

RESCINDED

DE 78-21 - April 12, 1978

**Financial Disclosure Required Of Candidates
FLA. CONST., ART. II, S.8;
SS. 99.012, 99.061, 112.312, 112.3145, 112.317, F.S.**

To: Richard C. McFarlain, Esq., McFarlain and Bobo, P.O. Box 1123, Tallahassee, Florida 32302

Prepared by: Division of Elections

By your recent letter on behalf of Senator Kenneth Plante, whom you represent, the following question was asked:

"Does a candidate for the State Senate qualifying on or after July 11, 1978 have the legal obligation to disclose his personal finances as required by Article II, Section 8, Florida Constitution or Florida Statutes 112, or both?"

If the answer is yes, does the disclosure have to be made in advance of the qualifying date if the candidate declares for the office prior to that date?"

In November, 1978, the voters of Florida approved an amendment to the state constitution adding section 8 to Article II. This amendment, popularly known as the Sunshine Amendment, became effective on January 4, 1977 and provided certain stringent financial disclosure requirements by public officials.

That portion of the amendment pertinent to the discussion here reads:

"Section 8. Ethics in government. A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officials and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(h) Schedule — On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

- a. A copy of the person's most recent federal income tax return; or
- b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000."

This amendment provides certain criteria and standards for disclosure, but its very language indicates the intent that it be fully implemented by subsequent legislative enactment. The Supreme Court of Florida has recently stated that "implementing legislation is authorized and obviously anticipated." Williams v. Smith, case no. 52, 840 (Fla. Sup. Ct., April 4, 1978).

An implementing law is necessary to give full effect to the amendment's provision. In the Williams case the court further stated:

"No specifics as to what constitutes full disclosure or as to where or when the disclosure must be made is included in subsection (a). That subsection standing alone cannot be said to be self-executing, and in obvious recognition of that fact, the framers included a schedule which provides those specifics 'until changed by law.'" Id., at p. 5.

The legislature attempted to provide this implementation during the 1977 regular legislative session. It approved Senate Bill 1454, which substantially amended ch. 112, F.S., the code of ethics for public officers and employees. Provisions relating to the disclosure requirements of candidates for elective public office were included.

However, the Governor saw fit on June 28, 1977 to withhold his consent and vetoed this bill. By his veto message to Secretary Smathers of that same date he correctly observed, "The veto of this bill does not mean that there will be no disclosures this year." In the absence of any implementing legislation, the Sunshine Amendment is effective to the extent provided in subsection (h) thereof. Furthermore, and perhaps most importantly, the disclosure requirements of part III, ch. 112, F.S., remain in effect. To date no legislation has been enacted into law which purports to implement the amendment. See Plante v. Florida Commission on Ethics, 354 So.2d 87 (1st D.C.A. Fla. 1977), at 88.

That section of ch. 112, which is the primary subject of this inquiry is s. 112.3145, F.S. It provides that a person seeking nomination or election to state or local elective office, i.e., a candidate, "shall file a statement of financial interests together with, and at the same time he files, his qualifying papers." s. 112.3145(2)(a), F.S. (1977). Such statement is filed with the candidate's qualifying officer, which in the case of a state legislative candidate is the Secretary of State, s. 99.061(1) and 112.3145(2)(c), F.S. (1977).

Financial disclosure required by ch. 112, which shall be referred to as statutory disclosure, must be filed no later than July 15th of each year in the case of currently serving public officers, s. 112.3146(2)(b), F.S. Candidates not holding office at the time of filing their qualifying papers are not required to file the original disclosure report with the qualifying officer, e.g., Secretary of State. The qualifying period for legislative office extends from noon of the 63rd day prior to the first primary election to noon of the 49th day prior to the first primary, s. 99.061(1), F.S. In 1978, this qualifying period begins

on July 11 and ends July 25.

The currently effective schedule contained in subsection (h) of the Sunshine Amendment mandates filing full and public disclosure by constitutional officers, including state legislators, by July 1 of each year.

For the purposes of financial disclosure, the term "candidate" is not defined in the constitution, but is defined in chapter 112, F.S. As it has meant for some time for disclosure purposes, candidate is thus defined as:

"... any person who has filed a statement of financial interest and qualification papers, has subscribed to the candidate's oath as required by s. 99.021, and seeks by election to become a public officer." s. 112.312(4), F.S.

Accordingly, it seems clear that for the purpose of financial disclosure filing, both from statutory language and prior practice, a person becomes a candidate at the time of qualifying and not before.

In addition to the provisions of chapter 112, the election law provides that no individual may qualify as a candidate for public office "until he has filed a statement of financial interest pursuant to s. 112.3145." s. 99.012(6), F.S. Refusal to file financial disclosure constitutes grounds for the qualifying officer, e.g., Secretary of State, to refuse to accept the qualifying papers or remove that individual from the ballot, s. 112.317(l)(c), F.S.; see Ops. Atty Gen. 074-251 (August 27, 1974).

No such equivalent provision exists in the constitution. The election law imposes no requirement for compliance with the Sunshine Amendment's so-called constitutional disclosure. In the absence of implementing legislation, the only guideline for the filing of constitutional disclosure is subsection (h).

There the filing of "full and public disclosure of financial interests" is required to be done by July 1 of each year. However, as applied to candidates, an individual is not a candidate for constitutional office until some time between July 11 and July 25 of this year. At the time of the deadline for filing constitutional disclosure until July 1 of the next year, i.e., 1979. The absence of legislation reconciling the filing deadline and the qualification period has caused this result.

An incumbent constitutional officer, in this case a state senator, is required by the constitution to file constitutional disclosure by July 1st. No statutory provision exists similar to that noted above for statutory disclosure which requires the filing of constitutional disclosure as a condition for qualifying of remaining a candidate.

Incumbent public officers do not file a second original disclosure at the time of qualifying, but file a copy of the disclosure filed pursuant to chapter 112. s. 112.3145(6), F.S. (1977). The "disclosure" referenced therein is the statement of financial interests detailed in s. 112.3145(3), F.S. By provisions of both the election law and the code of ethics for public officers, the qualifying officer of a candidate for constitutional office can look no farther than to determine that statutory disclosure has been filed at, or prior to, the time of the filing of qualifying papers.

Accordingly, in answer to your first question, under the law currently in effect on the date of this opinion, a candidate for the office of state senator need only file statutory disclosure at the time of qualifying as a candidate for such office. Constitutional disclosure should have been filed by July 1 in the case of an incumbent, and by July 1 of the next year in the case of a non-public officer candidate. The filing or non-filing of constitutional disclosure has no relevance to the acceptance of candidate qualifying papers by the Secretary of State.

It should be noted that the qualifying period is in July following the current legislative session. The legislature may approve legislation during this session which would implement the Sunshine Amendment and mandate candidate constitutional disclosure at the time of qualifying. Naturally, such a legislative enactment would supersede any opinion expressed herein.

The answer to your second question will be limited to the filing of statutory disclosure. The deadline for filing such disclosure is July 15th, which is within the qualifying period. Section 112.3145(6), F.S., provides that a public officer "who has filed a disclosure for the calendar or fiscal year" need not file a second disclosure at the time of qualifying, but may file a copy. (e.s.). The clear language of the statute indicates that to utilize this statute the official must have filed disclosure prior to qualifying. If the official seeks to qualify as a candidate prior to the filing of disclosure (deadline for which is 12 noon, July 15th), the original disclosure must be filed with and accompany the qualifying papers, s. 112.3145(2)(a), F.S. (1977). A copy should be actually attached to the qualifying papers.

The earliest possible time for disclosure by a candidate will be 12 noon on July 11, 1978. The latest possible filing of financial disclosure is July 15, 1978. A non-officeholding candidate is required to file statutory disclosure at the time of qualifying, as well as file constitutional disclosure by the next July 1. The mere act of declaring or announcing one's candidacy for public office does not itself invoke the disclosure requirement. Only the filing of qualifying papers does so.

SUMMARY

A candidate for public office is required to file a statement of financial disclosure pursuant to ch. 112, F.S., at the time of qualifying as such. A candidate in office at the time of qualifying is required to file a copy of previously filed disclosure pursuant to chapter 112 at the time of qualifying. In the absence of implementing legislation to the contrary, the full and public financial disclosure required by Art. II, s. 8 of the state constitution is not required to be filed until July 1 following qualification as a candidate. Incumbent public officers must file constitutionally provided disclosure by July 1 proceeding qualification as a candidate. Failure to file full and public financial disclosure in accordance with the state constitution does not disqualify an individual from being placed on the ballot as a candidate.