

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:

Opinion requested by
Gilbert H. Boreman, Registrar of Voters
City and County of San Francisco

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) No. 75-056
) August 7, 1975
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BY THE COMMISSION: We have been asked the following questions by Gilbert H. Boreman, Registrar of Voters for the City and County of San Francisco:

The Political Reform Act of 1974 provides that every candidate for certain state and local offices "file with his Declaration of Candidacy, a statement disclosing his investments and his interests in real property."

(1) If a candidate arrives at our office on the last day to file his Declaration of Candidacy but does not have his Statement of Economic Interests, should the Registrar of Voters refuse to accept the Declaration of Candidacy on the grounds that the candidate has failed to comply with the full provisions of Section 87201 of the Act?

(2) Pursuant to the San Francisco Charter, closing time for the office is 5:00 p.m. for official business. Would the Registrar of Voters then be correct in disqualifying such a candidate if the required disclosure statement is not received by closing time?

(3) In the event that a candidate attempts to file his Declaration of Candidacy in advance of the last day without the disclosure statement, should the Registrar reject the Declaration of Candidacy and insist that the candidate return with a disclosure statement and Declaration of Candidacy?

CONCLUSION

(1) The Registrar should accept the Declaration of Candidacy but should notify the candidate that late filing fees will

be assessed if the Statement of Economic Interests is not filed on time.

(2) Disqualification is not an appropriate remedy for a late disclosure statement.

(3) The Registrar should accept the Declaration of Candidacy and inform the candidate of the disclosure statement requirements and the penalties for late filing.

ANALYSIS

A candidate is required to file a statement disclosing his investments and his interests in real property at the same time the candidate files his Declaration of Candidacy. Government Code Section 87201.^{1/}

Failure to do so on time is punishable by imposition of the fines authorized by Section 91013. The late penalty is declared to be "in addition to other penalties or remedies established by this act." Section 91013. (Emphasis added.) Such penalties do not include disqualification from running for office except upon criminal conviction. See Section 91002.

The requirement that a candidate disclose financial interests is for the purpose of allowing the public to be aware of any financial interests which may be affected by his conduct if he is elected. This disclosure gives the public the opportunity to judge the performance of the candidate against his financial background. Refusal by the Registrar of Voters to accept a Declaration of Candidacy would not further these goals. The Act is not intended to prevent candidates from running for office or to interfere with the elective process. Courts have consistently held that:

...every reasonable presumption and interpretation is to be indulged in favor of the right of the people to exercise the elective process.

Hedlund v. Davis, 47 C.2d 75, 81 (1956);
Otsuka v. Hite, 64 C.2d 596, 603 (1966).

In addition, interference with the right to seek office is inappropriate if an alternative remedy is available to accomplish the governmental purpose.

At least since 1969 it is not enough that there be a rational relation between the restriction

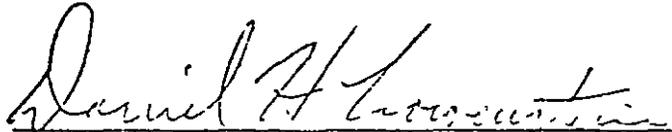
^{1/}All statutory references are to the Government Code unless otherwise noted.

[on the right to vote] and the compelling state interest; the restriction is now constitutionally permissible only if it is "necessary" to promote that interest, and to be "necessary" it must constitute, inter alia, the "least burdensome" alternative possible.

Ramirez v. Brown, 9 C.3d
199, 207 (1973)

We believe the same principle is applicable to the right to seek office. The imposition of late fines is an appropriate remedy for failure to file a disclosure statement with the declaration of candidacy. If a candidate seeks to file his declaration without filing his disclosure statement contemporaneously, the registrar should advise the candidate of the late fine. The registrar should also advise the candidate of the additional civil and criminal penalties and remedies that exist under the Political Reform Act. If the candidate nevertheless wishes to file his declaration of candidacy, the registrar should accept it.

Approved by the Commission on August 7, 1975. Concurring:
Brosnahan, Carpenter, Lowenstein, Miller and Waters.


Daniel H. Lowenstein
Chairman