



## FAIR POLITICAL PRACTICES COMMISSION

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November 13, 1998

Lynda Burgess  
City Clerk  
City of Diamond Bar  
21660 E. Copley Drive, Suite 100  
Diamond Bar, California 91765-4177

**Re: Your Request for Advice  
Our File No. A-98-245**

Dear Ms. Burgess:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Does an appeal process exist for late filers who are fined by a local filing officer?

### CONCLUSION

No. The Act does not provide an appeal process in such circumstances.

### FACTS

A former city councilmember did not file a semiannual campaign statement until four months after the deadline and three months after he received specific written notice that the form was late. The official was notified by the local filing officer about the penalty for late filing and was sent copies of FPPC guidelines specifying that the filing officer did not have the discretion to waive or reduce fines after the filing officer sent specific written notice that the form was late.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

## ANALYSIS

A local elected officer, who has a salary of \$100 or more per month, must file a semiannual statement each year by July 31 for the reporting period January 1 through June 30. (Section 84200.) In addition, a semiannual statement is due by January 31 of each year for the period July 1 through December 1. During the six-month period in which the local elected officer is seeking reelection, additional statements must be filed. (Section 84200.5.) Local elected officers who will not receive or spend \$1,000 or more during a calendar year may satisfy these requirements by filing a short form no later than July 31 for the entire calendar year. (Section 84206.)

If a local filer does not meet the specified deadline for filing a campaign statement, the filer will be subject to a late filing penalty in the amount of \$10 per day after the deadline until the statement is filed. (Section 91013(a).) The amount of the liability may not exceed the cumulative amount reported in the late statement, or \$100, whichever amount is greater. (Section 91013(c).) At the discretion of the local filing officer, the fine for a late statement may be waived, provided that the statement is filed within 10 days after the filer receives specific written notification from the filing officer of the requirement. (Section 91013(a).) There is no statutory exception permitting a local filing officer to waive a fine if the statement is filed after the 10-day period.

If the statement is filed within the 10-day period, the local filing officer has the sole authority to assess or waive a late filing penalty. Such discretion must be exercised on an impartial basis. As such, the filing officer may not base his or her decision on a personal relationship with the filer, the political party of the filer, or on any other similar personal basis. However, the filing officer may consider illness, injury, personal tragedy or a similar legitimate reason for a late filing. In addition, nothing prohibits the filing officer from establishing guidelines for waiving late penalties or from requiring a written explanation for the late filing. (*In re Rundstrom* (1975) 1 FPPC Ops. 188.) However, the filing officer may exercise discretion only during the period between the filing deadline and 10 days after a notice has been sent.

The Act grants total authority for imposing or waiving fines to the local agency. There is no provision for appealing to the Commission. However, nothing would prohibit the local agency from developing its own appeal process.

Please note that late filers may resort to laws that are outside of the Act, such as Civil Procedure Code section 1094.5. The Commission has no jurisdiction to provide advice regarding laws that are not within the Act. (Section 83111.)

If you have any other questions regarding this matter, please contact me at  
(916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink, appearing to read "Julia Butcher". The signature is written in a cursive style with a large initial "J" and "B".

By: Julia Butcher  
Staff Counsel, Legal Division

SGC:JB:tls