

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance	•••	Administration	•••	Executive/Legal	•••	Enforcement	•••	Conflict of Interest
(916) 322-5662		322-5660		322-5901		322-6441		322-6444

April 11, 1980

Doris B. Black  
 City Clerk  
 401 East Chapman Avenue  
 Placentia, CA 92670

A-80-04-102

Dear Ms. Black:

Your letter of March 18, 1980, has been referred to me for reply. As I understand the matter, Mr. Bean filed his initial campaign statement the day after it was due. From the correspondence between Mr. Bean and yourself it appears that he attempted to file the statement on the date that it was due, but could not because your office was closed. Your question concerns whether Government Code Section 91013 permits you to waive the fine it otherwise permits you to impose for late filings.

Government Code Section 91013(a) provides:

If any person filed 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 10 days, or five days in the case of the second preelection campaign statement, after the filing officer has sent specific written notice of the filing requirement.

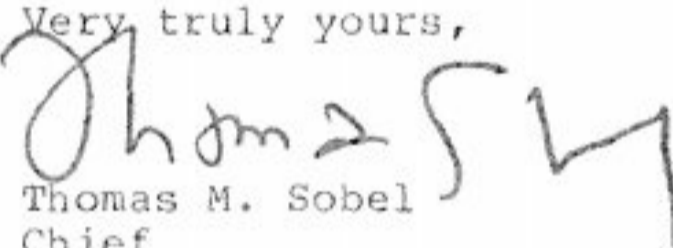
This section provides for waiver of fine if, in the exercise of the filing officer's judgment, the late filing was not willful and that imposition of a fine would not further the purposes of the Act. The filing officer has no discretion to waive a fine, however, if any person required to file has

Doris B. Black  
April 11, 1980  
Page Two

not filed within 10 days of his receiving written notice that a deadline for filing has passed (in the case of the first statement). Since Mr. Bean filed before any written notice of his failure to file was received by him, your discretion to waive the fine is intact. Under the Act, therefore, you may waive the fine if you conclude that Mr. Bean's failure to file was not willful and imposition of it will not further the purposes of the Act.

I trust this answers your question. If I may be further assistance to you, do not hesitate to call me.

Very truly yours,

  
Thomas M. Sobel  
Chief  
Legal Division

TMS:plh

The People Are The City



Mayor

WILLIAM E. RASHFORD

City Administrator

EDWIN T. POWELL

Councilmembers

VIRGINIA C. FARMER  
NORMAN Z. ECKENRODE  
DONALD A. HOLT, JR.  
BETTY MEAD

401 East Chapman Avenue - Placentia, California 92670

March 18, 1980

Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95184

Attention: Enforcement Division

Gentlemen:

Enclosed for your information is the complete correspondence involved in the recent late filing of Placentia City Council candidate George R. Bean's first campaign statement. Please note that Mr. Bean has paid the late filing penalty "under protest".

After following advice from our City Attorney, as well as advice received in telephone conversations with the Los Angeles Fair Political Practices Commission office, the various correspondence was mailed to the candidate. I feel that all actions taken by this office were required to fulfill my responsibility of filing officer.

Please review the matter and notify us as to whether the actions taken were within the provisions of the Government Code. If you have any questions, please contact myself or Betty Wallis, Placentia Deputy City Clerk, (714) 993-8231.

Sincerely,

A handwritten signature in cursive script that reads "Doris B. Black".

Doris B. Black  
City Clerk

DBB:bw

Enclosures

The People Are The City



Mayor

WILLIAM E. RASHFORD

City Administrator

EDWIN T. POWELL

Councilmembers

VIRGINIA C. FARMER  
NORMAN Z. ECKENRODE  
DONALD A. HOLT, JR.  
BETTY MEAD

401 East Chapman Avenue - Placentia, California 92670

CERTIFIED MAIL  
NO. 177100

February 29, 1980

Mr. George R. Bean  
120 Santa Rosa Way  
Placentia, CA 92670

Dear Mr. Bean:

As you have previously been advised by correspondence dated January 8, 1980, and correspondence dated February 22, 1980, you were required to file a candidate's statement no later than February 28, 1980, which covered campaign reporting period ending February 25, 1980.

Under requirements of Government Code Section 91013, if any person files a report or statement after any deadline, he shall be liable in the amount of \$10 per day after the deadline until the statement or report is filed. You filed this report on February 29, 1980.

The Code also provides as follows: "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 10 days, or five days in the case of the second preelection campaign statement, after the filing officer has sent specific written notice of the filing requirement."

Please consider this specific written notice that you filed your campaign statement one day late and have 10 days from date of this letter to give reason why the penalty should be waived. If there are facts which should support a waiver of the fine which you feel the Clerk should consider, you should immediately supply them in writing to the Clerk.

Mr. George R. Bean  
February 29, 1980  
Page Two

Until a determination is made regarding a waiver, you are liable in the amount of \$10 for the late campaign report. This amount is due immediately and should be submitted to the City of Placentia Finance Department. Should a waiver be determined appropriate, this amount will be refunded to you.

Sincerely,

*Doris B. Black*

Doris B. Black  
City Clerk

DBB/BLW/s

No. 1771

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

Complete items 1, 2, and 3.  
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).  
 Show to whom and date delivered ..... ¢  
 Show to whom, date, and address of delivery ..... ¢  
 RESTRICTED DELIVERY  
Show to whom and date delivered ..... ¢  
 RESTRICTED DELIVERY  
Show to whom, date, and address of delivery. \$ \_\_\_\_\_  
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:  
George R. Bean  
120 Santa Rosa Way, Placentia

3. ARTICLE DESCRIPTION:  
REGISTERED NO. | CERTIFIED NO. | INSURED NO.  
| 177100 |

(Always obtain signature of addressee or agent)

I have received the article described above.  
SIGNATURE  Addressee  Authorized agent

4. *George R. Bean*  
DATE OF DELIVERY | POSTMARK  
| 3  
| 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

The People Are The City



Mayor

WILLIAM E. RASHFORD

City Administrator

EDWIN T. POWELL

Councilmembers

VIRGINIA C. FARMER  
NORMAN Z. ECKENRODE  
DONALD A. HOLT, JR.  
BETTY MEAD

401 East Chapman Avenue • Placentia, California 92670

March 10, 1980

Mr. George R. Bean  
120 Santa Rosa Way  
Placentia, CA 92670

Dear Mr. Bean:

Subject: Payment of Fine for Late Filing of  
First Candidate Campaign Statement

A notice, dated February 29, 1980, was delivered to you by certified mail advising you that you are liable in the amount of \$10.00 for the late filing of your first candidate's campaign statement. It further advised that you had ten days in which to submit a written request for waiver of the fine. We did not receive a request for waiver from you within the time permitted. (Government Code Section 91013)

Therefore, we have enclosed an invoice in the amount of \$10.00 which represents the fine you are required to pay for filing your campaign statement one day late.

You are hereby notified that, if we have not received payment of this fine by 5:00 p.m., Monday, March 24, 1980, we are required to forward the entire matter to the Orange County District Attorney for enforcement. (Government Code Section 91001(b)).

Your prompt attention to this matter will be appreciated.

Sincerely,

Handwritten signature of Doris B. Black in cursive.

Doris B. Black  
City Clerk

DBB:bw

Enclosure



CITY OF PLACENTIA  
 401 E. Chapman Avenue  
 Placentia, California 92670

FINANCE DEPT. 714-993-8237  
 CITY CLERK (714) 993-8231

INVOICE

Invoice No. 80/201

George R. Bean  
 120 Santa Rosa Way  
 Placentia, CA 92670

Invoice Date March 12,

	AMOUNT
Fine for filing first candidate's campaign statement one day late (Government Code Section 91013)	\$10.00
<p><u>Due and payable no later than March 24, 1980.</u></p> <p>Please make check payable to City of Placentia. Direct all correspondence to            City Clerk , City of Placentia, 401 E. Chapman Ave., Placentia, CA 92670            RETURN ONE COPY OF INVOICE WITH YOUR REMITTANCE.</p>	

*George R. Bean*

*Attorney at Law*

*112 No. Bradford*

*Placentia, California 92670*

(714) 524-0380

March 12, 1980

Doris B. Black  
City Clerk  
City of Placentia  
401 East Chapman Ave  
Placentia, CA 92670

**RECEIVED**  
CITY CLERK

MAR 14 1980

**CITY OF PLACENTIA**

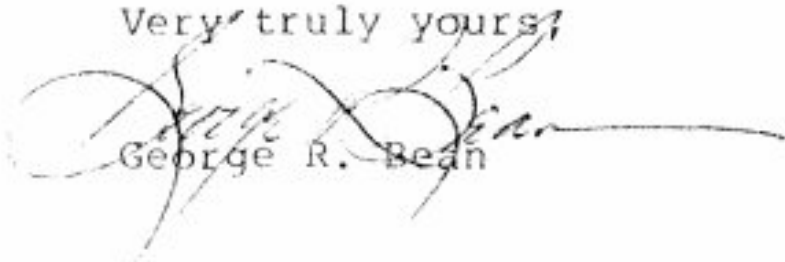
Dear Mrs. Black:

I have received your letter concerning the first filing of the candidate's statement, which you have indicated was filed a day late. It would appear that a waiver would be in order since the purpose of the statute is to attempt to force the filing of such statements which would otherwise not be filed.

In this particular instance the statement was due as you stated on the 28th of February, and the statement was executed and attempted to be delivered on said date, however, by the time that I was able to get to the city hall it was closed and I could only wait to turn it in the next day. The day actually ends on the hour of 12:00 midnight, and it would appear that if such is the law then there would have to be accommodations to permit the filing of such statements up to and until such hour.

The document was filed the following morning, within one hour after your offices opened, at 9:00 a.m. It would seem that there is no wilfulness on my part, and request that this fee be waived. Especially in view of the fact that no effort was required by any person other than to receive the document.

Very truly yours,

  
George R. Bean

GRB/rb

The People Are The City



Mayor

WILLIAM E. RASHFORD

City Administrator

EDWIN T. POWELL

Councilmembers

VIRGINIA C. FARMER  
NORMAN Z. ECKENRODE  
DONALD A. HOLT, JR.  
BETTY MEAD

401 East Chapman Avenue - Placentia, California 92670

(714) 993-8231

March 14, 1980

Mr. George R. Bean  
120 Santa Rosa Way  
Placentia, CA 92670

Dear Mr. Bean:

We received this date your request for a waiver of the late filing fee for your first candidate's campaign statement. However, as the City Filing Officer, I am restricted under California Government Code Section 91013 from waiving the liability because your request was not received within the time provided for in this statute. This Government Code Section was outlined in our notice to you sent February 29, 1980.

Please remit the late filing fine to the City of Placentia prior to 5:00 p.m., March 24, 1980.

Sincerely,

Doris B. Black  
City Clerk

DBB:bw

*George R. Bean*

*Attorney at Law*

*112 No. Bradford*

*Placentia, California 92670*

March 14, 1980

(714) 524-0380

**RECEIVED**  
CITY CLERK

MAR 17 1980

CITY OF PLACENTIA

Doris B. Black, City Clerk  
City of Placentia  
401 East Chapman  
Placentia, CA 92670

Re: Imposition of Fine for Late Filing of  
First Candidate Campaign Statement

Dear Mrs. Black:

I am enclosing a check in the sum of \$10.00 in response to your request and statement under invoice No. 80/201. This is not an admission that there was a violation of C.G.C. 84200, and is being submitted under protest, since the proper determinations under C.G.C. 91013 have not been made.

C.G.C. 91013 does not impose a time limit for the submission of a request for waiver such as you have attempted to do, nor does it impose a specific time within which any penalty is required to have been paid. I had submitted to you a letter requesting a waiver within the ten days after I had actually received your letter. Further, no candidate is required to submit a request for a waiver at all. It does however, require that "on an impartial basis he determines that the late filing was not wilful and that the enforcement of the liability will not further the purposes of the act, . . ." This act on the part of your office has not been done. ("he" meaning City Clerk).

I can very well understand your desire to administer the duties of your office, and would expect you to do so, however, it would seem to me that you are going beyond the duty imposed under the Political Reform Act. And, I might add, I don't believe that you are acting in any manner other than out of a desire to enforce the law as you understand it.

I would have to point out to you that under the codes applicable, I had until midnight of February 28, 1980 to file the statement with your office. Your office was closed before the deadline. Under section 81007, I could have mailed the statement and would be deemed to have met the requirements, had it been mailed prior to midnight. Instead, in order to have the document in your hands at the earliest possible time, I waited to the next morning, and promptly brought it to your office.

The promptness on my part would show that there is no wilful avoidance of the requirements.

I have examined your letters with some care, and do not find that your office has performed the following functions and made the following determinations prior to demanding the penalty:


1. There has been no determination and finding that on an "impartial basis" there has been a wilful late filing.

2. There has been no determination and finding that on an "impartial basis" that the imposition of the liability would or would not further the purposes of the act.

I would submit to you that the purpose of the act is to make certain that the necessary papers are filed, and not for the purposes of creating a liability. This is further evidenced by the fact that the total imposition of liability can be no greater than \$100.00, and that the "civil prosecutor" has the responsibility for enforcement of liabilities, remedies and sanctions. This particular liability is a civil matter and is not within the scope of the district attorney as you would suggest. This is not a "fine" under C.G.C. 91013.

In view of the above, it is my position that the necessary prerequisites have not been met before you have demanded the \$10.00 liability, and therefore the \$10.00 which you have demanded is being submitted under protest.

Very truly yours,

  
George R. Bean

GRB/rb



CITY OF PLACENTIA  
 401 E. Chapman Avenue  
 Placentia, California 92670

FINANCE DEPT. 714-993-8237  
 CITY CLERK (714) 993-8231

INVOICE

Invoice No. 80/201

George R. Bean  
 120 Santa Rosa Way  
 Placentia, CA 92670

Invoice Date March 12,

	AMOUNT
<p>Fine for filing first candidate's campaign statement            one day late (Government Code Section 91013)</p> <p>3/14/80 Payment is being made under protest that this is            not a "fine" within C.G.C. 91013, and secondly, the proper            determinations by the City Clerk have not been made in            conformance with the requirements of C.G.C. 91013.</p> <p><i>[Signature]</i></p> <p><u>Due and payable no later than March 24, 1980.</u></p> <p>Please make check payable to City of Placentia. Direct all correspondence to            City Clerk, City of Placentia, 401 E. Chapman Ave., Placentia, CA 92670            RETURN ONE COPY OF INVOICE WITH YOUR REMITTANCE.</p>	<p>\$10.00</p>