

**ADVISORY OPINION AO-1989-005
RECONSTITUTED AS ETHICS INTERPRETATION EI-1989-005
ISSUED JULY 12, 1989**

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

Do Title 74 O.S. Supp. 1989, §§ 4211 (B), (C) and (D) and 4223 (A), (B) and (E) apply to candidates or members of a school district board of education?

Section 4211 (B) reads, in pertinent part:

Every candidate for local office other than county office who receives a contribution which exceeds Two Hundred Dollars (\$200.00) in a campaign shall file such a report with the clerk of the appropriate political subdivision.

"Local office" is defined in § 4202 (14) as:

...all elective offices for which declarations of candidacy are filed with the secretary of any county election board.

Title 70 O.S. Supp. 1989, § 2-104 reads, in pertinent part:

No person shall be elected or voted upon, nor shall his candidacy be submitted or considered, at any school district election for membership on the board of education of a school district whether a dependent district, an independent district, or an area vocational-technical school district, unless he files a declaration of his candidacy with the office of the county election board of the county wherein the supervision of the school district is located,...

Section 4211 (C) and (D) refer to "contributions" to a "candidate"; therefore, § 4211 (B), (C) and (D) are all applicable to candidates for school boards.

Section 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.

Subsection (B) of § 4223 reads, in pertinent part:

Any candidate for 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 shall file a Financial Disclosure Statement with the Council during the period specified in Section 5-110 of Title 26 of the Oklahoma Statutes.

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.

Since school board candidates do not run for "county office", it is clear that neither of these sections apply to school board candidates.

Section 4223 (E) 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.

A school board is an elective "board"; therefore, the next question to be answered 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...

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*, 74 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, 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. 1989, § 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 1988 candidates. Or, would they file the same as elected officials before the 40th day after each general 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 § 4223 (B) previously quoted?

Title 74 O.S. Supp. 1989, § 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 July 12, 1989, that Title 74 O.S. Supp. 1989, § 4211 (B), (C) and (D) apply to candidates for school boards, and that § 4223 (A), (B) and (E) do not require school board candidates or elected members to file financial disclosure statements with the Council.