



ALAN WILSON
ATTORNEY GENERAL

May 23, 2012

The Honorable William E. Crosby
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Crosby:

You request an opinion "as to the definition of 'current' under Code Section 8-13-1356(A) pertaining to filing disclosure statement by an incumbent." You correctly note that the state Supreme Court did not address this question in its recent decision in *Anderson v. S.C. Election Comm., et al.*, Op. No. 21270 (May 2, 2012). By way of background, you state the following:

By way of review, the Supreme Court of South Carolina issued Opinion Number 27120 on May 2, 2012, whereby they were asked to construe the meaning of SC Code Section 8-13-1356 (Supp. 2011), which provides that "[a] candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination." After hearing oral arguments, the Court ruled "we find the statute means what it says", and granted declaratory relief whereby "individuals *not exempt* who are seeking nomination by political party primary to be a candidate for office must file a Statement of Economic Interest (SEI) at the same time and with the same official with whom the individuals file a Statement of Intention of Candidacy (SIC)". (See Appellate Case No. 2012-211366 at page 2.)

In ruling, the Court did not address or define paragraph (A) of SC Code Section 8-13-1356, which states as follows: (A) This section does not apply to a public official who has a *current* disclosure statement on file with the appropriate office pursuant to Sections 8-13-1110 or 8-13-1140." Section 8-13-1110 outlines those required to file statement of economic interests and includes "a public official". [See Section 8-13-110(B)(10).]

Section 8-13-1140 outlines the requirement of an updated statement, namely, "A person required to file a statement of economic interest under this chapter shall file an updated statement for the previous calendar year with the appropriate supervisory office annually, no later than April fifteenth of each calendar year, listing any addition, deletion, or change in his economic status with respect to which information if required to be supplied under this article." A clear reading of this section calls for non-exempt

individuals, i.e. incumbents, to file an annual statement by April 15th of each year they are in office.

Given the above, the statute's terms are clear and unambiguous on their face, thus there is no room for statutory construction and a court must apply the statute according to its literal meaning (*Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 SC 65, 476 SE2d 690 (1996)). The literal meaning of Section 8-13-1140, in my opinion, requires all incumbents to file an annual SEI.

Unfortunately, an incumbent candidate has filed for re-election in Charleston County having not filed an updated SEI since April 2009; however, the candidate was certified to be on the November 2012 general election ballot by their respective party on May 4, 2012. The respective party has opined that SC Code Section 8-13-1356 does not apply to the candidate because she is a current public official; however, it ignores the additional requirement that the candidate have a *current* disclosure statement on file. As stated above, the candidate has not filed an SEI since April 2009, thus I do not believe she is an exempt individual under Section 8-13-1356(A).

I am respectfully requesting that your office issue an Advisory Opinion with regards to the definition of "current" as outlined in Section 8-13-1356(A). Given the time sensitivity of this matter, I am requesting that an opinion be issued as soon as practicably possible. Thank you in advance for your assistance in this matter.

Law / Analysis

Relevant portions of § 8-13-1356(A) and (B) read as follows:

(A) This section does not apply to a public official who has a *current* disclosure statement on file with the appropriate supervisory office *pursuant to Sections 8-13-1110 or 8-13-1140*. (emphasis added).

(B) A candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination.

Section 8-13-1356(E) reads as follows:

(E) An officer authorized to receive declarations of candidacy and petitions for nominations under the provisions of Chapter 11 of Title 7 may not accept a declaration of candidacy or petition for nomination unless the declaration or petition is accompanied by a statement of economic interests. If the candidate's name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election.

Section 8-13-1110(A) states:

[n]o public official, regardless of compensation, and no public member or public employee as designated in subsection (B) may take the oath of office or enter upon his official responsibilities unless he has filed a statement of economic interests in accordance with the provisions of this chapter with the appropriate supervisory office. If a public official, public member, or public employee referred to in this section has no economic interests to disclose, he shall nevertheless file a statement of inactivity to that effect with the appropriate supervisory office. All disclosures are matters of public record open to inspection upon request.

Section 8-13-1140 provides that:

[a] person required to file a statement of economic interests under this chapter shall file an updated statement for the previous calendar year with the appropriate supervisory office annually, no later than April fifteenth of each calendar year, listing any addition, deletion, or change in his economic status with respect to which information is required to be supplied under this article. If the person has filed the description by name, amount, and schedule of payments of a continuing arrangement relating to an item required to be reported under this article, an updating statement need not be filed for each payment under the continuing arrangement, but only if the arrangement is terminated or altered.

In construing a statute, a number of principles of statutory construction are applicable. As we stated in *Op. S.C. Atty. Gen.*, April 20, 2012 (WL 1561870),

[t]he primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000); *Mid-State Auto Auction of Lexington, Inc. v. Altaian*, 324 S.C. 65, 476 S.E.2d 690 (1996). The best evidence of intent is in the statute itself. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their plain and ordinary meaning. *Id.*

If the [L]egislature's intent is clearly apparent from the statutory language a court may not embark on a search for it outside the statute. When the language of a statute is clear and explicit a court cannot rewrite the statute and inject matters into it which are not in the [L]egislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that [a] Court can completely rewrite a plain statute.

Hodges, 533 S.E.2d at 582. What the Legislature says in the text of a statute is considered the best evidence of legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the Legislature

While many of the terms in §§ 8-13-1356 and 8-13-1110 and 1140 are defined, the term “current” as used in § 8-13-1356(A) is not. It is well recognized that “[w]here the legislature chooses not to define a term in the statute, courts should interpret the term in accordance with its usual and customary meaning.” *Pee v. AVM, Inc.*, 344 S.C. 162, 168, 54 S.E.2d 232, 235 (Ct. App. 2001) (citing *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994)). The word “current” in its ordinary meaning “refers to something that is occurring in or belonging to the present time” or is “most recent” *Project Vote/Voting for America, Inc. v. Long*, 752 F.Supp.2d 697, 706 (E.D. Va. 2010) (quoting *Webster’s Third New International Dictionary* 736 (2002)). Thus, in its common and ordinary sense, the word “current” as used in § 8-13-1356 would mean the “present” or “most recent” filing pursuant to § 8-13-1110 and 8-13-1140.

However, § 8-13-1356(A), which establishes the exemption from the requirements of Subsection (B) of § 8-13-1356, expressly references §§ 8-13-1110 and 8-13-1140 and requires that, in order to be exempt from the requirements of Subsection (B), a “public official” must have “on file” a “current” disclosure statement “pursuant to Sections 8-13-1110 or 8-13-1140.” As stated above, § 8-13-1140 speaks directly to the question of the frequency for filing the Statement of Economic Interests by those exempted from § 8-13-1356(B)’s requirement. Again, § 8-13-1140 references “an updated statement for the previous calendar year with the appropriate supervisory office annually, no later than April fifteenth of *each calendar year*.” (emphasis added). Such filing is for “the *previous calendar year*.” (emphasis added). Thus reading §§ 8-13-1356 to include by reference § 8-13-1140, it is clear that the word “current” as used in § 8-13-1356 means filing an SEI *annually*.

In an Opinion of this Office, dated April 2, 2008 (2008 WL 1960281), we addressed the following factual situation:

[b]y way of background, one of the Trustees of the Board [Bamberg School District Two], Mrs. Edith Ann Causby (“Causby”), was elected to the Board in August 2004. Since that time, on two separate occasions, Causby has violated the South Carolina State Ethics Code. The first violation occurred when she was still a candidate for the vacant seat on the Board, for failure to File a Pre-Election Campaign Disclosure report pursuant to SC Code Ann. § 8-13-1308(D). The second violation was for failure to file a statement of economic interest pursuant to SC Code Ann. § 8-13-1110. Each violation was followed by several notices from the Commission in an effort to bring Causby into compliance. The notices were ignored by Causby, which caused the Commission to file a Complaint for each violation, the first in 2004, and the second in 2006. Each Complaint ended in a judgment against Causby, a public reprimand, and a \$2000 fine in addition to the late filing penalties that were already assessed. To date, according to the Commission’s Debtor List, Causby owes the Commission \$26,779.75.

The Opinion concluded that the Ethics Commission does not have the authority to remove a public official for violation of § 8-13-1110. Nevertheless, we found that it was quite possible that Causby did not properly enter into her position because of failure to meet the requirements of SEI filing pursuant to § 8-13-1110 (and § 8-13-1140). We noted that Causby’s failure “to file *an annual* Statement of Economic Interest by the required deadline” could be a situation “in which an individual concerned about Causby’s qualification for her position on the Board may consider filing a quo warranto action to

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determine Causby's eligibility to hold office." Thus, the Opinion is clear that an "annual" filing of an SEI is required by law. *See*, §§ 8-13-1110 and 8-13-1140.

Conclusion

Of course, as the 2008 Opinion emphasized, this Office cannot resolve questions of fact. As we noted, "[b]ecause this Office does not have the ability to resolve issues of fact, the ultimate decision as to whether ... [therefore] violations of the Ethics Reform Act can only be resolved by a court." Thus, we cannot address the specific factual situation referenced in your letter. Nevertheless, § 8-13-1356(A)'s use of the word "current" must be deemed to refer to the "annual" filing of an SEI required by Sections 8-13-1110 and 8-13-1140. As the 2008 Opinion recognized, "an annual Statement of Economic Interest[s] [must be filed] by the required deadline [“of April fifteenth of each calendar year.”] Such filing, “for the previous calendar year with the appropriate supervisory office annually,” defines the word “current” in § 8-13-1356(A). Thus, the SEI must be filed annually by April 15 of each year.

As discussed above, § 8-13-1356(A)'s purpose is to establish an exemption from the requirements of §§ 8-13-1356(B) and (E). Section 8-13-1356(A) does not expressly state which SEI must be "on file" in order to qualify for that exemption. Of course, filing one's candidacy for an election occurs in March, and yet § 8-13-1140 requires that the SEI must be filed by April 15. To avoid any possible conflict between the two dates, we thus believe it is most reasonable to construe the language "current" SEI "on file," for purposes of § 8-13-1356(A)'s exemption, to be the SEI filed in the previous year on or before April 15, rather than the current year when candidacy filing occurs.¹ Otherwise, § 8-13-1356(A) could have the effect of partially repealing § 8-13-1140, as well as rendering the exemption contained in § 8-13-1356(A) ineffective. Such a reading is consistent with the common and ordinary meaning of the word "current," as the "most recent" at the time of candidate filing in March, i.e. the filing from the previous year.

Sincerely,



Robert D. Cook
Deputy Attorney General

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¹ Subsection (A) serves the purpose of exempting a person from the requirements of Subsections (B) and (E). Such exemption's applicability, of course, does not mean there need not be an SEI filing by April 15 of this year pursuant to §§ 8-13-1110 and -1140. *See Anderson, supra* (distinguishing between non-exempt candidate's filing Statement of Intention of Candidacy pursuant to § 8-13-1356(B) and filing SEI electronically pursuant to § 8-13-365 by April 15.).