

DE 91-07 - October 21, 1991

**Calculation of Late Days Under Automatic Fine Provisions
Sections 106.04(8) and 106.07(8), F.S.**

*TO: Honorable Dorothy Ruggles, Supervisor of Elections, Pinellas County, 315 Court Street,
Clearwater, Florida 34616-5190*

Prepared by: Division of Elections

This is in response to your letter of September 10, 1991, wherein you request an opinion from the Division of Elections. You are the Pinellas County Supervisor of Elections and are requesting an opinion concerning the Florida Election Code, the division has authority under Section 106.23(2), Florida Statutes, to issue this opinion.

You ask:

How are the number of late days determined under the late report automatic fine provisions of Chapter 106, Florida Statutes, when a campaign treasurer's report is late and a fine must be assessed?

It is the opinion of the division that the calculation of late days begins on the day after the campaign treasurer's report is due, including weekends and holidays, and continues and includes the day of the postmark, courier receipt, or certificate of mailing, whichever is earlier.

Section 106.07(8), Florida Statutes, provides a per day fine for late reports of political committees and candidates. Section 106.04(8), Florida Statutes, sets forth the applicable fine provisions for late reports of committees of continuous existence. The fine provisions of these two sections are substantially the same. Section 106.07(8), Florida Statutes, provides in part:

(8)(a) Any candidate or political committee failing to file a report on the designated due date shall be subject to a fine as provided in paragraph (b) for each late day....

(b) ...The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.
2. When the report is postmarked.
3. When the certificate of mailing is dated.
4. When the receipt from an established courier company is dated.

Though the first day on which the fine is to begin is not specifically stated in the statute, the division and the Florida Elections Commission have construed the statute to mean that the late days begin accruing on the day after the due date. The statute provides that the accruing of late days will continue until the earlier of when the report is actually received, when the report is postmarked, when a certificate of mailing is dated, or when the receipt from an established courier company is dated.

Therefore, it is the opinion of the division that the accruing of late days continues, including holidays and weekends, up to and including the earlier of the above-referenced dates. For example, if a report was required to be filed on the first of the month and was received on the tenth, bearing a postmark dated on the fifth of the month, the late days would include the second, third, fourth, and fifth days of the month. Therefore, the report is four days late.

SUMMARY

It is the opinion of the division that the calculation of late days begins on the day after the campaign treasurer's report is due, including weekends and holidays, and continues and includes the day of the postmark, courier receipt, or certificate of mailing, whichever is earlier.