

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 04-141

“Unclaimed” Return-Receipt Letters

QUESTIONS

1. May the Registry of Election Finance consider an assessment letter or notice sent return receipt requested under Tenn. Code Ann. § 2-10-110 as personally served or received for purposes of subsections (a)(1)(E) or (a)(2) if the letter is returned “unclaimed?”
2. Does the answer to the former question depend on whether the letter was sent within Tennessee or out of Tennessee?

OPINIONS

1. Yes.
2. No.

ANALYSIS

The Registry of Election Finance has jurisdiction to administer the Campaign Financial Disclosure Law compiled in Title 2, Chapter 10, Part 1, of the Tennessee Code. Tenn. Code Ann. § 2-10-205(1). To enforce the Act, the Registry may impose civil penalties for violations under Tenn. Code Ann. § 2-10-110(a)(1)(E) and (a)(2), providing in part:

(a) The registry of election finance . . . may impose a civil penalty for a violation of this part as provided in this section.

(1) "Class 1 offense" means the late filing of any report or statement required by this part. A Class 1 offense shall be punishable by a civil penalty of not more than twenty-five dollars (\$25.00) a day up to a maximum of seven hundred fifty dollars (\$750).

* * * *

(E) For state public offices, the registry of election finance shall have personally served upon, or send by return receipt requested mail, an assessment letter to any candidate or committee upon the registry or its appropriate staff discovering that a due report has not been filed. A civil penalty of twenty-five dollars (\$25.00) a day shall begin to accrue five (5) days after personal service or receipt of the letter

and will continue to accrue until the report is filed or for thirty (30) days, whichever occurs first.

* * * *

(2) “Class 2 offense” means failing to file a report required by this part within thirty-five (35) days after service of process or receipt of notice by registered or certified mail of an assessment or any other violation of the requirements of this part. A Class 2 offense is punishable by a maximum penalty of not more than ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount in controversy, if fifteen percent (15%) of the amount in controversy is greater than ten thousand dollars (\$10,000).

Tenn. Code Ann. § 2-10-110(a)(1)(E) & (a)(2). Thus, it is the personal service or receipt of an assessment letter or notice that triggers whether penalties may be imposed by the Registry of Election Finance. Because the statute provides that notice may be sent by return-receipt mail, notices also may be returned as “unclaimed.” The issue, then, is whether the U.S. Postal Service notation of “unclaimed” may be treated as a refusal to accept delivery and equivalent to service or receipt.

We think a Tennessee court would look to the Rules of Civil Procedure in answering this question. Effective July 1, 2004, Tenn.R.Civ.P. 4.04(11) provides that a properly addressed registered or certified letter that is returned by the U. S. Postal Service as “unclaimed,” or any other similar notation, is sufficient evidence of the defendant’s refusal to accept delivery. The Advisory Commission Comment to the 1997 Amendment to Rule 4.05 notes that “[c]ourts are virtually unanimous in holding that service of process is not defeated by the defendant’s refusal to accept a certified or registered letter.” It has also been held that one cannot assert failure of service when he willfully disregarded postal service notice to pick up certified mail, and it can be reasonably inferred that the addressee was aware of the nature of the correspondence.¹ Arguably, those who receive notice of return-receipt letters from the Registry of Election Finance are aware of the nature of the correspondence. There is also a significant interest in ensuring that candidates and political campaign committees do not delay or subvert the administrative process by willfully evading notice in order to avoid filing required forms or paying penalties.

The new subsection to Rule 4.04 is clear:

When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee’s agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing. For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or

¹ *Hankla v. Governing Board of Roseland Sch. District.*, 120 Cal.Rptr. 827, 834 (Cal.App. 1975).

certified letter is “unclaimed,” or other similar notation, is sufficient evidence of the defendant’s refusal to accept delivery.

Tenn.R.Civ.P. 4.04(11). Therefore, it is important to determine whether return-receipt letters that are returned as “unclaimed” were properly addressed. The designation “unclaimed” necessarily implies that the address is valid. So long as a letter is **properly addressed**, “unclaimed” mail may be treated as received.

Adequate notice is an essential element of due process, which the Registry of Election Finance must satisfy to impose valid penalties under Tenn. Code Ann. § 2-10-110. Under traditional notice requirements for service of process, however, due process may be satisfied even if the potential claimant does not actually receive the notice.² Where return-receipt mail is returned with “address no longer valid,” and the new address is easily obtainable, such is not adequate notice.³ Further, returned letters with any indication such as “undeliverable as addressed,” or “mail forwarding has expired,” obviously cannot be considered received. But, “[a]n otherwise valid notice that has been mailed is effective even if the addressee has not actually received or read the notice. . . . Thus, notice by certified mail is sufficient even if the addressee fails or refuses to accept the notice.”⁴ Return-receipt letters returned as “unclaimed” may, therefore, be treated as refused.

“Unclaimed” return-receipt letters may be treated as received regardless whether the letter was sent within Tennessee or out of Tennessee. Rule 4.04(11) now conforms service on Tennessee residents to that of nonresidents under Rule 4.05(5). Under Rule 4.05(5), the U.S. Postal Service notation that a properly addressed registered or certified letter is “unclaimed,” or other similar notation, is sufficient evidence of the defendant’s refusal to accept delivery, and a refusal shall be deemed an actual and valid service of the notice.

² *Toyota Motor Credit Corporation v. State of Tennessee Department of Safety*, No. M2003-00147-COA-R3-CV, 2003 WL 22519810, slip op. (Tenn.Ct.App. Nov. 7, 2003).

³ *Id.*

⁴ *Id.*, citing *Helms v. Tennessee Dep’t of Safety*, 987 S.W.2d 545 (Tenn. 1999).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

MARNEE L. BAKER
Assistant Attorney General

Requested by:

Drew Rawlins
Executive Director
Registry of Election Finance
404 James Robertson Parkway, Suite 1614
Nashville, TN 37243-1360