

Before the
Administrative Hearing Commission
State of Missouri



GREGORY FLESHMAN,)	
)	
Petitioner,)	
)	
vs.)	No. 14-0267 EC
)	
MISSOURI ETHICS COMMISSION,)	
)	
Respondent.)	

DECISION

Gregory Fleshman is subject to a late filing fee of \$30.00.

Procedure

On February 26, 2014, Fleshman filed a complaint appealing the Missouri Ethics Commission’s (the “MEC”) determination that, as a candidate for the elective office of a political subdivision with an annual operating budget of over one million dollars, he failed to file a personal financial disclosure statement (“PFD”) by the deadline of February 4, 2014, and is subject to a late fee of \$10 per day pursuant to § 105.963.3 RSMo.¹ Our notice of complaint and hearing notice were sent to the MEC on February 26, 2014. The MEC filed its answer on March 27, 2014 and a motion for summary decision, memorandum in support, and exhibits on April 7, 2014. We gave Fleshman until April 22, 2014 to respond to the MEC’s motion, but he failed to respond.

¹ Supp. 2013. Statutory references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Pursuant to 1 CSR 15-3.446(6),² we may decide this case without a hearing if the MEC establishes facts Fleshman does not genuinely dispute and entitle the MEC to a favorable decision. Facts may be established by admissible evidence such as a stipulation, pleading of the adverse party, discovery response of the adverse party, affidavits, or any other evidence admissible under law. 1 CSR 15-3.446(6)(B). The MEC's motion is accompanied by documentary evidence, including authenticated business records of the MEC. Therefore, we make our findings of fact based on this admissible evidence, along with Fleshman's pleadings.

Findings of Fact

1. At the time this appeal was filed, Fleshman was a candidate for election to the Board of Directors for the Putnam County Memorial Hospital District ("District"), which election was to be held April 8, 2014.
2. The District is a political subdivision of the State of Missouri.
3. At all relevant times, the District had an annual operating budget exceeding one million dollars.
4. The District has not provided to the MEC a certified copy of an ordinance, order, or resolution passed pursuant to § 105.485.4 making public its own method of disclosing potential conflicts of interest and substantial interests of its officers and employees.
5. The closing date for the April election was January 21, 2014. Fleshman was required to file a PFD with the MEC no later than fourteen days thereafter, or February 4, 2014.
6. On February 4, 2014, Fleshman visited the office of the Putnam County Clerk, seeking advice about complying with the deadline for filing the PFD. The clerk's secretary called the MEC and spoke to someone who informed her that if his PFD was postmarked on that

² All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

date, it would be considered timely filed. Fleshman deposited a paper copy of his PFD with the United States Postal Service on the date it was due.

7. On February 7, 2014, Fleshman filed a PFD electronically with the MEC, but his paper copy was not delivered until February 10, 2014, bearing a postmark date of February 6, 2014.

8. The electronic PFD received on February 7, 2014 was three days late.

9. On February 18, 2014, the MEC sent Fleshman a late fee assessment notice notifying him that he owed a late fee of \$30.00.

10. On February 26, 2014, Fleshman paid the late fee under protest and requested that the MEC forward his protest letter to this Commission to initiate an appeal, and the MEC complied with the request.

Conclusions of Law

We have jurisdiction of this matter. Section 105.963.4. Our duty is to decide the issues that were before the MEC. *Mo. Ethics Comm'n v. Wilson*, 957 S.W.2d 794, 798 (Mo.App. S.D., 1997). We must follow the same law that the MEC must follow. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21(Mo. banc 1990). The MEC has the burden of proof. *See Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo.App., St.L.D. 1974).

The MEC contends Fleshman is subject to late fees of \$30.00 for failing to timely file a PFD as required by § 105.483, which provides, in pertinent part:

Each of the following persons shall be required to file a financial interest statement:

* * *

(11) Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with

an annual operating budget in excess of one million dollars, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485[.]

Section 105.487 provides when Fleshman was required to file:

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:

(1) Each candidate for elective office, except those candidates for county committee of a political party pursuant to section 115.609, RSMo, or section 115.611, RSMo, who is required to file a personal financial disclosure statement shall file a financial interest statement no later than fourteen days after the close of filing at which the candidate seeks nomination or election[.]

* * *

(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.

Fleshman does not dispute that he was required to file his statement with the MEC according § 105.483, and the record reflects that he made an attempt to do it timely.

However, individuals are presumed to know the law, and ignorance of the law is not an excuse for failing to follow it. *In re Estate of Pittman*, 16 S.W.3d 639, 643 (Mo. App., W.D. 2000). Regardless of whether Fleshman relied, to his detriment, upon the postal service or the advice of a clerk or both, the obligation to timely file a financial interest statement was his alone. Regardless of whether Fleshman mailed his PFD on February 4 or 6, it was not timely filed.

Only a postmark dated on or before February 3, 2014 would have resulted in a timely filing according to § 105.487(4).

The MEC is required to assess late fees pursuant to § 105.963.3, which provides:

The executive director [of the MEC] 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 commission a late filing fee of ten dollars for each day after such statement is due to the [MEC.]

In his appeal, Fleshman expressed frustration in having to pay late fees despite his effort to comply with the PFD filing deadline. We sympathize, but we cannot change the law to address his special circumstances, no matter how compelling they might be.

Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). We do not have authority to add to or subtract from the terms of the statutes or to make an exception. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). Section 105.963.3 does not give the MEC or this Commission discretion to waive the late fee if a financial interest statement is not timely filed. Therefore, we assess Fleshman a late fee of \$10.00 for each day his PFD was late, or a total of \$30.00.

Summary

We grant the MEC's motion for summary decision. Fleshman is subject to the MEC's assessment of a late fee in the amount of \$30.00 for filing his financial interest statement three days after the February 4, 2014 deadline. We cancel the hearing.

SO ORDERED on May 21, 2014.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner