

RESCINDED

DE 78-01 - January 9, 1978

Qualifying For Municipal Office; Financial Disclosure ss. 112.3146 & 112.317(l)(c), F.S.

To: Mrs. Johnnie F. Soule, City Clerk, Post Office Box 1148, Jasper, Florida 32052

Prepared by: Division of Elections

By your letter of December 20, 1977, you requested an opinion of this office regarding the status of a candidate for municipal office (city council to be exact) who fails to file a financial disclosure form at the time of filing his/her qualifying papers.

The filing of financial disclosure at the time of qualifying as a candidate is mandated, not by the election laws, but rather by Part III of chapter 112, F.S., the Code of Ethics for Public Officers and Employees. To be exact, s. 112.3145(2)(a), F.S., states:

"A person seeking nomination or election to state or local elective office shall file a statement of financial interests together with, and at the same time he files, his qualifying papers." (e.s.).

The requirement as to what shall be included in the statement filed is found in s. 112.3145(3), F.S.

The law provides penalties for violations thereof, including failure to file. In the case of a candidate, the penalty is disqualification from being on the ballot, s. 112.317(l)(c), F.S. The question remains as to the method and procedure of enforcement.

In an opinion issued shortly after this law (ch. 74-177, Laws of Florida) was enacted, the Attorney General determined that the Secretary of State had the authority to automatically remove names of candidates intentionally failing to file financial disclosure. Op. Atty. Gen. 074-251 (August 27, 1974). Though the opinion only specifically addressed state candidates qualifying with the Secretary of State, the broad implications of the legislation can be seen in its conclusion "that the legislature must have intended that in every case of intentional failure to file a disclosure statement the name of the candidate must be removed from the ballot." *Id.* (author's emphasis). The Florida Supreme Court found the disclosure requirement to be a condition precedent to becoming a candidate:

"We hold that the legislature may establish a standard means of financial disclosure to be made at the time of qualifying for all candidates for office in every branch as part of the election code and as a condition for the candidate to seek election or retention to an office." In Re The Florida Bar, 316 So. 2d 45 (Fla. 1975). (e.s.).

From the above it appears to be clear that the filing of financial disclosure constitutes a qualifying requirement in order to be a candidate for any elective public office in this state. The reasoning of the Attorney General's opinion is just as applicable to local qualifying officials as to state officials.

Accordingly, in the event of the refusal of a candidate for municipal office to file financial disclosure the qualifying officer must immediately disqualify that person. There is no need to wait for a judicial determination as required in the case of a failure to file campaign financial reports mandated by chapter 106, F.S. See s. 106.18, F.S. The effective enforcement of the financial disclosure law requires such prompt and decisive action by the qualifying officer.

SUMMARY

Financial disclosure required by s. 112.3145, F.S., for candidates for municipal office must be filed at the time of qualifying and failure to do so automatically disqualifies that person from the ballot.