

Advisory Opinion C.F.C. 2013-02 - DRAFT

Question Presented

Whether an incumbent public official, who is undecided about seeking re-election in his or her election year, and who has taken no steps to either seek nomination for election or re-election, is required to file the March 31 Campaign Contribution Disclosure Report.

Advisory Opinion

The Georgia Government Transparency and Campaign Finance Commission (the “Commission”) has received this request for advisory opinion from Charles J. King, the Clerk and Qualifying Officer of Town of Riverside, Georgia.

The Georgia Government Transparency and Campaign Finance Act (the “Act”) provides that candidates or campaign committees that accept contributions, make expenditures designed to bring about the nomination or election of a candidate, or have filed a declaration of intent to accept campaign contributions (“DOI”) must file certain campaign disclosure reports. *See* O.C.G.A. § 21-5-76(a).

A “candidate” is defined by the Act as “an individual who seeks nomination for election or election to any public office, whether or not such an individual is elected....” *See* O.C.G.A. § 21-5-3(4). A person can be deemed “to seek nomination or election” several different ways. *Id.* For example, if a person has taken necessary action to qualify for nomination or election, he or she is deemed to seek nomination or election. *Id.* A person is also deemed to seek nomination or election if he or she has received any contributions or made any expenditures in pursuit of such nomination or election. *Id.* Likewise, a person is to seek nomination or election if he or she has given consent for his or her campaign committee to receive contributions or make expenditures. *Id.*

The Act’s definition of candidate makes clear that a person does not necessarily have to qualify for nomination or election to be deemed a candidate. Indeed, a person may begin receiving campaign contributions before taking action to qualify for nomination or election, so long as that person has filed with the Commission a DOI. *See* O.C.G.A. § 21-5-30(g).

The Commission does not require an incumbent to file a new DOI to accept campaign contributions for the office currently held prior to formally qualifying to seek re-election. Thus, because the DOI is in effect until the incumbent vacates his or her office, such an incumbent is permitted to accept campaign contributions prior to formally qualifying.

Accordingly, the Commission finds that unless an incumbent in an election year has formally withdrawn the DOI on file with the Commission or is seeking a different office, then the DOI on file is still in effect. Thus, the incumbent must file the March 31 Campaign Contribution Disclosure Report.

Prepared by Jonathan Hawkins.
March 21, 2013.

DRAFT

C.F.C. 2013-02

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FAX #: (404) 463-1988
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DATE: February 1, 2012
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Please find as follows my letter for presentation to the Commission. Thank you.

AO Request

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Town of Riverside

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February 1, 2013

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Georgia Government Transparency and
Campaign Finance Commission
Attn: Ms. Holly LaBerge, Executive Secretary
200 Piedmont Avenue, Suite 1402 – West Tower
Atlanta, GA 30334


Re: Request for advisory opinion to determine whether or not an incumbent public official, who on or before March 31 of his or her election year, has taken no steps to either seek nomination for election or election, is required to file the March 31 Campaign Contribution Disclosure Report

Dear Ladies and Gentlemen:

This letter requests a formal advisory opinion to clarify whether or not an incumbent public official, who is undecided about seeking re-election in his or her election year, and who has taken no steps to either seek nomination for election or election, is required to file the March 31 Campaign Contribution Disclosure Report ("CCDR").

Pursuant to Official Code of Georgia Annotated ("O.C.G.A.") § 21-2-132, the municipal qualifying period for city council is not held until the last Monday in August preceding the general election. The election year for two of Riverside's incumbent councilors was 2012. The town is small and elections are generally non-contested. The incumbent councilors had taken no steps to seek nomination for election or election on or before the March 31, 2012 deadline. They were not yet required to do so and were in fact unable on that date to qualify.

In July, upon attempting to timely file the CCDR for public officials due on June 30, 2012, the electronic filing system prompted and required the incumbents (for whom 2012 was an election year) to first file a CCDR for the March 31, 2012 filing date. Upon so doing, they were assessed a late filing penalty. This penalty was assessed notwithstanding that the councilors had not yet qualified nor taken any steps to seek nomination for election or election. The two incumbents subsequently timely qualified in August 2012. They paid their own qualifying fees with their own personal funds (each less than \$100). Neither was opposed and there being no other issues to be decided by the electorate, no election was held. A waiver of the late fee was subsequently sought on the basis that the councilors were not "candidates" on the due date and



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were therefore not required to file the report. The waivers were denied on the grounds that the councilors had achieved candidacy for filing purposes and the March CCDD was therefore due. In subsequent telephone conversation(s) with the Commission's staff, it was stated that the Commission viewed an "incumbent in an election year" as a "candidate" and therefore these incumbents were required to file.

The definition of "candidate" as set forth in O.C.G.A. § 21-5-3(4) is as follows:

"Candidate" means an individual who seeks nomination for election or election to any public office, whether or not such an individual is elected; and a person shall be deemed to seek nomination or election if such person:

- has taken necessary action under the laws of this state to qualify such person for nomination for election or election; or
- has received any contributions or made any expenditures in pursuit of such nomination or election; or
- has given such person's consent for such person's campaign committee to receive contributions or make expenditures with a view to bringing about such person's nomination for election or election to such office.

These councilors did not have an opportunity to qualify until August; received no contributions (municipal elections in Riverside are rarely contested); made no expenditures toward re-election and had no campaign committee. The statutory definition does not distinguish between "incumbents" and "non-incumbents." These councilors clearly do not come within the statutory definition. To require otherwise is to force these councilors to file as candidates even though they have not decided to stand for re-election, or alternatively to be penalized with a late filing fee when attempting to file the required June 30 report. The statute is clear and should be construed in accordance with the "strict construction powers" granted to the Commission.

Additionally, in subsequent telephone conversation(s) with the Commission's staff, it was noted that these councilors had in a previous year filed a declaration of intent to accept contributions and were therefore required to file. O.C.G.A. § 21-5-34(c) states in relevant part (emphasis added):

Candidates or campaign committees which accept contributions, make expenditures designed to bring about the nomination or election of a candidate, or have filed a declaration of intention to accept campaign contributions pursuant to subsection (g) of Code Section 21-5-30 shall file campaign contribution disclosures reports in compliance with the following schedule:

- (1) In each non-election year on June 30 and December 31;
- (2) In each election year:
 - (A) On March 31, June 30, September 30, October 25, and December 31 . . .

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The referenced provisions of O.C.G.A. § 21-5-30(g) are expressly inapplicable to candidates who are incumbent public officers. It states (emphasis added):

(g) Neither a candidate who is not a public officer nor his or her campaign committee may lawfully accept a campaign contribution until the candidate has filed with the commission a declaration of intention to accept campaign contributions which shall include the name and address of the candidate and the names and addresses of his or her campaign committee officers, if any.

Public officers are already required to file CCDRs, and this Section seems aimed at having candidates other than public officers become subject to the appropriate filing requirements of O.C.G.A. § 21-5-34. Public officers should therefore become subject to reporting as a candidate only when they take action to achieve candidacy as set forth in the first part of O.C.G.A. § 21-5-34(c).

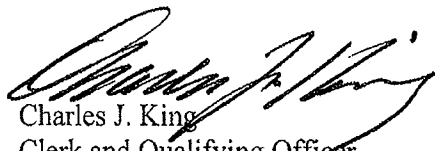
Advisory Opinion C.F.C. 2012-01 held that candidates that have no contributions and no expenditures other than payment of their own qualifying fees with their own personal funds *are not required to file more than the initial and final campaign financial disclosure reports*. That opinion goes on to define the "initial campaign disclosure report" as the first report due by a candidate after (i) qualifying or (ii) achieving candidacy for the purpose of reporting. Since none of the statutory requirements for "candidacy" had been met by these councilors until qualification, the first campaign contribution disclosure report for these councilors was the one due September 30 and the final was due on December 31. No March 31 filing (before qualifying) should be required in these circumstances.

On behalf of future incumbents in their election year, who are in March of such year undecided about running for re-election, and who are attempting to comply with their required ethics filings, clarity is needed.

I wish to add that, while the Commission's present staff has been steadfast in the Commission's position, they have also been communicative, cordial and cooperative.

The late fees assessed in the above instance were subsequently waived for hardship, but the question remains. I look forward to receiving your guidance on the foregoing.

Very truly yours,


Charles J. King
Clerk and Qualifying Officer
Town of Riverside, Georgia