

§ 23-15-813. Civil penalty for failure to file campaign finance disclosure report; notice to candidate of failure to file; assessment of penalty by Mississippi Ethics Commission; hearing; appeal

[Effective from and after January 1, 2018, this section will read:]

(a) In addition to any other penalty permitted by law, the Mississippi Ethics Commission shall require any candidate or political committee, as identified in Section 23-15-805(a), and any other political committee registered with the Secretary of State, who fails to file a campaign finance disclosure report as required under Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, or who shall file a report that fails to substantially comply with the requirements of Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, to be assessed a civil penalty as follows:

(i) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of State shall compile a list of those candidates and political committees who have failed to file a report. The list shall be provided to the Mississippi Ethics Commission. The Secretary of State shall provide each candidate or political committee, who has failed to file a report, notice of the failure by first-class mail.

(ii) Beginning with the tenth calendar day after which any report is due, the Mississippi Ethics Commission shall assess the delinquent candidate and political committee a civil penalty of Fifty Dollars (\$ 50.00) for each day or part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. In the discretion of the Mississippi Ethics Commission, the assessing of the fine may be waived, in whole or in part, if the Commission determines that unforeseeable mitigating circumstances, such as the health of the candidate, interfered with the timely filing of a report. Failure of a candidate or political committee to receive notice of failure to file a report from the Secretary of State is not an unforeseeable mitigating circumstance, and failure to receive the notice shall not result in removal or reduction of any assessed civil penalty.

(iii) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed constitutes compliance with Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53.

(iv) Payment of the fine without filing the required report does not excuse or exempt any person from the filing requirements of Sections 23-15-801 through 23-15-813, and Sections 23-17-47 through 23-17-53.

(v) If any candidate or political committee is assessed a civil penalty, and the penalty is not subsequently waived by the Mississippi Ethics Commission, the candidate or political committee shall pay the fine to the Commission within ninety (90) days of the date of the assessment of the fine. If, after one hundred twenty (120) days of the assessment of the fine the payment for the entire amount of the assessed fine has not been received by the Commission, the Commission

shall notify the Attorney General of the delinquency, and the Attorney General shall file, where necessary, a suit to compel payment of the civil penalty.

(b)

(i) Upon the sworn application, made within sixty (60) calendar days of the date upon which the required report is due, of a candidate or political committee against whom a civil penalty has been assessed pursuant to subsection (a) of this section, the Secretary of State shall forward the application to the State Board of Election Commissioners. The State Board of Election Commissioners shall appoint one or more hearing officers who shall be former chancellors, circuit court judges, judges of the Court of Appeals or justices of the Supreme Court, to conduct hearings held pursuant to this article. The hearing officer shall fix a time and place for a hearing and shall cause a written notice specifying the civil penalties that have been assessed against the candidate or political committee and notice of the time and place of the hearing to be served upon the candidate or political committee at least twenty (20) calendar days before the hearing date. The notice may be served by mailing a copy of the notice by certified mail, postage prepaid, to the last-known business address of the candidate or political committee.

(ii) The hearing officer may issue subpoenas for the attendance of witnesses and the production of documents at the hearing. Process issued by the hearing officer shall extend to all parts of the state and shall be served by any person designated by the hearing officer for the service.

(iii) The candidate or political committee has the right to appear either personally, by counsel or both, to produce witnesses or evidence in his or her behalf, to cross-examine witnesses and to have subpoenas issued by the hearing officer.

(iv) At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the hearing officer, who shall not be bound by strict rules of procedure or by the laws of evidence, but the determination shall be based upon sufficient evidence to sustain it. The scope of review at the hearing shall be limited to making a determination of whether failure to file a required report was due to an unforeseeable mitigating circumstance.

(v) In any proceeding before the hearing officer, if any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any documents called for by a subpoena, the attendance of the witness, the giving of his or her testimony or the production of the documents shall be enforced by a court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(vi) Within fifteen (15) calendar days after conclusion of the hearing, the hearing officer shall reduce his or her decision to writing and forward an attested true copy of the decision to the last-known business address of the candidate or political committee by way of United States first-class, certified mail, postage prepaid.

(c)

(i) The right to appeal from the decision of the hearing officer in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is granted. The appeal shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and the prepayment of all costs, including the cost of preparing the record of the proceedings by the hearing officer, and filing a bond in the sum of Two Hundred Dollars (\$ 200.00), conditioned that if the decision of the hearing officer is affirmed by the court, the candidate or political committee will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Mississippi Ethics Commission will pay the costs of the appeal and the action in court.

(ii) If there is an appeal, the appeal shall act as a supersedeas. The court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may be tried in vacation, in the court's discretion. The scope of review of the court shall be limited to a review of the record made before the hearing officer to determine if the action of the hearing officer is unlawful for the reason that it was 1. not supported by substantial evidence, 2. arbitrary or capricious, 3. beyond the power of the hearing officer to make, or 4. in violation of some statutory or constitutional right of the appellant. The decision of the court may be appealed to the Supreme Court in the manner provided by law.

(d) If, after forty-five (45) calendar days of the date of the administrative hearing procedure set forth in subsection (b), the candidate or political committee identified in subsection (a) of this section fails to pay the monetary civil penalty imposed by the hearing officer, the Secretary of State shall notify the Attorney General of the delinquency. The Attorney General shall investigate the offense in accordance with the provisions of this chapter, and where necessary, file suit to compel payment of the unpaid civil penalty.

(e) If, after twenty (20) calendar days of the date upon which a campaign finance disclosure report is due, a candidate or political committee identified in subsection (a) of this section shall not have filed a valid report with the Secretary of State, the Secretary of State shall notify the Attorney General of those candidates and political committees who have not filed a valid report, and the Attorney General shall prosecute the delinquent candidates and political committees.

§ 23-15-821. Personal use of campaign contributions by elected public officeholders or candidates for public office prohibited; definitions; disposition of unused funds; penalties [Effective January 1, 2018]

(1) The personal use of campaign contributions by any elected public officeholder or by any candidate for public office is prohibited.

(a) For the purposes of this section, "personal use" is defined as any use, other than expenditures related to gaining or holding public office, or performing the functions and duties of public office, for which the candidate for public office or elected public official would be required to treat the amount of the expenditure as gross income under Section 61 of the Internal Revenue Code of 1986, 26 USC Section 61, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended. "Personal use" shall not include donations to a political organization, or to a political action committee, or to another candidate.

(b) "Candidate" shall mean any individual described in Section 23-15-801(b), and shall include any person having been a candidate until such time that the person takes office or files a termination report as provided in this section.

(c) "Officeholder" shall mean any elected or appointed official from the beginning of his or her term of office until that person no longer holds office.

(2) The following personal use expenditures are specifically prohibited under this section:

(a) Any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence where a homestead exemption is claimed of a candidate or officeholder or a member of the candidate's or officeholder's family;

(b) Mortgage, rent or utility payments for any part of any nonresidential property that is owned by a candidate or officeholder or a member of a candidate's or officeholder's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;

(c) Funeral, cremation or burial expenses within a candidate's or officeholder's family;

(d) Clothing, other than items of de minimis value that are used for gaining or holding public office or performing the functions and duties of public office;

(e) Automobiles, except for automobile rental expenses and other automobile expenses related to gaining or holding public office or performing the functions and duties of public office;

(f) Tuition payments within a candidate's or officeholder's family other than those associated with training campaign staff or associated with an officeholder's duties;

(g) Salary payments to a member of a candidate's family, unless the family member is providing bona fide services to the campaign. If a family member provides bona fide services to a campaign, any salary payments in excess of the fair market value of the services provided is personal use;

(h) Nondocumented loans of any type, including loans to candidates;

(i) Travel expenses except for travel expenses of a candidate, officeholder or staff member of the officeholder for travel undertaken as an ordinary and necessary expense of gaining or holding public office, or performing the functions and duties of public office or for attending meetings or conferences of officials similar to the office held or sought, or for an issue the legislative body is or will consider, or attending a state or national convention of any party. If a candidate or officeholder uses campaign contributions to pay expenses associated with travel that involves both personal activities and activities related to gaining or holding public office or performing the functions and duties of public office, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty (30) days for the amount of the incremental expenses; and

(j) Payment of any fines, fees or penalties assessed pursuant to Mississippi law.

(3) Any expense that reasonably relates to gaining or holding public office, or performing the functions and duties of public office is a specifically permitted use of campaign contributions. Such expenditures are not considered personal use expenditures and may include, but are not limited to, the following expenditures:

(a) The defrayal of ordinary and necessary expenses of a candidate or officeholder, including expenses reasonably related to performing the duties of the office held or sought to be held;

(b) Campaign office or officeholder office expenses and equipment, provided the expenditures and the use of the equipment can be directly attributable to the campaign or office held;

(c) Donations to charitable organizations, not-for-profit organizations or for sponsorships, provided the candidate or officeholder does not receive monetary compensation, other than reimbursements of expenses, from the recipient organization;

(d) Gifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement or death, unless made to a member of the candidate's or officeholder's family;

(e) Meal and beverage expenses which are incurred as part of a campaign activity or as a part of a function that is related to the candidate's or officeholder's responsibilities, including meals between and among candidates and/or officeholders that are incurred as an ordinary and necessary expense of seeking, holding or maintaining public office, or seeking, holding or maintaining a position within the Legislature or other publicly elected body;

(f) Reasonable rental or accommodation expenses incurred by an officeholder during a legislative session or a day or days in which the officeholder is required by his or her duties to be at the Capitol or another location outside the officeholder's county of residence. Such rental or accommodation expenses shall not exceed Fifty Dollars (\$ 50.00) per day, if the officeholder receives per diem, or One

Hundred Ninety Dollars (\$ 190.00) per day, if the officeholder receives no per diem. Any expenses incurred under this paragraph (f) must be reported as an expenditure pursuant to this section;

(g) Communication access expenses, including mobile devices and Internet access costs. Examples of communication access expenses include, but are not limited to, the following: captioning on television advertisements; video clips; sign language interpreters; computer-aided real-time (CART) services; and assistive listening devices;

(h) Costs associated with memberships to chambers of commerce and civic organizations;

(i) Legal fees and costs associated with any civil action, criminal prosecution or investigation related to conduct reasonably related to the candidacy or performing the duties of the office held.

(4) Upon filing the termination report required under Section 23-15-807, any campaign contributions not used to pay for the expenses of gaining or holding public office or performing the functions and duties of public office shall:

(a) Be maintained in a campaign account(s);

(b) Be donated to a political organization, or to a political action committee, or to another candidate;

(c) Be transferred, in whole or in part, into a newly established political action committee or ballot question advocate;

(d) Be donated to a tax-exempt charitable organization as that term is used in Section 501(c) (3) of the Internal Revenue Code of 1986, 26 USC Section 501, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended;

(e) Be donated to the State of Mississippi; or

(f) Be returned to a donor or donors.

(5) Any candidate for public office or any elected official who willfully violates this section shall be guilty of a misdemeanor and punished by a fine of One Thousand Dollars (\$ 1,000.00) and by a state assessment equal to the amount of misappropriated campaign contributions. The state assessment shall be deposited into the Public Employees' Retirement System. No fine or assessment imposed under this section shall be paid by a third party.

(6) Any contributions accruing to a candidate's or officeholder's campaign account before January 1, 2018, shall be exempt and not subject to the provisions of this section. All exempt contributions must be designated as exempt on all reports filed with the Secretary of State pursuant to the provisions of this chapter.

(7) The Mississippi Ethics Commission shall issue advisory opinions regarding any of the requirements set forth in this section. When any officeholder or candidate requests an advisory opinion, in writing, and has stated all of the facts to govern the opinion, and the Ethics Commission has prepared and

delivered the opinion with references to the request, there shall be no civil or criminal liability accruing to or against any officeholder or candidate who, in good faith, follows the direction of the opinion and acts in accordance with the opinion, unless a court of competent jurisdiction, after a full hearing, judicially declares that the opinion is manifestly wrong and without any substantial support. No opinion shall be given or considered if the opinion would be given after judicial proceedings have commenced.

All advisory opinions issued pursuant to the provisions of this subsection (7) shall be made public and shall be issued within ninety (90) days of written request. The request for an advisory opinion shall be confidential as to the identity of the individual making the request. The Ethics Commission shall, so far as practicable and before making public, an advisory opinion issued under the provisions of on this subsection (7), make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion.

SOURCES: Laws, 2017, ch. 417, § 1, eff from and after Jan. 1, 2018.