

DE 91-02 - February 5, 1991

Duties of a Filing Officer
Sections 97.012, 106.07(1), 106.23(2), 106.07(8)(b), and 106.07(8)(c), F.S.

TO: Mr. Donald W. Rhodes, Chairman, Florida Elections Commission, Post Office Box 887, Marco Island, Florida 33969

Prepared by: Division of Elections

This is in reference to your letter of November 26, 1990, requesting information relating to the notification requirements of filing officers with regard to the filing of late campaign financing reports.

The Secretary of State is the chief election officer of the state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws. Section 97.012, Fla. Stat. Within the Department of State, of which the Secretary of State is the head, there has been created a Division of Elections (Division) and the staff for the Florida Elections Commission (FEC) is housed within the Division. Both the Division and the FEC have specific powers and duties as prescribed by statute. See Fla. Jur. 2d, Elections Section 17. The Division is empowered to, inter alia, interpret the Election Code, Chapters 97-106, Florida Statutes, and issue opinions relating to the same. Section 106.23(2), Fla. Stat. The FEC was created by the legislature to investigate alleged violations of the campaign financing laws found in Chapter 106, Florida Statutes. The FEC has the authority to impose civil penalties in the form of fines to be deposited in the Campaign Financing Trust Fund.

You are the chairman for the FEC and pursuant to Section 106.23(2), Florida Statutes, the Division has authority to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You ask:

1. Do filing officers have an affirmative duty to ascertain that a required financial report is late?
2. If the above is required, is it a condition precedent that the person responsible for the report be notified that the report is late before a fine may be imposed?

In answer to your questions, filing officers have an affirmative duty to ascertain that a required financial report is late. It is not, however, a condition precedent that the officer notify the person responsible for the report before a fine is imposed.

Chapter 106, Florida Statutes, requires that each campaign treasurer designated by a candidate or political committee file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Section 106.07(1), Fla. Stat. Section 106.07(8)(b),

Florida Statutes, provides:

Upon determining that a report is late, the filing officer shall immediately notify the candidate or chairman of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. (Emphasis added.)

Thus, in reference to your first question, this statute places an affirmative duty on the filing officer to ascertain that a financial report is late and requires the filing officer to notify the candidate or chairman of the political committee as to the failure to file. In reference to your second question, the words " a fine is being assessed" indicate that the fine is an automatic fine. The fine begins to accrue the first day after the due date of the report regardless of whether the candidate or chairman of the political committee is notified that the report has not been received. Therefore, it is not a condition precedent that the person responsible for the report be notified that the report is late before a fine is assessed against the candidate or political committee.

Once the report is received, the filing officer determines the amount of the fine and must notify the candidate or chairman. The candidate or chairman has 20 days after receipt of the notice of payment due to pay the fine or make an appeal to the Florida Elections Commission. See Section 106.07(8)(b), Fla. Stat. Section 106.07(8)(c), Florida Statutes, provides in part:

Any candidate or chairman of a political committee may appeal or dispute the fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part.

In addition, Rule 1D-1.005, Florida Administrative Code, provides that the notice of appeal may be accompanied by any documentation or evidence supporting the claim.

Therefore, when considering an appeal of the fine, the FEC must make a two step analysis. First, has the appellant stated a claim of unusual circumstances and second, does the evidence submitted tend to prove or disprove the claim.

The term "unusual circumstances" is defined in Rule 1D-1.005, Florida Administrative Code:

Unusual circumstances means uncommon, rare or sudden events over which the actor has no control and which directly result in the failure to act in accordance with the filing requirements. Circumstances which allow for time in which to take those steps necessary to assure compliance with the filing requirements shall be deemed not to constitute unusual circumstances. (Emphasis added.)

Over the years, the FEC has taken the position that occurrences such as the absence of a key person involved in the reporting process, medical emergencies, other emergencies, last minute filings, mailing a report at a rural mail facility which forwards its mail to the main post office for next day postmarking, and other similar excuses were sufficient to support a claim of unusual circumstances.

However, pursuant to Rule 1D-1.005, Florida Administrative Code, before the FEC may label these occurrences as "unusual circumstances," the FEC must determine that the persons involved took all steps necessary to insure that a timely report was filed.

In the presence of a fine and subsequent appeal for failing to timely file a report, there must be proof that every effort was made to comply with the filing requirements, but because of unusual circumstances the report was not timely filed. The failure to take all steps necessary to assure timely filing cannot constitute unusual circumstances. The FEC has the ultimate authority to decide whether the proffered evidence bears out the claim of unusual circumstances.

SUMMARY

Section 106.07(8)(b), Florida Statutes, places an affirmative duty on the filing officer to ascertain that a financial report is late and requires the filing officer to notify the candidate or chairman of the political committee as to the failure to file. The fine for failure to file a required report begins to accrue the first day after the due date of the report regardless of whether the candidate or chairman of the political committee is notified that the report has not been received. Therefore, it is not a condition precedent that the person responsible for the report be notified that the report is late before a fine is assessed against the candidate or political committee.