

Fair Campaign Practices Act

Candidate Filing Guide

Ninth Edition



Elections Division
Office of the Secretary of State
Beth Chapman, Secretary of State
State of Alabama

CANDIDATE CHECK LIST

Filing requirements for the following statements or reports are mentioned in this publication. **Other requirements may exist** for specific offices or to satisfy political party rules. Check when qualifying for further information on any additional requirements.

FAIR CAMPAIGN PRACTICES ACT

DATE FILED

- Appointment of Principal Campaign Committee (see page 5) _____
- Annual Report for Previous Calendar Year _____
- Pre-Election Reports (see page 10)
 - Primary Election 50-45-day report _____
 - Primary Election 10-5-day report _____
 - Primary Runoff Election 10-5-day report _____
 - General Election 50-45-day report _____
 - General Election 10-5-day report _____
- Annual Report for Election Year _____

ETHICS

- Statement of Economic Interests _____
Every candidate must file this form simultaneously upon becoming a candidate with the appropriate election official. If a candidate does not submit a Statement of Economic Interests in accordance with the requirements of §36-25-15, the name of the person shall not appear on the ballot and the candidate shall be deemed not qualified as a candidate in that election. The appropriate elections official shall remove the name of that candidate from the ballot.

BALLOT ACCESS

- Qualified for ballot access _____

JUDICIAL ELECTIONS

- Copy of “Statement of Economic Interests” filed with Clerk of the Alabama Supreme Court _____
Remember, original is filed with appropriate election official upon becoming a candidate.
- “Disclosure Statement of Financial Interests” with Clerk of the Alabama Supreme Court. _____
- Annual Report required by §12-24-2(a) (see page 32). _____

ALABAMA STATE CAPITOL
600 DEXTER AVENUE
SUITE S-105
MONTGOMERY, AL 36130



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WWW.SOS.ALABAMA.GOV

BETH CHAPMAN
SECRETARY OF STATE

Dear Fellow Alabamians:

We are blessed to live in a nation where we have the freedom to choose our elected officials. This precious right has been won and protected by our military, our brave men and women who have fought to defend our liberty.

It is my pleasure, along with the staff of the Secretary of State's Elections Division, to provide you with this Candidate's Filing Guide to the Fair Campaign Practices Act. We hope that you will find this book a valuable source of information.

While this filing guide addresses some of the most frequently asked questions concerning the FCPA, it should not be used as a substitute for the Code of Alabama, 1975.

Should you need further assistance, please contact the Secretary of State's Elections Division at 1-800-274-8683 or 334-242-7210.

We are here to serve you and it would be our honor.

Sincerely,

A handwritten signature in black ink that reads 'Beth Chapman'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Beth Chapman
Secretary of State

SPECIAL NOTE FOR FEDERAL CANDIDATES

This filing guide applies to candidates for state, county and municipal offices. Federal candidates must follow reporting guidelines and deadlines administered by the Federal Elections Commission (FEC). For more information, please contact the FEC at:

Federal Elections Commission
999 E Street Northwest
Washington, D.C. 20463
1-800-424-9530
www.fec.gov



PUBLICATION NOTES

FCPA FILING GUIDE - NINTH EDITION

Prepared by the Office of the Secretary of State

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Acknowledgements

The Office of the Secretary of State appreciates the guidance provided by the Office of the Attorney General through its Opinions Division. Especially, the Secretary of State would like to thank Assistant Attorney General Brenda Smith for the time she has devoted to reviewing this publication. Appreciation is also extended to the Administrative Office of the Courts and the Alabama Ethics Commission.

Legal Disclaimer

This document is not a substitute for the ***CODE OF ALABAMA, 1975***. It is provided as a guide and is not intended to be an authoritative statement of law. For further legal information, please consult the Code of Alabama, other appropriate legal resources or your attorney.

CONTENTS

PREFACE	1
GETTING STARTED	5
CAMPAIGN FUNDS	15
CAMPAIGN ADVERTISING	19
FREQUENTLY ASKED QUESTIONS	23
ELECTED OFFICIALS	31
APPENDIX: INDEPENDENT CANDIDACY.....	33



► ***HAVE QUESTIONS OR NEED FORMS?***

Contact the Office of the Secretary of State

Mailing Address: Elections Division
Office of the Secretary of State
P.O. Box 5616
Montgomery, Alabama 36103-5616

Telephone: 334-242-7210 or 1-800-274-8683

FAX: 334-242-2444

World Wide Web: www.sos.alabama.gov

E-mail: alavoter@vote.alabama.gov

► ***NEED INFORMATION FOR COMPLYING WITH THE ETHICS ACT?***

Contact the State Ethics Commission

Telephone: 334-242-2997

World Wide Web: www.ethics.alabama.gov

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CHAPTER I

GETTING STARTED

The Fair Campaign Practices Act (FCPA), the state's campaign finance law, is found in the **CODE OF ALABAMA 1975**, at §§17-5-1 THROUGH 19. It sets the rules for how and when candidates can raise and spend money. The law also specifies how campaign finance activities are reported.

CAMPAIGN FINANCE COMMITTEE MANDATORY

The law requires **every candidate** to organize a campaign finance committee and file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, which lists who serves on the committee. [§17-5-4] A candidate who fails to do this can be denied a certificate of election. [§17-5-18]

The committee form must be filed within five (5) days of becoming a candidate. For purposes of the FCPA, the law defines two ways to become a candidate [§17-5-2(b)(1)-(4)]:

1. Reaching a threshold by either raising or spending:
 - \$1,000 for local office (county, municipal)*
 - \$5,000 for district or circuit office*
 - \$5,000 for Alabama House of Representatives*
 - \$10,000 for Alabama Senate*
 - \$25,000 for statewide office*
2. Qualifying as a candidate with a political party or by filing a petition as a third party or independent candidate. [§17-5-2(a)(1)]

If, by the deadline for qualifying with a political party, an individual has not reached the office threshold and, thus, has not filed an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, the campaign finance committee section on the political party qualification form may be used to set up the committee. The important thing to remember about the committee form is that it must be filed with the secretary of state (for state offices) or with the probate judge (for local offices) within five days of becoming a candidate. The candidate should be sure party officials forward a copy of the qualifying form by that deadline to the appropriate FCPA filing office or else provide

him or her with a copy to file on his or her own behalf.

A candidate may either serve as the campaign finance committee or may appoint from two to five persons. The Office of the Secretary of State recommends that the candidate appoint at least two persons to serve on the principal campaign committee so that in the event of death or incapacitation, the remaining committee members can legally transact business. If a candidate appoints himself or herself and a second person to serve, a joint checking account can be established to enable the candidate to write checks on the account without requiring the second person's signature.

STATEMENT OF ECONOMIC INTERESTS

Every candidate must simultaneously file a **STATEMENT OF ECONOMIC INTERESTS** form upon filing as a candidate with the appropriate election official. [*§36-25-15*]

If the individual becomes a candidate by reaching the threshold for raising or spending campaign funds, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted with the **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form to the appropriate election official: the secretary of state for state candidates or the judge of probate for municipal and county candidates.

If the individual becomes a candidate by qualifying with a political party, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted to the political party with his or her qualifying papers.

If the individual is seeking ballot access by submitting a petition for independent candidacy, the **STATEMENT OF ECONOMIC INTERESTS** must be submitted with the petition to the appropriate election official: the secretary of state for state candidates or the judge of probate for municipal and county candidates.

If a candidate does not submit a **STATEMENT OF ECONOMIC INTERESTS** in accordance with the requirements of *§36-25-15*, his or her name shall not appear on the ballot and he or she shall be deemed not qualified as a candidate in that election. The appropriate election official shall remove the name of that candidate from the ballot. [*AG's Opinion 98-00200*]

AFTER THE MANDATORY COMMITTEE FILING

While every candidate must appoint a principal campaign

committee, candidates **who have not reached their threshold** are exempt from filing the contribution/expenditure reports until the threshold is reached. Otherwise, the contribution/expenditure reports are due 50-45-days and/or 10-5-days prior to an election. [*\$17-5-8*]

Though not required to file, candidates who have not reached their threshold may still choose to file the optional **WAIVER OF REPORT** for if they are concerned about the appearance of noncompliance.

After reaching the threshold, a candidate files the contribution/expenditure report at the required times. All contributions, including those received to reach the threshold, are reported.

Contributions and expenditures greater than \$100 must be itemized on these reports. Therefore, it is important for a candidate to maintain some type of internal records on contributions of \$100 or less, since an additional donation from the same contributor could bring the total to more than \$100 and result in a need to itemize that contributor's contributions. The same is true for expenditures of \$100 or less.

A candidate may request forms for filing these reports from either the Office of the Secretary of State or from the local probate judge. Forms and FCPA educational materials, such as this book, are supplied at no charge to the candidate. However, a candidate is not required to use the forms developed by the Office of the Secretary of State, as long as the information required by the FCPA is included in the report. [*AG's Opinion 90-00211*]

The law requires that a paper copy of filings be submitted. However, any candidate wishing to submit a report on computer disk, in addition to the paper filing, may do so. The candidate should call the Office of the Secretary of State for further filing details.

FILING LOCATIONS

1) Reports for District, Circuit, Legislative, and Statewide Offices

These reports are submitted to the Office of the Secretary of State. The mailing address is:

**Office of the Secretary of State
P.O. Box 5616
Montgomery, AL 36103-5616**

Those candidates hand-delivering reports should bring them to the Elections Division located on the second floor of the State Capitol in room E-208, which is in the east wing (just off the rotunda).

2) **Reports for local offices (municipal and county)**

Municipal and county reports are submitted to the local office of the probate judge.

DEADLINES

According to the FCPA, forms that are hand-delivered or sent by regular United States mail must be received on or before the due date.

Forms sent by certified or registered United States mail **must be postmarked no later than two days prior to the due date set in law.**

Only original forms can be submitted; thus, documents transmitted by a FAX machine, which are in fact copies, will not be accepted. A photocopy is also not acceptable, unless it carries original signatures.

FILING SCHEDULE

An FCPA filing calendar for the current election year is available from the Secretary of State's office and is published on its web site. ***Please take careful note of all deadlines!***

During a campaign cycle, contribution/expenditure reports are filed 50-45 days before and again 10-5 days before the primary; 10-5 days before the primary run-off; and 50-45 days before and 10-5 days before the general election. An annual report covering the previous year is required in January.

PENALTIES

The FCPA has some severe penalties for noncompliance:

[a] certificate of election or nomination shall not be issued to any person elected or nominated to state or local office who shall fail to file any statement or report required by this chapter. A certificate of election or nomination already issued to any person elected or nominated to state or county office who

fails to file any statement or report required by this chapter shall be revoked. §17-5-18

A candidate who violates a reporting requirement is guilty of a Class B misdemeanor. [§17-17-35(b)]

A candidate who violates any section of the FCPA other than §17-5-7 or other than the reporting requirements is guilty of a Class A misdemeanor. [§17-17-35(a)]

FCPA revisions passed during the 1997 legislative session make violations of section §17-5-7, dealing with limits on candidates receiving campaign contributions and spending campaign money, a Class B felony [§17-17-35(c)]. See **CHAPTER II, CAMPAIGN FUNDS**, for further information on this section of the law.

The attorney general or a district attorney may prosecute for violations of the FCPA.

FORMS

FCPA candidate forms fall into two categories: 1) committee forms and 2) disclosure filings. Disclosure filings are submitted as pre-election or annual reports, as well as a committee termination filing.

COMMITTEE FORMS

Candidates have two committee filings, the **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form, used to set up the committee, and the **STATEMENT OF DISSOLUTION**, filed when the committee is closed.

The importance of the mandatory committee filing has already been discussed on page 5. Once a committee is formed and the threshold reached, a candidate continues filing disclosure reports until the committee is dissolved.

CHANGES/UPDATES. Whenever a change takes place in the committee, such as the addition or removal of officers or members, change of phone number or address, or change of name for the political committee, the new information must be provided to the filing officer within 10 days. [§17-5-5(c)]

Candidates may provide the new information by filing a new **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form.

STATEMENT OF DISSOLUTION. Once a candidate determines that

he or she will no longer receive contributions or make expenditures, a **STATEMENT OF DISSOLUTION** form must be filed. This form may be accompanied by a **TERMINATION REPORT** which itemizes all contributions/expenditures of more than \$100 received or made since the last itemized report. The **TERMINATION REPORT** is filed using **FORMS 1A-5**, discussed under the **ANNUAL REPORT** and **PRE-ELECTION REPORT** sections on this and the following pages. If the **TERMINATION REPORT** is not filed with the **STATEMENT OF DISSOLUTION**, then the candidate must file the requisite **ANNUAL REPORT** covering the last year of activity.

The candidate must also disclose how any excess funds will be used. See page 15 for information on the law and excess funds.

PRE-ELECTION REPORTS

Once the contribution/expenditure threshold is reached, a candidate is responsible for filing the following disclosure reports, itemizing contributions or expenditures of more than \$100:

- ▶ **50-45-day report** - due prior to the primary and general elections.
- ▶ **10-5-day report** - due prior to the primary, primary run-off, and general elections.

EXCEPTION: If a candidate does not have opposition during the primary or primary run-off phase of the election cycle **and** the candidate has no campaign finance activity aimed at influencing the outcome of the primary or primary run-off, no pre-election report has to be filed for those elections, since the candidate's name is not on the ballot. [*AG's Opinions 90-00224 and 2006-142.*]

However, the candidate must keep accurate contribution/expenditure records during that period and report all activity on the **50-45-DAY REPORT** filed prior to the general election, even if unopposed in the general election. The candidate must also file the **10-5-DAY REPORT** for the general election and provide a full accounting of contributions/expenditures

for the year (January 1 - December 31) in the
ANNUAL REPORT that is filed in January.

Pre-election Contribution/Expenditure Report (Forms 1-5)

Form 1: Summary of Contributions and Expenditures.

This FCPA form must be notarized.

Form 2: Cash Contributions.

The FCPA requires that cash contributions of more than \$100 be itemized. If they choose to do so, candidates may itemize contributions of \$100 or less, but this is not required by law. However, if contributions of \$100 or less are not itemized, the law does require that they be totaled and reported. They may be reported as “non-itemized” contributions on **FORM 1**.

As mentioned earlier, some type of campaign bookkeeping system should be used to track contributors making small donations of \$100 or less per contribution. If the combined contributions from any one contributor total more than \$100, an itemized entry on **FORM 2** is then required.

Form 3: In-kind Contributions.

An “in-kind” contribution is made when equipment, furniture, office space, or some other item of value other than money is contributed or used. A reasonable market value should be listed.

Form 4: Receipts from other Sources.

Receipts from other sources are usually funds received through interest payments on a political committee bank account, loans made to the committee or refunds.

Form 5: Expenditures.

The FCPA requires that expenditures of more than \$100 be itemized. Candidates may itemize expenditures of \$100 or less, but this is not required by law. However, if the expenditures of \$100 or less are not itemized, the law does require that they be totaled and reported. They may be reported as “non-itemized” expenditures

on **FORM 1**.

As with contributions, some type of campaign bookkeeping system should be used to track small expenditures. If expenditures to the same vendor total more than \$100, an itemized entry on **FORM 5** is then required.

ANNUAL REPORT

The FCPA requires candidates to file an **ANNUAL REPORT** by January 31. This report covers all contributions and expenditures for the campaign committee for the preceding calendar year.

The **ANNUAL REPORT** is comprised of the same forms as the pre-election reports, discussed in the previous section, with one exception.

FORM 1 of the pre-election report is replaced by **FORM 1A**, a form specifically designed for the purposes of the **ANNUAL REPORT**. **FORM 1A** is designed with two sections. Section I summarizes totals of contributions/expenditures since the last filing. Section II is a summary of contributions/expenditures for January 1-December 31 of the previous year. **FORM 1A** must be notarized.

In the itemized sections of the **ANNUAL REPORT (FORMS 2-5)**, candidates include those entries of more than \$100 that have been received or spent since the last itemized report.

WAIVER OF REPORT (OPTIONAL FORM)

Those committees that have not reached the contribution/expenditure threshold or have had no activity during the reporting period are not required to file reports. However, an optional **WAIVER OF REPORT FORM** is provided for those who wish to place a record of their status in a formal FCPA report.

PUBLIC ACCESS

The FCPA requires the secretary of state and probate judges to make the campaign finance reports available for public inspection and copying during regular office hours.

However, the law specifies that information copied from the reports may not be sold or used by any political party or any

political committee to solicit contributions or for commercial purposes, without the express written permission of the candidate or political committee reporting the information. [§17-5-11(2)]

POINTS TO NOTE

Campaign Activities. The Fair Campaign Practices Act contains other provisions, in addition to those dealing with campaign finance reporting. The Office of the Secretary of State recommends a complete reading of the act which is contained in the ***CODE OF ALABAMA, 1975, §17-5-1 through §17-5-19.***

Prohibitions. Candidates should note the statutes on conduct that are contained in §17-17-33 through §17-17-35 of the Code of Alabama. Among the prohibited activities are making a contribution in someone else's name, buying votes, interfering with a person's right to freely cast a vote, soliciting money or anything of value by physical force, job discrimination, financial reprisal, or threats, or fraudulently misrepresenting oneself as acting for a candidate.

Other sections of state law also address campaign behavior; see page 22 for highlights of those statutes.

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CHAPTER II

CAMPAIGN FUNDS

The FCPA has strict controls on what a candidate can solicit campaign funds for, how they can be spent, and when he or she can raise money.

FUND RAISING

The law states that a candidate may only accept campaign contributions for three purposes [*§17-5-7(b)(1)-(4)*]:

- ▶ Influence the outcome of an election.
- ▶ Pay off a campaign debt.
- ▶ Pay all expenses associated with an election challenge, including quo warranto challenges.

Campaign funds, including excess funds left after the election, may be spent only for the following purposes [*§17-5-7(a)(1)-(5)*]:

- ▶ Expenditures of the campaign.
- ▶ Expenditures that are reasonably related to performing the duties of the office held [does not include personal and legislative living expenses].
- ▶ Donations to the State General Fund, the Education Trust Fund or equivalent county or municipal funds.
- ▶ Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U.S. Code.
- ▶ Transfers to another political committee.
- ▶ Inaugural or transitional expenses. [Warning: the Ethics Act prohibits converting to personal use contributions from an inaugural or transitional fund (*§36-25-6*).]

FUND-RAISING PERIOD

Candidates may begin raising money 12 months prior to the

election in which they intend to be on the ballot. However, FCPA provision §17-5-7(b)(2) prohibits candidates for state offices from raising money while the Alabama Legislature is in session, except within 120 days of a primary, primary run-off, or general election. [§17-5-7(b)(2)]

A 1999 amendment to the campaign finance law creates an exception to this prohibition on fundraising. State candidates and elected officials may loan money to their committees while the Legislature is in session. [§17-5-7(b)(2)]

The fund-raising prohibition does not affect expenditures: state candidates may continue to spend campaign funds while the Alabama Legislature is in session.

The fund-raising prohibition also does not apply to candidates for county or municipal offices. They may continue raising money when the Legislature is in session.

CAMPAIGN DEBT

Candidates should take particular note that the **FCPA limits the fund-raising period to clear campaign debts** to only 120 days after the election. They are limited to raising only up to the amount of the debt plus the entire amount of filing threshold for that office. [AG's Opinion 99-00090]

All contributions received after the election to retire any debt must be reported:

Under the FCPA all contributions ... by candidates, their principal campaign committees, and other political committees are to be reported regardless of the time when the contributions are received. [AG's Opinion 96-00120]

BRIBES AND CORRUPT INFLUENCE

The FCPA prohibits a candidate or campaign finance committee from accepting, soliciting, or receiving a contribution as a bribe, or for corruptly influencing the official actions of a public official or a candidate for public office.

PENALTY

Any person who intentionally violates the section that governs how and when money can be raised [§17-5-7] is guilty, upon

conviction, of a Class B felony. [*§17-17-35*] A Class B felony carries a penalty of up to \$10,000 and/or not less than two and not more than 20 years imprisonment.

The statute of limitations on these violations is four years from the commission of the offense. Violators can be prosecuted by either a district attorney or the attorney general.

The Legislature, through Act of Alabama 97-651, effective October 1, 1997, added this penalty provision.

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CHAPTER III

CAMPAIGN ADVERTISING

The Fair Campaign Practices Act (FCPA) specifies that campaign advertising appearing in print and broadcast media and campaign literature must be clearly identified with an advertising disclaimer.

Campaign literature and advertisements must carry this information on the face or front page and broadcast materials must be identified either at the beginning or the end of the radio or television spot.

DISCLAIMER

The FCPA does not give a specific format for wording the disclaimer. However, the FCPA does state that political advertisements must be identified or marked as being a paid advertisement. Such words as *paid advertisement by*, *paid for by*, and *paid political ad* meet the requirements of the act; however, an advertiser is not limited to just those phrases. The attorney general has advised that:

words which indicate that the advertisement is a paid political advertisement meet the requirements of the law. [AG's Opinion 94-00227]

In addition, the disclaimer must contain the identification of the person, candidate, principal campaign committee, or other political committee placing the ad. Under the FCPA, the term **identification means full name and complete address**. The attorney general has stated that a complete address includes the street or post office box, city, and state. [AG's Opinion 94-00227]

EXCEPTION

A U.S. Supreme Court ruling in *McIntyre v. Ohio Elections Commission* seems to provide one very limited exception for advertising identification. In that case, the court upheld the right of an individual to distribute anonymous leaflets opposing a proposed school tax levy. The impact on the FCPA disclaimer requirements, however, is minimal. Alabama's attorney general has written that

the ruling:

is limited to individuals who distribute anonymous written material (particularly leaflets) in a non-candidate election. [AG's Opinion 95-00218]

In all other circumstances, the advertising must carry identification.

APPLICATION

The advertising disclaimer must be on all types of advertising, such as billboards, yard signs, bumper stickers, buttons, pencils, caps, and T-shirts.

PENALTY

The attorney general or a district attorney may prosecute any person who violates the FCPA. Anyone failing to comply with the advertising requirements is guilty of a Class A misdemeanor and subject to a fine of not more than \$2,000 and/or imprisonment of not more than one year.

CAMPAIGN ADVERTISING AT THE POLLING PLACE

The FCPA ensures that all campaign advertising must be clearly marked. Another section of law, §17-9-50, prohibits anyone from campaigning within 30 feet of the polling place. Generally, that distance is interpreted as 30 feet from the door of the polling place. [AG's Opinion 82-00113]

Candidates frequently ask if supporters may wear campaign T-shirts or buttons when they go to the polling place to vote or when campaign workers are asked to accompany a voter who has requested assistance. *AG's Opinion 93-00118* states that there is no provision that specifically prohibits an elector from wearing campaign buttons, badges, or T-shirts while inside the polling place to vote or assist another voter.

Also, nothing prohibits a voter from taking a sample ballot into the polling place, but it should not be left.

It should be noted that poll watchers, who can be appointed by the candidate or a political party, are prohibited from campaigning while inside the polling place, and the attorney general has held that wearing buttons, badges, or T-shirts suggests, either directly or indirectly, how a citizen should

vote and, therefore, constitutes campaigning. [AG's Opinions 93-00118 and 84-00020]

**Elect
John
Doe**

Paid for by the
Committee to Elect John Doe
PO Box 5551212
Inacounty, AL 99999

***ELECT
JANE DOE TO
PUBLIC OFFICE***

Paid political advertisement by
Committee to Elect Jane Doe
P.O Box 1212555
Ourfair City, Alabama

OTHER SELECTED SECTIONS OF THE CODE OF ALABAMA OF INTEREST TO CANDIDATES

MISCELLANEOUS OFFENSES §17-17-36 THROUGH §17-17-45

This section of law prohibits such illegal voting as casting more than one ballot for the same office or knowingly attempting to vote when not entitled to do so.

Citizens are prohibited from bribing or attempting to influence voters, buying or selling votes, altering or changing the vote of an elector, or disturbing an elector on election day.

A candidate convicted of bribing or attempting to influence a voter is not allowed to hold the office to which he or she was elected for that term.

RIGHTS OF CITY, COUNTY, STATE EMPLOYEES §17-1-7

City, county, and state employees have the right to participate in city, county, or state political activities to the same extent as other citizens of the state, including endorsing candidates and contributing to campaigns. City, county, and state employees also have the right to join local political clubs and organizations and state and national political parties. They may also publicly support issues of public welfare.

However, no employee may use his or her official position to influence the vote or political action of any person.

It is unlawful for any state officer or employee to solicit any type of political campaign contributions from employees under his or her supervision. Such supervisors are also not allowed to coerce any subordinate employee into working in any political campaign or cause.

Any state, county, or city employee must be either on approved leave or on personal time to engage in political activity.

USE OF STATE-OWNED PROPERTY §36-12-60 THROUGH 64

It is unlawful for any state officer or employee to use or to permit to be used any state-owned property including stationery, stamps, office equipment, office supplies, or automobiles for political activity.

State employees are also prohibited from transporting campaign literature in either a state vehicle or in a private vehicle while mileage is being paid by the state.

CHAPTER IV

FREQUENTLY ASKED QUESTIONS

The Elections Division receives many questions from candidates regarding the Fair Campaign Practices Act (FCPA) and how it relates to a particular situation or set of circumstances. Following is a discussion of some of those questions that are asked most frequently.

Should you have a question that is not addressed in this section, please contact the Elections Division for further assistance.

Must I set up a separate bank account for my principal campaign committee?

Yes. The Fair Campaign Practices Act specifies that principal campaign committee funds must be segregated and that there can be no commingling of personal funds with campaign funds.

I am running for a federal office. Do I have to report under the FCPA?

No. Alabama participates in the FEC State Filing Waiver program that waives the requirement that campaign finance reports filed with the FEC also be filed with the state election office, provided that the state has an adequate system to serve the public with electronic access to, and duplication of, reports and statements.

Do I have to keep receipts for the expenditures made during the campaign?

Yes. The FCPA states that the political committee treasurer must keep a receipted bill or canceled check for every expenditure greater than \$100 and for expenditures of \$100 or less, if the aggregate amount of such expenditures to the same person during a calendar year is greater than \$100. The receipts should be kept for a period of two years from the date of the expenditure.

I charge many of my campaign expenses on a credit card. May I itemize only the total amount I pay to the credit card company?

No. The FCPA requires itemization and identification (full

name and complete address) of:

each person to whom expenditures have been made . . . within the calendar year in an aggregate amount greater than \$100.00, the amount, date and purpose of each expenditure . . . [§17-5-8(c)(7)]

This issue is also addressed in *AG's Opinion 95-00132* that says:

Several expenditures should be not lumped together under a general heading of credit card expenses.

If a candidate could only enter the name and full identification of the credit card company, many expenditures of more than \$100 could be hidden.

Do I have to file an APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE form even if I do not reach the campaign finance contribution/expenditure threshold for the office I'm seeking?

Yes. All candidates must file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form within **five days** of qualifying (with a political party or as an independent candidate) or within **five days** of reaching the campaign finance contribution/expenditure threshold set for the office.

I received an unwanted, unsolicited check from a PAC, and I returned it. Must I report that as a contribution?

It depends on whether it was deposited into your campaign account. If a candidate receives an unwanted, unsolicited campaign contribution and returns it to the contributor without depositing it or using it to influence an election, it does not have to be reported. However, a candidate may voluntarily report the receipt and return of such a contribution. **FORM 2** has a checkoff box under the "Source of Contribution" section that can be used to show that transaction. When totaling contributions received for that page, omit the returned contribution from the total. However, if the contribution is deposited into the campaign account or is used in any way to influence an election, it must be reported as a contribution. [*AG's Opinion 94-00228*]

Does the FCPA require that I put the address of my political committee on a campaign button?

Yes. §17-5-13 addresses political advertisements that are printed. All such advertising, whether printed on a campaign button, T-shirt, brochure, sign, etc., must carry the name of the candidate or political committee and the address.

May I transmit FCPA filings by FAX to the secretary of state's office or judge of probate?

No.

Is there any prohibition against my borrowing money from my campaign account, provided that I pay back the money plus the prevailing rate of interest?

The Office of Secretary of State believes that such action is prohibited by these sections:

§17-5-7(b)(1) of the FCPA —

*. . . a candidate, public official, or principal campaign committee may only accept, solicit, or receive contributions: **to influence the outcome of an election.***

§36-25-5(a) of the Ethics Act —

No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

§17-5-7(a) of the FCPA —

. . . a candidate, public official, or principal campaign committee . . . may only use contributions, and any proceeds from investing the contributions that are in excess of any amount necessary to defray expenditures of the candidates, public official, or principal campaign committee, for the following purposes:

(1) Necessary and ordinary expenditures of the

campaign.

- (2) *Expenditures that are reasonably related to performing the duties of the office held . . . (Does not include personal and legislative living expenses.)*
- (3) *Donations to the State General Fund, the Education Trust Fund or equivalent county or municipal funds. Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U.S. Code.*
- (4) *Transfers to another political committee as defined in this chapter.*
- (5) *Inaugural or transitional expenses incurred after October 1, 1995.*

In addition, the Ethics Act states in §36-25-6:

*Contributions to an office holder, a candidate, or to a public official's inaugural or transitional fund **shall not be converted to personal use.***

Does a write-in candidate have to comply with the Fair Campaign Practices Act?

Yes, if the candidate has received contributions or made expenditures with a view toward bringing about his or her election. As with other candidates, the contributions or expenditures must reach the threshold of the office to trigger the reporting requirements. [AG's *Opinion 91-0084*]

I have several volunteers who work in my campaign. Must I assess a fair labor wage and report that as an in-kind contribution?

No. The FCPA lists in §17-5-2(a)(2)(b) several services that are not considered contributions including:

- ▶ Value of services provided by individuals who volunteer their time on behalf of a candidate.
- ▶ The use of real or personal property and the cost of

invitations, food, or beverages, voluntarily provided by an individual to a candidate when the voluntary personal service is on the individual's residential or business premises.

- ▶ Any unreimbursed payment for travel expenses made by an individual who volunteered on behalf of a candidate.
- ▶ The amount spent by a state or local political party for the preparation, display, mailing, or other distribution of a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office. [However, this exemption does not extend to the costs incurred by the committee when such a listing is placed on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising.]
- ▶ The value or cost of polling data and voter preference data and information, if provided to a candidate or political committee, unless the information was compiled with the advance knowledge of and approval of the candidate or the political committee.

I am a member of the Alabama Legislature and am considering renting an apartment in Montgomery. May I pay the rental expense from my campaign account?

No. The FCPA prohibits using campaign funds for personal or Legislative living expenses. The Act lists such prohibited expenses as:

Household supplies, personal clothing, tuition payments, mortgage, rent, or utility payments for a personal residence; admission to an entertainment event or fees for a country club or social club, unless tied to a specific campaign event or functions involving constituents; and any other expense, excluding food and beverages, that would exist irrespective of the candidate's campaign or duties as a legislator. Personal and legislative living expenses shall not include expenses for food, beverages, travel, or communication incurred by the legislator in the performance of the office held. [§17-5-2(b)(9)]

May I pass out campaign materials on private property, such as an apartment complex, if there is a “no soliciting” sign?

That’s a question that must be addressed with the owner. Any enforcement of “no soliciting” would be between the owner and an individual who wishes to campaign. [AG’s *Opinion 96-00306*]

Is it legal to pass out sample ballots at the polling place?

Yes, provided that those handing out the sample ballots are at least 30 feet from the door of the polling place. Also, those individuals distributing sample ballots should not in any manner attempt to intimidate or harass voters. Voters may take marked sample ballots into the polling place for personal use but should not leave them in the polling place.

May a candidate assist a voter?

Yes. Under the ***Harris v. Siegelmen*** federal court order, a voter may request assistance from anyone other than those persons prohibited by federal law. Federal law prohibits assistance from the voter’s employer or an agent of the employer or from an officer or agent of the voter’s union. §17-9-13 was revised to incorporate this language and bring the text of this section into compliance with the terms of ***Harris v. Siegelmen***.

However, candidates should note that they may assist **only if the voter requests the help**. The voter is then required to sign the poll list in a designated column showing that assistance is requested, and the candidate must also sign the poll list.

May citizens use video cameras at the polling place?

No. The United States Department of Justice wrote the following to the state prior to the 1994 general election:

We have found that no useful information is obtained, and federal law is likely to be violated, when private citizens form “ballot security” forces and attempt to take over the role of policing polling places. While this type of action often is proffered in the guise of helping law enforcement officials, the filming at or near the polls achieves nothing of the kind. Instead, we have

found that such action intimidates lawful voters and interjects an element of fear into the process by which our republican form of government is guaranteed to our citizens.

Instead, citizens or poll watchers who believe election violations are occurring at the polling place should immediately notify either the local sheriff, local district attorney or the attorney general's office.

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CHAPTER V

ELECTED OFFICIALS

The Secretary of State congratulates each candidate who wins his or her election! Before getting immersed in the details of the job, each elected official should take a few minutes to note the information in this chapter.

COMMISSIONS

All state officials must be commissioned by the Secretary of State and Governor before assuming office. County officials who meet certain requirements may also receive commissions.

The law dictates what documents must be filed and where for obtaining a commission. Generally, an elected official must file an oath and/or a bond at the state or county level, depending upon the office. County officials must also have a certification from their probate judge. The law requires the Office of the Secretary of State to charge everyone a \$5.00 commissioning fee.

Information packets providing the specific requirements for each office are available from the Government Services Division in the Office of the Secretary of State.

FILING REQUIREMENTS

FCPA

All elected officials must file an **ANNUAL REPORT** by January 31 each year, even if they have had no activity and even if they have dissolved their campaign finance committee. They may file either a **FORM 1A**, showing the lack of activity, or an optional **WAIVER OF REPORT** form. Remember, an **ANNUAL REPORT** is due not just for the year you are elected but for every year you are in office.

STATEMENT OF ECONOMIC INTERESTS

All elected officials must file a **STATEMENT OF ECONOMIC INTERESTS** with the Ethics Commission every year by April 30. For more information, contact the State Ethics Commission, 334-242-2997.

JUDICIAL REPORTS

Judges have additional requirements and should consult Canons 6C and 7 of the ***Canons of Judicial Ethics*** relating to filing requirements and campaign conduct in general.

A report required by §12-24-2(a) is described here, since it is filed with the Office of Secretary of State:

Any justice or judge of an appellate or circuit court of this state shall file, at least two weeks prior to the commencement of his or her term of office, with the Secretary of State, a statement disclosing the names and addresses of campaign contributors and the amount of each contribution made to him or her in the election immediately preceding his or her new term of office. Contributions from political action committees may be accepted if the committee furnishes to the Secretary of State according to existing law a list of names and addresses of contributors and an amount properly attributable to each contributor. When a judge or justice does not file this annual statement, the Secretary of State shall notify the Administrative Office of Courts and that office shall withhold further compensation to the justice or judge pending compliance with this section. [§12-24-2(a)]

The Office of Secretary of State will accept an FCPA **ANNUAL REPORT** as fulfilling this requirement, provided the report is filed at least two weeks prior to the commencement of the term of office as required by §12-24-2(a).

The Secretary of State's Office interprets the disclosure requirements of §12-24-2(a) to be the same as FCPA reporting requirements: that is, only contributions of more than \$100 must be listed. If a contributor gives several donations that total more than \$100, those contributions must be itemized. Also, all types of contributions — in-kind, receipts from other sources, etc. — must be listed. Of course, to comply with the FCPA requirements, judges must also include expenditures in the report, even though §12-24-2(a) does not mention them.

APPENDIX

INDEPENDENT CANDIDACY

Those not qualifying through a political party may obtain ballot access by submitting a petition on or before 5:00 PM on the date of the primary election [*§17-9-3(a)(3)*].

The primary is scheduled for the first Tuesday in June of the election year.

No qualifying fee is required, but the petition must be submitted to the secretary of state, if seeking a state or federal office, or to the probate judge if the office is local.

SIGNATURES

FEDERAL CANDIDATES

A congressional candidate must submit a petition with enough signatures to meet or to exceed three percent of the qualified electors who cast ballots for the office of governor in the last general election for the district in which he/she is running [*§17-9-3(a)(3)*]. For the number of signatures needed in each district, call the Office of Secretary of State's Elections Division at (334) 242-7210. Candidates seeking a U.S. Senate seat would need the number of signatures for statewide candidacy.

STATE OR COUNTY CANDIDATES

The number of signatures on the petition must equal or exceed at least three percent of the qualified electors who cast ballots for the office of governor in the last General Election in the county, district, or other political subdivision for which he/she is seeking ballot access. For the number of signatures needed for a particular state office, call the Office of Secretary of State's Elections Division at (334) 242-7210.

FCPA

Independent candidates should be aware of their obligation to file an **APPOINTMENT OF PRINCIPAL CAMPAIGN COMMITTEE** form at the time they submit their petition or within five days of exceeding a monetary threshold amount set forth by the

FCPA. Threshold amounts are \$25,000 for statewide candidates, \$10,000 for Alabama State Senate, \$5,000 for State House, judicial district and circuit races, and \$1,000 for county or municipal races. (See **CHAPTER I**.)

ETHICS

Independent candidates must file a **STATEMENT OF ECONOMIC INTERESTS** with the appropriate election official simultaneously upon becoming a candidate. For information on filing the **STATEMENT OF ECONOMIC INTERESTS**, call the Alabama Ethics Commission (334) 242-2997.

PETITION REQUIREMENTS AND SUGGESTIONS

A petition form, which may be photocopied, is available from the Office of the Secretary of State.

Each petition **must** include the following information:

- ▶ A statement that includes the name of the independent candidate, the date of the general election for which ballot access is sought, and the name of the office sought, including district number, if applicable.
- ▶ Numbered pages.
- ▶ Requested information for each person signing, which includes: name, residential address, county of residence, city of residence (if applicable), voting place, date of birth and signature. A signature shall not be deemed invalid for lacking any portion of the requested information if the disclosed information is sufficient for determining the validity of the signature.

The following are suggestions for the petition:

- ▶ Have the voter sign in ink and write legibly.
- ▶ Obtain signatures in excess of required number, as some signatures may not be valid and identifiable.
- ▶ Keep a copy of the petition.

PETITION FILING LOCATIONS

Petitions for state and federal offices are filed in the Elections

Division of the Office of Secretary of State, located in the State Capitol, Room E-208 at 600 Dexter Avenue in Montgomery, Alabama. Petitions may be submitted by mail to the Elections Division at this address:

Elections Division
Office of the Secretary of State
P.O. Box 5616
Montgomery, Alabama 36103

Petitions for county ballot access are filed in the office of the county's probate judge.

NOTES

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Elections Division
Office of the Secretary of State
PO Box 5616
Montgomery AL 36103-5616