used?” – a reasonable answer is that the term “state-wide” is only added to distinguish these elections from “special primaries” and “special elections” (which are, by definition, always local rather than state-wide elections) and that the inclusion in the new law for the first time of separate provisions for such elections in (c)(3) and (c)(4) generated a need for a modifier which would exclude special primaries and special runoffs from the requirements for filing the 48 hour reports.

[3] Some disclosure would result from the 48 Hour Reports but only if a particular contribution was \$1,000.00 or more and it was to a candidate for statewide office. There would be absolutely zero disclosure of campaign expenditure activities during that time.