

**ADVISORY OPINION AO-1988-007  
RECONSTITUTED AS ETHICS INTERPRETATION EI-1988-007  
ISSUED JANUARY 11, 1989**

The Oklahoma Council on Campaign Compliance and Ethical Standards ["the Council"] has received your request for an advisory opinion asking, in effect:

*Does Title 74 O.S. Supp. 1988, § 4223 (E) require members of a school district board of education to file financial disclosure statements with the Council?*

The law under consideration reads:

A member of a board or commission as *created* by the Oklahoma Constitution or by statute shall file a Financial Disclosure Statement with the Council *upon initial appointment* and not later than April 30 of each even-numbered year thereafter. The provisions of this subsection shall not be construed to require precinct inspectors, judges, clerks and counters to file Financial Disclosure Statements.

[emphasis added]

Besides serving on a board, school board members are elected officials. The first question to be answered then is whether school boards are "created" or "authorized" by statute.

Title 70 O.S. 1981, § 5-101 reads in pertinent part:

All school districts in Oklahoma, now in existence or which may hereafter be *created*, shall be designated only as independent, dependent or area vocational-technical school districts...

[emphasis added]

Title 70 O.S. 1981, § 5-107A reads in pertinent part:

The governing board of each school district in Oklahoma is hereby designated and shall hereafter be known as the board of education of such district.

The terms "create" and "authorize" are defined as follows:

"Create" means a bringing of something into being and the inception or beginning of something not theretofore in existence.

[*U.S. v. Turner*, C.A. Mo., 287 F. 2d 821, 826]

"Authorize" means to clothe with authority, warrant or legal power; to give a right to act; to empower.

[*Ernest M. Loeb Co. v. Avoyelles Drainage Dist. No. 8 of Avoyelles Parish, La., D.C. La.*, 92 F. Supp. 126, 135]

The case of *State v. Gooding*, 124 P. 791, 792, 22 Idaho, 128, held that to create an office means to cause it to exist, and an act which provided for the organization and government of highway districts, etc. does not create the office of commissioner of highway districts, but makes it possible for the people to organize highway districts and thereby bring into existence the office of highway commissioner.

The case of *Funke v. Joint County School Committee of Milwaukee and Waukesha Counties*, 73 N.W. 2d 579, 580, 271 Wis. 439, held that an order by which a joint school district dissolved five common school districts, detached a portion of a joint district, and attached to and consolidated within an existing city district all of the territory so dissolved and detached did not constitute the "creating" of a new district, within a statute requiring that when a new district is created, it must be numbered and a designated number of school board members ordered elected.

School boards are thus not brought into existence by statute. School districts are not even created by statute but may "hereafter be created." Citizens of each school district are given the right to elect a certain number of members to a board to govern each school district. Therefore, it follows that school boards are not created but authorized by statute.

The next point is that Title 74 O.S. Supp. 1988, § 4223 (E) requires the filing of financial disclosure statements upon "initial appointment and not later than April 30 of each even-numbered year thereafter". It would be difficult to determine when school board members would file since they are not appointed unless it is to fill a vacancy.

If school board members are not appointed, then would they not need to file before April 30 of 1990? This would be more than a year after board members began to serve for 1989 candidates. Or, would they file the same as elected officials before the 40th day after each general election?

Title 74 O.S. Supp, 1988, § 4223 (A) reads:

Any person elected to an office for which a declaration of candidacy is required to be filed with the State Election Board as provided in Section 5-102 of Title 26 of the Oklahoma Statutes or the county election board as provided in Section 5-103 of Title 26 of the Oklahoma Statutes, except any person required to file financial disclosure pursuant to the provisions of any federal law, shall file a Financial Disclosure Statement with the Oklahoma Council on Campaign Compliance and Ethical Standards on or before the fortieth day after each General Election.

Title 26 O.S. 1981 § 5-103 reads:

Candidates for county office shall file declarations of candidacy with the secretary of the county election board in the county in which said candidates seek election.

If school board members are to file as elected officials, then why are they purposely excluded from the requirement [since they are not candidates for county office] by the above sections?

Title 74 O.S. Supp. 1988, § 4201.1 (A) (3) reads:

The clerk of the board of education shall administer this act with respect to candidates for school district office.

If the legislature intended for school board members to file financial disclosure statements, they surely would have placed the administration [receipt and public availability of the statements] with the clerks of the boards of education, as they did the candidate reports in the above section, so that the citizens of each district would have access to the reports.

**It is, therefore, the advisory opinion of the Council, as voted on at its regular meeting on January 11, 1989, that Title 74 O.S. Supp. 1988, § 4223 (E) does not require school board members to file financial disclosure statements with the Council.**