

# State of California



## Fair Political Practices Commission

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

Technical Assistance  
(916) 322-5662

Administration  
322-5660

Executive/Legal  
322-5901

Enforcement  
322-6441

Conflict of Interest  
322-6444

June 10, 1980

Anthony L. Miller  
Chief Counsel  
Secretary of State's Office  
1230 J Street  
Sacramento, CA 95814

Re: ~~Opinion Request~~  
No. ~~80-004~~

Dear Mr. Miller:

Thank you for your letter of April 18, 1980, regarding Section 91013 of the Political Reform Act. Because the ultimate resolution of your particular question involves not only an interpretation of the Act but possible constitutional considerations as well, no formal opinion will be issued in response to your question. However, we hope that the decision which follows will be of some benefit to you.

Government Code Section 91013 provides:

(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 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.

(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 10 days, or five days in the case of the second preelection campaign statement, after the officer has sent specific written 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.

On its face, the statute requires a fine of \$10 per day up to the cumulative amount stated in the report. Calculation of the amount of the fine, we take it, raises no problems of statutory construction; the formula is straightforward and unambiguous. We also believe that your policy of equating "cumulative amount" with the "cumulative total" listed in lobbying reports in arriving at the maximum fine for late filers is reasonable.

You have asked what action is appropriate for your office to take if application of this strict statutory formula leads, in individual cases, to fines which bear "no rational relationship to the nature of the violation." Unfortunately, I cannot give you a definitive answer to this question for the reasons stated above.

In Hale v. Morgan (1978) 22 Cal. 3d 388, the California Supreme Court indicated that a statutory scheme for calculating penalties which led to confiscatory results in certain cases would not be enforced by the courts when the results were "wholly disproportionate to any discernible and legitimate legislative goal and so clearly unfair...." Id. at 405.<sup>1/</sup> It is clear from the court's scrupulous and detailed analysis of both the facts and statutory scheme in Hale, however, that the conclusion that a particular fine is irrational cannot be drawn lightly or without compelling facts.

Although the Hale decision clearly established the principle that courts can refuse to enforce "mandatory" fines when to do so would be clearly confiscatory, the question of whether administrative agencies or executive officers, such

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<sup>1/</sup> It should be noted that Government Code Section 91013, unlike the fine scheme found objectionable in Hale v. Morgan, contains a statutory ceiling on the total fine which can be levied. Section 91013(c).

Anthony L. Miller  
June 10, 1980  
Page Three

as the Secretary of State, possess a similar power was not addressed by the Supreme Court. In addition, the question of whether the Secretary of State has the power to determine that a particular application of a statute is unconstitutional is further confused by Article 3, Section 3.5 of the California Constitution, which provides:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

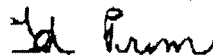
(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Unfortunately, an interpretation of Section 3.5 is outside the jurisdiction of the Fair Political Practices Commission.

I am sorry I cannot be more definitive in answering your question but the constitutional problems posed by reconciling Hale v. Morgan and Section 3.5 prevent me from doing so. However, the Commission's staff will be happy to work jointly with you in attempting to resolve specific cases as they arise.

If you wish to appeal the denial of your request for a formal opinion, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please contact either me or Tom Sobel, Chief of the Legal Division.

Sincerely,



Ted Prim  
Executive Director

TP:cjb



Office of the Secretary of State  
 March Fong Eu  
 APR 21 11 21 AM '80

1230 J Street  
 Sacramento, California 95814

Request No. 80 004  
 Date Received 4-21-80  
 Response Due 5-5-80  
 prepared 4-28-80  
 Resp. due

April 18, 1980

Mr. Ted Prim  
 Executive Director  
 Fair Political Practices Commission  
 1100 K Street  
 Sacramento, California 95814

Re: Request for opinion - Government Code section 91013(c)

Dear Mr. Prim:

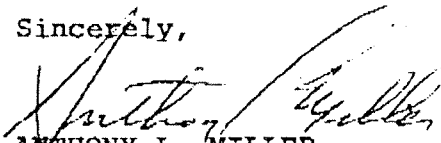
On behalf of March Fong Eu, Secretary of State of the State of California, I should like to request an opinion of the Commission pursuant to Government Code section 83114 and California Administrative Code section 18320 on the following question:

What is the maximum liability which may be assessed by the Secretary of State pursuant to Government Code section 91013, with particular reference to subdivision (c) thereof, for the filing of an original report under Chapter Six of the Political Reform Act of 1974 after the statutory deadline?

It should be noted that the Secretary of State has traditionally based the maximum liability to be assessed on the "cumulative total" indicated on the Commission prescribed form. On occasion, this has resulted in liabilities thought by the Secretary of State to be unreasonably high, bearing no rational relationship to the nature of the violation.

Your assistance in this regard is appreciated.

Sincerely,

  
 ANTHONY L. MILLER  
 Chief Counsel

ALM:gp

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80-103

Anthony L. Miller  
June 10, 1980  
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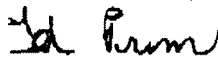
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March Fong Eu

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Sacramento, California 95814

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