

**Tennessee Registry of Election Finance
November 1998**

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November 24, 1998

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Kenneth N. (Pete) Springer, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Tennessee Registry of Election Finance. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the registry should be continued, restructured, or terminated.

Very truly yours,

W. R. Snodgrass
Comptroller of the Treasury

WRS/ms
98-032

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Tennessee Registry of Election Finance
November 1998

AUDIT OBJECTIVES

The objectives of this audit were to review the registry's legislative mandate and the extent to which the registry has met its mandate, to evaluate the efficiency and effectiveness of the registry's activities, and to make recommendations that might result in more efficient and effective operation of the registry.

FINDING

Candidates Can Avoid Disclosure in Certain Cases

The Registry of Election Finance sends violation notices to candidates who do not submit required financial disclosure reports. However, if a candidate does not accept the certified notice, the registry cannot take further disciplinary action. Also, a candidate who wins the general election can be sworn into office without submitting the required reports (page 14).

OBSERVATIONS AND COMMENTS

The audit discusses the following issues that affect the operations of the registry and the citizens of Tennessee: (1) the lack of authority to require candidates to provide supporting documentation for their financial disclosure reports; (2) the timing of the due dates of the allocation report, which indicates how excess contributions will be allocated, and the post-general disclosure report, which indicates the ending balance of the campaign fund; (3) the requirement that citizens provide personal information in order to view a candidate's file; (4) the advantages of an electronic filing system for campaign contribution disclosures (page 9).

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider (1) amending state law so that the allocation of unexpended contributions report is submitted at the same time as or after the post-general disclosure report; (2) amending state law so that certified violation notices returned as unclaimed can be reissued by overnight delivery and be considered served; and (3) amending state law so that candidates who win the general election are required to file all disclosure reports prior to being sworn into office (page 15).

“Audit Highlights” is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

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Performance Audit Tennessee Registry of Election Finance

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Performance Audit Tennessee Registry of Election Finance

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Registry of Election Finance was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-220 of that statute, the registry is scheduled to terminate June 30, 1999, unless continued by the General Assembly. The Comptroller of the Treasury is authorized, under *Tennessee Code Annotated*, Section 4-29-111, to conduct a limited program review audit of the registry and to report to the Joint Government Operations Committee. The performance audit is intended to aid the committee in determining whether the Tennessee Registry of Election Finance should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of our audit of the Tennessee Registry of Election Finance were

- to determine the authority and responsibility mandated to the registry by the General Assembly,
- to determine the extent to which the registry has met its legislative mandate,
- to evaluate the efficiency and effectiveness of the registry's activities, and
- to recommend possible alternatives for legislative or administrative action which might result in more efficient and effective operation of the registry.

SCOPE AND METHODOLOGY OF THE AUDIT

The audit covered the activities of the Tennessee Registry of Election Finance from July 1989 through August 1998 (with an emphasis on the 1996 election year, the most current complete state election cycle of primary and general elections). The audit was conducted in accordance with generally accepted government auditing standards. The methods used were

- interviews with registry staff and members, officials from state agencies outside of Tennessee, the Attorney General's Office staff, County Election Commission registrars, and a citizen lobbyist group;

- review of Tennessee statutes, registry rules, and statutes of other states; review of the registry's meeting minutes, candidates' campaign contribution disclosure files, PAC quarterly disclosure files, lobbyists' files, sworn complaint files, the registry's civil penalty log book and the log book of final orders forwarded to the Attorney General's Office, lists of people ineligible to run for state or public office, the registry's annual reports, and the registry's three-year information systems plan; and
- review of information from lobbyists or special interest groups concerning campaign finance disclosure.

ORGANIZATION AND STATUTORY DUTIES

Purpose of the Registry

The Tennessee Registry of Election Finance was established by Chapter 585 of the Public Acts of 1989 (codified as *Tennessee Code Annotated*, Section 2-10-201 et seq.). The registry has the jurisdiction to administer and enforce the provisions of the following statutes:

- The Campaign Financial Disclosure Act of 1980 (Section 2-10-101 et seq.)
- The Tennessee Lobbyist Registration and Disclosure Act of 1975 (Section 3-6-101 et seq.)
- The Conflict of Interest Disclosure Act of 1972 (Section 8-50-501 et seq.)
- The Campaign Contribution Limits Act of 1995 (Section 2-10-301 et seq.)

The following are among the registry's duties:

- Making reports available, during regular office hours, for public inspection and copying at the expense of the person requesting copies.
- Reviewing all filed statements to ensure compliance with the respective disclosure laws.
- Providing an annual report to the Governor and the General Assembly.
- Investigating any alleged violation.
- Notifying all candidates for public office in a state election of the requirements for filing required disclosure statements 14 days before any fixed deadline provided.

The registry has the power to promulgate rules and regulations, hold hearings, subpoena witnesses and records pursuant to the Uniform Administrative Procedures Act, issue written advisory opinions, and assess late filing fees and other civil penalties.

Lobbyists must pay \$25 for each employer they represent. The registry uses these registration fees to help offset operating expenses. Money collected from civil penalties issued

by the registry is deposited into the state's general fund. The registry received \$282,100 in state appropriations and \$47,439 in interdepartmental revenues (e.g., lobbyist registration fees, fines, or penalties; copies of mailing lists) as of the year ended June 30, 1998. The registry had \$283,614 in expenditures for the year ended June 30, 1998.

Registry Membership and Staff

According to *Tennessee Code Annotated*, Section 2-10-203, the registry should consist of seven members. As of August 26, 1998, the registry had only six members. The statutes do not specify the number of meetings to be held each year, but the registry members meet monthly at least 11 months of the year. According to the executive director, there have always been enough registry members present to have a quorum.

The Governor appoints three members—one from a list of three nominees submitted by the state executive committee of the majority party, one from a list of three nominees submitted by the state executive committee of the minority party, and one from nominations from an organization that has demonstrated a nonpartisan interest in fair elections and informed voting such as the League of Women Voters (this position on the registry has been vacant since October 1997). The Senate appoints two members—one chosen by the members of the Senate Democratic Caucus and one by the members of the Senate Republican Caucus. The House of Representatives appoints two members—one chosen by the members of the House Democratic Caucus and one by the members of the House Republican Caucus. Of the seven members appointed, at least one is to be a female and one is to be black. The registry meets these requirements.

The registry has four employees: an executive director, an assistant director, an administrative assistant, and an executive secretary. The registry is administratively attached to the Department of State.

CAMPAIGN FINANCIAL DISCLOSURE PROCESS

Tennessee's Campaign Financial Disclosure Act of 1980 was enacted to promote public disclosure of campaign contributions and expenditures. As the agency responsible for administering this act, the registry is to ensure the timely and accurate disclosure of campaign finance information for the benefit of the public. In 1996, there were two elections—the August primary and the November general election. See Exhibit 1 for a summary of the filing of financial disclosure reports in the 1996 state election.

Candidates for state public office or their political campaign committees are required to file a statement of all contributions received and all expenditures made by or on behalf of the candidate or committee. A candidate's statement must include the date the contribution was received; a committee's statement must include the date of each contribution it made to a candidate. Candidates for the General Assembly and their political campaign committees must also file a copy of the statement in the county where the candidate resides.

Candidates and committees for a local election are required to file a statement of all contributions received and all expenditures made by or on behalf of the candidate or committee with the county election commission. The statement of each candidate for a local public office must include the date each contribution was received and the statement of a committee for a local election must include the date of each contribution to a candidate.

Exhibit 1
Filing of Campaign
Financial Disclosure Reports by
Candidates for State Public Office in 1996

	<u>Pre-Primary</u>	<u>Post-Primary</u>	<u>Pre-General</u>	<u>Post-General</u>
Candidates	297	297	192	192
Reports Timely Filed	264	252	171	173
Certified Letters Mailed	33	45	21	19
Reports Returned for Corrections	130	49	22	17
Candidates Assessed Civil Penalties for Failure to File Report Timely	6	12	2	2
Percent of Reports Timely Filed	89%	85%	89%	90%
Percent of Candidates Mailed Certified Letters	11%	15%	11%	10%
Percent of Reports Returned for Corrections	44%	16%	11%	9%
Percent of Candidates Assessed Civil Penalties for Failure to File Report Timely	2%	4%	1%	1%

Filing of Quarterly Campaign
Financial Disclosure Reports by
Multicandidate Committees (PACs) in 1996

	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
PACs	329	334	341	343
Reports Timely Filed	298	309	306	315
Certified Letters Mailed	31	25	35	28
Reports Returned for Corrections	23	25	19	12
PACs Assessed Civil Penalties for Failure to File Report Timely	1	7	5	3
Percent of Reports Timely Filed	91%	93%	90%	92%
Percent of Candidates Mailed Certified Letters	9%	7%	10%	8%
Percent of Reports Returned for Corrections	7%	7%	6%	3%
Percent of PACs Assessed Civil Penalties for Failure to File Report Timely	0%	2%	1%	1%

Filing of
Lobbyist Activities Reports in 1996

	<u>Mid-Year Report</u>	<u>Year-End Report</u>
Lobbyists Required to File Activities Report	486	498
Reports Timely Filed	455	458
Certified Letters Mailed	31	40
Lobbyists Assessed Civil Penalties for Failure to File Report Timely	1	0
Percent of Reports Timely Filed	94%	92%
Percent of Lobbyists Mailed Certified Letters	6%	8%
Percent of Lobbyists Assessed Civil Penalties for Failure to File Report Timely	0%	0%

Supplemental Campaign Financial Disclosure Statement

If a candidate or committee appoints a political treasurer more than one year before the first election they expect to be involved in, the candidate or committee must file an early supplemental campaign financial disclosure statement on February 1 of each year. For example, if a candidate plans to run in the August 1998 primary and appoints a political treasurer in January 1996, the candidate would need to file an early supplemental campaign financial disclosure statement February 1, 1997, and again February 1, 1998. The early supplemental report must cover the period beginning with the date of the first contribution or first expenditure, whichever is earlier, or with the date of the last early supplemental report.

If a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit on his or her final report of the normal election year cycle, the candidate must file a supplemental annual statement of contributions and expenditures beginning one year after the last post-election report. This report is due January 31 of the year following the general election, continuing annually until the campaign account is closed.

Regular Election Cycle Campaign Financial Disclosure Statements

Candidates or their political campaign committees must file the following reports during the election cycle:

Pre-Primary and Pre-General: A campaign disclosure statement must be filed no later than seven days before the primary and/or general election. This statement must disclose all contributions and expenditures beginning with the date the first contribution was received or the first expenditure was made, whichever is earlier, through the tenth day before the election. However, if an early supplemental campaign financial disclosure statement was filed on February 1 of the election year by the candidate or candidate's committee, the pre-primary statement should list all contributions and expenditures beginning January 30 and extending through the tenth day before the primary election.

Effective January 1, 1996, an independent candidate for a state or local public office which has a primary election must file pre-primary and post-primary election reports, even if the candidate is not included on the ballot in the primary election.

Post-Primary and Post-General: A campaign financial disclosure statement must be filed no later than 48 days after the primary or general election, covering the period from the last day of the prior report (either pre-primary or pre-general) through the forty-fifth day after the primary or general election. If a candidate loses a primary and shows no balance of contributions, no continuing debts or obligations or expenditure deficit, the post-primary statement is the final required statement. For candidates in the general election, if the post-general statement shows no unexpended balance of contributions, expenditure deficit or continuing debts or obligations, the post-general statement is the final required statement.

Campaign Financial Disclosure Allocation Report: All candidates who have excess campaign contributions must submit an allocation report to the registry indicating how the excess funds will be allocated (*Tennessee Code Annotated*, Section 2-10-114). Candidates who lose in the primary election must submit an allocation report if the post-primary campaign disclosure report has a positive balance. If the campaign balance is zero or negative, the candidate is not required to file an allocation report. If the candidate participates in the general election, the candidate (win or lose) must submit the allocation report by January 7 of the year following the election if the candidate's campaign disclosure report has a positive balance.

Notifying Candidates of Disclosure Report Due Dates

The registry is required to notify candidates for state public office 14 days before any regularly scheduled statement is due. Each county election commission is required to notify candidates for local public office seven days before any regularly scheduled statement is due. The registry mails a letter indicating the date the report is due, the report forms to be completed, and instructions concerning how to complete the report.

Late Report Notification Process

The registry is responsible for monitoring whether candidates and committees submit the required campaign contribution disclosure reports by the scheduled date. The reports are considered on time if received by the registry on or before the scheduled date or if the report is postmarked on the scheduled date and mailed by registered or certified mail. If the reports are not submitted on time, the registry is required to notify the candidate or committee that the report is late. For state public offices, the registry must personally serve or send by return-receipt-requested mail, an assessment notice to any candidate, political campaign committee, PAC, or lobbyist who does not file the appropriate report or statement. A Class I civil penalty of \$25 per day begins to accrue five days after personal service or receipt of the notice and continues to accrue until the report or statement is filed or for 30 days, whichever occurs first. For local offices, the county election commissions are required to send assessment notices when the reports or statements are not filed with the commission.

When the required report or statement is not filed with the registry or commission within 35 days after personal service or receipt of notice, the violation becomes a Class II offense, punishable by a maximum penalty of not more than \$10,000 or 15% of the amount in controversy (e.g., a campaign contribution that was not disclosed), whichever is greater. The county election commissions must forward local candidate Class II violations to the registry for further disciplinary action. The registry's show-cause hearing notice must advise the candidate or committee of the factual basis of the violation, the maximum penalty that could be assessed, and the date, place, and time of the registry's next regularly scheduled meeting. The candidate or committee may choose to appear before the registry for a show-cause hearing or submit a sworn statement to the registry for review.

Issuance and Appeal of Civil Penalty Assessment Orders

Candidates who receive a show-cause hearing notice from the registry and do not respond by either appearing before the registry at the scheduled meeting or submitting a sworn statement may be issued an order assessing a civil penalty. Civil penalty assessment requires a majority vote of the registry members.

The penalty order must be mailed by registered or certified mail to the candidate or committee and provide 30 days from its date of issuance to either appeal the registry's order, in accordance to Tennessee's Administrative Procedures Act (*Tennessee Code Annotated*, Section 4-5-301 et seq.), or to pay the assessed penalties to the registry. If the order is returned to the registry from the United States Postal Service as unclaimed, the order is to be reissued and mailed by overnight delivery to the candidate or committee. The candidate or committee then has 30 days from the date of the order's reissuance either to appeal the registry's order pursuant to procedures provided in the Uniform Administrative Procedures Act or to pay the penalty.

According to the registry rules, if the registry's order is not appealed within 30 days of its issuance, the order becomes a final order. The registry is required to forward the final order to the State Attorney General and Reporter's Office and request that the Attorney General take legal action on the registry's behalf to collect the civil penalties from the candidate or committee. During the calendar year 1996 and through August 31, 1998, the registry forwarded 51 final orders to the Attorney General's Office. The Attorney General's Office filed 36 lawsuits (71%), six of the assessed civil penalties were paid (12%), and one payment arrangement was set up (2%). Three of the final orders were transferred to the Attorney General's Office in July 1998, and there had not been enough time to take action as of August 31, 1998. The remaining final orders are at other stages of processing.

OBSERVATIONS AND COMMENTS

The issues discussed below did not warrant a finding but are included in this report because of their effect or potential effect on the registry and on the citizens of Tennessee.

The Registry Does Not Have the Power to Enforce the Campaign Financial Disclosure Act of 1980

The registry does not have the authority or power to require that candidates provide supporting documentation for their campaign financial contribution disclosure reports. The registry has been given the jurisdiction to administer and enforce the provisions of the Campaign Financial Disclosure Act of 1980 (*Tennessee Code Annotated*, Section 2-10-101), but it cannot conduct random audits to ensure reports are correct or subpoena records if it suspects a violation.

A 1990 Attorney General Opinion stated that since the registry cannot conduct an investigation unless there is an alleged violation, it does not have the authority to conduct random audits. Thus, the registry cannot ensure that candidates and elected officials are reporting in accordance with statutes and must rely on the candidates to self-report.

A 1991 informal opinion from the Attorney General's Office stated that the registry cannot force the production of records until the case goes to an administrative judge for a contested case hearing because the registry's subpoena powers are tied to the Uniform Administrative Procedures Act (title 4, chapter 5, *Tennessee Code Annotated*). According to the executive director, there may be suspicions of campaign finance violations, but there may not be enough information to present the case to the administrative judge without access to the candidate's records.

We conducted a telephone survey of 11 southeastern states to determine whether the state agencies that monitor campaign contribution disclosure have subpoena power. Tennessee and two other states (Alabama and Virginia) did not have independent subpoena power. Seven of the states in the survey indicated that their legislation gives the investigating agency the authority to subpoena people, books, records, and other documents during the investigation. The registry's effectiveness as a regulatory entity is restricted when it does not have the power to force an individual to produce documents and records during an investigation.

The registry's ability to monitor adherence to the campaign contribution disclosure laws could be enhanced by the authority to conduct random audits. Random audits could be an effective tool to ensure that everyone (candidates, candidate committees, PACs, and lobbyists) are disclosing campaign contribution information according to registry rules and state law. Other regulatory agencies use random audits to determine whether the regulated individuals are properly reporting required information (e.g., the State Board of Accountancy randomly

verifies information certified public accountants submit concerning continuing professional education).

The Campaign Financial Disclosure Allocation Report Is Due Before the Post-General Campaign Contribution Disclosure Report

Candidates are required by statute to file an allocation report, which indicates how excess campaign contributions will be allocated, before they file a post-general campaign financial disclosure report, which indicates the ending balance of the campaign fund account.

All candidates who have excess campaign contributions must submit an allocation report to the registry (*Tennessee Code Annotated*, Section 2-10-114) indicating how the unexpended contributions will be allocated. The report is to be filed within 60 days after the last election the candidate participates in (January 4, 1999, for the November 3, 1998, general election). A candidate who participates in the general election is required to file the post-general election campaign contribution disclosure report within 48 days of the election. In theory, the post-general disclosure report would be submitted prior to the campaign allocation report. But *Tennessee Code Annotated*, Section 2-10-113, states that for any report required to be filed in December (e.g., post-general disclosure report), the reporting period will end on December 31 and the report must be filed no later than January 31 of the following year. Thus, the report for unexpended contributions is due in the first part of January, and the report that indicates the ending balance of the campaign fund is due on February 1, 1999, according to the schedule set by the registry.

The registry is not able to determine which candidates are required to submit an allocation report until the candidates submit the post-general disclosure report showing the ending balance of the campaign fund account. Submitting the allocation report with the post-general disclosure report or after the post-general disclosure report might be a better alternative. The registry would have accurate campaign balance information to determine who should submit the allocation of unexpended contributions report. The General Assembly may wish to consider amending the statutes so that a candidate's allocation of unexpended contributions report is submitted at the same time or after the post-general election campaign contribution disclosure report.

Citizens Must Provide Personal Information Before Inspecting Candidate Campaign Contribution Disclosure Reports

The registry is required by state law to make disclosure statements available for public inspection and copying. However, state law also requires that anyone requesting the disclosure information fill out a document that includes the individual's name, address, home and business telephone numbers, identification (driver's license, social security card, etc.), and the person or organization for whom the candidate's files were inspected or copied. This

document is placed in the candidate's file and a copy is forwarded to the candidate within three business days.

A national survey of all 50 states by Contributions Watch, a nonprofit national research and monitoring organization, indicated that Tennessee is one of only three states that require candidates to be informed whenever anyone inspects their campaign disclosure files. We conducted a telephone survey of 11 southeastern states (see Exhibit 2). Five of the states surveyed require the public to fill out a form in order to inspect or copy a candidate's or elected official's campaign disclosure file. The information requested from the reviewer ranges from name only to name, address, and telephone number. None of the states surveyed notified the candidate or elected official that someone had reviewed or copied his or her file.

The registry maintains campaign contribution disclosure information for all statewide officials, and the county election commissions maintain the records of the local candidates and copies of the reports submitted by members of or candidates for the General Assembly. An interested citizen may review the disclosure reports of local officials, local candidates, and candidates or members of the General Assembly at the appropriate county election commission. Files of the candidates for governor, public defender, or district attorney are available for review during the normal business hours of the registry in Nashville.

Exhibit 2
Access to Campaign Contribution Information
In Southeastern States

State	Electronic Filing	Access to Candidate Information	Personal Information Required	Candidate Notified of File Review
Alabama	No	Paper Reports	No	No
Arkansas	No	Paper Reports	Yes (1)	No
Florida	Yes	Internet	No	No
Georgia	No	Paper Reports	No	No
Kentucky	No	Paper Reports and Annual Reports	Yes (2)	No
Louisiana	No	Paper Reports and some information on Internet	Yes (3)	No
Mississippi	Yes	Paper Reports and Internet	Yes (4)	No
Missouri	No	Paper Reports	Yes (5)	No
North Carolina	No	Paper Reports and Internet	No	No
South Carolina	No	Paper Reports	No	No
Tennessee	No	Paper Reports	Yes (6)	Yes
Virginia	No	Paper Reports	No	No

Notes:

1. Individual must fill out form that includes the individual's name, address, telephone number, and employer. Information is maintained on file and is used only to contact person if certain information is missing after file has been reviewed.
2. Individual must fill out form that includes the individual's name, address, and what the individual is looking for.
3. The Board of Ethics will record the name of the individual who reviews a candidate's or elected official's file.
4. Individual must fill out a public disclosure form.
5. The individual must sign an acknowledgment stating that the information will not be used for any commercial purposes.
6. Individual must fill out a disclosure form and a copy of the form is forwarded to the candidate.

Electronic Filing of Campaign Contribution Disclosures Could Improve the Registry's Efficiency and Make the Information More Accessible

Under electronic filing systems, candidates submit their reports either on disk or through the Internet, and the data are read directly into computers at the election regulatory agency. In 1996, five states had mandatory electronic filing systems in place or planned. And in 1997, 13 state legislatures passed legislation promoting digital disclosure.

In addition, states are beginning to offer electronic access to campaign finance data. Eleven states, the federal government, and two major cities currently provide on-line access to campaign finance information via the Internet, and most of the sites offer comprehensive information on candidates, candidate committees, and PAC contributions and expenditures.

Registry staff indicated that it would not be very difficult to develop electronic filing software for the registry (proposed cost of \$100,000). The registry has included such a request in its *Three Year Information Systems Plan* submitted to the Office for Information Resources (OIR). The plan states that the registry proposes development of software capable of providing candidates for public office with the ability to electronically file campaign disclosure reports. The system would automate the filing of campaign disclosure statements and allow candidates to keep a record of campaign activity, such as contributions and expenditures, on their computer. The software would produce an electronic version of the specific disclosure required to be filed and would check the data for completeness and accurate calculations. It would make entering the information into the registry's computer much easier. Presently, the average time to manually enter a candidate's campaign finance disclosure report is about 10 to 15 minutes for a short report and two to three days for a report from the Governor. Electronic filing software could provide candidates an automated system to keep a record of their campaign activity, improve the accuracy of disclosures filed with the registry, lessen staff time required to enter candidate information, and provide the public with more accurate and timely information.

FINDING AND RECOMMENDATION

Candidates can avoid disclosure in certain cases

Finding

If a candidate does not accept or claim the certified violation notice from the registry, the registry cannot have a show-cause hearing or assess a civil penalty. Further, a candidate can be sworn into office without having submitted the required reports.

State law requires that the candidate or political campaign committee be personally served or sign for the certified notice from the registry or county election commission before any disciplinary action can be taken (*Tennessee Code Annotated*, Section 2-10-110). If the certified notice is returned to the registry by the United States Postal Service unclaimed, the statute or registry rules do not allow the registry to take any further disciplinary action. Thus, under the current statutes, if a candidate or committee does not claim the first notice from the registry indicating that the report is past due, the registry may not take any further disciplinary action, and the candidate may avoid being issued a civil penalty assessment order.

The only action the registry can take against a candidate or committee that does not claim the first notice is to place the candidate's name on the list of people ineligible to qualify for state or local election until the past-due reports are filed with the registry. The list is sent to county election commissions and the State Election Commission. The candidate cannot qualify to run in another election until his name is removed from the list. If the candidate does not run for office again, no action can be taken.

Also, a candidate can participate in the general election and not file the pre-general campaign contribution disclosure report. If the candidate wins the election, the individual can be sworn into the elected office and not file the pre-general and post-general disclosure reports. Exhibit 3 provides a time line that indicates when a candidate qualifies to run in an election and when the campaign financial disclosure reports are due at the registry's office.

According to an opinion from the Attorney General's Office, if a candidate wins the primary election but does not file all of the required reports and/or pay assessed penalties, the state coordinator of elections will not certify the individual for the general election in accordance with *Tennessee Code Annotated*, Sections 2-8-115 and 2-5-105. The candidate is ineligible to qualify as the political party nominee in the general election until the reports are filed and/or the penalties are paid. However, the statute does not address the problem of a candidate who wins the general election and does not file the required campaign disclosure reports. The state of Alabama has a statute that allows the revocation of an individual's certificate of election or nomination to a state or county office if the person fails to file any statement or report required by Alabama statute. The registry's executive director said that

this situation has never occurred but that one elected official was sworn into office and did not submit the required reports until April after the November general election.

Exhibit 3

Election Year 1998 Activity Timetable

February
 Feb. 19
 Qualifying deadline for May
 Primary

April
 April 28
 Pre-primary financial
 disclosure report for May
 county primary due

May
 May 5
 Election Day

 May 21
 On or before this date, the
 Coordinator of Elections shall
 publicly examine the returns
 and declare who shall have
 been nominated for office in
 the May primary.

May 21
 Qualifying deadline for the
 August primary.

May 24
 By this date, the county
 election commission in each
 county shall forward a
 complete list of candidates who
 have qualified for state public
office to the Registry of
 Election Finance.

June
 June 22
 Post-primary financial
 disclosure for May county
 primary due.

July
 July 6
 Excess contribution allocation
 report due for candidates who
 were defeated in the May
 primary and have an
 unexpended balance of
 contributions after the election

July 30
 Pre-primary financial
 disclosure report for August
 primary due.
 Pre-general financial
 disclosure for August general
 election due.

September
 September 23
 Post-primary financial
 disclosure report for August
 primary election due.

October
 October 5
 Allocation report due for
 candidates who were defeated
 in the August primary and
 have an unexpended balance of
 contributions after the election.

October 27
 Pre-general financial
 disclosure report for November
 general election due.

November
 November 3
 Election Day

January
 January 4
 Allocation report due for
 candidates who participated in
 the November general election
 and have an unexpended
 balance of contributions after
 the election.

February
 February 1
 Post-general financial
 disclosure report for November
 general election due.

Recommendation

The General Assembly may wish to consider amending state law so that certified notices returned as unclaimed can be reissued by overnight delivery service and be considered served. The reissued notice would become legal notification to the candidate or committee, and the registry could begin the civil penalty assessment process if the candidate or committee does not respond within 30 days of the date the notice is reissued.

The General Assembly may wish to consider amending state law so that candidates who win in the general election are required to file all reports prior to being sworn into office. This change in the statutes would prevent elected officials from holding office but not filing the required campaign contribution disclosure reports.

Management's Comment

We concur. As your recommendation noted, legislative changes would be required to prevent candidates from being able to avoid disclosure in some cases. The registry supports any necessary changes to the disclosure laws to close this loophole.

RECOMMENDATIONS

LEGISLATIVE

The performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Registry of Election Finance's operations.

1. The General Assembly may wish to consider amending state law so that a candidate's allocation of unexpended contributions report is submitted at the same time as or after the post-general election campaign disclosure report.
2. The General Assembly may wish to consider amending state law so that certified violation notices returned as unclaimed can be reissued by overnight delivery service and be considered served. The reissued notice would become legal notification to the candidate or committee, and the registry could begin the civil penalty assessment process if the candidate or committee does not respond within 30 days of the date the notice is reissued.
3. The General Assembly may wish to consider amending state law so that candidates who win the general election are required to file all reports prior to being sworn into office. This change in the statutes would prevent elected officials from holding office but not filing the required campaign contribution disclosure reports.