



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

May 27, 2004

Ms. Caren Daniels-Meade  
Chief, Political Reform Division  
Office of the California Secretary of State  
P.O. Box 1467  
Sacramento, CA 95812-1467

**Re: Your Request for Informal Assistance  
Our File No. I-03-193**

Dear Ms. Daniels-Meade:

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

### QUESTION

Under the Act, does the Secretary of State as filing officer have the authority to reject an electronic or online filing which is incomplete and has material deficiencies?

### CONCLUSION

Under sections 81010(b), 84612, and regulation 18110, the Secretary of State, as filing officer, has the authority to reject an online or electronic filing which lacks the basic information necessary to identify the filer and/or filing, such as the name of the filer, the name of the committee, the office or measure, the election, or the signature of the filer. With respect to filings lacking other information on a form, the summary page, or an attached schedule, however, the FPPC interprets the above sections of the Act and regulations, consistent with prior advice, to require that such filings be accepted by the filing officer, and that the filer be contacted to provide any missing information. The FPPC supports the Secretary of State's efforts to use the technological capabilities of electronic and online filing to improve the accuracy and completeness of information submitted by filers and will work together with your agency toward that end.

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. Informal assistance does not confer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3), copy enclosed.)

## FACTS

You are seeking the FPPC's informal advice on what policies should be followed when dealing with electronic filings of campaign and lobbying registration and disclosure reports which have not provided all the required information in their electronic or online submissions.

So that we may understand your question in context, you provide the following background. In 2000, when the Secretary of State began operation of the Cal-Access electronic filing system, you were advised by FPPC staff that you should not reject incomplete filings. You were told that you should adhere to the advice FPPC staff had previously given the Secretary of State in the paper filing environment, specifically: if a filing contained the name of the committee, name of the filer, and a signature, the paper filing was to be accepted as a timely filing. The Secretary of State, therefore, designed the CAL filing format, Cal-Online, and the validator components that review the filings prior to your accepting them with very few mandatory rejection capabilities.

During the in-depth review of your database that you did in preparation for the design, build and roll-out of the searchable database, however, you have discovered that some very incomplete filings are passing into your system. This has caused you to reconsider the rejections policy.

Because the purpose of disclosure is to afford the voters of California an opportunity to review the financial records of campaign and lobbying filers, you believe you are falling short of that goal if you continue to allow filers to provide only superficial views into their activities relating to campaign contributions and expenditures and lobbying efforts. When a user of Cal-Access cannot determine for what office or election cycle fundraising activities are occurring, for example, you are failing your goal of providing substantive information to assist voters in their ballot box choices. And with the limits set forth in Proposition 34, you question how the public is to monitor whether contribution limits have been violated if they cannot track the money in a meaningful way.

Based on these concerns about filings that are incomplete or have material deficiencies, you ask whether the Secretary of State as filing officer, has the authority to reject an electronic or online filing if certain required fields are not provided. Further, if statutory authority exists to reject electronic or online filings with material deficiencies, you propose we set up a team of Fair Political Practices Commission and Political Reform Division staff to go through each form and determine what should and what should not be mandatory fields which would result in rejections if not provided.

Examples of possible "mandatory fields" provided by Secretary of State staff were possibly some fields on the Summary Page of the committee campaign statement, Form 460, or the contributor name, date and amount for contributions. Another example of a required field could be on the Form 496, Late Independent Expenditure report, where a filer states if an

independent expenditure was made for or against a candidate or measure, if the filer checks "candidate," the system could require the filer to name the office; if the filer checks "ballot measure," the system could require the filer to state the measure number.

Conversations with Secretary of State staff indicate that your question is a long-term question affecting how your office continues to design and enhance the electronic and online filing systems. The Secretary of State does not have funds available to reprogram or change the validator on the vendor-based electronic filing system now. In the near term, however, the answer to this question might affect development of the Cal-Online filing system which will accept direct filings from certain lobbyists and campaign users.

### ANALYSIS

**1. Disclosure.** Disclosure of campaign finances and lobbying activities is one of the primary purposes of the Act, as described in section 81002:

"(a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.

(b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials."

The Online Disclosure Act, added to the Act in 1997, contains further findings and declarations about disclosure:

"(a) The people of California enacted one of the nation's most comprehensive campaign and lobbying financial disclosure laws when they voted for Proposition 9, the Political Reform Act of 1974, an initiative statute.

(b) Public access to campaign and lobbying disclosure information is a vital and integral component of a fully informed electorate.

(c) Advances in technology have made it viable for disclosure statements and reports required by the Political Reform Act to be filed online and placed on the Internet, thereby maximizing availability to the public." (§ 84601.)

Because disclosure of campaign finances and lobbying activity is a cornerstone of the Act, the FPPC seeks to interpret the measure to encourage and assist candidates, committees and lobbyists in filing the required public disclosure reports.

**2. Duties of the Filing Officer.** Your question about rejection of an electronic or online filing which has material deficiencies involves the Secretary of State's duties as a filing officer. Section 81010 sets forth the duties of filing officers as follows:

“With respect to reports and statements filed with him pursuant to this title, the filing officer shall:

- (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; and
- (e) Compile and maintain a current list of all reports and statements filed with this office.” (Emphasis added.)

Under section 81010(b), the Secretary of State as filing officer has a duty to determine whether campaign statements submitted conform on their face with the requirements of the Act.

Regulation 18110(b) (copy enclosed) describes in detail the information for the filing officer to review when determining whether campaign statements filed “conform on their face” with the requirements of the Act:

(b) It shall be the duty of the filing officer pursuant to Government Code section 81010(b) in connection with the filing of candidate and committee campaign statements to determine whether original documents filed conform on their face with the requirements of the Political Reform Act and regulations adopted pursuant to the Act.

¶...¶

(2) In determining whether original documents filed conform on their face, the filing officer shall review:

- (A) All statements to insure that they contain the full name, residential or business address and phone number of the filer or if a committee is the filer, the name, street address and phone number of the committee and of the committee treasurer.
- (B) All statements to insure that they have been signed and dated by the proper person as outlined below:
  - 1. Statements of recipient committees signed and dated by the treasurer, and statements of all other committees signed and dated by the filer or his or her designated agent.
  - 2. Statements of controlled committees signed and dated by the treasurer and the candidate or state measure proponent.
  - 3. Candidate statements signed and dated by the candidate.
- (C) All statements to insure that they are legible, are printed in ink or typewritten, and that readable reproductions can be made.

(D) All statements to insure that beginning and closing dates for the statement which are prescribed by law are accurate.

(E) All statements to insure that the following information is contained in the statement [Subdivisions (E)(1)-(13), omitted, set forth information which must be on the campaign statement including the amount of contributions, expenditures, contributor and payee information, etc., as required by section 84211.]

¶...¶

“(F) All statements to insure that there are no gross or readily apparent errors in arithmetical calculations.”

Subdivision (c) of regulation 18110 sets forth the filing officer’s duties in accepting and processing filings, and notifying filers of incomplete statements, errors or omissions:

“(c) It shall be the duty of the filing officer pursuant to Government Code section 81010(c) in connection with the filing of candidate and committee campaign statements:

*(1) To accept for filing any campaign statement which the Act requires to be filed with the filing officer.*

*(2) To date stamp on the day of receipt, any campaign statement or report required to be filed with the filing officer.*

*(3) In those cases where the filing officer discovers in his or her review of campaign statements that a candidate or committee has filed an incorrect, incomplete or illegible campaign statement or a campaign statement which cannot be reproduced, he or she shall promptly notify the candidate or committee of the error or omission. However, no notification is required in those cases in which the errors or omissions are minor ones which do not recur throughout the campaign statement. An error or omission is minor if it does not result in omission of the amount of an individual contribution or expenditure. An error or omission in connection with the identification of a donor or intermediary is minor if such person is identified by name and either street address, occupation, employer or principal place of business. An error or omission in connection with the identification of the recipient of an expenditure or person providing consideration for an expenditure is minor if such person is identified by name.”*  
(Emphasis added.)

Section 81004.5 of the Act provides the general authority to amend a statement: “Any report or statement filed pursuant to this title may be amended by the filer at any time. Amending an incorrect or incomplete report or statement may be considered as evidence of good faith.” The FPPC has consistently advised that when a filing officer discovers during his or her review of campaign statements that a candidate or committee has filed an incorrect, incomplete, or illegible statement, an amendment must be requested. (*Daniels-Meade Advice Letter*,

No. A-01-285; *Tucker* Advice Letter, No. A-97-176.) Pursuant to regulation 18110(c), however, amendments need not be requested when errors or omissions are minor or do not recur throughout the campaign statement and do not result in omission of the amount of an individual contribution or expenditure. (*Id.*)

**3. Section 84612.** In addition, section 84612, added to the Online Disclosure Act in 2001, discusses the notice to be sent if the Secretary of State rejects an online or electronic filing. Section 84612 provides:

“If the Secretary of State rejects a filing made under this chapter [Chapter 4.6 – Online Disclosure], the Secretary of State shall immediately notify the filer, by electronic mail, of the reason or reasons for rejection using plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The notice shall be written or displayed so that the meaning will be easily understood by those persons directly affected by it.”

This provision was added to the Online Disclosure Act by SB 386 sponsored by Senator Ross Johnson, and chaptered in 2001 as Ch. 79. The legislative history of the bill shows that it was designed to get a clear explanation from the Secretary of State when the system sent filers technical error messages with respect to their electronic campaign or lobbying filings.<sup>2</sup>

---

<sup>2</sup> The report for the Senate Committee on Elections and Reapportionment hearing on the bill, dated April 4, 2001, prepared by Darren Chesin provides the following comments:

“According to the author, when a filer’s report is rejected by the Secretary of State’s system, a notice is immediately sent to the filer via e-mail that the electronic filing was rejected. However, the notice does not specify why the filing was rejected. The other way for the filer to find out why he or she was rejected is to contact the filing software vendor so the vendor can explain in simple English what the problem is.

For example, if a state legislative candidate gave money to a federal candidate and included the federal candidate’s ID number, the filing would be rejected by the Secretary of State because the ID number was too long. But the filer would have no way of knowing that was the reason for rejection without input from the vendor.

Since it is the filer who is responsible for submitting the report and not the vendor, information on the reasons for rejection must go to the filer. And it is important that the information be in simple language that would be understood by the filer and not in technical language that would be impossible to decipher.”

According to staff of the Secretary of State’s office, the initial electronic filing system may have technically been unable to process filings with more than nine characters in the ID field. The Secretary of State’s office, however, did not have a policy of rejecting such statements in the sense being discussed in this letter. In addition, the system generated technically complex error messages about data in some statements which were difficult for filers to understand. The report for the Assembly Committee on Elections, Reapportionment and Constitutional Amendments hearing on the bill dated June 19, 2001, prepared by Lloyd Levine contained similar observations as the Senate report, and noted that the Secretary of State was neutral on the bill but acknowledged the problem and reported that they planned to fix the problem when funding became available.

**4. Handling Filings with Incomplete Information.** We interpret sections 81010(b), 84612, and regulation 18110(b) and (c), to permit the Secretary of State to reject an online or electronic filing which lacks the basic information necessary to identify the filer and/or filing, such as the name of the committee, the name of the filer, the office or measure, the election, or the signature of the filer. With respect to other missing information on a form, summary page or attached schedule, however, consistent with prior advice, we interpret the above sections of the Act and regulations to require that the filing officer accept the filing as timely filed and contact the filer for an amendment to submit the missing information.

We do not interpret the Act to permit the Secretary of State to reject filings lacking a particular piece of information on the many schedules and fields of the Act's disclosure forms. To do so might risk the system rejecting a candidate's otherwise comprehensive disclosure report because the committee was unable to obtain a small piece of information. From the perspectives of public disclosure and enforcement, to reject such a filing would be less consistent with the goals of the Act than to accept the filing and request that the candidate provide the missing information. Further, permitting rejection of filings lacking a piece of information in one of many fields designated as "mandatory" would create different standards for acceptance of statements between paper and electronic filings and between the various electronic filing jurisdictions (the Secretary of State, Los Angeles and San Francisco).

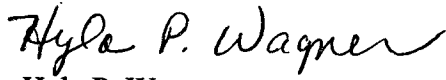
This interpretation does not mean that filing officers should not take advantage of advances provided by electronic and online filing technology. The FPPC recognizes that electronic and online filing can automate the "desk review" of a statement which a filing officer conducts. Electronic or online filing means that a more thorough review of the data submitted can be conducted using less staff time. The electronic or online filing systems can be developed to generate a clear "exception report" or "missing information" report that is automatically e-mailed back to the filer, requesting more information. In addition, the online filing system can be designed with logical prompts for filers, links to related fields, and highlighting of missing information.

The FPPC fully supports the Secretary of State's efforts to design the electronic and online filing systems as user-friendly and technologically sophisticated as possible, using information technology techniques to get the most complete information from filers. If you believe it would be helpful, FPPC staff would be pleased to work together with staff of the Secretary of State's office in reviewing the forms and identifying areas where links for related information or prompts would assist filers.

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

Sincerely,

Luisa Menchaca  
General Counsel

By:   
Hyla P. Wagner  
Senior Counsel, Legal Division

Enclosures

HPW:jg  
I:\AdviceLtrs\03-194