

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-15

Re: Can a financial statement be amended after it has been filed, adding information inadvertently excluded? If the amendment is submitted after the deadline, will the filer be penalized, or will the amendment preclude any prosecution?

This opinion responds to a request (AOR 1984-1) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984, and relates to the following issue:

Can you amend your financial disclosure statement after it has been filed, adding information inadvertently excluded? If the amendment is submitted after the date the original report was due, will the filer be assessed a civil penalty for late reporting? Will the amendment preclude any prosecution?

Tex. Rev. Civ. Stat. Ann. art. 6252-9b, § 3(a) and (b) (Vernon Supp. 1984) requires executive heads of state agencies, certain state officers, candidates, and appointees to file a financial statement with the secretary of state containing the information required by section 4 of the article. Deadlines for filing the statement are established by paragraphs (b), (c), (d), (e) and (f) of section 3. There are no provisions in the statute regarding the submission of required information after a filing deadline.

There are civil and criminal sanctions for failing to comply with the disclosure provisions of the article. A person required to file a financial statement commits an offense if he knowingly and willfully fails to file a financial statement "as required by this Act." Tex. Rev. Civ. Stat. Ann. art. 6252-9b, § 10(a) (Vernon Supp. 1984). The offense is a Class B misdemeanor.

The secretary of state is directed to "conduct a continuing survey to determine whether all persons required to file financial statements under this Act have actually filed the statements in compliance with this Article. Whenever he determines that a person who is required to file a financial statement has failed to file the statement in compliance with this Act, the secretary of state shall send a written statement of his findings to the appropriate prosecuting attorneys of the state." Tex. Rev. Civ. Stat. Ann. art. 6252-9b, § 12 (Vernon Supp. 1984).

Section 12A of Tex. Rev. Civ. Stat. Ann. art. 6252-9b (Vernon Supp. 1984) states in part:

(a) The secretary of state shall determine from any available evidence whether a statement required to be filed with him under this Act is late. In making that determination, the secretary shall immediately mail a notice of the determination to the person responsible for filing the statement and to the appropriate attorney for the state.

(b) If a statement is determined to be late, the person responsible for filing the statement is civilly liable to the state for \$100.00 . . . .

A declaration of policy is provided in art. 6252-9b, § 1, as follows:

It is the policy of the state of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and to strengthen the faith and the confidence of the people of Texas in their state government there are provided . . . disclosure requirements to be observed by persons owing a responsibility to the people of Texas and the government of the State of Texas in the performance of their official duties.

To the extent that submission of required information after the filing deadline will further the policy of this statute, such submission should be encouraged. Therefore, it is the opinion of this Commission that a filer may submit information that supplements a timely filed financial statement. However, since the statute fails to provide a mechanism for such submission or a defense based thereon, the submission of supplemental information by itself will not preclude liability.

Article 6252-9b mandates compliance with its disclosure requirements by certain deadlines. Compliance necessitates that all information required by section 4 of the article be filed by the particular deadline. It is the opinion of the Commission that if a filer submits required information after the deadline, he has failed to timely file a financial statement and is subject to the provisions of §12A of that article.

The timely filing of an incomplete statement is not a filing of a statement "as required by this Act." However, there must be a knowing and willful failure to comply with the disclosure requirements of the statute before criminal sanctions may be imposed. Inadvertence has been defined as "inattention; neglect." St. Paul Fire & Marine Ins. Co. v. Earnest, 293 S.W. 677, 684 (Tex. Civ. App. Amarillo 1927), aff'd., 296 S.W. 1088 (Tex. 1927). Failure to comply with the statute may be inadvertent and that inadvertence may be a defense to criminal prosecution by negating the required mental state. Whether or not a criminal violation has occurred involves a determination of fact to be made by the appropriate fact finder on a case by case basis.

Since the financial disclosure statement is filed under oath, an omission of information may also trigger a violation of the perjury statute. Successful prosecution would require proof that the omission was done with the intent to deceive. Tex. Penal Code Ann. § 37.02 (Vernon 1974).

#### SUMMARY

A financial statement may be amended. However, because the statute does not expressly provide for amendments, the failure to timely file a complete and accurate statement as required by the Act subjects the filer to civil liability for late filing. A late amendment would not necessarily subject the filer to criminal liability, which requires a finding of knowingly and willfully failing to file an accurate statement. Whether or not a criminal violation of disclosure requirements has occurred must be determined on a case by case basis by the appropriate finder of fact.

W. Page Keeton, Chairman  
State Ethics Advisory Commission  
Adopted this 14th day of September, 1984.