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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Beth Chapman  
Secretary of State's Office  
State Capitol - Suite S-105  
600 Dexter Avenue  
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Fair Campaign Practices Act – Reporting  
Requirements – Preclearance – Elections

A candidate is not required to file preelection financial disclosure reports until he or she has reached the threshold amount for campaign contributions or expenditures with a view toward influencing the outcome of an election. A candidate who has not reached the threshold amount may, however, file a waiver report.

Dear Ms. Chapman:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Under Act 2011-687, are candidates who, through their principal campaign committee, have received contributions or made expenditures with a view toward influencing an election in the 2012 election cycle, required to file preelection financial disclosure reports under the Fair Campaign Practices Act (“FCPA”) if the contributions and expenditures do not reach the threshold amount for the office in question?

FACTS AND ANALYSIS

Act 2011-687 (“Act”) amends section 17-5-8 of the FCPA to require the filing of preelection financial disclosure reports at more frequent intervals

beginning with the 2012 election cycle. The Act was precleared by the United States Department of Justice on September 22, 2011.

The Act amends section 17-5-8(a) of the Code of Alabama to require that each principal campaign committee shall file with the Secretary of State or judge of probate, as designated in section 17-5-9 of the Code, reports of contributions and expenditures at more frequent intervals "once a principal campaign committee files its statement under Section 17-5-4. . . ." 2011 Ala. Acts No. 2011-687. Section 17-5-4 refers to the requirement that a candidate must file his or her principal campaign committee statement within five days of becoming a candidate for office.

Moreover, the Act amends section 17-5-8(a)(1) to provide that, beginning with the 2012 election cycle, regardless of whether the candidate has opposition in any election, candidates are required to file monthly reports on the last day of the month beginning twelve months before the date of any election "for which a principal campaign committee receives contributions or makes expenditures with a view toward influencing such election's result." *Id.* The Act amends sections 17-5-8(a)(2) and (3) to require weekly reports in the month preceding the election and, in some cases, daily financial disclosure reports. *Id.*

Based on the interpretation given to the original FCPA and the preclearance of the original FCPA by the U.S. Department of Justice in 1989, this Office has consistently stated that a candidate is not required to file preelection FCPA reports of campaign contributions and expenditures unless the candidate has reached the threshold amounts under section 17-5-2(a)(1)(b). Opinions to Honorable Gerald O. Dial, Member, Alabama State Senate, dated September 7, 2006, A. G. No. 2006-142; Honorable Sherrie R. Phillips, Judge of Probate, dated November 13, 1990, A. G. No. 91-00084; and Honorable Mo Brooks, Member, House of Representatives, dated July 16, 1990, A. G. No. 90-00343. Those amounts are \$25,000 or more for any state office, other than one filled by election of the registered voters of any circuit or district; \$5000 or more for circuit or district offices; \$10,000 or more for elections to the Alabama Senate; \$5000 or more for elections to the Alabama House of Representatives; and \$1000 or more for local offices.

The recent amendment of the FCPA by Act 2011-687 did not change the requirement that a candidate must raise or spend the threshold amount with a view toward influencing the outcome of an election before the candidate is required to file preelection financial disclosure reports. The amendment merely changed the number and frequency of the disclosure reports to be filed, but no explicit or implicit changes were made to the requirement that the threshold must be met before reports are required to be filed.

Thus, because the more frequent financial disclosure requirements of amended sections 17-5-8(a)(1), (2), and (3) of the Act must be read in the light

of the original interpretation that the threshold amount must be raised or spent, candidates are not required to file preelection financial disclosure reports for the 2012 election cycle until they have either raised or spent the threshold amount with a view toward influencing an election's result. Although a candidate is not required to file preelection disclosure reports until he or she has raised or spent the threshold amount, a candidate may file a waiver report if the candidate does not reach the threshold amount.

CONCLUSION

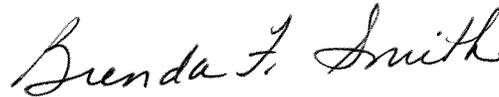
A candidate is not required to file preelection financial disclosure reports until he or she has reached the threshold amount for campaign contributions or expenditures with a view toward influencing the outcome of an election. A candidate who has not reached the threshold amount may, however, file a waiver report.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE  
Attorney General

By:



BRENDA F. SMITH  
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