

Before the  
Administrative Hearing Commission  
State of Missouri



CARL FOUNTAIN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 14-0713 EC
	)	
MISSOURI ETHICS COMMISSION,	)	
	)	
Respondent.	)	

**DECISION**

Carl Fountain is subject to a late filing fee of \$50.

**Procedure**

On May 16, 2014, Fountain filed a complaint appealing the Missouri Ethics Commission’s (the “MEC”) determination that, as an elected member of a political subdivision with an annual operating budget of over one million dollars, he failed to file a financial interest statement by the deadline of May 1, 2014, and is subject to a late fee of \$10 per day pursuant to § 105.963.3.<sup>1</sup> Our notice of complaint and hearing notice were sent to the MEC on May 16, 2014. The MEC filed its answer on June 9, 2014 and a motion for summary decision, memorandum in support, and exhibits on July 2, 2014. We gave Fountain until July 14, 2014 to respond to the MEC’s motion, but he failed to respond.

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<sup>1</sup>RSMo Supp. 2013. Statutory references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Pursuant to 1 CSR 15-3.446(6),<sup>2</sup> we may decide this case without a hearing if the MEC establishes facts Fountain 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 Fountain's pleadings.

### **Findings of Fact**

1. The Cooper County Memorial Hospital District ("District") is a political subdivision of the State of Missouri.
2. At all relevant times, the District had an annual operating budget exceeding one million dollars.
3. 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.
4. On December 13, 2013, the District electronically filed with the MEC a list of its elected officials required to file a financial interest statement, and identified Fountain as a member of the Board of Trustees on that list.
5. Fountain was required to file a financial interest statement with the MEC no later than May 1, 2014, but failed to do so.
6. May 1, 2014 was not a Saturday, Sunday, or legal holiday.
7. On May 6, 2014, at 1:58 p.m., Fountain electronically filed a verified financial interest statement with the MEC, five days late.

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<sup>2</sup> 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.

8. The MEC assessed a late fee of \$10 for each day Fountain's report was late, for a total of \$50.

9. On May 16, 2014, Fountain appealed the MEC's assessment of a late fee to this Commission.

### 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.<sup>3</sup> We must follow the same law that the MEC must follow.<sup>4</sup> The MEC has the burden of proof.<sup>5</sup>

The MEC contends Fountain is subject to late fees of \$50 for failing to timely file a financial interest statement 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 Fountain 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:

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<sup>3</sup> *Mo. Ethics Comm'n v. Wilson*, 957 S.W.2d 794, 798 (Mo.App. S.D., 1997).

<sup>4</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

<sup>5</sup> *See Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo.App., St.L.D. 1974).

(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.

Fountain does not dispute that he was required to file his statement with the MEC according § 105.483.3, and the record reflects that he made an attempt to do it timely. In his complaint, Fountain asserts that he did not have a computer and had to contact the District's administrative office to assist him in completing the filing of his financial interest statement. He also seeks our reconsideration of the late fees assessed because his wife had serious health issues at the time.

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 commission[.]

Because this Commission was created by state statutes, we have only such authority as the statutes give us.<sup>6</sup> We do not have authority to add to or subtract from the terms of the statutes or

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<sup>6</sup> *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

to make an exception.<sup>7</sup> 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 are required to assess a late fee of \$10 for each day after May 1, 2014, when Fountain's financial interest statement was due, to May 6, 2014, when it was received by the MEC, for a total late fee of \$50.

### **Summary**

Fountain is subject to a late fee in the amount of \$50 for filing his financial interest statement five days after the May 1, 2014 deadline. We grant the MEC's motion for summary decision and cancel the hearing.

SO ORDERED on July 23, 2014.

\s\ Mary E. Nelson\_\_\_\_\_

MARY E. NELSON

Commissioner

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<sup>7</sup> *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).