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OFFICE OF THE ATTORNEY GENERAL

Department of Justice

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July 25, 1977

A-77-420

Mr. Michael Bennett
Executive Director
Fair Political Practices Commission
P. O. Box 807
1100 K Street Building
Sacramento, California 95814

Re: Partial Waiver of Fines
Our CV 77/87 IL

Dear Mr. Bennett:

You have requested an opinion on the following question:

May a filing officer, when waiving fines pursuant to Government Code section 91013, waive a portion of the fine to which a late filer is liable?

The conclusion is:

When waiving fines pursuant to Government Code section 91013, a filing officer may waive a portion of the fine to which a late filer is liable.

ANALYSIS

The Political Reform Act of 1974 (Gov. Code § 81000 et seq.) requires the filing of various reports and statements by persons - such as candidates, lobbyists, public officials - who are regulated by its provisions. See Gov. Code § 81005. Such reports and statements are filed with appropriate "filing officer[s]" (Gov. Code §§ 81005, and 82027) who, among other things, are to determine whether the required documents have been properly filed and are to notify promptly all persons who have failed to file a report or statement at the time required by the Act. Gov. Code § 81010.

Government Code section 91013 provides that:

"(a) If any person files an original statement or report, after any deadline imposed by this act he shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within five days after the filing officer has sent specific written notice of the filing requirement.

"(b) If any person files a copy of a statement or report after any deadline imposed by this act, he shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting five days after the officer has sent specific notice of the filing requirement and until the statement is filed.

"(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater." (Emphasis added.)

Thus, with regard to original statements or reports, the filing officer has some discretion with respect to not enforcing the \$10 a day late filing penalty ". . . if . . . the late filing was not willful and that enforcement . . . will not further the purposes of the act." However, no liability can be waived if the late filer fails to file within five days after the filing officer has sent specific notice of the filing requirement.

You ask whether or not a filing officer, when waiving fines pursuant to this section, can waive a portion of the fine to which a late filer is liable. For the following reasons, it is our opinion that a partial waiver is permissible.

First, authority to waive the total fine implies the authority to waive a part of the fine. It is a maxim of jurisprudence that "[t]he greater contains the less" Civil Code § 3536. Thus, it has been held that the authority of a commission to revoke a license includes the lesser power of suspension (See, Reynolds v. State Board of Equalization, 29 Cal.2d 137, 140-141 (1946)) and the power of a school board to dismiss a teacher includes the power to suspend temporarily. Goldsmith v. Board of Education, 66 Cal.App. 157, 164 (1924).

Second, the ability to partially waive fines appears to be in accord with the Legislature's intent in amending this section to provide for some filing officer flexibility with respect to the enforcement of such fines. Originally, Government Code section 91013 provided for no discretion with respect to late filing penalties. ^{1/} The amendment of this section in Statutes of 1975, Chapter 915, section 8 to provide for some measure of discretion by the filing officer evidences a clear intent that the Legislature believed it desirable for the filing officer to possess some flexibility in assessing late filing penalties. We do not think the Legislature intended to replace one rigid system, with no discretion, with a second rigid system which requires either a total waiver or none at all. On the contrary, the manifest intent appears to have been to provide the filing officer with maximum flexibility, which reasonably includes the authority to partially waive fines.

1. Prior to its amendment by Statutes of 1975, Chapter 915, section 8, Government Code section 91013, as adopted by the voters on June 4, 1974, provided that:

"If any person files a statement or report, or a copy of a statement or report, after any deadline imposed by this act, he shall, in addition to any other penalties or remedies established by this act, be liable to the filing officer or other officer with whom the copy is required to be filed for the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed. The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater."

This Office held that under virtually identical language in the previous Waxman-Dymally Campaign Disclosure Act (now

Third, in many instances, a partial waiver of the late filing penalty would be the only way that a filing officer could fairly and impartially exercise his discretion. In 1 FPPC Opinions 188 (No. 75-084, Dec. 3, 1975), the FPPC said, at pages 189 and 190:

"The requirement of impartiality in the determination of late penalties means that the filing officer may not base his decision on his personal relationship with the filer, the political party of the filer, or similar personal biases. However, the filing officer may consider illness, injury, personal tragedy or similar legitimate reasons for a late filing. Moreover, nothing prohibits the filing officer from establishing guidelines for waiving late penalties or from requiring a written explanation for a late filing."

It is readily apparent that "legitimate reasons" may sometimes justify part but not the total delay in the filing of a statement or report. In other instances, a filing officer might reasonably determine that while enforcement of the total accrued penalty would be oppressive and not ". . . further the purposes of the act . . .," the enforcement of a partial penalty - rather than waiving the fine altogether - would best promote respect for the Act's need for timely compliance with its terms.

In closing, it is our opinion that in those situations where Government Code section 91013 permits a filing officer to waive late filing penalties, he may waive all or a portion of the fine.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

Floyd D. Shimomura
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1 cont.

inoperative, Stats. 1975, Ch. 145, § 1), there was no discretion for a filing officer to waive fines. 58 Ops. Cal. Atty. Gen. 203, 210 (1975). This earlier provision was also amended to provide for discretion. Stats. 1974, Ch. 979, § 3. See, Los Angeles County Democratic Central Committee v. County of Los Angeles, 61 Cal. App. 3d 335 (1976).