

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-072
Rex E. Layton, City Clerk)	August 21, 1975
City of Los Angeles)	
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BY THE COMMISSION: We have been asked the following questions by Rex E. Layton, City Clerk, City of Los Angeles:

(1) When a person submits a campaign statement under Government Code Section 84200^{1/} on a form or by some means other than those prescribed by the Commission, should that person be considered to have filed a campaign statement, or should late filing fees continue to accumulate until said person has filed on a prescribed form?

(2) If a candidate submits a Form 430 or 470 unsigned, is this statement considered filed? If a candidate-controlled committee submits a Form 420 signed by only the treasurer or candidate, is this considered filed? If Forms 440, 450 and 460 are submitted unsigned, are they considered filed? If they are not considered filed, should late filing fees continue to accumulate until the statement is signed?

CONCLUSION

(1) Late filing fees should not be assessed if a campaign statement is submitted on an incorrect form so long as all required information is included and the correct form is filed promptly.

(2) Unsigned forms are not completed forms and late filing fees should be assessed if no signed forms are filed.

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

ANALYSIS

(1) A campaign statement is an itemized report which is prepared on a form prescribed by the Commission and which provides the information required by the Campaign Disclosure chapter of the Political Reform Act. Section 82006. A statement which contains all the required information, although submitted on an incorrect form, would satisfy the filing requirement if it constituted substantial compliance with the statute.

Substantial compliance expresses a rule of interpretation which derives from general maxims of equity - that substance governs over form, that no one is required to perform an idle act. (Civil Code Sections 3528, 3522) Hence if the essence of a requirement has been met, or if its performance would be superfluous, then the law holds that the requirement has been substantially complied with.

People v. Boone,
2 C.A.3d 503, 506 (1969)

In the case of a campaign statement, it is reasonable to find that substance governs over form and the required information is the essential element of the statement. Although the statement must be filed on the prescribed form, a person who files a statement in good faith on the wrong form before the deadline and who corrects his error promptly after it is brought to his attention should not be assessed a lateness penalty.

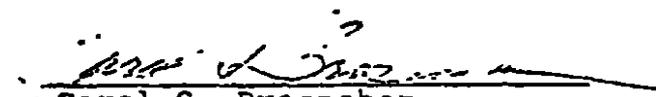
(2) Statements required to be filed under the Political Reform Act must be signed under penalty of perjury and verified by the filer. Section 81004. Verification is not a matter of form. It is an essential part of the report. The specific question of verification was decided by the courts in Oda v. Elk Grove Union Grammar School District, 61 C.A.2d 551 (1943). An unverified claim did not satisfy the statutory requirement that a verified claim be filed.

The value of a campaign statement is its accuracy. Without a signature to support that accuracy, no reliance may be placed on the information submitted. The Commission concludes that an unsigned statement is not filed within the requirements of the Act.

Other defects in the form are subject to correction, but do not serve to invalidate its filing. The filing officer must require completion of satisfactory statements. However, a good faith effort to comply with the law should not be subject to the imposition of late fines. The following list of defects is not exhaustive, but indicates the type of omission or error to be remedied by the filer but not fatal to the effective date of the filing:

- (1) Absence of date;
- (2) A Xeroxed copy, rather than a signed original;
- (3) Absence of signature by the candidate in the case of a controlled committee where the treasurer's signature is present.
- (4) Absence of signature by the treasurer when the candidate has signed in the case of a controlled committee.

Approved by the Commission on August 21, 1975.
Concurring: Brosnahan, Carpenter, Miller and Waters.
Dissenting: Lowenstein.


Carol S. Brosnahan,
for the Commission

LOWENSTEIN, CHAIRMAN, DISSENTING IN PART: Unfortunately, in my opinion, the majority does not pay sufficient heed to the quotation it sets forth at the outset of its opinion:

Substantial compliance expresses a rule of interpretation which derives from general maxims of equity -- that substance governs over form, ...

People v. Boone,
2 C.A.3d 503, 506 (1969)
(emphasis added).

In concluding that the lateness penalty of Section 91013 must be applied to persons filing otherwise adequate campaign statements which are filed on time, simply because

the filer has neglected to sign the statement, I believe the majority exalts form over substance in a way that is unnecessary and may cause significant injustice in some small number of cases.

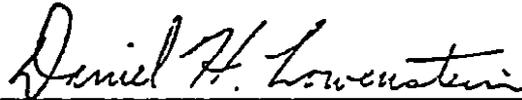
A person who is bent on evading the disclosure requirements will attempt to further his design by omitting or falsifying information on the statement or by failing to file any statement at all. Certainly, he will gain nothing by omitting his signature. The failure to sign is surely, in virtually all cases, an oversight and as a practical matter is less detrimental to the objective of full disclosure than most other defects that may be found in a statement, including the filing of the statement on the wrong form. Ironically, however, the majority exempts such substantive defects from the lateness penalty but applies the penalty to a person who discloses all the required information on the proper form but forgets to sign his or her name.

This is not to say that the signature and verification are unimportant. Aside from its symbolic importance, the verification subjects a false filer to prosecution for perjury. Section 81004. The question before us, however, is not whether the statement must be verified - of course it must - but what is the remedy to be applied when the filer neglects to sign and verify. The filing of an unsigned statement is a violation of the Act. As such, like other defects in filing a statement, it subjects the filer to prosecution for a misdemeanor, Section 91001, as well as to injunctive relief, Section 91003, and liability for monetary damages, Section 91004. Whether or not any or all of these remedies will be applied will depend on the facts and circumstances of each case.

The penalty for lateness has a special purpose, namely to encourage filers to file in a timely manner. A filer who fails to sign his statement, like a person who files on an unauthorized form, has committed a violation but is not guilty of lateness in any meaningful sense. In my opinion, if a filing officer discovers that a statement has not been signed he should ask the filer to correct the defect. Assuming that the statement is signed and verified promptly after notice of the defect is provided to the filer, I see no reason for assessing the lateness penalty. In most cases the failure to sign is an oversight which evidences no lack of good faith and is not detrimental to the public interest. In any case in which the failure to sign serves to indicate bad faith or is prejudicial to the public, a remedy far more severe than the lateness penalty should be more appropriate.

The majority's conclusion is not dictated by Oda v. Elk Grove Union Grammar School District, 60 C.A.2d 551 (1943). In that case a personal injury suit against a school district was dismissed because the plaintiff had submitted an unverified claim to the district within 90 days after the accident, whereas a statute required filing of a verified claim. The court emphasized that in light of the doctrine of sovereign immunity there was no right to sue at all absent the statute, and therefore the plaintiff was bound to follow the statutory procedure, a consideration which has no relevance to the question before us. More importantly, Oda at most supports the proposition, with which I concur, that failure to verify constitutes a violation. The case suggests no reason for applying the lateness penalty to such a violation.

For the reasons stated, I am unable to concur in the second part of the Commission's opinion.



Daniel H. Lowenstein
Chairman