

**Assessment of Fines
§ 106.07(8), Fla. Stat.**

TO: Ms. Grace Chewning, City Clerk, City of Orlando, 400 South Orange Avenue, Orlando, Florida 32801-3302

Prepared by: Division of Elections

This is in response to your request for an opinion concerning assessment of fines pursuant to section 106.07(8), Florida Statutes. You are the City Clerk for the City of Orlando and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you. You ask the following:

1. Does a filing officer have any discretion with regard to the amount of a fine assessed in section 106.07(8), Florida Statutes?
2. If such a fine is mandatory, what obligation does the filing officer have with respect to collection of the fine?

The answer to your first question is no. Section 106.07(8)(a), Florida Statutes, provides in pertinent part:

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, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate. The fine shall be assessed by the filing officer. . . .

As the fines are statutorily imposed and the language of the section is mandatory, the filing officer has no discretion regarding the assessment of a fine. The filing officer's duty is to determine whether a report is timely and assess the appropriate fine as set forth in section 106.07(8)(b), Florida Statutes.

With regard to your second question, section 106.07(8)(b), Florida Statutes, provides that upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the 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. Once a report is filed, the filing officer is required to notify the candidate or chair of the political committee of the amount of the fine due. Further, section 106.07(8)(d), Florida Statutes, provides that the filing officer shall notify the Florida Elections Commission (FEC) of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee failure of a candidate or political committee to file a report after being notified, or the failure to pay the fine imposed. Once the FEC is notified that a candidate or political committee has failed to pay the fine imposed, the FEC will enter a final order for the amount of the fine assessed.

At this point, the filing officer may file an enforcement action in circuit court to collect the fine and all cost and attorneys fees expended to collect the fine. The fine must be assessed and if collected the moneys must be deposited in the fund designated by section 106.07(8)(2), Florida Statutes. Unlike these mandatory provisions, the statute does not include a statement that the assessment be enforced. It is therefore our conclusion that the commencement of a collection action is within the discretion of the filing officer.

SUMMARY

A filing officer has no discretion with regard to fines imposed pursuant to section 106.07(8), Florida Statutes. The filing officer's duty is to notify a candidate or chairman of a political committee of the failure to file a report; determine the amount of the fine based upon the formula provided in section 106.07(8)(b), Florida Statutes; and notify the candidate or chairman of the political committee of the amount of the fine due.

The filing officer is also required to notify the FEC if the candidate or political committee fails to pay the fine imposed. Once a final order is entered by the FEC, the filing officer may then file an enforcement action in circuit court to collect the fine.