



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

April 17, 2002

Nancy A. Dillon, MMC  
City of Thousand Oaks  
2100 Thousand Oaks Boulevard  
Thousand Oaks, CA 91362-2903

**Re: Your Request for Informal Assistance  
Our File No. I-02-058**

Dear Ms. Dillon:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your request is general in nature and does not seek advice regarding a specific public official, we are treating your request as one for informal assistance.<sup>2</sup>

### FACTS

The City Of Thousand Oaks City Clerk Department is considering an update of Resolution 99-73 regarding formal guidelines for notification of filing obligations and the waiving and imposing of fines for delinquent filers of Statements of Economic Interests, Form 700. The city clerk requests that Commission staff review Resolution 99-73 and advise of additional requirements.

For purposes of this response, the operative provisions of the resolution are as follows:

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code section 83114; 2 Cal. Code of Regs. Section 18329(c)(3), copy enclosed.)

GUIDELINES FOR NOTIFICATION OF CONFLICT OF INTEREST FILING  
OBLIGATION AND GUIDELINES FOR IMPOSING PENALTIES AND WAIVING  
FINES FOR LATE FILINGS

Section 1. Notification Process

A. Filing Official Notification Procedure

- 1) Initial notification of filing obligation (30 day filing deadline).
- 2) Reminder letter to non-filer mailed one week after original filing deadline (two additional weeks for filing deadline).<sup>3</sup>
- 3) Reminder Letter signed by City Attorney (two additional weeks for filing deadline).
- 4) Specific Written Late Notice – 30 day notification (sent by certified mail with return receipt requested).
- 5) Notice of Assessment of Fine (as regulated by State law) for statement not filed within 30 days of specific written notice.

Section 2. Penalties

A. Procedural – Committee/Commission/Board Members

- 1) Persons who fail to file a statement within 30 days after Specific Written Late Notice (sent by certified mail – return receipt requested) will not be allowed to participate in meetings of committees, commissions or boards to which they have been appointed until the Form 700 is filed with the filing officer.
- 2) Persons who fail to file a statement within 30 days after Specific Written Late Notice could be asked by the City Council to resign their position on the committee.

Section 3. Imposing and Waiving Fines\*

A. Full fines will be imposed upon the following:

- 1) Persons who do not otherwise qualify for a waiver and who fail to file a statement within 30 days after the mailing of Specific Written Late Notice that their statement is late.
- 2) Persons who fail to file a statement within 30 days after Specific Written Notice (sent by certified mail – return receipt requested)
- 3) Persons who fail to respond within 30 days after receiving the filing officer's certified letter requesting a justification for the late filing.
- 4) Persons who do not qualify for a waiver pursuant to subsections B. and C. below.

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<sup>3</sup> During my telephone conversation with Linda Lawrence of your office, she stated that the informal notices sent under subdivision 1. A. 2) and 3) request the nonfiler to file the missing statement within two weeks of the date of the notice.

- B. Partial or full waivers may be issued to the persons described below. A stricter standard may be applied to persons who have filed late statements within the two years prior to the late filing in question.
- 1) Persons who, because of illness, injury, personal tragedy or similar reasons, found it extremely difficult to file on or before the filing deadline but filed as soon as possible thereafter. Full details of the emergency must be provided in writing.
  - 2) Persons who were necessarily out of town immediately prior to and on the filing deadline but who filed as soon as possible thereafter. Full details concerning the absence must be provided in writing.
  - 3) Persons who received inadequate or erroneous notification of their filing requirement but who filed within 30 days after receiving adequate notice. Full details concerning the type of notice received or lack thereof must be provided in writing.
  - 4) Persons serving in an acting officeholder capacity who filed within 30 days of receiving such notice from the agency official.
  - 5) Persons who left office without receiving adequate notice of their filing requirement but who filed within 30 days of receiving such notice from the filing official.
  - 6) Persons who wrote their agency prior to the filing deadline, or who had someone write on their behalf, indicating that the filing would be late for a justifiable reason and who then filed as soon as possible.
- C. In cases in which persons filed within five days of the due date, the following guidelines will apply:
- 1) Persons who filed within five days of the filing deadline with only one late or no prior history of late filings will be granted automatic waivers.
  - 2) Persons who filed within five days of the filing deadline, but who have a history of filing late twice in the prior two years will be subject to guidelines A. through C. on waiving and imposing fines.
- D. The filing official receiving late fines shall deposit the funds into the General Fund of the City of Thousand Oaks.

\* \* \* \* \*

**\*NOTE:** Fines issued pursuant to these guidelines shall not exceed \$10 per day up to a maximum of \$100 pursuant to State law.

### ANALYSIS AND CONCLUSIONS

The Commission is charged with interpreting and enforcing the provisions of the Act, and may provide advice only with respect to those provisions. (Section 83114.) While the interpretation of local resolutions is generally beyond the scope of Commission advice (see *Kunkel* Advice Letter, No. I-89-598; *Zundel* Advice Letter, No. I-94-111), the

Act does contain provisions regarding the imposition of local requirements as long as the requirements do not prevent a person from complying with the Act. (Section 81013.) Therefore, the advice provided is limited to the application of this section. (*Gawron* Advice Letter, No. I-89-550.) Responsibility for interpretation and enforcement of local provisions not covered by the Act rests with the City of Thousand Oaks. (*Kunkel* Advice Letter, *supra*.)

Section 81010 sets out the following duties a filing officer<sup>4</sup> must perform with respect to reports and statements filed with his or her office:

- “(a) Supply the necessary forms and manuals prescribed by the Commission;
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title.
- (c) Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title.
- (d) Report apparent violations of this title to the appropriate agencies.<sup>5</sup>
- (e) Compile and maintain a current list of all reports and statements filed with this [his or her] office.”

In addition, section 91013 states, in pertinent part:

- “(a) If any person files an original statement or report after any deadline imposed by this act, he or she 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 or she 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 30 days for a statement of economic interest. . . . after the filing officer has sent specific written notice of the filing requirement.

¶...¶

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

In Section 1. Notification Process we recommend the following revisions:

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<sup>4</sup> “‘Filing officer’ means the office or officer with whom any statement or report is required to be filed....” (Section 82027.)

<sup>5</sup> An apparent violation exists when a filer fails to file all or part of his statement or refuses to file all or part of his statement after reasonable notice has been provided by the filing officer. (Regulation 18115(a)(6)(B).)

Replace the term "Filing Official" with "Filing Officer" in subdivision A. Filing officials are not required to follow up on non-filed statements; they simply notify the filing officer who provides further notification to nonfilers.

The two informal notices set out in subdivisions A. 2) and 3) allow a nonfiler an additional four weeks to file his or her statement before the 30-day specific written notice required under section 91013(a) is sent. Although the Act and Commission regulations do not establish any deadlines for a filing officer to send specific written notice, we feel this period is too long and recommend that specific written notice be sent after the first informal notice.

We also recommend providing clarification in subdivision A. 5) that a fine cannot be assessed until a statement has been filed. If a statement is not filed after the notices outlined in section 1 have been given, an enforcement referral (either to your County District Attorney or to the Commission's Enforcement Division) must be made. The remainder of section 1 appears to conform with the duties outlined in section 81010.

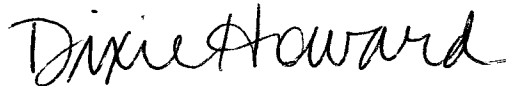
We offer no comments on Section 2. Penalties because these provisions do not fall under the jurisdiction of the Act. As mentioned earlier, interpretation and enforcement of this section lies with the City of Thousand Oaks. However, section 2 does not appear to conflict with any of the Act's provisions.

Since filing officers have the authority to waive or fine filers of late filed statements of economic interests, Section 3. Imposing and Waiving Fines appears to conform with the provisions of section 91013. In fact, the fine and waiver guidelines contained in Resolution 99-73 are similar to those used by the Commission for late-filed statements.

If you have any other questions regarding this matter, please contact me at (916) 323-6935.

Sincerely,

Luisa Menchaca  
General Counsel



By: Dixie Howard  
Manager, Filing Officer Programs  
Technical Assistance Division