

Before the
Administrative Hearing Commission
State of Missouri



ELISE ALTENBERND,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1027 EC
)	
MISSOURI ETHICS COMMISSION,)	
)	
Respondent.)	

DECISION

Elise Altenbernd is liable for a fee of \$210 for the late filing of her personal financial disclosure statement (“statement”). We grant the motion for summary decision filed by the Missouri Ethics Commission (“the MEC”) and cancel the hearing.

Procedure

The MEC assessed a fee against Altenbernd for the late filing of her statement. On June 7, 2013, Altenbernd filed a complaint appealing the assessment. On July 15, 2013, the MEC filed a motion for summary decision. On July 23, 2013, Altenbernd filed a response.

Our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the MEC establishes facts that Altenbernd does not dispute and entitle the MEC to a favorable decision. The following facts are undisputed.

Findings of Fact

1. Altenbernd was a board member of the charter school, Scuola Vita Nuova (“the School”), after January 1, 2012. She was not a member of the School board for the 2012-2013 school year.

2. On November 13, 2012, the MEC requested from the School a list of its governing board members who would be required to file a statement. The School responded, and Altenbernd’s name was on the list.

3. On January 28, 2013, the MEC mailed a reminder to Altenbernd,¹ stating that her name had been submitted as a person who must file a statement and that the statement would be due on May 1, 2013.

4. May 1, 2013, fell on a Wednesday.

5. On March 15, 2013, the MEC mailed a second reminder to Altenbernd providing the same information.

6. On May 3, 2013, the MEC mailed a letter to Altenbernd stating that the MEC had not received her statement.

7. Altenbernd filed her statement with the MEC on May 22, 2013.

Conclusions of Law

We have jurisdiction to hear the complaint.² We perform the same role as the MEC below, following the law it must follow and rendering, on the evidence heard, the decision of that agency. *See Mo. Ethics Comm’n v. Wilson*, 957 S.W.2d 794, 798-99 (Mo. App. W.D. 1997). The MEC has the burden of proof.³

¹ All letters were sent to Altenbernd’s correct address.

² Section 105.961.3. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri. Sections changed in Senate Bill 844 (2010) are reprinted in the Supplement because parts of that bill were declared unconstitutional in *Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012).

³ *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App., St.L.D. 1974).

Section 105.483⁴ requires certain officials to file a statement. That statute does not list members of governing boards of charter schools among those required to file. Instead, § 160.400 applies the filing requirements of §§ 105.483, 105.485, 105.487, and 105.489 to such board members:

15. . . . All members of the governing board of the charter school shall be considered decision-making public servants as defined in section 105.450 for the purposes of the financial disclosure requirements contained in sections 105.483, 105.485, 105.487, and 105.489.

Section 105.487⁵ states:

The financial interest statements shall be filed at the following times, but no person is required to file more than one financial interest statement in any calendar year:

(3) Every other person required by sections 105.483 to 105.492 to file a financial interest statement shall file the statement annually not later than the first day of May and the statement shall cover the calendar year ending the immediately preceding December thirty-first; provided that the governor, lieutenant governor, any member of the general assembly or any member of the governing body of a political subdivision may supplement such person's financial interest statement to report additional interests acquired after December thirty-first of the covered year until the date of filing of the financial interest statement;

(4) The deadline for filing any statement required by sections 105.483 to 105.492 shall be 5:00 p.m. of the last day designated for filing the statement. When the last day of filing falls on a Saturday or Sunday or on an official state holiday, the deadline for filing is extended to 5:00 p.m. on the next day which is not a Saturday or Sunday or official holiday. Any statement required within a specified time shall be deemed to be timely filed if it is postmarked not later than midnight of the day previous to the last day designated for filing the statement. [Emphasis added.]

⁴ RSMo 2000.

⁵ *Id.*

There is no dispute that Altenbernd was a member of the School board for a period of time after January 1, 2012. Section 105.487(3) required her to file a statement “not later than the first day of May and the statement shall cover the **calendar** year ending the immediately preceding December thirty-first[.]”⁶ Altenbernd does not deny she received the reminders of her need to file a statement.⁷

In her response to the MEC’s motion, Altenbernd states she “disregarded letters from the [MEC] ‘assuming’ that they were just not aware that I was no longer on the Board.” She also states her position was unpaid, she was not a member of the School board for the 2012-2013 school year, and the School did not inform her that she was required to file anything. She states: “That I find out after the fact that the Ethics Commission runs a Year Behind – is their problem, not mine.”

None of these assertions changes Altenbernd’s duty to file the statement as required by law. This Commission does not have the power to change the law.⁸ We are also unable to change the law to address Altenbernd’s “fairness” argument, that she did not know she would be required to file for a prior calendar year when she was not a member of the School board for the most current **school** year. As an administrative agency, we have no authority to apply the doctrines of equity.⁹ Although Altenbernd states that she still wants her hearing, she has shown no facts that dispute the MEC’s evidence entitling it to a favorable decision. Altenbernd was required to file the statement on May 1, 2013, and failed to do so. She is liable for a late fee.

Next we determine the amount of the fee. Section 105.963.3 states:

The executive director shall assess every person required to file a financial interest statement pursuant to sections 105.483 to 105.492 failing to file such a financial interest statement with the

⁶ Emphasis added.

⁷ Although the duty to timely file the statement is not conditioned upon receiving such notice. *See Graham-Alexander v. Missouri Ethics Comm’n*, No. 07-1046 EC (AHC Feb. 27, 2008).

⁸ *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

⁹ *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940).

commission a late filing fee of ten dollars for each day after such statement is due to the commission. The executive director shall send a notice to any person who fails to file such statement informing the individual required to file of such failure and the fees provided by this section. If the person persists in such failure for a period in excess of thirty days beyond receipt of such notice, the amount of the late filing fee shall increase to one hundred dollars for each day thereafter that the statement is late, provided that the total amount of such fees assessed pursuant to this subsection per statement shall not exceed six thousand dollars.

Altenbernd filed her statement on May 22, 2013, 21 days late. She is liable for a late fee of \$210.

Summary

Altenbernd is liable for a \$10 assessment for each day she was late filing her statement. She filed 21 days late, and is liable for a \$210 late fee. We grant the motion for summary decision and cancel the hearing.

SO ORDERED on September 24, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner