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PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: LEONARD HOFFITT

TITLE:

ADDRESS: POB 478

CITY: PALMER

ZIP: 99645

PHONE: 745-3384

BILL NO:

SUBJECT: ALASKA POLITICAL OFFICES COMMISSION

MESSAGE: SEEMS MISUSE OF APOC FOR POLITICAL NAME EXPOSURE COULD BE MONITARILY PENALIZED RATHER THAN TAKING INVESTIGATIONS UNDERGROUND FROM PUBLIC & PRESS.

ALSO PLEASE DO NOT DISCREDIT THE LEGISLATURE BY INCLUDING PROVISIONS THAT WILL HAMPER INVESTIGATIONS.

POMID: 14111710

DATE: 04/12/88

TIME: 11:17:10

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Alaska State Legislature

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Senator Mitch Abood
SENATE DISTRICT G-A

CHAIRMAN
STATE AFFAIRS
MAJORITY WHIP

MEMBER
TRANSPORTATION
COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
INTERNATIONAL TRADE

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FISCAL NOTE

REQUEST:

Revision Date: 3/8/88
Title: "An Act Relating to the Alaska Public Offices Commission"
Sponsor: Sen. Abood
Requestor: Senate State Affairs

Agency Affected: Alaska Public Offices Comm.
BRU: A.P.O.C.

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	19.5	19.5	19.5	19.5	19.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	19.5	19.5	19.5	19.5	19.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	19.5	19.5	19.5	19.5	19.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	19.5	19.5	19.5	19.5	19.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

see attachments

Prepared by: Karla Forsythe, Executive Director Phone: 276-4176
Division: Alaska Public Offices Commission Date: 3/10/88

Approved by Commissioner: Daniel Patrick O'Tierney, Chairman Date: 3/10/88
Agency: Alaska Public Offices Commission

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CS SB 85: State Affairs

Fiscal Detail:

1. Personal Services		0
2. Travel		0
3. Contractual Services		19.5
legal services (hearing officer contracts @ \$75/hr), transcription and witness fees, @ \$3.0/day aggregate cost:		
3 hearings (cases in which respondent will not settle with no contest plea)		
- 2 cases @ 1 day ea x 3.0 day =	6.0	
- 1 case @ 3 days x 3.0 day =	3.0	
5 hearings on factual disputes for late reports		
3.0/day x 1.5 days total =	4.5	
4. Supplies		0
5. Equipment		0
	total:	<u>19.5</u> =====

CSSB 85 (State Affairs)

Fiscal Analysis

Although many of the provisions contained in this measure would codify existing commission procedures, two sections would change current practice in ways which would create a fiscal impact for the agency.

Proposed Section 44.21.470(a) states that the commission may impose a penalty only if the respondent either admits or pleads no contest to allegations, or if the commission holds a hearing. This language has the effect of prohibiting the commission from settling a matter unless the terms of the settlement agreement contain an admission or a statement of no contest to factual allegations of wrongdoing.

In FY 87 the commission settled three matters. None of the settlement documents contain an admission or a plea of no contest; two of the documents expressly indicate that the respondent does not admit to the allegations. It is assumed for purposes of this fiscal note that these respondents would have chosen to proceed to hearing rather than to enter into a settlement which required an admission of wrongdoing or a statement of no contest.

Two of the settled matters involved simple factual allegations, and each hearing could have been concluded within one day. One of the matters involved more complex facts as well as a large number of respondents, and would have required a minimum of three hearing days. Costs for a hearing officer, witness fees and transcription total \$3000 per hearing day. Since it is difficult to quantify additional time spent by commission members in deliberation over these matters and additional staff time devoted to hearing preparation, these costs are not reflected in the fiscal note.

Proposed Section 44.21.475 will have a minor fiscal impact on the agency. This section provides that in matters amenable to summary disposition, the commission may follow less formal due process standards unless respondents wish to dispute the facts. In FY 87 150 matters subject to summary disposition were appealed to the commission. Of these, five matters appear to have involved factual disputes (focusing primarily on controverted facts about mailing of reports). Since these matters center on very simple facts, and it is unlikely that respondents will raise complicated issues through legal counsel, it is assumed that these five matters would have required a total of one and one-half days of hearings. Staff would endeavor to schedule these matters at one time to avoid any hearing officer costs attributable to five separate appearances at commission offices. Based on costs of \$3000 per day, one and one-half days of hearing would require an additional expenditure of \$4500 to fund the more formal due process procedures warranted when factual disputes arise.

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SECTIONAL ANALYSIS AND NARRATIVE

FOR

CSSB 85 (SA), "An Act relating to the powers and duties of the Alaska Public Offices Commission, and providing for an effective date."

Index of Sections

44.21.450	Alaska Public Offices Commission
44.21.455	Duties of the Commission
44.21.460	Preliminary Investigations
44.21.465	Hearings
44.21.470	Imposition of Penalty
44.21.475	Summary Disposition of Violations
44.21.480	Confidentiality
44.21.485	Judicial Review
44.21.490	Compelling Testimony; Examination of Records
44.21.495	Judicial Review
44.21.500	Definition
	Several conforming amendments
	Immediate effective date

** Section 44.21.450. ALASKA PUBLIC OFFICES COMMISSION.

This section corrects a serious constitutional problem with the manner in which the commission chooses its fifth member. Article II, Section 26 of the Alaska Constitution requires all members of regulatory or quasi-judicial boards or commissions to be appointed by the Governor and confirmed by the legislature. However, since the commission was established in 1974, the four members have

chosen the commission's fifth member themselves, without appointment by the Governor or confirmation by the legislature. This section sets out a procedure for the appointment and confirmation of the fifth member; the selection of successors; and deletes obsolete material relating to the initial terms of members.

Subsection (h) is a new provision 1/ which holds commission staff to the same standard as commission members by prohibiting staff from engaging in political activity while they are employed by the APOC.

**** Section 44.21.455. DUTIES OF THE COMMISSION.**

This section is identical to present law, AS 15.13.030, which describes the responsibilities of the commission to administer AS 15.13 (campaign disclosure), AS 24.45 (lobbying) and AS 39.50 (conflict of interest).

**** Section 44.21.460. PRELIMINARY INVESTIGATIONS.**

Existing statutes governing APOC investigations are hopelessly confused and raise serious questions about the lack of constitutional due process afforded individuals who are subjected to APOC staff investigations.

Subsection (a) is similar to present regulation 2 AAC 50.450 (c)(1), which sets out a procedure for handling complaints which are properly filed and sworn. However, this subsection sets out a new requirement for the executive director to notify each person against whom a complaint is filed. The present APOC regulation only requires staff to acknowledge receipt of a complaint to the complainant but not to the respondent. Subsection (a) also sets out a new requirement that both parties be notified immediately.

1/ The use of language such as "new provision" or "new requirement" means that similar language does not exist in present law.

Subsection (b) adds a new requirement for the executive director to make an initial determination whether a complaint sets out facts which, if true, would constitute a violation of the law, within 10 working days after first receiving the complaint, for purposes of notifying the complainant and the respondent.

Present APOC regulation 2 AAC 50.450 (c)(2), simply states that the staff must make this determination "promptly".

Subsection (c) provides that the staff may conduct a preliminary investigation of violations of the campaign disclosure, conflict of interest and lobbying laws on its own motion. Present APOC regulations (2 AAC 50.460 (a)(2), (b) and 2 AAC 50.450 (e)), which describe these procedures are poorly written and extremely confusing.

Subsection (c) also sets out a new requirement for an investigation which the staff begins on its own motion, that requires the executive director to immediately notify a person against whom a preliminary investigation is proceeding of the nature of the alleged violation. Present law and regulation do not require commission staff to notify a person that he or she is under investigation. It has happened in the past that individuals were not aware of the existence of an APOC investigation which involved them until after the staff terminated its investigation and made public charges in a report to the commission which recommended that action be taken against them.

Subsection (d) is a new provision which is modeled after similar provisions in Florida, Nebraska and Hawaii. The subsection provides that a person whose name is mentioned in a complaint or identified during an investigation or at a hearing as someone who may have violated AS 15.13, AS 24.45, or AS 39.50 shall be advised by the executive director of the information obtained by the commission. This person may appear personally and

testify at the hearing or may file a signed and sworn written statement of the facts or other evidence for incorporation into the record.

The intent of this subsection is to ensure that individuals who are identified as possible violators of the law, but who have not been formally made a party to an action, be allowed an opportunity to provide facts or other evidence so that an investigation or hearing can develop a full and fair record. This does not mean that everyone whose name merely comes up in a commission matter will be notified, as the APOC staff fears. It is hoped that professional staff will be able to distinguish between a casual, frivolous or malicious mention and the point at which the evidence raises a serious possibility that an individual may have violated the law.

Commission staff have also pointed to the Florida provision and argued that notification should be restricted to hearings only. While it is true that the Florida provision pertains to hearings, it is also true that the hearings in Florida are kept closed, while those in CSSB 85 (SA) are open to the public. The point being -- that an individual whose conduct is seen to rise to the level of possibly violating the law during proceedings which are confidential and hidden from public view, should be given the opportunity to incorporate his or her side of the story into the record, before being blind-sided by possibly damaging, defamatory and inaccurate staff accusations in a public hearing. This is precisely what has occurred to individuals in the past, and is the reason why the subsection was put in the bill.

* * *

When staff concludes the preliminary investigation and submits their report, the commission deliberates. The purpose of this initial deliberation is to elicit evidence on the question of whether or not the complaint was filed on justifiable grounds.

Subsection (e) is a new provision and provides that when a preliminary investigation is ended and the commission makes a determination that there is probable

cause to believe that the person named in the complaint has committed a violation of AS 15.13 (campaign disclosure), AS 24.45 (conflict of interest) or AS 39.50 (lobbying), the commission will then commence violation proceedings by filing and serving an accusation on the person who is alleged to have committed the violation.

Subsection (f) is a new requirement which provides that if a preliminary investigation is terminated and the commission finds that no probable cause exists that the person named in the complaint has committed a violation, the commission shall immediately inform the complainant and each person against whom the complaint was filed, of the information which was reviewed and that the commission will not be taking further action concerning the complaint. The commission will then close the file.

** Section 44.21.465. HEARINGS.

There is very little existing law governing the actual administrative procedures that the commission must follow in adjudicating violations and imposing penalties. In the absence of statutory provisions, the commission has filled the void with a large number of its own administrative regulations.

It is much better policy to include basic procedures in the law, rather than leaving such important matters to questionable regulations and staff interpretation.

Subsection (a) is new and provides that a hearing shall be conducted if a respondent requests a hearing on a contested accusation or under the conditions described in the "Summary Disposition of Violations". In the absence of a request, the commission in its discretion may decide to hold a hearing. The hearing shall be conducted under the provisions of the Administrative Procedures Act and will be open to the public.

Subsection (b) is a new requirement that when a

hearing officer submits a proposed decision to the commission, the respondent and the commission staff may, within 10 working days after receipt of a copy of the proposed decision, submit written comments on the proposed decision to the commission. This is to allow an opportunity for both sides to comment on the hearing officer's proposed decision. The commission is required to consider these written statements before adopting the hearing officer's decision.

*** Section 44.21.480 IMPOSITION OF PENALTY

This entire section contains new provisions and has no counterpart in existing law.

Subsection (a) provides that the commission may impose penalties only after a person has admitted or plead no contest to an accusation or after the commission holds a hearing at which certain due process rights have been afforded to the respondent, and at which the commission determines by substantial evidence that the person has actually committed the violation. Existing law does not address standards of proof in hearings before the commission.

Subsection (b) provides that in cases where there is evidence of a willful violation (emphasis added) of the law, the commission staff may not formally or informally make a recommendation to the commission members as to a particular penalty in a pending matter or make a commitment to the respondent to make a particular recommendation to the commission in the future until after the respondent has admitted or pleaded no contest to the accusation or until after a hearing and a final determination by the commission that the respondent has actually committed the acts charged in the accusation. This ban on plea bargaining by staff is restricted to instances where there is evidence of a flagrant, willful violation and does not in any way impair staff's ability to negotiate settlements in other cases.

Subsection (c) states that before the executive director may make a recommendation to the commission for the imposition of a particular penalty in a matter, the respondent must first be given notice of the recommendation and afforded an opportunity to respond to the recommendation in person or in writing.

Subsection (d) contains specific guidelines for the commission to follow in imposing penalties. This subsection provides that the higher penalties should be reserved for egregious conduct where the violation has impeded public disclosure of information as to the amount and source of contributions; and the extent to which the respondent's conduct, including prior violations of AS 15.13, AS 24.50, or AS 39.50 shows a disregard for the law.

The intent of this section is for the legislature to provide clear guidelines to the commission in exercising its discretionary "sentencing" authority, so that the law is the determining factor in the commission's imposition of penalties and not the staff's interpretation; It is also intended to provide some standards for judicial review of commission actions.

*** Section 44.21.485. SUMMARY DISPOSITION OF VIOLATIONS

This section authorizes the commission to establish by regulation the less serious violations that are amenable to summary disposition without formal accusation. This category of violations makes up the vast majority of the commission's business and involves such transgressions as inadvertent mistakes and the late filing of reports.

The intent of this section is to permit the commission to continue to deal with relatively minor violations in a summary fashion, without having to employ the more detailed procedures of the Administrative Procedures Act. The concept of the "summary disposition of violations" by means of a schedule of fines, is modeled after the "mail-in-bail" provisions of the Motor Vehicle Code (AS 28).

Subsection (b) states that a notice of fine may be mailed to the person who is alleged to have committed a summary violation which indicates the circumstance of the violation and the amount of the fine. The person may then pay the fine within 30 days after receiving the notice, file a notice of defense disputing the facts and requesting a hearing, or file an affidavit stating facts in mitigation of the amount of the fine.

Subsection (c) provides that if a person does not properly respond under the requirements of the section, that the notice of fine constitutes an accusation and the commission shall proceed against the person under AS 44.21.465 - 44.21.470.

Subsection (d) provides that if the person files an affidavit stating facts in mitigation of the fine, the members of the commission shall hold a hearing limited to the amount of the fine. This is not an APA-type of hearing and does not require a hearing officer.

*** Section 44.21.490. CONFIDENTIALITY

This entire section contains new provisions and has no counterpart in existing law.

Most states, including the Federal Elections Commission provide for confidentiality. In drafting the confidentiality provision for CSSB 85, we reviewed the following states: South Carolina; Hawaii; Minnesota; Nebraska; Illinois; Florida; Kansas; Washington; Massachusetts and California.

In CSSB 85, the complaint, the commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of probable cause has been made by the commission and an accusation is filed under 44.21.465, unless the person alleged to be in violation requests in writing that the proceedings be public.

If the commission finds that there is no probable cause to believe an individual has committed an offense, the parties are notified, the file is closed and the matter remains confidential. This is the same procedure used by the Ombudsman.

It is no secret that complaints have been filed as a campaign strategy to inflict maximum damage upon an opponent. It is also no secret that prejudicial material has been leaked to the press by commission staff in order to bolster their "case" in front of the commission, with no regard for whether the information is true or false.

Whatever its source, this practice denies an individual his or her constitutional rights to privacy and due process and destroys any expectation to be treated fairly under the law. A person who is targeted for staff investigation should not be blind-sided by the dissemination of prejudicial and defamatory material before the commission even makes a determination that there is probable cause to proceed.

Sensational press accounts which are purposely timed to appear before commission decisions, make a mockery out of the common law doctrine of the "deliberative process privilege" which is intended to protect from public disclosure those pre-decisional documents that reflect the decision-making authority of an agency.

The rationale for the privilege was discussed in Ryan v. Department of Justice, 617 F. 2d 781 (D.C. Cir. 1980), in which the court stated:

The [privilege] was created to protect the deliberative process of the government, by ensuring that persons in an advisory role would be able to express their opinions freely to agency decision-makers without fear of publicity. In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit the frank discussions of policy matters and likely impair the quality of decisions.

The United States Supreme Court has emphasized that documents that are protected by the privilege remain privileged even after a final decision is reached in the matter, unless ideas expressed in the document(s) are incorporated in the final decision. The rationale for this is that "disclosure at any time could inhibit the free flow of advice, including analysis, reports, and expression of

opinion within the agency." Federal Open Market Committee of the Federal Reserve System v. Merrill, 443 U.S. 340, 360 (1979). 2/

Commentators Stone and Liebman discuss this privilege, as recognized by the federal courts, in part as follows:

...a document is protected if its disclosure would reveal "the methods by which a decision is reached, the matters considered, the contributing influences, or the role played by the work of others."

The ultimate purpose of the privilege is "to prevent injury to the quality of agency decisions." Its particular purposes are (1) to encourage open, frank discussions on policy matters between subordinates and their superiors by assuaging fear of public ridicule or criticism; (2) to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and (3) to protect against confusing the issues and misleading the public by disclosure of reasons that were not in fact the actual reasons for the agency's actions.

....The scope of the privilege is not so narrowly confined, however, it has been held to extend to "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinion of the writer rather than the policy of the agency."

2/ Index for Inspection or Discovery of Public Records, Dept. of Law, 1986.

S. Stone & R. Liebman, Testimonial Privileges (1983).

I think it is important not only to review the provisions of the confidentiality section in terms of the deliberative process privilege, but to weigh those provisions with the constitutional right to privacy in Alaska, which exceeds even that of the federal standard. According to a 1984 Attorney General's Opinion (1984 Inf. Op. Att'y Gen. Oct. 366-625-84):

"Regarding the (constitutional) right to privacy, first it must be determined whether the information is of the type that would be protected under Article I, Section. 22 of the Alaska Constitution, which provides that:

The right of the people to privacy is recognized and shall not be infringed.

In this regard, the issue is whether the information is "sensitive"; that is, information

. . . which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person.

Falcon v. Alaska Public Offices Commission, 570 P.2d 469, 479 (Alaska 1977). If the information is not "sensitive" it is not protected by the right to privacy.

If it is determined that the information is "sensitive", and thus protected by the constitutional amendment, then the second step in the analysis must be taken. This step involves a balancing process, in which the nature and extent of the harm to the individual that would be caused by public disclosure is balanced against the public interest furthered by disclosing the information."

At the Supreme Court's direction after the Falcon decision, the Public Offices Commission in 1978, adopted 2 AAC 50.100, a regulation which specifies the procedures to be

used when a person claims that information is exempt from disclosure under the right of privacy. The regulation reads in part:

(a) Disclosure of another person's name in a report is not required and should not be made where that disclosure alone would likely result in disclosing sensitive information which the person would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person....

The APOC narrowly restricted the application of this regulation to AS 39.50 (Conflict of Interest), in instances when a candidate for public office claims that disclosure of information to the commission, as required by statute, would violate someone's right to privacy. However, I think that it can be reasonably argued that the Falcon test which prompted this APOC regulation, is broader than APOC's interpretation and also extends to certain documents such as complaints, reports or other sensitive material obtained or produced prior to the hearing stage under 15.13, 24.45 and 35.50. These matters fall within the confidentiality provision contained in CSSB 85 (SA).

**

**

As far as the actual procedures specified in CSSB 85 for the handling of complaints on through the hearing phase, I would like to briefly discuss similar procedures used by South Carolina, which, like CSSB 85 (SA) allows the executive director to determine from the facts presented in a complaint if sufficient cause exists to conduct a preliminary investigation of the alleged violation or failure to file required statements. If it is determined that facts are not sufficient to constitute a violation, the complaint will be dismissed and all parties will be notified. If the executive director determines that facts are sufficient to constitute a violation, a preliminary investigation will be conducted by the staff.

When the preliminary investigation is terminated, the executive director reports the results of the preliminary investigation to the Commission for review, to determine if probable cause exists to support an alleged violation. If the commission determines that there is insufficient cause to support the violation, all parties will be notified, the complaint will be dismissed and the matter will remain confidential. When sufficient facts do exist to support the alleged violation, the commission shall file an accusation. It is the probable cause determination made by the commission, resulting in the filing of an accusation which ends the confidentiality and makes the matter public.

*** Section 44.21.495. JUDICIAL REVIEW

This section has no counterpart in existing law and is modeled after a similar section in the Administrative Procedures Act.

*** Section 44.21.500. POWERS OF THE COMMISSION

This section is, apart from minor editing, identical to existing AS 15.13.045, and provides the commission with the power to compel witnesses, issue subpoenas, etc. with respect to an investigation or hearings.

*** Section 6 (13)

A new provision that requires the executive director and the professional staff of the commission to submit conflict of interest reports under AS 39.50.200 (b).

*** Several conforming amendments follow.

*** Immediate effective date.

Federal Election Commission Regulations

§ 111.1

11 CFR Ch. I (1-1-86 Edition)

Federal Election Commission

110.4(a) and Part 114 and 2 U.S.C. 441b and 441c.

(g) *Administrative expenses of party committees and payments to qualify as delegates*—(1) Administrative expenses incurred by local, county, district or State party committees in connection with the sponsoring of conventions or caucuses during which delegates to a national nominating convention are selected, are not reportable under the Act; however, such expenses may not be paid from contributions or expenditures which are prohibited under 11 CFR 110.4(a) and Part 114 and 2 U.S.C. 441b and 441c.

(2) Payments to a State or district party committee by individuals for the purpose of qualifying as delegates would not be contributions or expenditures under the Act, nor would such payments be reportable under 11 CFR Part 104 and 2 U.S.C. 434 or subject to limitation under 11 CFR Part 110 and 2 U.S.C. 441a.

[45 FR 34867, May 23, 1980]

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

Sec.

- 111.1 Scope (2 U.S.C. 437g).
- 111.2 Computation of time.
- 111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).
- 111.4 Complaints (2 U.S.C. 437g(a)(1)).
- 111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).
- 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).
- 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).
- 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).
- 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).
- 111.10 Investigation (2 U.S.C. 437g(a)(2)).
- 111.11 Written questions under order (2 U.S.C. 437d(a)(1)).
- 111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a)(3), (4)).
- 111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a)(3), (4)).
- 111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).
- 111.15 Motions to quash or modify a subpoena (2 U.S.C. 437d(a)(3), (4)).

Sec.

- 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).
- 111.17 The probable cause to believe finding; notification (2 U.S.C. 437d(a)(4)).
- 111.18 Conciliation (2 U.S.C. 437g(a)(4)).
- 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).
- 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).
- 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).
- 111.22 Ex parte communications.
- 111.23 Representation by counsel; notification.

AUTHORITY: 2 U.S.C. 437g, 437d(a), 438(a)(8).

SOURCE: 45 FR 15120, Mar. 7, 1980, unless otherwise noted.

§ 111.1 Scope (2 U.S.C. 437g).

These regulations provide procedures for processing possible violations of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, *et seq.*) and chapters 95 and 96 of the Internal Revenue Code of 1954 (26 U.S.C. 9001, *et seq.* and 9031 *et seq.*).

§ 111.2 Computation of time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. As used in this section, the term "legal holiday" includes New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the United States by the President or the Congress of the United States.

(b) *Special rule for periods less than seven days.* When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(c) *Special rule for service by mail.* Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or

upon the Commission or such person and the paper is served by or upon the Commission or such person by or through three (3) days shall be added to the prescribed period.

§ 111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).

(a) Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.

(b) Matters initiated by complaint are subject to the provisions of 11 CFR 111.4 through 111.7. Matters initiated on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities are subject to the provisions of 11 CFR 111.8 through 111.23.

§ 111.4 Complaints (2 U.S.C. 437g(a)(1))

(a) Any person who believes that a violation of any statute or regulation over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing with the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. If possible, three (3) copies should be submitted.

(b) A complaint shall comply with the following:

(1) It shall provide the full name and address of the complainant; and

(2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

(c) All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint should conform to the following provisions:

(1) It should clearly identify as respondent each person or entity who is alleged to have committed a violation.

(2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives

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upon the Commission or such person and the paper is served by or upon the Commission or such person by mail, three (3) days shall be added to the prescribed period.

§ 111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).

(a) Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.

(b) Matters initiated by complaint are subject to the provisions of 11 CFR 111.4 through 111.7. Matters initiated on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities are subject to the provisions of 11 CFR 111.8. All compliance matters are subject to the provisions of 11 CFR 111.2 and 111.9 through 111.23.

§ 111.4 Complaints (2 U.S.C. 437g(a)(1)).

(a) Any person who believes that a violation of any statute or regulation over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted.

(b) A complaint shall comply with the following:

(1) It shall provide the full name and address of the complainant; and

(2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

(c) All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. 1001. The complainant should differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint should conform to the following provisions:

(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation;

(2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise

to the complainant's belief in the truth of such statements;

(3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

(4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

[45 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).

(a) Upon receipt of a complaint, the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint.

(b) If a complaint does not comply with the requirements of 11 CFR 111.4, the General Counsel shall so notify the complainant and any person(s) or entity(ies) identified therein as respondent(s), within the five (5) day period specified in 11 CFR 111.5(a), that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent.

§ 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been

16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).

17 The probable cause to believe finding; notification (2 U.S.C. 437d(a)(4)).

18 Conciliation (2 U.S.C. 437g(a)(4)).

19 Civil proceedings (2 U.S.C. 437g(a)(6)).

20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

21 Confidentiality (2 U.S.C. 437g(a)(12)).

22 Ex parte communications.

23 Representation by counsel; notification.

24 Authority: 2 U.S.C. 437g, 437d(a), (8).

25 SOURCE: 45 FR 15120, Mar. 7, 1980, unless otherwise noted.

1 Scope (2 U.S.C. 437g).

2 These regulations provide procedures for processing possible violations of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et seq.) and chapters 95 and 96 of the Internal Revenue Code of 1954 (26 U.S.C. 9001, et seq. and 9031 et seq.).

3 1. Computation of time.

4 *General rule.* In computing any period of time prescribed or allowed in part, the day of the act, event, or failure to occur, the day after the day of the act, event, or failure from which the designated period of time begins to run shall not be included. The last day of the period prescribed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. As used in this section, the term "legal holiday" includes New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any day appointed as a holiday for the employees of the United States by the President or the Congress of the United States.

5 *Special rule for periods less than 7 days.* When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

6 *Special rule for service by mail.* Whenever the Commission or any other officer or employee has the right or is required to serve a notice or other document by mail, the time for the service of any paper by or

§ 111.7

served upon the Commission within the fifteen (15) day period specified in 11 CFR 111.6(a).

§ 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 CFR 111.6(a) or the receipt of a response as specified by 11 CFR 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 CFR 111.6(a).

§ 111.8 Internally generated matters: referrals (2 U.S.C. 437g(a)(2)).

(a) On the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or of any state, the General Counsel may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) If the Commission finds reason to believe that a violation has occurred or is about to occur the notification to respondent required by 11 CFR 111.9(a) shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

(c) Prior to taking any action pursuant to this section against any person who has failed to file a disclosure report required by 11 CFR 104.5(a)(1)(iii) for the calendar quarter immediately preceding the election involved or by § 104.5(a)(1)(i), the Commission shall notify such person

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of failure to file the required report. If a satisfactory response is not received within four (4) business days, the Commission shall publish before the election the name of the person and the report or reports such person has failed to file.

(45 FR 15120, Mar. 7, 1980, as amended at 45 FR 21210, Apr. 1, 1980)

§ 111.9 The reason to believe finding: notification (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 CFR 111.7 and any response of a respondent submitted pursuant to 11 CFR 111.6, or after reviewing an internally generated recommendation as described in 11 CFR 111.8, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding.

(b) If the Commission finds no reason to believe, or otherwise terminates its proceedings, the General Counsel shall so advise both complainant and respondent by letter.

§ 111.10 Investigation (2 U.S.C. 437g(a)(2)).

(a) An investigation shall be conducted in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

(b) In its investigation, the Commission may utilize the provisions of 11 CFR 111.11 through 111.15. The investigation may include, but is not limited to, field investigations, audits, and other methods of information-gathering.

§ 111.11 Written questions under order (2 U.S.C. 437g(a)(1)).

The Commission may authorize its Chairman or Vice Chairman to issue

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an order requiring any person to submit sworn written answers to ten questions and may specify a time by which such answers must be submitted.

§ 111.12 Subpoenas and subpoenas tecum: depositions (2 U.S.C. 437g(a)(3), (4)).

(a) The Commission may authorize its Chairman or Vice Chairman to issue subpoenas requiring the attendance and testimony of any person at a deposition and to issue subpoenas tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.

(b) If oral testimony is ordered taken by deposition or document produced, the subpoenaed person shall so state and shall advise the person or person subpoenaed that the testimony will be under oath. A deposition may be taken before any person having the power to administer oaths.

(c) The Federal Rules of Civil Procedure, Rule 30(e), shall govern the opportunity to review and sign depositions taken pursuant to this section.

§ 111.13 Service of subpoenas, orders, and notifications (2 U.S.C. 437d(a)(3)).

(a) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the manner prescribed by 11 CFR 111.13 (b), (c) and (d). In the case of subpoenas, fee for one day's attendance and mileage shall be tendered as specified in 11 CFR 111.14.

(b) Whenever service is to be made upon a person who has advised the Commission of representation by an attorney pursuant to 11 CFR 111.13 (a), the service shall be made upon the attorney by any of the methods specified in 11 CFR 111.13(c).

(c) Delivery of subpoenas, orders, or notifications to a natural person shall be made by handing a copy to the person, or leaving a copy at his office with the person in charge of, by leaving a copy at his dwelling place or usual place of business with some person of suitable age and discretion residing therein, or by delivering a copy by registered or certified mail.

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an order requiring any person to submit sworn written answers to written questions and may specify a date by which such answers must be submitted.

§ 111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a) (3), (4)).

(a) The Commission may authorize its Chairman or Vice Chairman to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.

(b) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. A deposition may be taken before any person having the power to administer oaths.

(c) The Federal Rules of Civil Procedure, Rule 30(e), shall govern the opportunity to review and sign depositions taken pursuant to this section.

§ 111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a) (3), (4)).

(a) Service of a subpoena, order or notification upon a person named therein shall be made by delivering a copy to that person in the manner described by 11 CFR 111.13 (b), (c), and (d). In the case of subpoenas, fees for one day's attendance and mileage shall be tendered as specified in 11 CFR 111.14.

(b) Whenever service is to be made upon a person who has advised the Commission of representation by an attorney pursuant to 11 CFR 111.23, the service shall be made upon the attorney by any of the methods specified in 11 CFR 111.13(c).

(c) Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with some person of suitable age and discretion residing therein, or by mailing a copy by registered or certified

mail to his or her last known address, or by any other method whereby actual notice is given.

(d) When the person to be served is not a natural person delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

§ 111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).

Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the United States. Such fees may be tendered at the time the witness appears for such deposition, or within a reasonable time thereafter.

§ 111.15 Motions to quash or modify a subpoena (2 U.S.C. 437d(a) (3), (4)).

(a) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. Motions to quash shall be filed with the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. If possible, three (3) copies should be submitted.

(b) The Commission may deny the application or quash the subpoena or modify the subpoena.

(c) The person subpoenaed and the General Counsel may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

145 FR 15120, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985

§ 111.16

§ 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).

(a) Upon completion of the investigation, the General Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether or not the Commission should find probable cause to believe that a violation has occurred or is about to occur.

(b) The General Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, setting forth respondent's position on the factual and legal issues of the case. If possible, ten (10) copies of such brief should be filed with the Commission Secretary and three (3) copies should be submitted to the General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) After reviewing the respondent's brief, the General Counsel shall advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

[45 FR 15120 Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

§ 111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).

(a) If the Commission, after having found reason to believe and after following the procedures set forth in 11 CFR 111.16, determines by an affirmative vote of four (4) of its members that there is probable cause to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, the Commission shall authorize the General Counsel to so notify the respondent by letter.

(b) If the Commission finds no probable cause to believe or otherwise orders a termination of Commission

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proceedings, it shall authorize the General Counsel to so notify both respondent and complainant by letter.

§ 111.18 Conciliation (2 U.S.C. 437g(a)(1)).

(a) Upon a Commission finding of probable cause to believe, the Office of General Counsel shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(b) A conciliation agreement is not binding upon either party unless and until it is signed by the respondent and by the General Counsel upon approval by the affirmative vote of four (4) members of the Commission.

(c) If the probable cause to believe finding is made within forty-five days prior to any election, such conciliation attempt shall continue for at least fifteen (15) days from the date of such finding. In all other cases such attempts by the Commission shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(d) Nothing in these regulations shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the General Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. Any conciliation agreement reached under this subsection is subject to the provisions of subsection (b) of this section and shall have the same force and effect as a conciliation agreement reached after a Commission finding of probable cause to believe.

(e) If a conciliation agreement is reached between the Commission and the respondent, the General Counsel shall send a copy of the signed agreement to both complainant and respondent.

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§ 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).

(a) If no conciliation agreement is reached within the application period specified by 111.18(c) the General Counsel shall recommend to the Commission that the Commission authorize relief in an appropriate court of the United States.

(b) Upon recommendation of the General Counsel, the Commission may, by an affirmative vote of its members, authorize the General Counsel to commence a civil action for relief in an appropriate court of the United States.

(c) The provisions of 111.18(c) shall not preclude the Commission upon request of a respondent from entering into a conciliation agreement even after a conciliation attempt to file a civil action made pursuant to this section. This subsection is subject to the provisions of 11 CFR 111.18(b) and shall have the same force and effect as a conciliation agreement reached under 11 CFR 111.18(c).

§ 111.20 Public disclosure of conciliation action (2 U.S.C. 437g(a)(4)).

(a) If the Commission makes a finding of no reason to believe or otherwise determines its proceedings, it shall not take any public such action and the Commission shall not take any public such action for no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(b) If a conciliation agreement is reached, the Commission shall not take any public such conciliation action forthwith.

§ 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).

(a) Except as provided in 111.20, no complaint filed with the Commission, nor any notification conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person without the written consent of the respondent with respect to

authorize the notify both re- ant by letter.

§ 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).

.S.C. 437g(a)(6). ion finding of : the Office of : attempt to cor- ation by infor- rence concilia- d shall attempt conciliation agree- nt.

(a) If no conciliation agreement is finalized within the applicable minimum period specified by 11 CFR 111.18(c) the General Counsel may recommend to the Commission that the Commission authorize a civil action for relief in an appropriate court of the United States.

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(b) Upon recommendation of the General Counsel, the Commission may, by an affirmative vote of four (4) of its members, authorize the General Counsel to commence a civil action for relief in an appropriate court of the United States.

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(c) The provisions of 11 CFR 111.18(c) shall not preclude the Commission upon request of a respondent, from entering into a conciliation agreement even after a recommendation to file a civil action has been made pursuant to this section. Any conciliation agreement reached under this subsection is subject to the provisions of 11 CFR 111.18(b) and shall have the same force and effect as a conciliation agreement reached under 11 CFR 111.18(c).

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§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

(a) If the Commission makes a finding of no reason to believe or no probable cause to believe or otherwise terminates its proceedings, it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(b) If a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith.

§ 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).

(a) Except as provided in 11 CFR 111.20, no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the

complaint was filed, the notification sent, the investigation conducted, or the finding made.

(b) Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.

(c) Nothing in these regulations shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure.

§ 111.22 Ex parte communications.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 11 CFR Part 111, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of any Commissioner's staff make or entertain any such ex parte communications.

(b) The prohibition of this regulation shall apply from the time a complaint is filed with the Commission pursuant to 11 CFR Part 111 or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 11 CFR Part 111, and remains in force until the Commission has finally concluded all action with respect to the enforcement matter in question.

(c) Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or staff member of

the Office of General Counsel in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by such a Commission attorney or staff member during any such communication shall bind or estop the Commission in any way.

§ 111.23 Representation by counsel; notification.

(a) If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:

(1) The name, address, and telephone number of the counsel;

(2) A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

(b) Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent.

PART 112—ADVISORY OPINIONS (2 U.S.C. 437f)

Sec.

- 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).
- 112.2 Public availability of requests (2 U.S.C. 437f(d)).
- 112.3 Written comments on requests (2 U.S.C. 437f(d)).
- 112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).
- 112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).
- 112.6 Reconsideration of advisory opinions.

AUTHORITY: 2 U.S.C. 437f, 438(a)(8).

SOURCE: 45 FR 15123, Mar. 7, 1980, unless otherwise noted.

§ 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the

agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(f) Upon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

[45 FR 15123, Mar. 7, 1980, as amended; 50 FR 50778, Dec. 12, 1985]

§ 112.2 Public availability of requests (2 U.S.C. 437f(d)).

(a) Advisory opinion requests which qualify under 11 CFR 112.1 shall be made public at the Commission promptly upon their receipt.

(b) A copy of the original request and any supplements thereto, shall be available for public inspection and purchase at the Public Disclosure Division of the Commission.

§ 112.3 Written comments on requests (2 U.S.C. 437f(d)).

(a) Any interested person may submit written comments concerning

advisory opinion request at the Commission.

(b) The written comment submitted within 10 calendar days following the date the request is made public at the Commission, the 10th calendar day following the date of the request, or Federal holiday, shall be submitted within the 10 day period ending at the end of the next business day after the end of the holiday. An extension of the submission of written comments shall be granted upon written request by the person submitting comments, or by the Commission, at the discretion of the Commission.

(c) Comments on requests should refer to the AOR number of the request. References should be to the States Code citations of the Public Law citations.

(d) Written comments for additional time to be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(e) Before it issues an advisory opinion the Commission shall consider all written comments submitted within the 10 day period or any extension thereof.

[45 FR 15123, Mar. 7, 1980; 50 FR 50778, Dec. 12, 1985]

§ 112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).

(a) Within 60 calendar days following the receipt of an advisory opinion request that qualifies under 11 CFR 112.1, the Commission shall issue an advisory opinion or shall issue a written statement stating that the Commission declines to approve an advisory opinion. The required affirmative action shall be taken by the Commission.

(b) The 60 calendar day period of 11 CFR 112.4(a) is reduced to 30 days for an advisory opinion request qualified under 11 CFR 112.1(b).

(1) is submitted by or on behalf of the candidate or agent of the candidate, or by or on behalf of the date of any election.

SOUTH CAROLINA

ARTICLE 3 COMPLAINTS

RULE

- 52-3.1 Generally
- 52-3.2 Who may file
- 52-3.3 Complaint Form (SEC-7)
- 52-3.4 Time
- 52-3.5 Amendment and Withdrawal
- 52-3.6 Delivery of Complaint
- 52-3.7 Determination of Just Cause
- 52-3.8 Preliminary Investigation
- 52-3.9 Confidentiality of Complaint
- 52-3.10 Malicious or Non-just Cause Filing of Complaints
- 52-3.11 Records
- 52-3.12 Statute of Limitations
- 52-3.13 Informal Disposition of Complaints

52-3.1 Generally

A complaint may be filed against any candidate for public office, any public official, or any public employee and any person is who alleged to have violated the State Ethics Act. Complaints against members of the General Assembly should be filed with either the House of Representatives Ethics Committee or Senate Ethics Committee, as appropriate.

52-3.2 Who may file

Any individual may file a complaint with the Commission alleging violations of the law or failure to file a required statement. Assistance in drafting and filing complaints is available from the the Commission office.

52-3.3 Complaint Form (SEC-7)

The Complaint Form (SEC-7) must be completed in writing (or typewritten), signed by the complainant,

and verified before the Commission. The form requires the signature of the complainant and the responder. The complaint form concerning the alleged violation must be accompanied by the required statement.

52-3.4 Time

The Commission will accept a complaint against a candidate during a fifty-day period prior to the election. A respondent is a candidate who qualified for an election may be a member of the Commission. If a complaint is not disposed of or dismissed by the Commission within fifty days prior to the election, the Commission may elect to hear the complaint or dismissed by the Commission.

52-3.5 Amendment

A complaint may be amended at the discretion of the Commission. A hearing on the complaint shall be held in writing before the Commission. Complaints may be amended after final determination of the Commission. Notification of a request for withdrawal of a complaint shall be in writing before the Commission.

52-3.6 Delivery of Complaint

A copy of the complaint shall be delivered to the respondent.

52-3.7 Determination

and verified before a notary public. The Complaint form requires the name and address of the complainant and the respondent, the telephone number of the complainant and the position title of the respondent. The complaint form requires detailed specific facts concerning the alleged violation or failure to file a required statement.

52-3.4 Time

The Commission will not accept any complaint filed against a candidate for public office during the fifty-day period prior to an election for which the respondent is a candidate. Complaints against candidates who qualify within fifty days of an election may be accepted only upon approval of the Commission. If accepted, the complaint will be disposed of or dismissed within ten days of receipt in the Commission office. Complaints filed more than fifty days prior to an election shall be disposed of or dismissed by the Commission within forty days of the election.

52-3.5 Amendment and Withdrawal

A complaint may be amended at any time prior to a hearing on the matter, and thereafter at the discretion of the presiding officer. All parties to the complaint shall be notified of any such amendments in writing before a final determination is made. Complaints may be withdrawn at anytime prior to a final determination of probable cause. After notification of a hearing, the complainant may only request withdrawal upon approval of the Commission.

52-3.6 Delivery of Complaint

A copy of the complaint and any amendments shall be delivered to the respondent promptly upon receipt.

52-3.7 Determination of Just Cause

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The Commission will determine from the facts presented in the Complaint if sufficient cause exists to investigate the alleged violation of the law or failure to file required statements. If the Commission determines that facts are not sufficient to constitute a violation, the complaint will be dismissed, all parties will be notified, and the complaint stricken from the public record. If the Commission determines that facts are sufficient to constitute a violation, a preliminary investigation will be conducted by the Executive Director and other State Agencies as may be deemed necessary.

52-3.8 Preliminary Investigation

The Executive Director will report the results of the preliminary investigation to the Commission for review, to determine if probable cause exists to support an alleged violation. When the Commission determines that there is insufficient cause to support the violation, all parties will be notified and the complaint will be dismissed. When sufficient facts do exist to support the alleged violation, the Commission shall, as appropriate, render an advisory opinion to the respondent requiring the respondent's compliance herewith within a reasonable time, or convene a formal hearing on the matter consistent with State administrative procedures.

52-3.9 Confidentiality of Complaint

All complaints, proceedings, and documents relating to these matters are private. No person associated with a complaint, including the complainant, respondent, counsel, counsel's secretaries, Commission members or employees, reporters or investigators, shall mention the existence of such proceedings or disclose any information pertaining thereto except to persons directly involved, and then only to the extent necessary for proper disposition of the complaint.

52-3.10 Malicious or Non-just Cause Filing of

Complaint

If, in the opinion filed which are not to the spirit of the just cause, this appropriate law. Filing of a complaint in malice is punishable by conviction, any person in such circumstances, shall be fined not more than one thousand dollars and imprisoned more than two years.

52-3.11 Records

The Commission will record and maintain all records after the completion of such recordings in part to the records requested. All documents and other formal records of three years will be maintained by the Commission.

52-3.12 Statute of

No complaint will be filed more than three years after the violation of the provisions of the statute.

52-3.13 Informal

The State Ethics Commission will determine the disposition of any complaint or agreed settlement, and may recommend a fine or suspension.

Subpoenas will be served on the officer or the complainant normally be served at the county of residence.

Complaint

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If, in the opinion of the Commission, Complaints are filed which are motivated by malice or reason contrary to the spirit of the law in filing a complaint without just cause, this determination shall be reported to appropriate law enforcement officials for action. Filing of a complaint without just cause or with malice is punishable as a misdemeanor. Upon conviction, any person filing a complaint under such circumstances, shall be fined not more than two thousand dollars (\$2,000) or be imprisoned for not more than two years, or both.

52-3.11 Records

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The Commission will cause all proceedings to be recorded and maintained for a period of three years after the completion of the proceeding. Transcripts of such recordings will be made available in whole or in part to the parties to the proceedings as requested. All documents, books, papers, evidence or other formal record shall be maintained for a period of three years with these records unless released by the Commission.

52-3.12 Statute of Limitations

No complaint will be accepted which is filed later than three years after the date of the alleged violation of the provisions of the State Ethics Act.

52-3.13 Informal Disposition of Complaints

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The State Ethics Commission may afford informal disposition of any contested case through stipulation, agreed settlement, consent order or default.

Subpoenas will be signed by either the presiding officer or the executive director. Subpoenas will normally be served by the Sheriff's office in the county of residence of the person being served.

Filing of

The Commission may seek the enforcement of a subpoena or subpoena duces tecum by requesting that the Court of Common Pleas, or a Judge thereof, compel obedience by proceedings for contempt as in the case of disobedience, or the requirements, or a subpoena duces tecum issued from such court, or a refusal to testify therein.

RULE

- 52-4.1 General Pro
- 52-4.2 Pertinent In
- 52-4.3 Conduct of t
- 52-4.4 Records
- 52-4.5 Disqualific
- 52-4.6 Hearing to t
- 52-4.7 Order of Proc
- 52-4.8 Presentation
- 52-4.9 Witnesses
- 52-4.10 Duties of Pr
- 52-4.11 Continuances
- 52-4.12 Burden of Pr
- 52-4.13 Disposition
- 52-4.14 Notification
- 52-4.15 Public Dispo
- 52-4.16 Subpoenas

52-4.1 General Prov.

A hearing is called Ethics Commission. All parties concerned the hearing and Commission hearings Columbia. A quorum Commission members. quorum.

52-4.2 Pertinent Inf

Copies of all pertine provided to the Commi the complaint prior t parties shall be prov: the opposing party.

52-4.3 Conduct of He:

Case Notes

Duty of candidate not nominated to file statement of expenses within 20 days of primary election. 55 H. 610, 525 P.2d 586.

§11-214 Disposition of funds. (a) All candidates who withdraw or cease to be candidates, or committees directly associated with such candidates, individuals who receive contributions but fail to file for nomination, or committees or parties which discontinue their activities covered in this subpart, shall return all residual private contributions to the donors of such contributions if their identities are known, provided that if the identity of any donor is not known, or the donor cannot be found, such contribution shall escheat to the Hawaii election campaign fund.

(b) All residual public funds shall be returned to the Hawaii election campaign fund.

(c) Upon disposition of all residual funds, the candidate or campaign treasurer shall file a report with the commission, reporting the amounts distributed under this section and the manner of disposition.

(d) This section shall not apply to elected officials or candidates who failed to be nominated or elected. [L 1979, c 224, pt of §2; am L 1980, c 232, §1]

§11-215 Advertising. (a) All advertisements shall contain the name and address of the candidate, committee, party, or person paying for the advertisement.

(b) In addition to subsection (a) above, no person shall cause or submit any advertisement in support of a candidate or against a candidate's opponent, to be published, broadcast, televised or otherwise circulated and distributed except under the following conditions:

(1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate or committee directly associated with a candidate, the notice of approval and authority need not be included; or

(2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate. [L 1979, c 224, pt of §2]

§11-216 Complaints, investigation, and notice. (a) Complaints of violations of this subpart against any person shall be filed with the commission. The complaint shall be in writing and shall be signed under oath by the complainant. Complaints initiated by the commission shall be in writing and signed by the chairman.

(b) The commission shall give notice of receipt of the complaint together with a copy of the complaint to the person cited and shall afford the person an opportunity to explain or otherwise respond to the complaint. The commission may also cause an investigation to be made of the complaint.

(c) Upon hearing the response of the person cited, if the person elects to respond to the complaint, and upon completion of any investigation, the commission shall make a prompt determination as to whether probable cause exists that a violation has been committed.

(1) Any person who appears before the commission shall have all of the

rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby, may appear personally before the commission or the person's own behalf or file a written statement for incorporation into the record of the proceeding.

- (2) The commission shall cause a record to be made of all proceedings pursuant to this subsection. At the conclusion of proceedings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence and then proceed to determine by majority vote of the members whether probable cause exists that a violation has been committed.

(d) Until a determination of probable cause is made by the commission, all proceedings, including the filing of the complaint, investigation, and hearing shall be confidential unless the person complained of requests an open hearing. In the event the commission determines that probable cause does not exist, the complaint shall be dismissed and the entire record of the proceedings shall be kept confidential at the option of the person complained of.

(e) The commission shall give written notice to the person complained of and to the complainant as to whether probable cause of a violation exists or whether the complaint has been dismissed.

(f) In the event a determination is made that probable cause of a wilful violation exists, the commission shall promptly advise the lieutenant governor of its finding and also the applicable clerk of the state legislature in the case of a state office, or the clerk of the respective county legislative body in the case of a county office. In the event a determination is made that probable cause of an unintentional violation exists, the commission shall issue a confidential order that may require the violator to:

- (1) Temporarily cease and desist violation of this subpart; or
- (2) File any report, statement, or other information as required by this subpart.

(g) The commission may only initiate prosecution as provided in section 11-229 when it finds that probable cause of a wilful violation exists. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; am imp L 1984, c 90, §1]

§11-217 Hawaii election campaign fund; creation. The Hawaii election campaign fund is created within the state treasury. The fund shall consist of all moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5, any general fund revenues appropriated, as well as all other moneys collected pursuant to this subpart. Payment to each candidate from the fund shall be by the comptroller in the manner prescribed in section 11-222. [L 1979, c 224, pt of §2; am L 1980, c 232, §1]

§11-218 Candidate funding; amounts available. (a) The maximum amount of public funds available to a candidate for the office of governor, lieutenant governor or mayor in any election year shall not exceed one-fifth or twenty per cent of the total expenditure limit established for each office above pursuant to section 11-209.

(b) For the office of state senator, state representative, county council

At any time
of any
455-0000 CONTENTS

MINNESOTA

4525.0200 HEARINGS RULES

4525.0200 FILING COMPLAINT.

Any person authorized by law to submit to the board a complaint that any person has not complied with the requirements of Minnesota Statutes 1974, sections 10A.01 to 10A.34 may request that the board investigate the alleged noncompliance by filing a complaint.

Statutory Authority: *MS s 10A.02 subd 13*

4525.0300 CONTENTS OF COMPLAINT.

A complaint shall contain:

- A. the name and address of the complainant;
- B. the name of the person against whom the complaint is made;
- C. the statutory sections which the complainant believes have been violated and the basis for complainant's belief, together with any evidentiary material;
- D. a statement that the complainant understands that any hearing or action of the board concerning any complaint or investigation shall be confidential and all information obtained by the board shall be privileged until the board makes a finding as to whether there is probable cause to conclude that a violation of Minnesota Statutes 1974, sections 10A.01 to 10A.34 or other campaign laws has occurred, and that any person violating the confidentiality provisions shall be guilty of a gross misdemeanor;
- E. the signature of the complainant; and
- F. verification by oath or affirmation of the complainant, taken before any officer authorized to administer oaths.

Statutory Authority: *MS s 10A.02 subd 13*

4525.0400 INFORMAL NOTIFICATION OF VIOLATIONS.

Any person having knowledge of a violation of Minnesota Statutes 1974, sections 10A.01 to 10A.34 may informally notify the board of the alleged violation without filing a complaint.

Statutory Authority: *MS s 10A.02 subd 13*

4525.0500 INVESTIGATIONS AND AUDITS.

Upon receipt of a complaint, the board or its employees shall undertake an investigation into the allegations contained therein. Immediately following receipt of a complaint, the executive director of the board shall inform the person complained against that a complaint has been filed against him.

The board may also undertake investigations or audits with respect to statements and reports which are filed or should have been filed under the provisions of Minnesota Statutes 1974, sections 10A.01 to 10A.34 although no complaint has been filed. Any decision as to whether an investigation should be undertaken shall be made at a closed meeting of the board.

All investigations and audits shall be conducted in an expeditious manner, but with regard for fundamental fairness. Within a reasonable time after undertaking an investigation or audit, the executive director of the board shall inform the person under investigation or audit of the fact of the investigation or audit. The board shall make no final decision on any investigation or audit unless the person under investigation or audit has been informed of the charges against him and has had the opportunity to make a statement to the board or its employees or agents.

Statutory Authority: *MS s 10A.02 subd 13*

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HEARINGS RULES 4525.1000

4525.0600 CONTESTED CASE HEARING.

At any time during an investigation or audit, the board, in its discretion, may hold a contested case hearing pursuant to parts 4525.0100 to 4525.1000 before making a finding on any investigation or audit.

Statutory Authority: *MS s 10A.02 subd 13*

4525.0700 BOARD ACTION FOLLOWING INVESTIGATION, AUDIT, OR HEARING.

At the conclusion of an investigation or audit or after a hearing thereon, if such hearing has been ordered, the board shall take the following action:

A. The board may make a finding that there is or is not probable cause to conclude that a violation of Minnesota Statutes 1974, sections 10A.01 to 10A.34 or other campaign laws has occurred. After such determination the board shall report any finding of probable cause to the appropriate law enforcement authorities; or

B. The board may authorize the commencement of a civil action for injunctive or other appropriate relief; or

C. The board may take action as provided by both items A and B.

Statutory Authority: *MS s 10A.02 subd 13*

4525.0800 CONFIDENTIALITY.

Any hearing or action of the board concerning any complaint, audit, or investigation shall be confidential and all information obtained by the board shall be privileged until the board makes a finding as to probable cause. Any person, including any member or employee of the board, violating the confidentiality provisions of this part shall be guilty of a gross misdemeanor.

Statutory Authority: *MS s 10A.02 subd 13*

4525.0900 INITIATING A CONTESTED CASE.

Subpart 1. Initiation by application. Any person requesting an exemption under Minnesota Statutes, section 10A.20, subdivisions 8 and 10, or any other person whose rights, privileges, and duties the board is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain: the name and address of the applicant; a statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request; the names and addresses of all persons known to the applicant who will be directly affected by such determination; and the signature of the applicant.

Subp. 2. Initiation by board order. Where authorized by law, the board may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

Statutory Authority: *MS s 10A.02 subd 13*

4525.1000 INITIATING ANONYMOUS PROCEEDINGS.

Subpart 1. Authority. Any person making application for an exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10 may proceed anonymously if the board determines that identification of the person for the purpose of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion.

Subp. 2. Application. Any person wishing to proceed anonymously under this part shall make an application under part 4525.0900, subpart 1, which shall contain

the name by which the person wishes to be known for the purposes of the proceeding.

B. The name and address of a person upon whom service can be made;

C. A statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion;

D. The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous. The person may be the same person on whom service is to be made;

E. A statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment, or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements of Minnesota Statutes, section 10A.20; and

F. The signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

Subp. 3. **Determination.** Upon receipt of an application for initiation of anonymous proceedings, the board may require the applicant or the person designated to appear for the applicant to appear before a closed meeting of the board with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the board and its employees. The purpose of the appearance is to enable the board to decide whether an anonymous proceeding is required.

Statutory Authority: *MS s 10A.02 subd 13*

they may be covered by the state personnel system through specific agreement between the commission and the Department of Personnel.

Source: Laws 1976, LB 987, § 121; Laws 1980, LB 535, § 18; Laws 1983, LB 479, § 4.

49-14.122. Commission; field investigations and audits; purpose. The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission under sections 49-1401 to 49-14,138. Any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his opponent or opponents as well. The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report or other statement filed under sections 49-1401 to 49-14,138 if the commission or the executive director deems such investigations or audits necessary to carry out the purposes of sections 49-1401 to 49-14,138.

Source: Laws 1976, LB 987, § 122.

49-14.123. Commission; powers and duties; enumerated. In addition to any other duties prescribed by law, the commissioner shall:

(1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the provisions of sections 49-1401 to 49-14,138, pursuant to the provisions of Chapter 84, article 9;

(2) Prescribe forms for statements and reports required to be filed pursuant to sections 49-1401 to 49-14,138, and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by sections 49-1401 to 49-14,138 and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of sections 49-1401 to 49-14,138;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission, and special reports and technical studies to further the purposes of sections 49-1401 to 49-14,138;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of sections 49-1401 to 49-14,138 upon the request of a person or governmental body directly covered or affected by sections 49-1401 to 49-14,138. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or public body who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion;

(11) Act as the primary civil and criminal enforcement agency for violations of the provisions of sections 49-1401 to 49-14,138 and the rules or regulations promulgated thereunder;

(12) Receive all late filing fees and submit them to those authorities designated by law to effectuate the provisions of Article VII, section 5, of the Constitution of Nebraska; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Source: Laws 1976, LB 987, § 123; Laws 1981, LB 545, § 13; Laws 1981, LB 134, § 9; Laws 1983, LB 479, § 5.

49-14.124. Alleged violation: preliminary investigation by commission: confidential: exception: notice. Upon a complaint signed under oath by any person, upon the recommendation of the executive director, or upon its own motion, the commission shall, by way of preliminary investigation, investigate any alleged violation of sections 49-1401 to 49-14,138 or any rule or regulation adopted and promulgated thereunder. Each governmental body shall cooperate with the commission in the conduct of its investigations. All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of sections 49-1401 to 49-14,138 requests that the proceedings be public. The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days of the commencement of the investigation. Within fifteen days of the filing of a

sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

Source: Laws 1976, LB 987, § 124.

49-14.125. Preliminary investigation; terminated, when; finding of violation; effect; powers of commission; subsequent proceedings; records. (1) If a preliminary investigation fails to indicate probable cause for belief that sections 49-1401 to 49-14,138 have been violated, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that sections 49-1401 to 49-14,138, or a rule or regulation adopted and promulgated thereunder, has been violated, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. All proceedings of the commission pursuant to this subsection shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of sections 49-1401 to 49-14,138, or any rule or regulation adopted and promulgated thereunder requests an open session. The commission shall have the powers possessed by the courts of this state to issue subpoenas and cause them to be served and enforced. All testimony shall be under oath which shall be administered by a member of the commission. Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state. All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding. The commission shall cause a record to be made of all proceedings pursuant to this subsection. At the conclusion of proceedings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence and then proceed to determine by majority vote of the members present whether there has been a violation of sections 49-1401 to 49-14,138. If the commission determines that sections 49-1401 to 49-14,138, or any rule or regulation was not violated, the records and actions relative to the investigation and determination shall remain confidential unless the

alleged violator requests that the records and actions be made public. If the commission determines that sections 49-1401 to 49-14,138 or any rule or regulation thereof was violated, the records and actions shall be made public as soon as practicable after the determination is made.

Source: Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10.

49-14.126. Commission; finding of violation; civil or criminal prosecution; orders. The commission, upon finding that there has been a violation of sections 49-1401 to 49-14,138 or any rule or regulation promulgated thereunder, may begin civil or criminal prosecution for the imposition of civil or criminal penalties provided by sections 49-1401 to 49-14,138. If the commission finds a violation of sections 49-1401 to 49-14,138, or any rule or regulation thereunder, it may issue an order requiring the violator to:

- (1) Cease and desist violation;
- (2) File any report, statement, or other information as required; or
- (3) Pay a civil penalty of not more than one thousand dollars for each violation of sections 49-1401 to 49-14,138, rule, or regulation.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11.

49-14.127. Mandamus to compel civil action; when. Any individual who believes that a violation of sections 49-1401 to 49-14,138 has occurred may, after exhausting the administrative remedies provided by sections 49-1401 to 49-14,138, bring a civil action to compel the commission to fulfill its responsibilities under sections 49-1401 to 49-14,138, or may bring a civil action against any person or persons to compel compliance with the provisions of sections 49-1401 to 49-14,138.

Source: Laws 1976, LB 987, § 127.

49-14.128. Reasonable attorney fees; court order. The court may order payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought pursuant to section 49-14,127. If the court finds that an action was brought without reasonable cause, the court may order the plaintiff to pay reasonable attorney fees and court costs incurred by the defendant.

Source: Laws 1976, LB 987, § 128.

49-14.129. Commission; suspend or modify reporting requirements; conditions. The commission, by order, may suspend or modify any of the reporting requirements of sections 49-1445 to 49-14,104, in a particular case, for good cause shown, or if it finds that literal application of sections 49-1401 to 49-14,138 works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of sections 49-1401 to 49-14,138. Any such suspen-

IV. COMPLAINTS, PRELIMINARY INVESTIGATIONS & HEARINGS
 (See also Commission Rule 1-Section VII of this manual.)

A. General

1. The NADC acts as the primary civil and criminal enforcement agency for violations of the NADC Act, and for violations of the rules and regulations promulgated thereunder.
2. Each governmental body shall cooperate with the Commission in the conduct of its investigations.
3. The Tax Commissioner, the Auditor of Public Accounts, the Attorney General and the county attorney shall make available to the Commission such personnel, facilities and other assistance as the Commission may request.
4. The Commission may obtain the services of experts and consultants as necessary to carry out its duties under the Act.
5. The Attorney General and the county attorney of the county in which a violation allegedly occurs shall have concurrent jurisdiction with the Commission to enforce the criminal provisions of the Act.
6. Civil and criminal prosecution for violation of this Act and for the rules and regulations promulgated thereunder shall be commenced within three years after the date on which the violation occurred.
7. No member or employee of the Commission shall disclose or discuss any statements, reports, records, testimony, or other information or material deemed confidential under the Act unless ordered by a court or except as necessary in the proper performance of such member's or employee's duties under the Act. Any member who violates this section shall be guilty of a Class III misdemeanor.

If a member of the public or the news media makes inquiry concerning a complaint, they will be advised of the confidentiality provisions of the law. If the inquiry asks for confirmation that a complaint from a particular individual has or has not been received, such inquiry can be answered. The name of the respondent or the subject matter of the complaint is not releasable nor any other information pertaining to a complaint is releasable unless the respondent has elected to go public. Commission procedures of handling complaints in general are always explainable.

NEBRASKA

B. Complaints

A complaint alleging a violation of the Act may be brought by:

- (1) Any person upon a complaint signed under oath.
- (2) Upon the recommendation of the executive director.
- (3) Upon the motion of the Commission.

* C. Preliminary Investigations

The Commission shall investigate any alleged violations of the Act, or of the Commission's rules and regulations, upon the filing of a complaint.

All Commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made unless the alleged violator requests that the proceedings be public.

Notices of preliminary investigations will set forth the specific allegations. In situations where the sworn complaint lacks specific allegations, a preliminary investigation will not be commenced until after the complainant is given the opportunity to specify the allegations. If he fails to do so, the director will recommend that the Commission dismiss the complaint. Formal legal pleadings are not required in sworn complaints. They must, however, set forth specific matters upon which the complaint is based to enable the Commission to confine its investigation to these same matters.

Within five (5) days of the commencement of an investigation upon a formal complaint, the executive director shall notify any person under investigation of the investigation and of the nature of the violation.

Within fifteen (15) days of the filing of the complaint, and every thirty (30) days thereafter until termination, the executive director shall notify the complainant and the alleged violator of any action taken to date by the Commission, along with the reasons for such action or inaction.

The respondent will be advised of the name of the complainant and be furnished a copy of the complaint. He will also be advised that he may present to the Commission by way of affidavit or other documentary evidence, material bearing on the issue. In addition, he will be informed of the confidentiality provisions of the law and of his option to make public all Commission proceedings, records, etc. If at any time he so elects, the complainant will be so informed by the director immediately. Where sworn complaints are received but the executive director does not commence a preliminary investigation on his own motion, the complaint will be referred to the Commission for its determination and action.

As soon as a preliminary investigation is commenced, the director will appoint a staff member to conduct the investigation, and provide each Commission member with a copy of the complaint or affidavit as soon as practicable.

In the case of a commencement of a preliminary investigation upon the recommendation of the executive director or upon a motion of the Commission, the procedure shall be the same as provided for citizen complaints, except that only a notice of preliminary investigation and a notice of termination of investigation shall be required.

When the director is satisfied that the preliminary investigation has developed the evidence sufficiently to enable the Commission to determine whether or not probable cause exists, he shall contact the chairperson to schedule the matter before a regular or special meeting of the Commission.

If the Commission, upon a majority vote of at least four of the members present and voting, makes a finding that the preliminary investigation fails to indicate probable cause for belief that the Act has been violated, the investigation shall terminate. The director shall notify the complainant and the respondent not later than the first workday following Commission action.

If the Commission is unable to conclude the matter by a majority vote of at least four of the members present and voting the preliminary investigation is continued.

D. Probable Cause

If, after a preliminary investigation, it is determined by a majority vote of at least four of the members present and voting, that there is probable cause for belief that the Act or a rule or regulation adopted and promulgated thereunder, has been violated, the Commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. A formal hearing notice shall be prepared by the general counsel after the director is satisfied that a Commission quorum will be present on the date selected for the hearing and following coordination of that date with the chairperson.

E. Violation Hearings

All proceedings shall be in closed session, attended only by those persons necessary to the investigation, unless the alleged violator requests an open session.

The Commission, after a complaint is filed, shall have the power to issue subpoenas and cause them to be enforced.

The Commission shall keep a complete record of all proceedings at this hearing.

The Commission shall cause a notice of hearing to be served upon the alleged violator.

This notice of hearing shall include:

- (a) The time, place and nature of the hearing.
- (b) The legal authority and jurisdiction under which the hearing is being held.
- (c) The specific allegations against such person.

1. Parties to the Proceedings

The notice of hearing and all pleadings filed thereafter shall bear the caption "In re the matter of" and list thereafter the name of the alleged violator.

The only parties to any action hereunder shall be the NADC and the alleged violator.

Since the hearing procedures hereunder are primarily investigative in nature, the Commission will not allow other parties to intervene, but any interested party may be called as a witness by either the Commission or the alleged violator.

Any witnesses called to testify and any alleged violator who has received a notice of hearing has a right to be represented by counsel at the hearing. The presence of counsel appearing on behalf of an alleged violator is encouraged.

2. Presentation of Evidence

At the time of the hearing evidence concerning the alleged complaint may be presented to the Commission by the Commission's general counsel, by the executive director, by any non-voting member of the Commission, or by any other person licensed to practice law in the State of Nebraska if so designated to do so by the Commission.

All testimony, at the final hearing stage, shall be under oath, which shall be administered by a member of the Commission, except as otherwise provided in Commission Rule 1.

Any person who appears before the Commission at the final hearing shall have all of the due process rights, privileges and responsibilities of witnesses appearing in court, and shall receive reimbursement as paid in like circumstances in the District Court.

Any person whose name is mentioned during the final hearing who may be adversely affected thereby shall be notified and may appear personally before the Commission on his or her own behalf, or he or she may file a written statement that will be incorporated into the record of the proceedings.

Every alleged violator shall have the right to be confronted by the evidence against him or her and have the right to cross-examine the witnesses who testify at the hearing against him or her.

Following the presentation of evidence concerning the alleged violation, the alleged violator shall have a right to call witnesses and introduce evidence on his or her behalf.

The representative of the Commission then shall have the opportunity to introduce rebuttal evidence if he or she chooses to do so.

Both sides shall have the right to make opening statements, which may be waived. Final argument will be at the discretion of the Commission.

3. Deliberations and Decisions

At the conclusions of the proceedings, the Commission shall immediately begin deliberation on the evidence, and then proceed to determine by a majority vote of at least four members present whether there has been a violation except that the concurrence of five members shall be required before any sanction may be imposed pursuant to the Act.

If the Commission determines that there was no violation, the records and actions relative to the investigation and determination shall remain confidential, unless the accused requests that the records and actions be made public.

If the Commission determines that there has been a violation of the Act or of a rule or regulation, the records, actions and order shall be made public as soon as practicable after the determination is made.

The deliberations of the Commission shall be in closed session with no member of the staff present. Ex parte communications of any kind are strictly forbidden.

4. Civil and Criminal Sanctions

Upon a finding that there has, in fact, been a violation the Commission may begin civil or criminal prosecution for the imposition of civil or criminal penalties.

If the Commission finds a civil violation, it may then issue an order requiring the violator to:

- (a) Cease and desist the violation.
- (b) File any report, statement or other information as required.
- (c) Pay a civil penalty of not more than One Thousand (\$1,000.00) Dollars for each violation.

If the Commission finds a criminal violation, it will then cause a criminal complaint or information to be filed against the alleged violator in the appropriate judicial forum within thirty (30) days thereafter.

Any criminal charge filed will be filed in the name of the State of Nebraska, and prosecuted on behalf of the Commission by any member of the bar of this state so designated by the Commission to do so.

After a criminal violation has been found, the Commission, upon good cause shown, may refer the matter, by resolution, to the appropriate county attorney or to the Attorney General for prosecution.

The executive director shall keep a complete register of all actions taken by the Commission, both civil and criminal which shall include:

- (a) The name of the violator.
- (b) The specific allegations against him.
- (c) The nature of the action taken.
- (d) The amount of the fine or fines, if any.
- (e) The disposition of the matter in court, if any judicial proceedings followed said Commission action.

5. Judicial Proceedings and Pleadings

The executive director shall maintain a Commission file on all court orders, pleadings and other judicial determinations and decisions in an action to which the Commission is a party.

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election or campaigns in support of or opposition to any referendum or question of public policy.

Section 125.199 Compelling Appearance at Hearing

The appearance at the hearing of a party or a person who is an officer, director or employee of a party may be required by serving the party with a notice designating the person who is required to appear. If the party or person is a non-resident of the State, the Hearing Examiner shall provide by order such terms and conditions in connection with his appearance at the hearing as are just, including payment of his reasonable expenses. The notice also may require production at the hearing of documents or tangible things.

SUBPART B: CLOSED PRELIMINARY HEARINGS

Section 125.210 Applicability

The rules in this Subpart shall apply to closed preliminary hearings pursuant to Section 9-21 of the Campaign Financing Act.

Section 125.220 Commencement of Proceeding

A proceeding to adjudicate an alleged violation of the Act shall be commenced by the filing of a complaint in accordance with Section 125.20.

Section 125.230 Form of Complaint

All complaints shall conform to Section 125.30, and shall contain the following:

- a) The complaint shall be directed to and state the name of the person, candidate, or the chairman or treasurer of a political committee against whom the complaint is directed;
- b) The complaint shall state the provisions of the Act or Rules which are alleged to have been violated;
- c) The complaint shall state the time, place and nature of the alleged offense; and
- d) The complaint shall be verified, dated and signed by the complainant, in substantially the following manner:

Verification

"I declare that this complaint (including any accompanying schedules and

plaint shall be a fine not to exceed \$500 or imprisonment in a penal institution other than the penitentiary not to exceed six months, or both fine and imprisonment."

(Date of filing)

(Signature of person filing the complaint)

Section 125.235 Board Members as Complainants

- a) Nothing in this Part shall prohibit a member of the Board from filing a complaint in his or her individual capacity.
- b) After filing the complaint, the complaining member shall decline to be present at or participate in any Board decision affecting said complaint or the proceedings pertaining to said complaint.
- c) In all other respects, the provisions of this Part shall apply to situations where a member of the Board is a complainant.

Section 125.240 Service of Complaint

- a) If a complaint is filed within 60 days prior to the date of an election in reference to which the complaint is filed, the complainant shall serve a copy of the complaint upon all respondents prior to the time of filing, and the complaint filed with the office of the General Counsel shall have attached thereto proof of service, consisting of any one of the following:
 - 1) a written acknowledgment signed by the person served;
 - 2) in case of service by personal delivery, an affidavit of the person who made delivery; or
 - 3) abode service in accordance with the Civil Practice Law. (Ill. Rev. Stat. 1981, ch. 110, par. 2-101 et seq.)
- b) In all other cases, service shall conform to Section 125.40.
- c) When complainant has attempted to serve a respondent who is no longer residing at his last known address, proof of service shall be complete when the complainant has filed an affidavit indicating that a diligent effort has been made to locate the respondent but such effort has been unsuccessful and respondent's whereabouts are unknown.

Section 125.245 Appointment of Hearing Examiner — Notice of Closed Preliminary Hearing

- a) Within three (3) days after the filing of a complaint, the General Counsel shall appoint a Hearing Examiner to conduct a closed preliminary hearing on the allegations of the complaint. The Hearing

ing Examiner, stating the name, business address and telephone number of the Hearing Examiner. If the complaint is filed within sixty (60) days preceding the date of an election in reference to which the complaint is filed, the General Counsel shall appoint such Hearing Examiner within twenty-four (24) hours after the filing of the complaint, and also shall give telephonic or telegraphic notice of the appointment to all complainants and all respondents, which notice shall be deemed supplementary to the written Notice of Appointment.

- b) Within twenty-four (24) hours after appointment, the Hearing Examiner shall designate a time and place for the closed preliminary hearing, and shall immediately serve a written Notice of Hearing upon all complainants and all respondents, stating the time and place of such hearing. If the complaint is filed within sixty (60) days preceding the date of an election in reference to which the complaint is filed, the Hearing Examiner also shall give telephonic or telegraphic notice of the hearing to all complainants and respondents, which notice shall be deemed supplementary to the written Notice of Hearing.
- c) The Notice of Appointment served upon the respondent pursuant to the provisions of this section shall have attached thereto a copy of the complaint initiating the hearing.
- d) The Notice of Closed Preliminary Hearing shall contain a statement that the respondent(s) has the right to be represented by legal counsel in any proceeding conducted by the State Board of Elections, including preliminary hearing proceedings.

Section 125.250 Time of Preliminary Hearing

Within ten (10) days after the filing of a complaint, the Hearing Examiner shall hold a closed preliminary hearing; provided, however, that if the complaint is filed within sixty (60) days preceding the date of the election in reference to which the complaint is filed, the preliminary hearing shall be held within four (4) days after the filing of the complaint.

Section 125.252 Scope of Preliminary Hearing — Evidence

The purpose of the closed preliminary hearing shall be to elicit evidence on the question whether the complaint was filed on justifiable grounds. All complainants and all respondents shall be permitted to present written materials and documents, to testify at the hearing, and to cross-examine witnesses. Additional testimony from persons not parties to the proceedings may be received within the discretion of the Hearing Examiner. In exercising his discretion, the Hearing Examiner shall consider

- a) the limited purpose of the hearing.

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- b) the nature of the testimony to be offered and
- c) the time requirements for final decision, as provided in Section 9-21 of the Act. The Hearing Examiner shall determine if the complaint is filed on justifiable grounds.

Section 125.255 Transcript of Preliminary Hearing

- a) Oral testimony and all other proceedings at a closed preliminary hearing shall be recorded by a certified court reporter, but need not be transcribed unless requested by a party. The party requesting the transcription shall pay for its cost. Except as otherwise provided by the Board, the notes, or transcriptions thereof shall be filed with the General Counsel and shall not be available to anyone except the Board, the General Counsel, the parties to the proceedings and the Hearing Examiner conducting the hearing, except upon order of a court.
- b) If the Board determines that the complaint has been filed on justifiable grounds, notes or transcriptions of the preliminary hearing may be requested and made available to the public. The board at its discretion may impound the transcript.
- c) If the Board determines the complaint was not filed on justifiable grounds, and if no appeal is pending pursuant to Section 125.270, then the transcript of the preliminary hearing will be made available to the public only at the option of the respondent.

Section 125.260 Report of Hearing Examiner

Immediately upon the conclusion of a closed preliminary hearing, the Hearing Examiner shall submit to the Board and to the General Counsel a written report on the hearing that summarizes all testimony and includes any and all documentary evidence received during the hearing along with his recommendation as to whether the complaint has been filed on justifiable grounds. The General Counsel shall promptly review the report and shall transmit his opinion and recommendation to each member of the Board.

Section 125.262 Board Determination

- a) After the submission of the report and recommendations of the Hearing Examiner and the opinion of the General Counsel, the Board shall determine whether the complaint was filed on justifiable grounds. If the Board determines that the complaint was not filed on justifiable grounds, it shall enter a final and appealable order dismissing the complaint without further hearing. If the

justifiable grounds, it shall order a public hearing to be conducted in accordance with the provisions of Subpart C of this Part.

- b) In the case of a complaint filed within sixty (60) days preceding the date of an election in reference to which the complaint is filed, the Board shall make its determination within forty-eight (48) hours of the submission of the report of the Hearing Examiner and the opinion of the General Counsel.
- c) In the event the Board does not reach a decision within the time specified by paragraphs (a) or (b) of this Section 125.62, such fact shall be deemed to be a final order of the Board adopting the recommendations and findings of the Hearing Examiner.
- d) The board may consider and discuss the Hearing Examiner's Report through a conference telephone call in lieu of an in-person meeting, and such consideration and discussion shall be deemed part of the closed preliminary hearing process. Any action on the Hearing Examiner's Report must be taken in open session, or if taken as part of the telephonic conference call, that portion of the conference call shall be broadcast over a speaker phone or other similar device at both the permanent and branch offices of the Board and that portion of the broadcast shall be open to the media and public.

Section 125.265 Judicial Review

Judicial review of a final order of the Board entered or effected pursuant to Section 125.262 shall be in accordance with Section 9-22 of the Act.

Section 125.270 Record of Preliminary Hearing on Appeal

Upon appeal from a final order of the Board dismissing a complaint following a closed preliminary hearing, the transcript and evidence received during the preliminary hearing, together with the report and recommendation of the Hearing Examiner, the opinion of the General Counsel and the final order of the Board, shall constitute the record on appeal. Before the transcript is filed, the Hearing Examiner shall notify the parties that the transcript has been prepared, shall receive corrections from any parties, shall examine the transcript for accuracy, and then shall certify that it is a true and correct transcript of the hearing. The filing of the record on appeal shall be "in camera" with the court having jurisdiction over the appeal, and any public inspection or release thereof shall be subject to order of that court.

Section 125.272 Order of Public Hearing

- a) In the event that the Board orders a public hearing, the General Counsel shall within twenty-four (24) hours appoint a Hearing

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Examiner to conduct a public hearing on the complaint and shall immediately serve upon all parties a written Notice of Appointment of the Hearing Examiner, stating the name, business address and telephone number of the Hearing Examiner, together with a copy of the Board's order after the closed preliminary hearing. If the complaint is filed within sixty (60) days preceding the date of an election in reference to which the complaint is filed, the General Counsel also shall promptly give telephonic or telegraphic notice of the appointment to all parties, which notice shall be deemed supplementary to the written Notice of Appointment.

- b) Within twenty-four (24) hours after appointment, the Hearing Examiner shall designate a time and place for the public hearing and shall immediately serve a written Notice of Hearing upon all parties, stating the time and place of such hearing. If the complaint is filed within sixty (60) days preceding the date of an election in reference to which the complaint is filed, the Hearing Examiner also shall promptly give telephonic notice of the hearing to all parties, which notice shall be deemed supplementary to the written Notice of Hearings.
- c) The Notice of Hearing shall contain a statement that the respondent(s) has the right to be represented by legal counsel in any proceeding conducted by the State Board of Elections, including public hearing proceedings.
- d) Unless all parties to the proceedings so stipulate, the Hearing Examiner who conducted the Closed Preliminary Hearing shall not conduct the Public Hearing.

Section 125.275 Time and Conduct of Public Hearing

The Hearing Examiner shall hold a public hearing on a complaint determined to have been filed on justifiable grounds within seventeen (17) days after the filing of the complaint; provided, however, that if the complaint is filed within sixty (60) days preceding the date of the election to which the complaint is filed, said hearing shall be held within ten (10) days after the filing of the complaint. Public Hearings under this Part shall be conducted in accordance with Subpart C of this Part.

SUBPART C: PUBLIC ADJUDICATIVE HEARINGS

Section 125.310 Applicability

106.21 Certificates of election not to be issued upon conviction.—

(1) If a successful candidate is convicted of violating s. 106.19(1) prior to the issuance of his certificate of election, such certificate shall not be issued, and a vacancy shall be declared and filled as provided by law.

(2) If a successful candidate is convicted of violating s. 106.19(1) subsequent to the issuance of a certificate of election but prior to taking office, such certificate shall be rescinded by the issuing body and declared void, and a vacancy in office shall exist and be filled as provided by law.

History.—s. 21, ch. 73-128; s. 57, ch. 77-175

106.22 Duties of the Division of Elections.—It is the duty of the Division of Elections to:

(1) Prescribe forms for statements and other information required to be filed by this chapter. Such forms shall be furnished by the Department of State or office of the supervisor of elections to persons required to file such statements and information with such agency.

(2) Prepare and publish manuals or brochures setting forth recommended uniform methods of bookkeeping and reporting, and including appropriate portions of the Election Code, for use by persons required by this chapter to file statements.

(3) Develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter.

(4) Preserve statements and other information required to be filed with the division pursuant to this chapter for a period of 10 years from date of receipt.

(5) Prepare and publish such reports as it may deem appropriate.

(6) Make, from time to time, audits and field investigations with respect to reports and statements filed under the provisions of this chapter and with respect to alleged failures to file any report or statement required under the provisions of this chapter.

(7) Investigate apparent or alleged violations of this chapter and recommend legal disposition of the violation as provided in s. 106.25.

(8) Employ such personnel or contract for such services as are necessary to adequately carry out the intent of this chapter.

(9) Provide adequate staffing and facilities for the Florida Elections Commission created by s. 106.24.

(10) Prescribe rules and regulations to carry out the provisions of this chapter. Such rules shall be prescribed pursuant to chapter 120.

(11) Make an annual report to the President of the Senate and the Speaker of the House of Representatives concerning activities of the division and recommending improvements in the election code.

History.—s. 23, ch. 73-128, s. 57, ch. 77-175, s. 13, ch. 79-365, ch. 84-254

106.23 Powers of the Division of Elections.—

(1) In order to carry out the responsibilities prescribed by this chapter, the Division of Elections is empowered to subpoena and bring before its duly authorized representatives any person in the state, or any person doing business in the state, or any person who has filed or is required to have filed any application, document, papers or other information with an office or agency of this state or a political subdivision thereof and to require the production of any papers, books, or other records relevant to any investigation, including the records and accounts of any bank or trust company doing business in this state. Duly authorized representatives of the division are empowered to administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before them concerning any relevant matter. Should any witness fail to respond to the lawful subpoena of the division or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, the division may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly. However, the refusal by a witness to answer inquiries or turn over evidence on the basis that such testimony or material will tend to incriminate such witness shall not be deemed refusal to comply with the provisions of this chapter.

(2) The Division of Elections shall provide advisory opinions when requested by any supervisor of elections, candidate, local officer having election-related duties, political party, political committee, committee of continuous existence, or other person or organization engaged in political activity, relating to any provisions or possible violations of Florida election laws with respect to actions such supervisor, candidate, local officer having election-related duties, political party, committee, person, or organization has taken or proposes to take. A written record of all such opinions issued by the division, sequentially numbered, dated, and indexed by subject matter, shall be retained. A copy shall be sent to said person or organization upon request. Any such person or organization, acting in good faith upon such an advisory opinion, shall not be subject to any criminal penalty provided for in this chapter. The opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion or with reference to whom the opinion

was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

History.—s. 23, ch. 73-128; s. 3, ch. 76-233; s. 58, ch. 77-175.

106.24 Florida Elections Commission; membership; powers; duties.—

(1) There is created within the Department of State a Florida Elections Commission, hereinafter referred to as the commission. It shall be composed of seven members, including a chairman, all of whom shall be appointed by the Governor with the approval of three members of the Cabinet and subject to confirmation by the Senate. Members of the commission appointed by the Governor shall serve for 4-year terms, except that, of the original appointees, three members shall be appointed for terms of 2 years each and their successors shall be appointed for full 4-year terms. The chairman of the commission shall be designated by the Governor. Vacancies on the commission shall be filled for the unexpired terms in the manner of the original appointment to the vacated position. Members of the commission may be reappointed to succeed themselves. Members of the commission shall be paid travel and per diem as provided in s. 112.061 while in performance of their duties and in traveling to, from, and upon same. Of the seven members of the commission, no more than four members shall be from the same political party at any one time.

(2) No member of the commission shall be a member of any country, state, or national committee of a political party; be an officer in any partisan political club or organization; or hold, or be a candidate for, any other public office. No person shall be appointed as a member of the commission who has held an elective public office or office in a political party within the year immediately preceding his appointment.

(3) The commission shall convene at the call of its chairman or at the call of the Department of State. The presence of five members is required to constitute a quorum, and the affirmative vote of four of the members present is required for any action or recommendation by the commission. The commission may meet in any city of the state.

(4) The Division of Elections shall provide the necessary staff and facilities for the commission to carry out its duties pursuant to this chapter.

History.—s. 24, ch. 73-128; s. 10, ch. 74-200; s. 59, ch. 77-175; s. 63, ch. 79-409.

106.25 Reports of alleged violations to Department of State; disposition of findings.—

(1) Jurisdiction to investigate and determine violations of this chapter is vested in the Division of Elections and the Florida Elections Commission; however, nothing in this section limits the jurisdiction of any other officers or

agencies of government empowered by law to investigate, act upon, or dispose of alleged violations of this code.

(2) The Division of Elections shall investigate and report to the Florida Elections Commission all violations of this chapter. Any person having information of any violation of this chapter shall file a sworn complaint with the Division of Elections. Such sworn complaint shall state whether a complaint of the same violation has been made to any state attorney.

(3) For the purposes of Florida Elections Commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or the willful failure to perform an act required by this chapter.

(4) The division shall, by written report filed with the commission, find an apparent violation or no apparent violation of this chapter, whereupon the commission shall make a preliminary determination to consider the matter or to refer the matter to the state attorney for the judicial circuit in which the alleged violation occurred.

(a) It is the duty of a state attorney receiving a complaint referred by the commission to investigate the complaint promptly and thoroughly; to undertake such criminal or civil actions as are justified by law; and to report to the commission the results of such investigation, the action taken, and the disposition thereof.

(b) The failure or refusal of a state attorney to prosecute or to initiate action upon a complaint or a referral by the commission shall not bar further action by the commission under this chapter.

(5) Every sworn complaint filed pursuant to this chapter with the Division of Elections or the Florida Elections Commission, every division investigation and investigative report or other paper of the division or commission with respect to a violation of this chapter, and every proceeding of the commission with respect to a violation of this chapter is confidential, is exempt from the provisions of s. 119.07(1) and chapter 286, and is exempt from publication in the Florida Administrative Weekly of any notice or agenda with respect to any proceeding relating to such violations, unless confidentiality is waived in writing by the person against whom the complaint has been filed. Upon the entry of an order by the commission disposing of a case before it, the entire proceedings and records relating to such case become a public record, except that if an order disposing of a case is entered within 30 days prior to the date of the election with respect to which the alleged violation occurred, such order and the proceedings and records relating to such case shall not become public until noon of the day following such election. When two or more persons are being investigated by the commission with respect to an alleged violation of this chapter, the commission may not publicly enter an order disposing of the findings of the case until the disposition of the entire case has been determined. However, once the confidentiality of any case has been breached, the person

persons under investigation shall have the right to waive the confidentiality of the case, thereby opening up the proceedings and records to the public. Any person who discloses any information or matter made confidential by the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any person who files a complaint pursuant to this section while knowing that the allegations contained in such complaint are false or without merit is guilty of a misdemeanor of the first degree punishable as provided in s. 775.082 or s. 775.083.

History.— s. 25, ch. 73-128; 11, ch. 74-200; s. 60, ch. 77-175; s. 3, ch. 78-403; s. 1, ch. 82-46; s. 2, ch. 83-265; s. 39, ch. 84-302.

Note.—Repealed effective October 1, 1990 by s. 1, ch. 89-06, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

106.26 Powers of commission; rights and responsibilities of parties; findings by commission.—

(1) The commission shall, pursuant to rules adopted and published in accordance with chapter 120, consider all matters reported to it by the Division of Elections or otherwise coming to its attention. In order to carry out its duties, the commission may, whenever required, issue subpoenas and other necessary process to compel the attendance of witnesses before it. The chairman thereof shall issue said process on behalf of the commission. The chairman or any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before the commission for the purpose of testifying in any matter about which the commission may desire evidence. The commission, whenever required, may also compel by subpoena the production of any books, letters, or other documentary evidence it may desire to examine in reference to any matter before it. The sheriffs in the several counties shall make such service and execute all process or orders when required by the commission. Sheriffs shall be paid for these services by the commission as provided for in s. 30.231. Any person who is served with a subpoena to attend a hearing of the commission also shall be served with a general statement informing him of the subject matter of the commission's investigation or inquiry and a notice that he may be accompanied at the hearing by counsel of his own choosing.

(2) Should any witness fail to respond to the lawful subpoena of the commission or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, the commission may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such

order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly.

(3) All witnesses summoned before the commission, other than on the request of the subject of a hearing, shall receive reimbursement for travel expenses and per diem at the rates provided in s. 112.061. However, the fact that such reimbursement is not tendered at the time the subpoena is served shall not excuse the witness from appearing as directed therein.

(4) Upon request of any person having business before the commission, and with the approval of a majority of the commission, the chairman or, in his absence, the vice chairman shall instruct all witnesses to leave the hearing room and retire to a designated place. The witness will be instructed by the chairman or, in his absence, the vice chairman not to discuss his testimony or the testimony of any other person with anyone until the hearing has been adjourned and the witness discharged by the chairman. The witness shall be further instructed that should any person discuss or attempt to discuss the matter under investigation with him after receiving such instructions he shall bring such matter to the attention of the commission. No member of the commission or representative thereof may discuss any matter or matters pertinent to the subject matter under investigation with witnesses to be called before the commission from the time that these instructions are given until the hearing has been adjourned and the witness discharged by the chairman.

(5) The commission, when interrogating witnesses as provided herein, shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced. The record shall include rulings of the chair, questions of the commission and its counsel, testimony or responses of witnesses, sworn written statements submitted to the commission, and all other pertinent matters. A witness at a hearing, upon his advance request and at his own expense, shall be furnished a certified transcript of all testimony taken at the hearing.

(6) Before or during a hearing, any person noticed to appear before the commission, or his counsel, may file with the commission, for incorporation into the record of the hearing, sworn written statements relevant to the purpose, subject matter, and scope of the commission's investigation or inquiry. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(7) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the commission and who, in the opinion of the commission, may be adversely affected thereby may, upon his request or upon the request of any member of the commission, appear personally before the commission and testify on his own behalf or, with the commission's consent, file a sworn written statement of facts or other documentary evidence

for incorporation into the record of the hearing. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(8) Upon the consent of a majority of its members, the commission may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance, or submission shall limit in any way the commission's power of subpoena. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(9) Any person who appears before the commission pursuant to this section shall have all the rights, privileges, and responsibilities of a witness appearing before a court of competent jurisdiction.

(10) If the commission fails in any material respect to comply with the requirements of this section, any person subject to subpoena or subpoena duces tecum who is injured by such failure shall be relieved of any requirement to attend the hearing for which the subpoena was issued or, if present, to testify or produce evidence therein; and such failure shall be a complete defense in any proceeding against such person for contempt or other punishment.

(11) Whoever willfully affirms or swears falsely in regard to any material matter or thing before the commission shall be guilty of a felony in the third degree and punished as provided by s. 775.082, s. 775.083, or s. 775.084.

(12) At the conclusion of its hearings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence presented at such hearings and shall proceed to determine by affirmative vote of four of the members present whether a violation of this chapter has occurred. Such determination shall promptly be made public. The order shall contain a finding of violation or no violation, together with brief findings of pertinent facts, and the assessment of such civil penalties as are permitted by this chapter or no such assessment and shall bear the signature or facsimile signature of the chairman or vice chairman.

History.—s. 26, ch. 73-128; s. 12, ch. 74-200; s. 60, ch. 77-175; s. 4, ch. 78-403; s. 64, ch. 79-400.

106.265 Civil penalties.—

(1) The commission is authorized upon finding of violation of this chapter to impose civil penalties in the form of fines not to exceed \$1,000 per count. In determining the amount of such civil penalties, the commission shall consider, among other mitigating and aggravating circumstances:

- (a) The gravity of the act or omission;
- (b) Any previous history of similar acts or omissions;
- (c) The appropriateness of such penalty to the financial resources of the person, political committee, or committee of continuous existence; and

(d) Whether the person, political committee, or committee of continuous existence has shown good faith in attempting to comply with the provisions of this chapter.

(2) If any person, political committee, or committee of continuous existence fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission may bring an action in any circuit court of this state to enforce such penalty.

(3) Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund.

History.—s. 61, ch. 77-175.

106.27 Determinations by commission; legal disposition.—

(1) Criminal proceedings for violations of this chapter may be brought in the appropriate court of competent jurisdiction. Any such action brought under this chapter shall be advanced on the docket of the court in which filed and put ahead of all other actions.

(2) Civil actions may be brought for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate order for the imposition of civil penalties provided by this chapter. Such civil actions shall be brought in the appropriate court of competent jurisdiction, and the venue shall be in the county in which the alleged violation occurred or in which the alleged violator or violators are found, reside, or transact business. Upon a proper showing that such person or political committee has engaged, or is about to engage, in prohibited acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court, and the civil fines provided by this chapter may be imposed.

(3) Civil actions may be brought to enjoin temporarily the issuance of certificates of election to successful candidates who are alleged to have violated the provisions of this chapter. Such injunctions shall issue upon a showing of probable cause that such violation has occurred. Such actions shall be brought in the circuit court for the circuit in which is located the officer before whom the candidate qualified for office.

History.—s. 27, ch. 73-128; s. 13, ch. 74-200; s. 62, ch. 77-175.

106.28 Limitation of actions.—Actions for violation of this chapter may be commenced before 2 years have elapsed from the date of the violation.

History.—s. 28, ch. 73-128.

106.29 Reports by political parties.—

(1) The state executive committee and each county executive committee of each political party regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. Such reports shall contain the same information as do reports required of candidates by s. 106.07 and shall be filed

History: L. 1981, ch. 171, § 15; L. 1985, ch. 124, § 1; July 1.

Source or prior law:
25-4116.

25-4157. Termination report. Before any candidate committee, party committee or political committee may be dissolved or the position of a candidate's treasurer terminated, the treasurer of the candidate or such committee shall file a termination report with the secretary of state which shall include full information as to the disposition of residual funds. Any report required by K.S.A. 25-4148 may be a termination report.

History: L. 1981, ch. 171, § 16; July 1.
Source or prior law:
25-4117.

25-4158. Duties of secretary of state; commission investigations. (a) The secretary of state shall: (1) Furnish forms prescribed and provided by the commission for making reports and statements required to be filed by the campaign finance act; and

(2) make such reports and statements available for public inspection and copying during regular office hours.

(b) The commission may investigate, or cause to be investigated, any matter required to be reported upon by any person under the provisions of the campaign finance act, or any matter to which the campaign finance act applies irrespective of whether a complaint has been filed in relation thereto.

History: L. 1981, ch. 171, § 17; July 1.
Source or prior law:
25-4118.

25-4159. Commission opinions; publication and filing; effect of acts that accord with opinions. The commission upon its own initiative may, and upon the request of any individual to which the campaign finance act applies shall, render an opinion in writing on questions concerning the interpretation of the campaign finance act. Any person who acts in accordance with the

provisions of such an opinion, shall be presumed to have complied with the provisions of the campaign finance act. A copy of every opinion rendered by the commission shall be filed with the secretary of state, and any opinion so filed shall be open to public inspection. The secretary of state shall publish all opinions rendered under this section monthly and each such publication shall be cumulative. Copies of each opinion shall be filed with the secretary of the senate and the chief clerk of the house on the same date as the same are filed with the secretary of state. The secretary of state shall cause adequate copies of all filings under this section to be supplied to the state library.

History: L. 1981, ch. 171, § 18; July 1.
Source or prior law:
25-4120.

25-4160. Complaints of violations; copy to respondent. Any individual, including any member of the commission, may file, by mail or in person, with the commission a verified complaint in writing stating the name of any person to whom or to which the campaign finance act applies who is alleged to have violated any provision of the campaign finance act, and which shall set forth the particulars thereof. If a member of the commission files a complaint, such member shall be disqualified from the commission's consideration of that complaint. Whenever a complaint is filed with the commission, the commission shall promptly send a copy thereof to the person complained of, who shall thereafter be designated as the respondent.

History: L. 1981, ch. 171, § 19; July 1.
Source or prior law:
25-4121.

25-4161. Complaints of violations; determination of sufficiency; confidentiality; investigation; notification of attorney general of violations of laws; findings of probable cause; hearing; notice. If the commission determines that a verified complaint does not allege facts, directly or upon infor-

mation and belief, sufficient to constitute a violation of any provision of the campaign finance act, it shall dismiss the complaint and notify the complainant and respondent thereof. Whenever a complaint is filed with the commission alleging a violation of a provision of the campaign finance act, such filing and the allegations therein shall be confidential and shall not be disclosed except as provided in the campaign finance act. If the commission determines that such verified complaint does allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of the campaign finance act, the commission shall promptly investigate the alleged violation. The commission shall notify the attorney general of any apparent violation of criminal law or other laws not administered by the commission, which is discovered during the course of any such investigation. If after the preliminary investigation, the commission finds that probable cause does not exist for believing the allegations of the complaint, the commission shall dismiss the complaint. If after such preliminary investigation, the commission finds that probable cause exists for believing the allegations of the complaint, such complaint shall no longer be confidential and may be disclosed. Upon making any such finding, the commission shall fix a time for a hearing of the matter, which shall be not more than 30 days after such finding. In either event the commission shall notify the complainant and respondent of its determination.

History: L. 1981, ch. 171, § 20; L. 1984, ch. 145, § 2; April 26.

25-1162. Same; withdrawal of complaints; civil action for malicious prosecution; when. The commission may permit a complainant to withdraw such person's complaint at any time. The respondent may bring a civil action in the district court against the complainant for malicious prosecution for the filing or prosecution of any complaint with the commission under the

campaign finance act, whenever under like circumstances an action for malicious prosecution would arise for filing or prosecution of an action or complaint in a court. All papers in the possession of the commission relating thereto shall be admissible.

History: L. 1981, ch. 171, § 21; July 1.

Source or prior law:

25-4123.

25-4163. Same; rights of respondent; hearing procedure; compulsory process; hearings to be public. (a) After a verified complaint alleging violation of a provision of the campaign finance act has been filed with the commission, the respondent shall be entitled to examine and make copies of all evidence in the possession of the commission relating to the complaint, including the transcript of the hearing, if any. If a hearing is to be held pursuant to K.S.A. 25-4161, the commission, before the hearing has commenced, shall issue subpoenas and subpoenas *duces tecum* at the request of any party. Any hearing held under K.S.A. 25-4161, may be conducted and held by a subcommittee of not less than three members of the commission, of whom not more than a majority shall be of the same political party. Final determination of all complaints shall be made by the commission as a whole. The chairperson of the commission or other member presiding over the commission or the presiding member of any subcommittee of the commission shall have the power to: (1) Administer oaths and affirmations; and (2) compel, by subpoena, the attendance of witnesses and the production of pertinent books, papers and documents. Witnesses shall be entitled to receive fees and mileage as provided by law for witnesses in civil actions, which shall be paid out of appropriations to the commission. Depositions may be taken and used in the same manner as in civil actions. Any person subpoenaed to appear and give testimony or to produce books, papers or documents, who fails or refuses to appear or to produce such books, papers or documents,

or any person, having been sworn to testify, who refuses to answer any proper question, may be cited for contempt of the district court of Shawnee county, Kansas. The commission shall report to such court the facts relating to any such contempt. Thereupon proceedings before such court shall be had as in cases of other civil contempt.

(b) At every hearing held by the commission: (1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to be represented by legal counsel, to call and examine witnesses, to introduce evidence and to cross-examine opposing witnesses.

(c) All hearings shall be open to the public.

History: L. 1981, ch. 171, § 22; July 1.

Source or prior law:
25-4124.

25-4164. Actions of commission following hearing. After a hearing of an alleged violation of the campaign finance act the commission shall state its findings of fact. If the commission finds that the respondent has not violated any provisions of the campaign finance act, it shall order the action dismissed, and shall notify the respondent and complainant thereof. If the commission finds that the respondent has violated any provisions of the campaign finance act, it shall state its findings of fact and submit a report thereon to the attorney general and to the county or district attorney of the appropriate county.

History: L. 1981, ch. 171, § 23; July 1.

Source or prior law:
25-4125.

25-4165. Commission records; confidentiality; release to attorney general and certain prosecuting attorneys; public records. The commission shall maintain a record of its investigations, inquiries, and proceedings. All records, complaints, documents, reports filed with or submitted to or made by the commission, and all records and transcripts of any investigations,

inquiries or hearings of the commission under the campaign finance act shall be confidential and shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or employee designated to assist the commission, except as otherwise specifically provided in the campaign finance act. The commission may, by adoption of a resolution, authorize the release to the attorney general or to the county or district attorney of the appropriate county of any information, records, complaints, documents, reports, and transcripts in its possession material to any matter pending before the attorney general or any county or district attorney. All matters presented at a public hearing of the commission and all reports of the commission stating a final finding of fact pursuant to K.S.A. 25-4164, shall be public records and open to public inspection.

History: L. 1981, ch. 171, § 24; July 1.

Source or prior law:
25-4126.

25-4166. Reports of disposition of cases; information to accompany report; procedure for consideration of and action upon reports; ouster; impeachment or removal, when. (a) Whenever a report is made under K.S.A. 25-4164, and the respondent is elected to a state office pursuant to a primary election or general election to which such report applies, the commission shall transmit a copy thereof to the supreme court, legislature or attorney general on the first day of the term for which the respondent is so elected.

(b) If the respondent is elected to be a member of the house of representatives or senate, such commission report shall be transmitted to the house to which the respondent is elected. If the respondent is elected to an office to which impeachment applies, the commission report shall be transmitted to the house of representatives. If the respondent is elected to a judicial office, and is not subject to impeachment,

the commission report shall be transmitted to the supreme court. If the respondent is elected to an office not heretofore mentioned in this subsection, the commission report shall be transmitted to the attorney general.

(c) Each commission report transmitted in accordance with this section shall include or be accompanied by a summary of the facts relating to the report under K.S.A. 25-4164, and shall make appropriate reference to this section. All information, reports, transcripts and other records relating to the respondent which are or have been in the possession of the commission shall be available to the body to which the commission report is transmitted.

(d) Reports relating to respondents who are elected to the legislature shall be considered by the house to which the respondent is elected, and such house shall impose censure or disqualification or it may determine that neither censure or disqualification is justified. Reports relating to impeachable officers shall be considered by the house of representatives. Reports relating to judicial officers, except those subject to impeachment, shall be considered by the supreme court. Reports relating to any officer not mentioned in this subsection may be the basis for an ouster action brought by the attorney general.

History: L. 1981, ch. 171, § 25; July 1.

Source or prior law:
25-4127.

25-4167. Failure to file a campaign finance report; misdemeanor. Failure to file a campaign finance report is (a) the intentional failure of any person required to make any report, amended report or statement by the campaign finance act to file the same with the secretary of state at the time specified in the campaign finance act or (b) the intentional failure of any person required by K.S.A. 25-4172 to submit a statement to a treasurer to submit the same.

Failure to file a campaign finance report is a class A misdemeanor.

History: L. 1981, ch. 171, § 26; July 1.
Source or prior law:
25-4128.

25-4168. Fraudulent campaign finance reporting; misdemeanor. Fraudulent campaign finance reporting is intentionally making any false material statement in a report or statement made under the campaign finance act.

Fraudulent campaign finance reporting is a class A misdemeanor.

History: L. 1981, ch. 171, § 27; July 1.
Source or prior law:
25-4129.

25-4169.

History: L. 1981, ch. 171, § 28; Repealed, L. 1985, ch. 124, § 4; July 1.

25-4170. Excessive campaign contributions; misdemeanor. Excessive campaign contribution is: (a) Intentionally making any contribution in violation of any provision of K.S.A. 25-4153, or

(b) intentionally accepting any contribution made in violation of any provision of K.S.A. 25-4153.

Excessive campaign contribution is a class A misdemeanor.

History: L. 1981, ch. 171, § 29; July 1.
Source or prior law:
25-4131.

25-4171. Violation of certain provisions; misdemeanor. Intentional violation of any provision of K.S.A. 25-4144, 25-4145, 25-4146, 25-4147, 25-4151, 25-4154 or 25-4165, and amendments thereto, or the confidentiality provision of K.S.A. 25-4161, and amendments thereto, is a class A misdemeanor.

History: L. 1981, ch. 171, § 30; L. 1984, ch. 145, § 3; April 26.

25-4172. Statements or reports by certain out-of-state individuals and persons; contents; filing; maintenance of records. (a) Except as provided by subsection (b), any combination of three or more individuals or a person other than an individual, not dom-

WASHINGTON

CHAPTER 390-37 WAC

ENFORCEMENT HEARINGS--PROCEDURES

WAC 390-37-010 Enforcement procedures--Policy. The commission recognizes the need for published uniform rules setting forth commission policies and procedures for cases in which violations or apparent violations of chapter 42.17 RCW are brought to its attention. The policy of the commission shall be to facilitate the resolution of compliance matters in a fair and expeditious manner. (Order 79, filed 6/25/76.)

WAC 390-37-020 Enforcement procedures--Initiation of complaint. (1) A complaint alleging a violation of chapter 42.17 RCW may be brought to the attention of the commission staff by:

- (a) A member of the public;
- (b) The commission staff;
- (c) A commission member, who shall then be disqualified from participating in the decision of an enforcement hearing that may arise from the complaint; or
- (d) Referral from the office of the attorney general or any other law enforcement agency.

(2) The person or entity against whom a complaint is filed shall be known as the respondent. (Order 84-03, filed 5/25/84; Order 79, filed 6/25/76.)

WAC 390-37-030 Enforcement procedures--Status of citizen complainant and others. (1) When a citizen complaint has been filed with the commission, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission.

WAC 390-37-030 (Continued)

However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the commission at any time. The complainant or any other person wishing to be heard in a compliance matter may request permission in advance of a public hearing on the matter or at such hearing, and the commission may grant such person a reasonable opportunity to be heard.

(3) A person not satisfied with the dismissal of a complaint by the commission or its executive director when no violation is found, may pursue an appropriate remedy under RCW 42.17.400(4). (Order 85-04, filed 10/31/85; Order 84-03, filed 5/25/84; Order 79, filed 6/25/76.)

WAC 390-37-040 Enforcement procedures--Procedures for filing citizen complaints. (1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.

(2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, may be made informally.

(3) A complaint filed under the provisions of either subsection (1) or (2) of this section should include:

- (a) A statement of the nature of the alleged violation or

WAC 390-37-040 (Continued)

violations, date, time and place of each occurrence and name of person or persons responsible; and

(b) All available documentation and other evidence which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.17 RCW has occurred.

(Order 84-03, filed 5/25/84; Order 79, filed 6/25/76.)

WAC 390-37-050 Enforcement procedures--Respondent's notice of complaint. Within ten days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated. (Order 79-03, filed 7/19/79; Order 81, filed 7/22/76.)

WAC 390-37-060 Enforcement procedures--Investigation of complaints--Initiation of hearing. (1) The executive director shall initiate an enforcement hearing whenever an investigation reveals facts which the executive director has reason to believe are a material violation of chapter 42.17 RCW and do not constitute substantial compliance.

(2) The respondent shall be notified of the date of the hearing no later than twenty days before that date pursuant to WAC 10-08-040.

(3) The staff shall provide the respondent, at his/her request, with copies of all materials to be presented by the staff at the hearing.

WAC 390-37-060 (Continued)

(4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310(1)(d). If a request is made for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330. (Order 85-04, filed 10/31/85; Order 84-03, filed 5/25/84; Order 81, filed 7/22/76.)

WAC 390-37-063 Enforcement procedures--Demand for information--Subpoenas. (1) During the course of an audit or an investigation, the executive director may issue a "demand for information" directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The "demand for information" shall

(a) Specifically describe the information which is sought, and

(b) Set forth a reasonable time and place for the production of the information, and

(c) Notify the person that if the information is not produced, the executive director will present a request to the commission, at its next regular or special meeting, to issue a subpoena for the information pursuant to RCW 42.17.370(5).

The "demand for information" may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission may issue a subpoena under RCW 42.17.370(5) to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other

WAC 390-37-063 (Continued)

documents which the commission deems relevant and material.

(3) Whenever the commission will consider the issuance of a subpoena, the executive director will place the matter on the published agenda for that meeting and, in addition, give the respondent, if any, and the person to whom the subpoena would be directed, at least five days written notice of the time and place where the meeting will be held. (Order 85-04, filed 10/31/85; Order 81-04, filed 12/28/81.)

WAC 390-37-070 Enforcement procedures--Complaints dismissible by executive director. The executive director, with the concurrence of the chairman, at any time prior to the consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of chapter 42.17 RCW has occurred. (Order 85-04, filed 10/31/85; Order 84-03, filed 5/25/84; Order 81, filed 7/22/76.)

WAC 390-37-090 Enforcement procedures--Cases resolvable by stipulation. (1) When the executive director and respondent agree that some or all of the facts are uncontested, the executive director and respondent shall prepare a stipulated statement of fact for presentation to the commission.

(2) The commission may ask that additional facts be presented if it deems any stipulation to be inadequate.

WAC 390-37-090 (Continued)

(3) The commission shall refer the matter to the executive director for further investigation or other action consistent with the commission's deliberations if the commission does not approve the stipulated statement of fact. (Order 85-04, filed 10/31/85; Order 84-03, filed 5/25/84; Order 81, filed 7/22/76.)

WAC 390-37-100 Enforcement procedures--Conduct of Hearings.

(1) An enforcement hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.04 RCW) and its supporting regulations (chapter 10-08 WAC)-

(2) An enforcement hearing shall be heard either by the commission or under RCW 34.12.040 or 34.12.050(2), by a duly designated administrative law judge.

(3) Upon the conclusion of an enforcement hearing heard by an administrative law judge, the judge shall prepare and present to the commission findings of fact, conclusions of law, and a proposed decision determinative of the matter. A copy of the findings of fact, conclusions of law and the proposed decision shall be served upon the executive director and the respondent. Both the respondent and the executive director shall be afforded an opportunity to file exceptions and written argument with the commission. The commission shall review the proposed decision at its next regular meeting or at a special meeting called for that purpose. The commission shall consider the whole record or such portions as shall be cited by the parties. Oral argument may be heard at the discretion of the commission.

(4) After either a hearing by the commission or review by the commission of the proposed decision of an administrative law judge the

WAC 390-37-100 (Continued)

commission may find that:

(a) Respondent did not violate the act, as alleged, and dismiss the case; or

(b) Respondent violated chapter 42.17 RCW, as alleged, and determine the sanction, if any, to be imposed, or

(c) Respondent is in apparent violation of chapter 42.17 RCW, its own remedy is inadequate and enter its order referring the matter to the appropriate law enforcement agency as provided in RCW 42.17.360.

(5) Upon the conclusion of a hearing, the commission

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall deliver, either in person or by mail, to each respondent and their representative a copy of the findings of fact, conclusions of law and decision.

(6) When the commission finds an apparent violation and refers the matter to an enforcement agency, the commission shall give to the respondent written notice of such finding and order of referral. (Order 85-04, filed 10/31/85; Order 85-03, filed 7/9/85; Order 84-03, filed 5/25/84; Order 81, filed 7/22/76.)

WAC 390-37-150 Reconsideration and review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of the person aggrieved thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

WAC 390-37-150 (Continued)

(3) Such a request for reconsideration shall be served, or motion made, within thirty days after service of the decision of which reconsideration is sought.

(4) A request or motion for reconsideration shall specify the grounds therefor.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission shall act on the reconsideration, at the next meeting at which it practicably may do so by: (a) Deciding whether to reconsider its decision, and (b) if it decides to do so, either affirming or amending its decision: Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision. (Order 79-03, filed 7/19/79.)

WAC 390-37-210 Hearings -- Subpoenas. (1) The commission, upon request by any party, may subpoena persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other records which the commission deems relevant or material.

WAC 390-37-210 (Continued)

(2) Such subpoena will issue and may be enforced in the form and manner set forth in RCW 34.04.105 and WAC 10-08-120. (Order 85-03, filed 7/9/85; Order 84-03, filed 5/25/84; Order 81, filed 7/22/76.)

970 CMR 3.00: RULES OF PROCEDURE

Section

- 3.01: Scope and Purpose
- 3.02: General Provisions
- 3.03: Representation
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3.01: Scope and Purpose

The Director of the Office of Campaign and Political Finance has the power and authority to investigate the legality, validity, completeness and accuracy of all reports and actions required to be filed and taken by candidates, treasurers, political committees, and any other person pursuant to M.G.L. c. 55 and any other laws of the commonwealth pertaining to campaign contributions and expenditures.

970 CMR 3.00 governs investigations and hearings conducted by the Office. They have been adopted to guide the Office in fulfilling its statutory responsibilities in a fair and effective manner. They are also intended to protect the rights of candidates, treasurers, witnesses and all others involved in any hearings or investigations conducted by the Office. The Director may, in his discretion, permit certain activities and procedures relative to the conduct of investigations and hearings which are not covered by 970 CMR 3.00 but which are not inconsistent with 970 CMR 3.00, M.G.L. c. 55 or any other law. The Office may also adopt internal guidelines to enable it to effectively and efficiently fulfill its statutory mandate.

3.02: General Provisions

- (1) Authority. 970 CMR 3.00 is promulgated under authority of M.G.L. c. 55, s. 3 and M.G.L. c. 30A.
- (2) Effective Date. 970 CMR 3.00 is effective upon publication in the Massachusetts Register in accordance with M.G.L. c. 30A.
- (3) Amendments. 970 CMR 3.00 may be amended at any time, and such amendments shall take effect in accordance with M.G.L. c. 30A.

3.03: Representation

- (1) An individual may appear in his own behalf.
- (2) A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture and an authorized trustee may represent a trust.
- (3) A witness shall have the right to be represented by counsel. Such counsel shall file a written notice of appearance with the presiding officer before representing a witness at any hearing.
- (4) The Director may determine that representation by a counsel of more than one witness is not in accordance with 970 CMR 3.00 and may therefore not permit such dual representation.

3.04: Reviews and Investigations

- (1) Initiation of Reviews and Investigations.
 - (a) The Director may initiate reviews or investigations of any and all matters relative to all reports and actions required to be filed and taken by candidates, treasurers, political committees and any other person pursuant

3.04: continued

to M.G.L. c. 55 and any other laws of the commonwealth pertaining to campaign contributions and expenditures.

(b) The initiation of any particular investigation or review shall be within the discretion of the Director or any employee or agent to whom he delegates that discretion.

(2) Conduct of Reviews and Investigations.

(a) In conducting a review or investigation, the Director or his employees or agents may interview persons, examine or audit books, records, files, documents or other materials, issue summonses in accordance with 970 CMR 3.05, or take any other action necessary which is permitted by law;

(b) Interviews:

1. Interviews may be conducted with any individual(s) whom it is determined may have information relevant to any matter under review or investigation;

2. A request by a person to have counsel present at an interview shall be honored;

3. Interviews may be taken under oath or affirmation and may be recorded by hand, sound recording or a stenographer.

(c) The scope, duration, conduct and disposition of any investigation or review shall be within the discretion of the Director or any employee or agent to whom he may delegate that discretion.

3.05: Summonses(1) Summonses for Books and Papers.

(a) The Director may issue summonses requiring the production of any books, papers, records, documents, correspondence or any other material relevant to any matter under review or investigation by him;

(b) A person summoned to produce books and papers pursuant to 970 CMR 3.05(1) shall do so at the time and place specified in the summons unless another time and place is mutually agreed upon by the Office and the person summoned;

(c) All books, papers and records obtained pursuant to a summons issued under 970 CMR 3.05(1) shall be retained by the office for so long as needed for an investigation. A person who has produced records pursuant to such a summons may request the Director to provide access to the records for inspection or copying at the party's expense. Such access shall be permitted provided it does not unduly interfere with the work of the Office;

(d) The person to whom a summons is issued pursuant to 970 CMR 3.05(1) may seek modification of the scope or terms for compliance with the summons by filing with the Director an Application for Modification of the Summons. Such application must be filed no later than five (5) calendar days after the date of issuance of the summons. It must state with particularity the requests for modification and the reasons and any argument in support of such modification. The Director may approve or deny, in whole or in part, such application for modification, or otherwise modify the scope and terms of the summons.

(2) Summonses for Attendance and Testimony of Witnesses and Production of Books and Papers.

(a) The Director may issue summonses requiring any person to attend and testify under oath at a private hearing, and also to produce books and records, if the Director has reason to believe that such person may have information relative to any matter under investigation by the Office. Witnesses shall testify under oath only at private hearings, and the same secrecy provisions which govern grand jury proceedings shall govern all such private hearings.

(b) A witness required by summons to attend and testify, or attend and testify and produce books and papers, pursuant to 970 CMR 3.05(2), shall do so at the time and place specified in the summons, unless another time and place is mutually agreed upon by the Office and the person summoned;

(c) A request by a witness for a change of the date or time of his or her appearance to attend and testify, or to attend and testify and produce books

3.05: continued

and papers, at a private hearing must be received by the Office no later than twenty-four (24) hours before the witness is scheduled to testify. The request must be in writing and must state the reasons for the requested change. The granting of such a request shall be at the discretion of the Director. A request will ordinarily be allowed if it is not made for purposes of delay and if allowing the request will not interfere with the conduct of the investigation;

(d) Any objections of a witness to a summons issued pursuant to 970 CMR 3.05(2), must be made in writing, must state the reasons for the objections and must be received by the Office no later than twenty-four (24) hours before the witness is scheduled to attend and testify, or to attend and testify and produce books and records. The Director shall rule upon the objections at the time of the hearing, or give reasons at that time for not ruling upon the objections;

(e) A witness who is required by summons issued pursuant to 970 CMR 3.05(2) to attend and testify, or to attend and testify and produce books and records, may file a sworn written statement with the Director. Such statement may be filed prior to the hearing, during the time of the testimony of the witness, or within five (5) calendar days after the hearing has been concluded or adjourned;

(f) A witness required by summons to attend and testify, or to attend and testify and produce books and papers, shall be provided with the following:

1. No less than forty-eight (48) hours notice of the time and place of the private hearing, unless such notice will unduly interfere with the conduct of the investigation;
2. Notification of the general matter under investigation concerning which the witness will be asked to testify;
3. A copy of these Rules of Procedure;
4. Notification that his or her testimony will be taken at a private hearing;
5. Notification that the witness has a right to consult with and have an attorney present at the time his or her testimony is taken.

(3) Provisions Relative to all Summonses Issued Pursuant to 970 CMR 3.00.

(a) Any summons issued pursuant to 970 CMR 3.05 shall be served in the same manner as summonses for witnesses in criminal cases issued on behalf of the Commonwealth;

(b) All provisions of law relative to summonses for witnesses in criminal cases issued on behalf of the Commonwealth shall apply to summonses issued under 970 CMR 3.05; so far as applicable;

(c) Any justice of the supreme judicial court or of the superior court may, upon application by the director, enforce any summons issued pursuant to 970 CMR 3.05 in the same manner and to the same extent as before said courts.

3.06: Hearings

(1) Hearings may be held for the following reasons:

(a) In furtherance of any investigation conducted by the Office pursuant to 970 CMR 3.04, and may include the taking of testimony of witnesses pursuant to summonses issued under 970 CMR 3.05 or those who are invited to testify before the Director;

(b) Upon request by any person or political committee after receiving notification by registered mail, return receipt requested, by the Director of his intention to present to the attorney general evidence of any alleged violation of M.G.L. c. 55 or regulations promulgated thereunder, to permit the alleged violator to present evidence to the contrary, provided the request is received by the Director within ten (10) days of receipt of notification by the alleged violator.

(2) The testimony of all witnesses shall be heard only at private hearings which shall be governed by all provisions of secrecy applicable to grand jury proceedings.



3.06: continued

- (3) The testimony of a witness shall be taken under oath administered by the presiding officer, a notary public or other Person authorized by the laws of the Commonwealth to administer oaths. Witnesses shall be sworn before testifying.
- (4) These Rules of Procedure shall be made available in printed form to each witness prior to his or her testimony.
- (5) A witness shall have the right to be represented at a hearing by counsel. Counsel shall file a written Notice of Appearance with the Office before representing a witness at a hearing.
- (6) All provisions with reference to secrecy which govern proceedings of a grand jury shall govern proceedings before the director.
- (7) There shall be a Presiding Officer at all hearings, who shall be the Director or his designee, who shall conduct said hearing.
- (8) A witness shall be informed, prior to his or her testimony, of the privilege against self-incrimination.
- (9) Testimony at all hearings shall be recorded by a stenographer or a mechanical recording device.
- (10) Witnesses, counsel and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Director may take appropriate action.
- (11) The examination and cross-examination of witnesses shall be subject to the following:
 - (a) At any hearing conducted in furtherance of any investigation as provided by 970 CMR 3.06(1)(a):
 1. Witnesses may be examined and cross-examined by the Director, Legal Counsel and Office staff at the discretion of the Presiding Officer;
 2. Counsel for the witness shall not be permitted to examine or cross-examine the witness, but the witness shall have the right to consult with his or her counsel;
 3. At any time prior to the close of questioning of the witness, the witness or his or her counsel may submit to the Presiding Officer written questions which the Presiding Officer may, in his or her discretion, ask of the witness.
 - (b) At any hearing conducted as the result of a Request for Hearing, as provided by 970 CMR 3.06(1)(b):
 1. Witnesses may be examined and cross-examined by Counsel for the requesting party;
 2. Witnesses may be examined and cross-examined by the Director, Legal Counsel, and Office staff;
 3. Counsel for a witness, other than a witness who is the requesting party, shall not be permitted to examine or cross-examine the witness, but the witness shall have the right to consult with his or her counsel;
 4. The Presiding Officer shall have the discretion to require that any such examination or cross-examination be modified in any manner.
- (12) A witness or his or her counsel may object to a question on the ground of privilege against self-incrimination. A witness may refuse to answer a question on the ground of this privilege. If a witness claims the privilege, he or she shall not be required to answer the question at that time.
- (13) Strict rules of evidence applicable in a judicial proceeding shall not be applied.
- (14) The order of proceedings shall be as follows:
 - (a) At any hearing conducted in furtherance of any investigation, as provided by 970 CMR 3.06(1)(a):

3.06: continued

1. A witness called to testify shall be permitted to make a brief opening statement, after being sworn;
 2. The witness may be examined and cross-examined in accordance with 970 CMR 3.06(1)(a);
 3. At the close of his or her testimony, a witness may make a brief closing statement. A witness may be asked additional questions after his or her closing statement.
- (b) At any hearing conducted as the result of any Request for Hearing, as provided by 970 CMR 3.06(1)(b):
1. The requesting party, or his or her counsel, may make a brief opening statement for the purpose of highlighting issues to be addressed and summarizing evidence to be adduced during the presentation of evidence;
 2. Witnesses may be examined and cross-examined in accordance with 970 CMR 3.06(1)(b);
 3. At the close of all evidence presented, the requesting party, or his or her counsel may make a brief closing statement.
- (15) A witness, or requesting party may file a sworn statement for inclusion in the record of the private hearing, which may be filed prior to the hearing, during the hearing, but no later than five (5) calendar days after the hearing has been concluded or adjourned.
- (16) Transcript of Proceeding.
- (a) All hearings shall be recorded by a stenographer or a mechanical recording device.
 - (b) Transcripts of a witness' testimony may be supplied to that witness, upon request, at his own expense. A witness may request that the Presiding Officer allow a stenographer to record his testimony, at his own expense. If that request is granted, a stenographic record shall be provided to the Office at no expense to the Office, and upon such other terms as the Office or Presiding Officer shall order.
 - (c) Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Upon receipt of the transcript, the witness shall have seven (7) days (excluding Saturdays, Sundays, and legal holidays) to indicate to the Office any alleged inaccuracies in the transcript. Requests to correct alleged inaccuracies shall be submitted in writing to the Office to the attention of the Presiding Officer, who shall agree or disagree to amend the transcript to reflect the change. If the Presiding Officer disagrees, the witness' proposed list of alleged inaccuracies shall be appended to the transcript.
 - (d) Transcripts of private hearings shall be kept confidential subject to the same restrictions on use as those applying to grand jury transcripts.
- (17) Nothing contained in 970 CMR 3.06 shall be construed to limit the manner and extent to which the Office may interview persons while conducting reviews or investigations, as provided by 970 CMR 3.04(2)(b).

3.07: Disposition of Matters

- (1) Administrative Disposition. The director may, in his discretion, dispose of any matter before him through any administrative disposition. This may include, but shall not be limited to, entering into Disposition Agreements with candidates, treasurers and any other person who is the subject of a review or investigation.
- (2) Referral to the Attorney General. The Director may refer to the attorney general evidence of any violation of M.G.L. c. 55 and any regulations promulgated thereunder.
 - (a) Such referral may not be made until the Director has notified the alleged violator, by registered mail, return receipt requested, of his intention to present such evidence to the attorney general;
 - (b) Within ten (10) days of receipt of such notice, an alleged violator may request a hearing before the Director, for the purpose of presenting any evidence to the contrary, in accordance with 970 CMR 3.06(1)(b);

3.07: continued

(c) The Director shall not refer any such evidence until after the hearing, if requested, is held;

(d) Evidence shall be presented by the Director to the Attorney General only after the relevant election involved, but within two (2) years after said election.

3.08: Delegation by the Director

The Director may delegate any power, authority, or function granted to him by statute, rule or regulation to any employee or agent of the Office as he deems appropriate for the effective performance of his duties and responsibilities.

REGULATORY AUTHORITY

970 CMR 3.00: M.G.L. c. 55, s. 3.

(c) Of each committee supporting one or more such candidates, insofar as these campaign statements relate to the support of such candidates;

(d) Of each committee required to register with the Secretary of State which the Board of Equalization determines has spent more than ten thousand dollars (\$10,000) during any calendar year.

Added Stats 1973 ch 1186 § 2.

Cross References:

Similar provision: Gov C § 90001.

§ 11612. Same; when permissible

In addition to the investigations and audits required by Section 11611, the Board of Equalization may make investigations and audits with respect to the campaign statements of any candidate or committee which has filed or should have filed a campaign statement with the Secretary of State.

Added Stats 1973 ch 1186 § 2.

Cross References:

Similar provision: Gov C § 91003.

§ 11613. Same; commencement; coverage; reports; corrections; supplements

No audit or investigation by the Board of Equalization shall begin until after the last date for filing the first report following the general or special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated. When the campaign statements of a candidate or a committee supporting a candidate are audited and investigated, the audit and investigation shall cover all campaign statements filed in connection with the primary and general or special elections and any previous campaign statement filed pursuant to Section 11553.5, since the last campaign statement filed in connection with an election. The report of the Board of Equalization shall be sent to the Secretary of State, and the Attorney General not later than four months after the first date for beginning the audit. The report of the Board of Equalization shall be a public document and shall contain the Board of Equalization's findings in detail with respect to the accuracy and completeness of each campaign statement reviewed and its findings with respect to any campaign statements that should have been but were not filed. Prior to making any reports, the board shall permit any candidate or committee to correct with 10 days any errors in its campaign statement. Such correction shall be noted in the report. If any of the Board of Equalization's investigations and audits have not been completed in time to be included in the Board of Equalization's

report, the report shall state the reasons for each such case and the Board of Equalization shall issue one or more supplemental reports at the earliest times feasible until each investigation and audit has been completed and fully reported.

Added Stats 1973 ch 1186 § 2.

Cross References:

Similar provision: Gov C § 90002.

§ 11614. Subpoenas; confidentiality

The superior court of a county shall issue, at the request of the Board of Equalization or any person authorized by the Board of Equalization, a subpoena for the production of such documents and records to carry out the responsibilities of the Board of Equalization. No member, employee or agent of the Board of Equalization shall divulge or make known in any manner any particulars of any record, documents, or information which he receives by virtue of his connection with the Board of Equalization, except in furtherance of the work of the Board of Equalization.

Added Stats 1973 ch 1186 § 2.

Cross References:

Similar provision: Gov C § 90005.

ARTICLE 9

Effectiveness

[Added by Stats 1975 ch 145 § 1, effective June 28, 1975]

§ 11620. Chapter inoperative; exceptions

§ 11621. Special campaign statement due July 31, 1975; exceptions

§ 11622. Enforcement not precluded

Note—Inoperability of provisions, see § 11620.

§ 11620. Chapter inoperative; exceptions

This chapter shall be inoperative and shall remain inoperative unless Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code is repealed, held invalid by a court of appeal, or otherwise made inoperative; provided that, this chapter shall be considered in full force and effect with respect to any activities covered by this chapter which occurred prior to January 7, 1975, and to campaign statements required to be filed by Section 11621.

Added Stats 1975 ch 145 § 1, effective June 28, 1975

Note—Stats 1975 ch 145 also provides: § J Nothing in this act shall be construed to reflect a legislative determination or judgment regarding the validity or

CALIFORNIA

Alaska State Legislature

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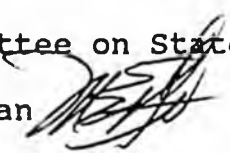
IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4714



Senator Mitch Abood
CHAIRMAN

Senate Committee on State Affairs

MEMORANDUM

TO: Members of the Senate Committee on State Affairs
FROM: Senator Mitch Abood, Chairman 
DATE: March 5, 1988
SUBJECT: Current APOC Procedures for Summary Violations

I think that it might be helpful to provide some additional information on the manner in which the commission handles a matter when there is no evidence of a willful violation of the law. These matters account for the vast majority of commission business and generally involve late or incomplete reporting.

A February 23, 1987 memo to commission members on "Affidavit and Hearing Procedures," (Exh. A) stated:

" At present, staff recommendations for a hearing are made when the preliminary investigation finds a violation subject to criminal penalties which may merit referral to the Attorney General. Staff does not recommend (a) hearing in instances where the violation is technical or inadvertent, but recommends civil penalties if late reporting or incomplete reporting is uncovered.

Under the current procedure, if the commission approves a (staff) recommendation for civil penalties, the assessment and appeal are handled in the same fashion as fines for simple delinquencies. The respondent is sent a civil penalty assessment and advised that he or she may pay the assessment or appeal via affidavit and appearance before the commission."

Assistant attorney general Kay Gouwens recommended that respondents in such cases who dispute that a report was required or incomplete and who appeal, should be provided with the opportunity for a hearing conducted by or with a hearing officer; and suggested that when affiants disputed the facts on affidavits and simple delinquencies, that they should be offered an opportunity for an Administrative Procedures Act (APA) hearing.

Ms Gowens' recommendation was consistent with AS 44.62.330 (39), which requires the commission to use the APA procedures in all matters concerning evidence and decisions, and the conduct of hearings. However, the commission made a conscious decision to ignore the requirement contained in AS 44.62.330 (39) and the advice of the Department of Law, and continued to informally sit as a commission to hear these contested cases without a hearing officer.

In 1986, the commission by regulation, removed the maximum fine ceiling for delinquent campaign reports (2 AAC 390 (d)(A,B,C,D)). This action resulted in the ability to assess enormous civil fines. It was not surprising that along with the higher fines came an increase in the number of people who wanted to appeal them. I have included a sampling of reports which will give you an idea of the kinds of fines which have been levied since the 1986 regulation went into effect (Exh. B) and a copy of the proposed criteria to be used by the commission in mitigating fines (Exh. C).

MEMORANDUM

State of Alaska

MAIL STOP:

TO: APOC MEMBERS

DATE: February 23, 1987

FILE NO: [20]

TELEPHONE NO: 276-4176

FROM: ^{TSP} Theda Pittman
Executive Director

SUBJECT: Affidavit & Hearing
Procedures

In preparing staff recommendations for disposal of several complaints at this meeting, we received oral advice from Kay Gouwens concerning preliminary investigations where, in the absence of evidence of a willful violation, staff recommends the assessment of civil penalties for incomplete reporting. Ms. Gouwens advises that respondents in such cases who dispute that a report was required or incomplete, should be provided with the opportunity for a hearing conducted by or with a hearing officer.¹

At present staff recommendations for a hearing are made when the preliminary investigation finds a violation subject to criminal penalties which may merit referral to the Attorney General. Staff does not recommend hearing in instances where the violation is technical or inadvertent, but recommends civil penalties if late reporting or incomplete reporting is uncovered.

Under the current procedure, if the Commission approves a recommendation for civil penalties, the assessment and appeal are handled in the same fashion as fines for simple delinquencies. The respondent is sent a civil penalty assessment and advised that he or she may pay the assessment or appeal via affidavit and appearance before the Commission.

¹ She also suggests that staff watch for affidavits on simple delinquencies where affiants are disputing the facts and offer those individuals an opportunity for an APA-type hearing.

During the November meeting, we discussed the procedure for handling affidavit appeals for simple delinquencies. The 1986 regulation changes which removed \$10 and \$50 as the maximum fines for campaign reports resulted in higher assessments and more appeals. Two major options for decreasing Commission meeting time to review affidavits were discussed: continued Commission review of both affidavit and staff recommendation with no presentation by either affiant or staff; or assignment of a hearing officer to preside over staff and affiant presentations.

The Commission chose to continue its practice of allowing affiants to make personal or telephone appearances with a request that initial statements be limited to three minutes and that affiants not repeat the information provided in their affidavits. This meeting will be the first time those guidelines have been provided to affiants. Sue and Greg prepared 36 affidavits and it appears that 3 or 4 of the affiants have asked to speak to the Commission.

Exhibit A

The current process was developed from the statutory language which allows fines to be assessed:

"[A] person who fails to file a properly completed and certified report within the time required...is subject to a civil penalty... for each day the delinquency continues subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed." AS 15.13.125

AS 15.13.125 was added to the Campaign Disclosure Law in 1976 in recognition that misdemeanor penalties were insufficient for adequate enforcement of the disclosure requirements. The same language was added to the Conflict of Interest Law and included in the enactment of the Lobbying Law.

Ms. Gouwen's recommendation is based on her concern that the present procedure is subject to potential challenge on the grounds it does not involve the use of a hearing officer as provided for in the Administrative Procedures Act ("APA"). A dissatisfied respondent might challenge the Commission claiming that she or he was denied due process.

Until 1984 the Commission followed APA procedures for promulgating regulations, but not for its 'hearings' because the Commission does not perform any of the functions described in the APA (Kennedy Memo, A-5,6). In 1984 Dick Monkman was appointed special counsel on the VECO payroll case. In reading the Commission's regulation on hearings he inferred that its non-APA process was because the Commission was not listed as subject to the APA. His experiences in court with the Real Estate Commission persuaded him that an agency listed as subject to the APA, was subject to it for all functions and he initiated an effort to make the Commission's hearing regulation consistent with the APA (Monkman Memo excerpt at B).²

If you adopt Ms. Gouwens' advice you have the potential for significantly increasing the number of instances in which you refer items to a hearing officer. In addition, you will have to decide which of those items are ones

² The first footnote of Monkman's memo is particularly interesting. It asserts that APA coverage is necessary because the Commission can hold hearings, take testimony, receive evidence and assess fines. The memo also says that it does not address the question of whether criminal referral decisions trigger APA procedures. As stated earlier staff recommends hearings when a preliminary investigation finds criminal violations which are not clearly inadvertant or innocent transactions. AS 15.13.120(d) requires the Commission to provide "...notice and an opportunity to be heard..." in such situations. Ironically, it appears that for the last two years we have been using APA-hearings which may not have been required. This may be due, in part, to the perception that APA procedures are safer if a respondent is likely to contest the facts. Also, respondents' attorneys are somewhat accustomed to the APA and may spend less of their clients' time, and our time, arguing about procedures.

where at least three of you will sit with the hearing officer or where we try to schedule the hearing at a regular meeting so all of you can sit with the hearing officer.

In order to quantify the question, we looked at the records from the last six Commission meetings, February - November 1986. In the last year there have been eleven actions where fines were levied as the result of a complaint or a staff audit. The initial value of the fines ranged from \$410 to \$7,650 (C). In 1986 there were 72 affidavits heard for simple delinquencies. Less than one-third, 22, of those were for fines of more than \$500. At this point its difficult to estimate how many of the 80-some possible actions would involve people who asked for an APA-type hearing. In the three years since we've been using hearing officers, we've never had more than 4 or 5 cases at a time. Each case requires a separate contract and the prospect of even 15 or 20 contracts each year feels like management nightmare.³ It appears that the best we could hope for is one large contract per year or finding an agency with in-house hearing officers who could do the work on a reimbursement basis.

Attachment D provides an example of the letters a respondent would receive if you change your procedure in accordance with Kay's suggestions. There is a letter explaining the fine and the alternatives, an affidavit form and a notice of defense form. If only the affidavit were returned you could continue to hear the appeal directly by yourselves. If the notice of defense form came in, staff would have to prepare to argue it before a hearing office (with or without the Commission present) and to arrange for the hiring of the hearing officer.

Because this subject has a history of varying legal advice, as well as financial implications, I believe the response to the latest recommendation should come from the Commission.

³ Budget uncertainties being what they are it seems likely we'd have to spend whatever contractual money we had and then either ask for a supplemental (depending on the time of year) or delay cases until funds were available.

MEMORANDUM

State of Alaska

TO Commissioners
Alaska Public Offices Commission

DATE August 25, 1981

FILE NO

TELEPHONE NO 276-3550

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT Complaints,
Investigations
and Hearings.

By: *Elizabeth P. Kennedy*
Elizabeth P. Kennedy
Assistant Attorney General

Theda Pittman has asked me to try to clarify the above subjects somewhat. There are basically many provisions in the present law which address the power of the Commission to hold hearings and conduct investigations.

AS 15.13.120(d) concerns complaints from outside persons who believe violations of the Campaign Disclosure Law have occurred. It reads:

(d) A person who believes a violation of this chapter has occurred may file a complaint with the commission. If the commission determines there is substantial reason to believe that a violation has occurred, it shall expeditiously make an investigation, which may also include an investigation of reports and statements filed by the complainant if he is a candidate, of the matter complained of. When, in the judgment of the commission, after affording due notice and an opportunity for a hearing, a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall report its determination and recommendation to the person who filed the complaint with the commission within 60 days of receiving the complaint unless circumstances require additional time to make an adequate investigation. The finding of the commission may be appealed to the superior court.

In response to these provisions, the Commission has promulgated 6 AAC 29.450 and 6 AAC 29.460, which read:

6 AAC 29.450. COMPLAINTS. (a) A complaint filed with the commission must be in writing and must contain the following:

(1) the full name and mailing address of the person making the complaint;

A-1

(2) the name of the person or group alleged to be in violation;

(3) allegations of specific facts which, if true would constitute

(A) a violation of AS 15.13 or of a provision of sec. 310 - 380 of this chapter, or

(B) a violation of AS 24.45 or of a provision of secs. 510 - 570 of this chapter;

(4) the basis of complainant's knowledge of the alleged facts.

(b) The complaint shall be signed by the complainant and the signature shall be verified by a notary public, municipal clerk, court clerk, postmaster, or any person authorized to administer oaths. Notarial service will be provided by the commission without cost.

6 AAC 29.460. PRELIMINARY INVESTIGATION. (a) If the commission determines that there is cause to credit the allegations in the complaint, a preliminary investigation will be conducted.

(b) The commission will, in its discretion, on its own motion, order a preliminary investigation of a possible violation of

(1) AS 15.13 or of a provision of secs. 310 - 380 of this chapter, or

(2) AS 24.45 or of provision of secs. 510 - 570 of this chapter.

(c) The executive director of the commission will present the results of the preliminary investigation to the commission for a finding.

The Commission is given further ability to act on its own when a violation of the campaign disclosure law is made known to it without complaint under AS 15.13.045, which states:

(a) The commission may issue subpoenas, administer oaths, hold hearings and conduct investigations.

(b) In conjunction with (a) of this section, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by this chapter.

(c) The commission may examine the papers, books, records, accounts and documents of any person subject to this chapter to ascertain the correctness of a report

filed with the commission, or in conjunction with an investigation or inspection conducted under (a) of this section.

(d) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner prescribed for obedience to a subpoena issued by the court.

Under the regulation of lobbying law, there are two provisions concerning hearings and investigations. AS 24.45.131 speaks to both outside complaints and information brought to the commission by staff and seems to set out the same procedures for both:

(a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Notice that this provision requires notice but no opportunity to be heard, and also requires an investigation but not necessarily a hearing.

In addition, AS 24.45.031(b)(1) and (2) gives the Commission the same broad discretionary powers as AS 15.13.045:

- (b) The commission may
- (1) hold hearings and conduct investigations into compliance with the provisions of this chapter.
 - (2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter.

Under the conflict of interest law, there does not appear to be such power. AS 39.50.050(a) and (b) merely states:

(a) The Alaska Public Offices Commission created under AS 15.13.020(a) shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution, standardized forms on which the reports required by this chapter shall be filed.

(b) The commission shall promulgate regulations to implement and interpret the provisions of this chapter; regulations or interpretation shall be within the intents and purposes of this chapter and are subject to judicial review in accordance with the provisions of the Administrative Procedure Act (AS 44.62).

There is no provision in this law for outside complaints, or for investigations by the Commission, although such power can be implied because of the inclusion of strict penalties in the law which would clearly need some referral and investigative powers in the Commission to implement.

You will note that under all laws, hearings and investigations are somewhat non-mandatory, barring an outside complaint on a violation of the campaign disclosure law, where opportunity to be heard is at issue. Even then, it is not clear that the opportunity to be heard must be given in a hearing rather than before the Commission in its investigative capacity. The Commission's main available remedy is to refer to the Department of Law, although there are provisions for civil penalties.

The Commission is a commission listed in AS 44.62.330 as being covered by the Administrative Procedures Act. The Act states in AS 44.62.330:

- (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - 44.62.630. This procedure,

including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency.

(d) Except in a case of reinstatement of penalty, the provisions of this chapter do not affect statutory provisions concerning

- (1) civil or criminal penalties;
- (2) additional relief by injunction or restraining order;
- (3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;
- (4) related matters which in their context do not relate to procedure.

Two basic provisions of the Act discuss hearings. AS 44.62.360 talks about one kind:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned is initiated by filing an accusation. . . .

AS 47.62.370 sets out the other kind of hearing:

(a) A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed is initiated by filing a statement of issues. . . .

Part of the problem we have always had with the Administrative Procedure Act is that the Commission has no authority to revoke, suspend, limit or condition or grant, issue or renew any right, authority, license or privilege. The one thing the Commission can do is specifically invoke civil penalties, but that is excluded under AS 44.62.330(d) from the Administrative Act procedures. Therefore, it is unclear whether or not the Commission must follow

the Administrative Procedure Act in most of its investigations or proceedings. Our general advice has been that in all but the most complicated and "politically difficult" cases, where a formal hearing has been called for, the Commission has been operating in its investigative role, and formal procedures, or procedures under the Administrative Procedure Act, are not called for.

Several things are clear from reading the various laws:

1. Under the campaign disclosure law and the regulation of lobbying law, the Commission may conduct investigations.

2. Under the campaign disclosure law only, when an outside complaint is filed, the Commission must give to the respondent an opportunity to be heard. This may be in the context of a hearing, or may merely mean that the person must show up during the investigation and be given a chance to answer the charges.

3. The Administrative Procedure Act will probably apply any time the Commission determines to have a full "hearing", and may apply at the Commission's level any time a formal complaint which has been received under campaign disclosure has been sustained and is being investigated.

4. The Commission, absent regulations, may not conduct "hearings" or possibly even "investigations" under the conflict of interest law.

5. The Commission needs to promulgate further regulations under all laws specifying when a "hearing" is required and when the Commission is involved in an investigation.

6. A "hearing" should follow the Administrative Procedure Act.

7. An "investigation" and its procedure should be defined by regulation.

8. Subpoenas for anything must be issued pursuant to AS 44.62.430.

It is my impression that Randall and I and the staff drafted a policy concerning the hearing times and procedures. I'm not sure what happened to them, but they may need to be considered for promulgation as regulations, rather than leaving them as policies.

If you have any questions concerning the above, please feel free to ask.

A-6
EKP:nw

Dear _____ :

At the _____ meeting, the Alaska Public Offices Commission found that you were in substantial noncompliance with AS _____, and subject to a fine of \$ _____ for the period the required information was outstanding. 2 AAC 50. _____. The specific grounds for the finding of substantial noncompliance were contained in the staff memorandum of _____, which you have received. A summary of those findings follows:

1. failure to _____ ; citation _____
2. failure to _____ ; citation _____

In accordance with AS _____, you have been assessed a civil penalty as follows:

Date report or information due:
Date postmarked or handcarried:
Days late:
Civil penalty due:
(fine calculation)

Three alternatives are available to you. You may pay the fine; file an Affidavit; or file a Notice of Defense.

1. Without appeal, you may pay the fine within thirty days.
2. If you do not dispute the facts listed above, you may file an affidavit stating why the fine should be reduced or waived. An affidavit must be filed within THIRTY days of this letter and will be reviewed by the Alaska Public Offices Commission at the next regular meeting, as time permits.
3. If you dispute the facts in the findings listed above, you may request a formal hearing with a hearing officer pursuant to AS 44.62.380. This letter constitutes a Notice of Accusation. In order to request a hearing you must return the Notice of Defense withing FIFTEEN days of this letter.

Failure to take one of the three actions listed above, within the time described, constitutes waiver of the right to appeal a fine or request a hearing from the Commission. Appeals after the due date must be made to the Superior Court.

S-----

encl: affidavit
notice of defense

D-1

AFFIDAVIT

19__ Conflict of Interest Statement

Name: _____

Position: _____

Mailing Address: _____
street address city state zip

INSTRUCTIONS

If you send payment, you do not need to file this form or a Notice of Defense form. This affidavit should be used if you want to appeal the civil penalty, but do not dispute the facts as presented in the accompanying letter. Affidavits must be filed within thirty days receipt of the penalty notice or they will not be considered. Affidavits and a staff recommendation are presented at the next regular Alaska Public Offices Commission meeting, as time permits. Contact our office if you need to know the meeting dates or wish to personally present an appeal. You will be notified of the Commission's action after the meeting. You must sign the self-certification and complete identifying information in order to file a valid affidavit.

AFFIDAVIT

I do hereby swear and affirm that the following facts are offered in mitigation of the finding of substantial noncompliance in filing my Conflict of Interest Statement:

SELF-CERTIFICATION

I, the undersigned, certify that the information in this statement is, to the best of my knowledge, true, correct, and complete. In the absence of a notary public, I personally certify under penalty of perjury that this affidavit is true. By statute, a person who makes a false sworn certification which s/he does not believe to be true, is guilty of perjury.

Signature

Date

D-2

NOTICE OF DEFENSE: Findings of Substantial Noncompliance
(AS 44.62.390)

INSTRUCTIONS

If you send payment, you do not need to file this form or an affidavit. This Notice of Defense should be used if you dispute the facts contained in the accompanying letter and wish to request a formal hearing with a hearing officer. If you want a formal hearing you must return this completed notice to our office within FIFTEEN days of receiving the enclosed letter which serves as an accusation under AS 44.62.360. Failure to return a signed notice of defense within this time will be a waiver of your right to a formal hearing. After we have received a properly filed notice of defense, we will contact you with the required information to proceed to hearing.

NOTICE OF DEFENSE

The undersigned respondent, or authorized representative, gives notice that the respondent in this case requests a hearing to defend against the Statement of Accusation received from the Alaska Public Offices Commission.

Dated this _____ day of _____, 198____, at _____,
Alaska. (Location)

Signature: Respondent or Authorized
Representative

Mailing Address

City State Zip

Theda Pittman
Executive Director

February 5, 1987

Jane Barcott
Associate Coordinator

Recent Fine History

The following is a summary of Commission actions, for the most recent six meetings, in fines which were handled separately from routine affidavit actions.

Meeting	Fine	Law	Action	Appellant
11/86	\$4,280 \$6,070	COI CD	reduce to \$2,190 uphold	Janssen Clossey-Norris
9/86	\$940 \$7,650	CD CUI	uphold consent agreement	Randolph Pignalberi
8/86	none			
7/86	\$5,000	Lob	consent agreement	Reed
4/86	\$2,180 \$7,600 \$410 \$950	COI CD CD CD	reduce to \$218 reduce to \$2160 reduce to \$205 reduce to \$425	Rutledge Cowper Syzmanski Brockway
2/86	\$820 \$200	COI COI	reduce to \$310 reduce to \$100	Bundrant Brown

APCC PRESS RELEASE

For Additional Information, Contact

ALASKA PUBLIC OFFICES COMMISSION
2221 Northern Lights, Room 128
Anchorage, AK 99508
(907)275-4176

February 27, 1987

Juneau Branch Office
Box C0
Juneau, AK 99811-0222
(907)465-4864

At each of its regular meetings the Alaska Public Offices Commission reviews affidavits filed by candidates, political groups, public officials, and lobbyists who have been assessed fines for late disclosure reports. Affidavits are filed by those who wish to appeal the fines and to request either a reduction or a waiver of the amount assessed.

The Commission hopes that a wider public knowledge of its actions on such fines will encourage those required to report do so timely. Further, the Commission is hopeful that regular distribution of this information will increase public awareness of the reporting requirements.

Affidavits taken up at the Alaska Public Offices Commission meeting February 25-26, 1987 in Anchorage, Alaska:

CAMPAIGN DISCLOSURE AFFIDAVITS

Mike Beirne - 1986 Lt. Governor Candidate

Appeal: \$1100 CPA, 7 Day Pre-Primary Report, 22 days late.

Appeal accepted in part; fine reduced to \$550 if paid within 30 days of notice.

Lyman Hoffman - 1986 House District 25 Candidate

Appeal: \$320 CPA, 10 Day Post-Primary Report, 32 days late.

Appeal accepted in part; fine reduced to \$160 if paid within 30 days of notice.

John McArthur - 1986 House District 11-A Candidate

Appeal: \$4250 CPA, 7 Day Pre-Primary Report, 85 days late
680 CPA, 10 Day Post-Primary Report, 68 days late
370 CPA, 30 Day Pre-General Report, 37 days late
750 CPA, 7 Day Pre-General Report, 15 days late

Total \$6050

Appeal accepted in part; fine reduced to \$121 if paid within 30 days of notice.

Terry Miller - 1986 Lt. Governor Candidate

Appeal: \$100 CPA, 24 Hour Pre-Primary Report, 2 days late
50 CPA, 24 Hour Pre-Primary Report, 1 day late

Total \$150

Appeal accepted in part; fine reduced to \$37.50 if paid within 30 days of notice.

Terry Miller - 1982 Gubernatorial Candidate

Appeal: \$5590 CPA, 1984 Year-end report, 559 days late

Appeal accepted in part; fine reduced to \$1020 if paid within 30 days of notice.

Mary O'Brannon - 1986 Gubernatorial Candidate

Appeal: \$ 420 CPA, 30 Day Pre-Primary Report, 42 days late
1000 CPA, 7 Day Pre-Primary Report, 20 days late
\$1420 CPA

Appeal accepted in part; fine reduced to \$142 if paid within 30 days of notice, and if \$60.00 in previous outstanding assessments is simultaneously paid.

Arliss Sturgulewski - 1986 Gubernatorial Candidate

Appeal: \$50 CPA, 24 Hour Primary Report, 1 day late

Appeal accepted; fine waived.

David C. Crosby - 1986 Juneau School Board Candidate

Appeal: \$100 CPA, 7 Day Pre-Municipal Report, 2 days late

Appeal accepted in part; fine reduced to \$50 if paid within 30 days of notice.

John Devens - 1986 City of Valdez Mayoral Candidate

Appeal: \$110 CPA, 30 Day Pre-Municipal Report, 11 days late
700 CPA, 7 Day Pre-Municipal Report, 14 days late

Total \$810

Appeal accepted in part; fine reduced to \$486 if paid within 30 days of notice.

Ken Federico - 1986 Anchorage Municipal Assembly Candidate

Appeal: \$400 CPA, 7 Day Pre-Municipal Report, 8 days late.

Appeal accepted; fine waived.

Janet Halvarson - 1986 Fairbanks City Council Candidate

Appeal: \$220 CPA, 30 Day Pre-Municipal Report, 22 days late

Appeal accepted in part; fine reduced to \$110 if paid within 30 days of notice.

Stephen Heitman - 1986 Fairbanks North Star Borough Assembly Candidate

Appeal: \$700 CPA, 7 Day Pre-Municipal Report, 14 days late
Appeal accepted in part; fine reduced to \$70 if paid within 30 days of notice.

Sally M. McAdoo - 1986 Valdez City Council Candidate

Appeal: \$450 CPA, 7 Day Pre-Municipal Report, 9 days late
Appeal accepted; fine waived.

Gerald McBeath - 1986 Fairbanks North Star Borough School Board Candidate

Appeal: \$20 CPA, 10 Day Post-Municipal Report, 2 days late
Appeal accepted in part; fine reduced to \$10 if paid within 30 days of notice.

Jerome Norum - 1986 Fairbanks North Star Borough Assembly Candidate

Appeal: \$250 CPA, 30 Day Pre-Municipal Report, 25 days late
150 CPA, 7 Day Pre-Municipal Report, 3 days late
Total \$400
Appeal accepted in part; fine reduced to \$40 if paid within 30 days of notice.

Patrick M. O'Connell - 1986 Kenai Peninsula Borough Assembly Candidate

Appeal: \$20 CPA, 30 Day Pre-Municipal Report, 2 days late
50 CPA, 7 Day Pre-Municipal Report, 1 day late
30 Day Pre-Municipal Report - Appeal accepted; fine waived.
7 Day Pre-Municipal Report - Appeal denied; fine upheld.

Joe Racina - 1986 Fairbanks City Council Candidate

Appeal: \$310 CPA, 30 Day Pre-Municipal Report, 31 days late
Appeal accepted in part; fine reduced to \$31 if paid within 30 days of notice.

Martha J. Rozkydal - 1986 Mat-Su Borough Assembly Candidate

Appeal: \$140 CPA, 30 Day Pre-Municipal Report, 14 days late
Appeal accepted in part; fine reduced to \$21 if paid within 30 days of notice.

Clarke Logan Young - 1986 Juneau Assembly Candidate

Appeal: \$140 CPA, 10 Day Post-Municipal Report, 14 days late
Appeal accepted in part; fine reduced to \$70 if paid within 30 days of notice.

AK Business PAC - George Krusz, Treasurer.

Appeal: \$100 CPA, 10 Day Post-Primary Report, 10 days late.
Appeal denied; fine upheld.

AK Life Underwriters PAC - Barry Jourolman, Treasurer

Appeal: \$2140 CPA, 1985 Year-end Report, 214 days late.
Appeal accepted; fine waived.

AK Public Emp Assn, Juneau GGU EPIC - George Imbsen, Treasurer

Appeal: \$210 CPA, 10 Day Post-Primary Report, 21 days late.
Appeal accepted in part; fine reduce to \$21 if paid within 30 days of notice.

Committee for Proposition 1, Charlotte Richards, Treasurer

Appeal: \$80 CPA, 10 Day Post-Municipal Report, 8 days late.
Appeal accepted in part; fine reduced to \$8 if paid within 30 days of notice.

DS-Democratic District 15 - Lola Pederson, Treasurer

Appeal: \$30 CPA, 10 Day Post-Primary Report, 3 days late.
Appeal denied; fine upheld.

DS-Sitka Democratic Club - Ivan Rezek, Treasurer

Appeal: \$210 CPA, 30 Day Pre-General Report, 21 days late.
Appeal accepted in part; fine reduce to \$105 if paid within 30 days of notice.

INUU PAC - William Hensley, Treasurer

Appeal: \$850 CPA, 7 Day Pre-Primary Report, 17 days late.
Appeal denied; fine upheld.

LS-Libertarian Party, AK - Lynn Davis, Treasurer

Appeal: \$50 CPA, 7 Day Pre-General Report, 1 day late.
30 CPA, 10 Day Post-General Report, 3 days late.
Appeal accepted; fine waived.

Libertarian Party, Fairbanks - Betty Hoch, Treasurer

Appeal: \$50 CPA, 30 Day Pre-Primary Report, 5 days late.
110 CPA, 10 Day Post-Primary Report, 11 days late.
Appeal accepted in part; fine reduced to \$80 if paid within 30 days of notice.

Local 1140 PAC - Harvey Linenschmidt, Treasurer

Appeal: 10 Day Pri/30 Day Muni Report, \$120 CPA, 12 days late.
Appeal denied; fine upheld.

Mat-Su Democrats (Formerly Demo. Dist. 16) - Bruce Scott, Treasurer

Appeal: \$220 CPA, 30 Day Pre-Primary, 22 days late.
Appeal denied; fine upheld.

No On "A" Committee - Thomas H. Reynolds, Treasurer

Appeal: \$150 CPA, 7 Day Pre-Municipal Report, 3 days late.
Appeal denied; fine upheld.

R-Anchorage Young Republicans - Steve Baker, Treasurer

Appeal: \$1,000 CPA, 7 Day Pre-Primary Report, 20 days late.
Appeal accepted in part; fine reduced to \$500 if paid within 30 days of notice.

RS-Republican Committee House District 16 - Beverly Jo Frost, Treasurer

Appeal: \$50 CPA, 7 Day Pre-Municipal Report, 1 day late.
Appeal accepted in part; fine reduced to \$25 if paid within 30 days of notice.

RS-Republican District 21 - Helen Bellinger, Treasurer

Appeal: \$10 CPA, 30 Day Pre-Primary Report, 1 day late.
Appeal denied; fine upheld.

Troll-PAC - Megan Dorman, Treasurer

Appeal: \$300 CPA, 30 Day Pre-Primary Report, 30 days late
400 CPA, 7 Day Pre-Primary Report, 8 days late
Appeal accepted in part; fine reduced to \$175 if paid within 30 days of notice.

V.A.L.U.E. Coalition - Doris Lee, Treasurer

Appeal: \$700 CPA, 7 Day Pre-Municipal Report, 14 days late.
850 CPA, 7 Day Pre-General Report, 17 days late.
7 Day Pre-Municipal Report - Appeal accepted in part; fine reduced to \$70 if paid within 30 days of notice.
7 Day Pre-General Report - Appeal accepted in part; fine reduced to \$425 if paid within 30 days of notice.

CONFLICT OF INTEREST STATEMENT AFFIDAVITS

Lee Stoops - 1986 State Senate Candidate

Appeal: \$1,680 CPA, 168 days late reporting of 1986 sources of income.
Appeal accepted in part; fine reduced to \$25 if paid within 30 days of notice.

Laura Kelly - Member Postsecondary Education Commission

Appeal: \$530 for 61 days late filing 1986 Conflict of Interest Statement.
Appeal accepted in part; fine reduced to \$53 if paid within 30 days of notice.

MEMORANDUM

State of Alaska

MAIL STOP

TO: APOC Members

DATE: February 24, 1987

FILE NO:

[8A]

TELEPHONE NO: 276-4176

FROM: ^{TSP} Theda Pittman
Executive Director

SUBJECT: Statutory Recommendations
Campaign Disclosure

The Governor's Office has forwarded a short version (Attachment A) and a long version (Attachment B) of the Campaign Disclosure amendments you proposed.

Short Version:

Bans a registered lobbyist from serving as a campaign treasurer or deputy campaign treasurer. A group or a candidate can not authorize a registered lobbyist to receive contributions or make expenditures.

Amends AS 15.13.070(a) so that an individual can contribute no more than \$1,000 to a candidate or to a group other than a political party. Only individuals and political parties may give to candidates. An individual, person or group registered as a lobbyist may make no contribution to a candidate. (No differentiation is made for party subdivisions.)

Clarifies that the limitation on cash contributions includes groups as well as candidates.

Provides an immediate effective date.

Analysis: Staff recommends you support submission of the short version with a \$50,000 fiscal note to take into account dissemination of the new requirements which go into effect immediately. You should also indicate whether you wish to pursue limitations on party subdivisions and what you plan to do with the longer version of the bill.

Long Version:

Page 1, Sec. 1: Raises population threshold from more than 1,000 to more than 7,500. At this level, eleven communities would be subject to AS 15.13:

Anchorage; City of Fairbanks; Fairbanks North Star Borough; Juneau; Kenai Peninsula Borough; City of Ketchikan; Ketchikan Gateway Borough; Kodiak Island Borough; Matanuska-Susitna Borough; North Slope Borough; and Sitka. APOC proposal of more than 5,000 would have included three more: City of Kenai, City of Kodiak, and the Northwest Arctic Borough.

Page 1, Sec. 2: cures the present inconsistency with §.080 concerning the amount a contributor must give before he or she is required to file a Statement of Contributions.

Page 2, Sec. 3: adds requirement for information from a business entity filing a Statement of Contributions or Statement of Expenditures.

Page 2, Sec. 4:

Subsection (a) specifies that groups must register before accepting contributions, clarifies that groups active on ballot propositions must register and specifies that registration is valid for a calendar year.

Subsection (b) adds a requirement to include the name of a ballot proposition in the name of the group if 50% or more of the group's funds will be devoted to one ballot proposition.

Subsection (c) requires the name of an organization to be included in a group name if 50 percent or more of the group's contributions are from the employees or members of the organization.

Subsection (d) requires a group to use a group name different from that of other groups.

Page 3, Sec. 5: Bans a registered lobbyist from serving as a campaign treasurer or deputy campaign treasurer.

Page 3, Sec. 6:

Subsection (a) says individuals may give no more than \$1,000 per year to a candidate or a group other than a political party. Only individuals, political parties and designated party district committees may give to candidates. A lobbyist may not contribute to a candidate.

Subsection (b) extends the ban on large cash contributions to include contributions by groups.

Subsection (c) is not changed.

Subsection (d) expands the ban on anonymous contributions or expenditures to include those used to influence ballot propositions. Language concerning return of anonymous contributions is removed because of inclusion later on.

Subsection (e) contains only language changes made for consistency with earlier sections.

Subsections (f) & (g) contained expenditure limitations the Attorney General had ruled years ago were unconstitutional.

Subsection (h) is not changed.

Subsection (i) is new. It says that a political party is not subject to the contribution limit for candidates, but that it may not contribute to groups other than its own designated party district committees.

Subsection (j) is new. Political parties are required to notify the Commission of their designated party district committees and no more than one such committee may be formed in each house district to contribute to candidates.

Subsection (k) is new. It bans designated party district committees from giving money to groups or to each other. It limits such committees to donating \$1,000 per year to a candidate.

Subsection (l) is new. It specifies that illegal contributions escheat to the state. It bans the use of contributions by a candidate to pay fines.

Page 6, Sec. 7: Defines independent expenditures much the same way the Commission now does in its regulations.

Page 7, Sec. 8: Adds a ban on contributions before filing.

Page 8, Sec. 9: Paragraph (a)(1) is a technical change consistent with the intent of existing language that 30 Day Pre-election reports are not required if a candidate can file for office after the end date of the 30 Day report. Affects municipal candidates only as state filing deadlines are 3 months prior to the Primary.

Paragraph (a)(4) specifies that Year-end reports are due January 15. (Strict adherence to the December 31st language made the reports due on December 31st covering activity ending December 28.)

Subsection (b) eliminates a 3 day loophole, after 7 Day reports, for which 24 Hour Reports are not required. It also makes explicit the requirement that groups file 24 Hour Reports. Both contributions and expenditures exceeding \$250 are required to be reported on 24 Hour Reports.

Subsection (c) eliminates an impractical 30 day deadline.

Subsection (d) repeals a requirement, which has not been enforced in some time, that suppliers of campaign services file a report. The original purpose was to serve as a cross-check on whether candidates were complying with their expenditure limitation.

Subsection (e) repeals a reference to initiative groups which has tended to suggest that they have to report the costs of collecting signatures on petitions. That requirement has not been enforced since 1982 on the advice of counsel that it infringed on the right to petition. An initiative group must register and report funds for influencing the outcome of the vote on a proposition.

Page 9, Sec. 10: Bans solicitation of contributions on the premises of a public office. The language is similar to that discussed last year and the provision allowing solicitation at a scheduled meeting of a labor union grew out of last year's protests by unions that such meetings were the only time they could speak with their members as a group.

Page 10, Sec. 11:

Subsection (a) allows the Commission to assess a civil penalty of not more than \$5,000 per violation of the statute or the regulations. Eliminates any criminal penalty. The list of examples of violations is eliminated to avoid the impression that only the listed items are violations and to avoid loopholes sometimes created in drafting such a list.

Subsection (b) was repealed in 1982; it allowed the Supreme Court to be petitioned to remove a violator from office. Subsection (f) on page 12 replaced it.

Subsection (c) concerns our standard delinquency notice. Candidates and registered groups are the only sets of filers we know for sure should be filing. Apart from the fact there are too many contributors for us to send them all delinquency notices, we have no way of knowing they should have filed unless we able to go through each candidate and group report to check them against the contributors.

Subsection (d) includes language specifying the Commission may assess the \$5,000 per violation fines in addition to the per day fines.

Subsection (e) establishes the timeframe for undertaking an Administrative Hearing on a violation: four years from the date of the violation to the date the commission sets the matter for hearing by issuing an accusation.

Subsections (f) and (h) include housekeeping language to account for the fact that there are no longer any criminal penalties.

Subsection (g) is unchanged.

Page 13, Sec. 12: The per day fines are increased from \$10 to \$20 and from \$50 to \$100. Late group registrations, AC 15.13.050, are subject to the \$20 per day rate. Language concerning affidavit appeals is removed.

Page 14, Sec. 13 & 14: Housekeeping language.

Page 14, Sec. 15: Repeals the section of the Law describing the contents of a supplier of services report. Discussed earlier as part of page 9 of the draft.

Page 14, Sec. 16: Immediate effective date.

Analysis:

The contribution limitation language comes fairly close to the Commission's original proposal but is tortuous and difficult to read or understand.

Attachment C shows the limitations set out in this bill. Your original recommendation is shown in parenthesis, if it differed from the draft.

The majority of the items you requested have been incorporated in this draft.
 Items not included:

- 1) A \$1,000 reporting exemption for candidates;
- 2) Shortening the duration of campaigns by changing the dates for filing a declaration;
- 3) Restricting use of campaign funds;
- 4) Requiring candidates to close campaigns by December 31;
- 5) Requiring groups formed within 14 days of an election to register in person or by telegram; and
- 6) Authorizing campaign chairs to certify reports.

Recommendation:

Decide whether you wish to pursue a differentiation between political parties and their subdivisions. Also decide which of the missing items you wish to pursue.

Submit your final recommendation to the Legislature in either re-drafted form or as this draft plus a letter outlining additions.

The fiscal note should follow much the same form as that submitted for SB 85. Possible adjustments are suggested by handwritten figures.

71000 - Personal Services

New PCN, Juneau, Associate Coordinator, Range 18A	49.1	
1309, Juneau, Project Coordinator - Range 16: transfer to Anch.	0.0	
1305, Juneau, Clerk III, Range 8A - 12 months <i>6 mo.</i>	27.3	13.7
New PCN, Anchorage, Regulations Specialist II, Range 16	43.0	
1306, Anchorage, Clerk IV, Range 9A - 12 months <i>5 mo.</i>	26.3	12.0
Eliminate 6.4% vacancy factor	27.1	
	<u>172.8</u>	<u>101.7</u>

72000 - Travel

Transportation for Commissioners	6.0
Per diem & honorarium	11.7
	<u>17.7</u>

73000 - Contractual Services

Hearing Officers: \$75/hour; 40 hours/month on average	36.0	18.0
Depositions, Transcripts, subpoena costs	18.0	9.0
Information Dissemination on new requirements: Includes revised regulations as well as manuals and public information - design, layout, production, advertising	30.0	
RSA Law - Attorney IV & 1/2 time Secretary (11.0 = one time items)	111.9	55.0
	<u>195.9</u>	<u>112.0</u>

[8A] - 2/24/87 - Page 6

74000 - Commodities

Office Supplies & Materials

6.0

Software: Lotus/dBase III+/Multimate - 3 sets @ \$1.2 each
(3.6 = one-time items)

3.6

9.6

75000 - Equipment

3 Compaq Deskpro Personal Computers w/peripherals
(13.2 = one-time items)

13.2

TOTAL

~~409.2~~ 206.7

CANDIDATE
CD
AFFIDAVITS

Jim Elkins - 1987 Ketchikan Gateway Borough Assembly Candidate

Appeal: \$750 CPA: 7 Day Pre-Municipal Report, 15 days late

Staff Recommendation: Deny the affidavit and uphold the fine.

The late report Mr. Elkins filed was not available in our office until 10 days after the election. It contained approximately 1/3 of his total contribution activity reported to date - through the runoff: (\$807 out of \$2347) and could have been of great significance to the public as Mr. Elkins was one of four candidates in the subsequent run-off election.

Mr. Elkins signed for his delinquency letter on 10/09/87, and took five additional days to file the delinquent 7 day report. He phoned our office on 10/13/87 - and staff questioned him about the delinquent report, told him to file it ASAP and that he could appeal the cpa if he wished.

Other factors working against mitigation include a poor reporting history and \$350 in outstanding civil penalties that have never been paid or appealed from his 1984 House campaign. Finally, although the matter has not been followed up on, Mr. Elkins could be liable for a substantial non-compliance assessment for failure to file requested contributor information with his 10 day post general report (1984). Mr. Elkins also showed \$4,756.91 in outstanding accrued expenditures at the end of 1984, but has not filed any additional reports (Year-end or final), reporting the disposition of these debts.

Although Mr. Elkins' 1987 Assembly campaign was small, he has been uncooperative with the Commission in the past and Staff sees no reason to mitigate this fine.

Reporting History:

1987: 30 Day Pre-Municipal Report not required
7 Day Pre-Municipal Report, \$750 CPA, 15 days late, appealing
10 Day Post Regular/7 Day Pre-Runoff, timely
10 Day Post-Runoff, timely

1986: Ketchikan Gateway Borough Charter Comm. Candidate: Exempt
1984: House District 1 Candidate
30 Day Pre-Primary Report, \$10 CPA, 28 days late, not paid
7 Day Pre-Primary Report, \$30 CPA, 6 days late, not paid
10 Day Post-Primary Report, \$310 CPA, 31 days late, not paid

1982: House District 1 Candidate
30 Day Pre-Primary Report, \$8 CPA, 8 days late, paid.

JANUARY 2 -2 , 1988 MEETING, COMMISSION ACTION

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit and waive the fine.

_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

Jim Eiki
At. 1, Box 911
Ketchikan, AK. 99901

AP02

2221 E. Northern Lights Blvd.
Rm 128
Anchorage, AK. 99508

Dear Sirs:

After receiving your registered letter, notifying me that I had not filed my 7-day report, I did some checking.

I thought that I had filed the Municipal Candidate Campaign Reporting Exemption form allowing me not to file the 7-day report since I had no intention of raising or spending over \$1000.00. As you can see by the enclosed report I did not raise or spend over \$1000.00.

Sincerely,
Jim Eiki

Mary Haidukovich Hollander - 1987 Fairbanks Assembly Candidate

Appeal: \$140 CPA, 10 Day Post-Municipal Report, 14 days late

Staff Recommendation:

Accept the affidavit in part and reduce the fine by 65% to \$50, if it is paid within thirty days of notice.

Ms. Hollander could have filed a Campaign Reporting Exemption Form had she been aware of it or anticipated the lack of campaign activity. Her campaign contribution and expenditure activity totaled approximately \$400. The entire fine would be overburdensome for a campaign of this size. Staff realizes that mailing reports can be problematic and encourages Ms. Hollander to use every precaution available to her to ensure timely reports in the future.

Reporting History:

1987: 30 Day Pre-Municipal Report: timely
7 Day Pre-Municipal Report: Zero Policy letter, 1 day late
10 Day Post-Municipal Report: \$140 CPA, 14 days late, appealing

1986: All Municipal reports timely

1985: 10 Day Post-Municipal Report: \$10 CPA, 11 days late, paid

1983: 30 Day Pre-Municipal Report: \$1 CPA, 1 day late, paid

1982: 10 Day Post-Municipal Report: \$10 CPA, 11 days late, paid

January 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.
_____ Accept the affidavit and waive the fine.
_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

APCO-ANCP
SM HC

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery
†(Extra charge)†

3. Article Addressed to: <i>AK. Pub. Off. Comm. 2221 E. N. L. Blvd. Room 128 Anchorage AK 99508</i>	4. Article Number <i>P066108091</i>
5. Signature - Addressee <i>X B Cornish</i>	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
6. Signature - Agent <i>X</i>	Always obtain signature of agent or agent and DATE DELIVERED
7. Date of Delivery <i>11/2/87</i>	8. Addressee's Address (ONI requested and fee paid)

Jacob Kagak - 1986 House District 22 candidate

Appeal: \$70 CPA, 1986 10 Day Post-General Report, 7 days late

Staff Recommendation: Deny the affidavit and uphold the fine.

Mr. Kagak developed a poor reporting history during his 1986 campaign. Both he and his treasurer, Maggie Ahmaogak, traveled frequently during his campaign and neglected to ensure that reports were timely filed or that fines incurred were paid or appealed. Currently, Mr. Kagak has a \$230 CPA outstanding (neither appealed or paid) for his 30 Day Pre-Primary report. He has paid an additional \$200 in fines assessed for late reports in the primary and general.

Communication with Mr. Kagak and his treasurer has been difficult due largely to distance and travel. Staff has made numerous phone calls and sent additional letters in an effort to assist the campaign. During a June office visit (1987), Mr. Kagak informed staff that he had closed out his campaign account and taken as income the \$2100 surplus (approximately). Staff requested that a final report be filed at that time and Mr. Kagak has yet to file the report.

The late 10 day report is a Zero (0) report. Total campaign activity reported equals \$5430 in contributions and \$2960 in expenditures. Although the campaign was small and the late report a Zero report, staff does not recommend mitigation because the campaign was careless with reporting requirements. Staff does not feel that Mr. Kagak made a strong effort to correct the reporting problems his treasurer was experiencing. Steps should have been taken to ensure that reports would be filed in her absence.

Reporting History:

1986: 30 Day Pre-Primary, \$230 CPA, 23 days late, not paid or appealed
7 Day Pre-Primary, \$50 CPA, 1 day late, paid
10 Day Post-Primary, timely
30 Day Pre-General, 1 day late, 0 Report, Zero Policy letter
7 Day Pre-General, \$150 CPA, 3 days late, paid
10 Day Post-General, \$70 CPA, 7 days late, appealing
Year-end report, timely

1984: North Slope Borough School Board Candidate, Exempt.

JANUARY 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit and waive the fine.

_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

Issac Kayutak - 1987 North Slope Borough Assembly Candidate

Appeal: \$500 CPA: 7 Day Pre-Municipal Report, 10 days late

Staff Recommendation:

Accept the affidavit in part and reduce the fine by 90% to \$50.

Mr. Kayutak ran a small campaign without benefit of a treasurer. The 7 day report shows that he received no outside contributions and spent \$1058 of his own money, with 46% of that total spent on travel and air freight costs. His affidavit states that he failed to file the report timely due to time spent away fishing for subsistence. Staff sees no serious violations with the information reported and believes a \$50 fine is sufficient to convey the importance of timely disclosure to Mr. Kayutak. A large fine would be overburdensome for Mr. Kayutak.

Reporting History:

1987: 30 Day Pre-Municipal Report not required by NSB candidates
7 Day Pre-Municipal Report: \$500 CPA, 10 days late, appealing
10 Day Post-Municipal Report: Not filed as of 1/12/88.

No previous history

JANUARY 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit and waive the fine.

_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

Eileen P. MacLean - 1987 North Slope Borough Mayoral Candidate

Appeal: \$120 CPA, 10 Day Post-Municipal Report, 12 days late

Staff Recommendation:

Accept the affidavit in part and reduce the fine to \$60 (by 50%), if it is paid within 30 days of notice.

Staff does not believe the maximum civil penalty should be assessed because Ms. MacLean conducted a small campaign: \$5286 in contributions, \$3928 in paid expenditures, \$2358 in outstanding accruals, and the late report contained minimal contribution activity (\$200 monetary). The late report did not affect the outcome of the election and its lateness caused minimal public harm.

Ms. MacLean has a good reporting history and staff feels she was complying with the spirit of the law (if not the letter) through her good intentions to fully disclose the period's activity. A \$60 fine will be punitive for a campaign of this size, but not overburdensome, and will convey to Ms. MacLean the importance of filing the most accurate report possible in a timely manner.

Reporting History:

1987: 30 Day Pre-Municipal Report not required
7 Day Pre-Municipal Report timely
10 Day Post-Municipal Report, \$120 CPA, 12 days late, appealing

1984: North Slope Borough Assembly Candidate
All reports timely

JANUARY 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Accept the affidavit and waive the fine.

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

Phil Younker - 1987 Fairbanks North Star Borough Assembly Candidate

Appeal: \$150 CPA, 30 Day Pre-Municipal Report, 15 days late.

Staff Recommendation: Accept the affidavit and waive the fine.

Staff recommends waiver of this assessment because agency error may have prevented the report being turned in on time and the delinquent statement was a Zero report.

According to staff memos (attached), confusion surrounded the mailout of additional candidate packets to the Fairbanks North Star Borough area. Staff supplied the FNSB Clerk's office with candidate packets prior to the candidate filing period (8/7 - 8/27). The clerk apparently ran out of materials and called our office (around 9/7) and asked that staff mail reporting packets to those candidates which had not already received materials. The confusion lay in the question of who had or had not received packets. Mr. Younker was mailed a packet on 9/15/87. Unfortunately, the 30 day Pre-primary report was due 9/8/87.

In addition, Mr. Younker's campaign was financed entirely by his own funds and totaled \$1924 in personal contributions and expenditures.

Staff feels that Mr. Younker made a good faith effort to obtain his reporting materials and regrets that he was frustrated by the mailout system.

Reporting History:

1987: 30 Day Pre-Municipal Report, \$150 CPA, 15 days late, appealing
7 Day Pre-Municipal Report, timely
10 Day Post-Municipal Report, timely

1984: FNSB Assembly Candidate, Exempt

1982: FNSB Assembly Candidate
7 Day Pre-Municipal Report, \$5 CPA, 1 day late, paid
10 Day Post-Municipal Report, Zero (0) Report, 12 days late, Zero
Policy Letter sent

JANUARY 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit and waive the fine.

_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

ARRIVED

Sept. 23, 1987

SEP 25 1987
9/22
APOG ANCH
PM HC

Alaska Public Offices Comm.
2221 E. Northern Lights Blvd.
Room 128
Anchorage, Alaska 99508

Dear Sirs:

I would like it entered into the record that I was not provided with a packet of materials from your office when I filed for Borough Assembly Seat k, of the Fairbanks North Star Borough. The Borough clerk did not have any packets available in her office, however she did state that she had ordered it for me. I did not receive the packet until Sept. 21 1987 and would note that it was not mailed from your office until Sept. 15, 1987.

Failure to be provided the necessary material to file my first two reports is the reason you are receiving these late. I would expect that any penalty be waived due to the above.

Sincerely yours

Phil A Younker

September 22, 1987

- APPROX 9/7 or 9/8

Earlier in September (date - can't remember) Fairbanks North Star Borough Clerk called and talked with Belinda. Belinda said, they did not receive enough packets so everyone did not get packets. She said the clerk would find out who did not get packets and call us back. Apparently we did not get a call back. Fairbanks North Star Borough clerk called again on September 15th and said they are still waiting for the packets. On September 15th Roxann sent all candidates on the list who are Letter of Intent, Missing Information.

This was a note from
Winona that I requested
after discussing the
packet situation with
her. JSS

**GROUP
CD
AFFIDAVITS**

AK Public Emp Assn, FBKS GGU Epic - William Newman, Treasurer

Appeal: \$5250 CPA; 7 Day Pre-Special (6/30/87) Report, 105 days late
\$870 CPA; 10 Day Post-Special (6/30/87) Report, 87 days late
\$280 CPA; 30 Day Pre-Municipal Report, 28 days late
\$350 CPA; 7 Day Pre-Municipal Report, 7 days late
\$6,750

Staff Recommendation: Accept the affidavit in part, and reduce the fines to 2% to \$135.

This group has had a good reporting history until 1987. They failed to file reports for the special Fairbanks election in June. They then changed treasurers, and the first report filed by the new treasurer uncovered the oversight. The group had minimal activity in the June election [one \$250 transaction], and almost no activity in the October election [\$21 in xeroxing costs]. A reduction to \$135 is recommended given the perspective of the unreported data for the June election [one \$250 newspaper ad expenditure], the relative inactivity [one transaction per election], the transitional difficulties, the lesser known reporting requirement deadlines for special elections.

Reporting History:

1987: 7 Day Pre-Special (6/30) Report; \$5250 CPA, 105 days late
10 Day Post-Special (6/30) Report; \$870 CPA, 87 days late.
30 Day Pre-Municipal Report; \$280 CPA, 28 days late, appealing
7 Day Pre-Municipal Report; \$350 CPA, 7 days late, appealing
10 Day Post-Municipal Report; timely

1986: All Primary & General Reports; timely
1985: All Municipal Reports, timely
1984: 30 Day Pre-General Report, timely
7 Day Pre-General Report, \$50 CPA, 20 days late, reduced to \$25, Pd.
10 Day Post-General Report; \$3 CPA, 3 days late, Pd.

January 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.
_____ Accept the affidavit and waive the fine.
_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

Alaskan's for Responsible Government - Don Smith, Treasurer

Appeal: \$240 CPA, 10 Day Post-Municipal Report, 24 days late.

Staff Recommendation: Accept the affidavit in part and reduce the fine to \$100.

Mr. Smith has had long experience with the campaign disclosure laws in his numerous campaigns and should be held accountable for understanding when a "zero" report is due. However, this was a report due after an election, and the fine is proportionately high in relation to the level of the group's expenditures.

Reporting History:

1987: 30 Day Pre-Municipal Report, timely filed.
7 Day Pre-Municipal Report, timely filed.
10 Day Post-Municipal Report, \$240 CPA, 24 days late, appealing.

No previous reporting history.

January 27-28, 1988 MEETING, COMMISSION ACTION:

- _____ Deny the affidavit and uphold the fine.
- _____ Accept the affidavit and waive the fine.
- _____ Accept the affidavit in part and reduce the fine to \$_____ if it is paid within 30 days of notice.

Building Industry Assn of Anchorage Build PAC.

Appealing: \$310 CPA; 10 Day Post-Municipal Report, 31 days late.

Staff Recommendation: Accept the affidavit in part and reduce the fine to \$100.

Building Industry PAC was sent a "zero" report policy letter on October 8th advising them that similar delinquencies would not be viewed lightly in the future. Some reduction, however, is in order, in that the group had a low level of activity [it collected \$2140 in contributions and disbursed \$1000 in the initial Mayoral election and no funds in the runoff].

Reporting History:

- 1987: 30 Day Pre-Municipal Report; timely filed.
7 Day Pre-Municipal Report; 8 days late, Zero Policy letter sent.
10 Day Post-Municipal Report; timely filed.
7 Day Pre-Run off Report, 1 day late, Zero Policy letter sent.
10 Day Post-Municipal Report; \$310 CPA, 31 days late, appealing.
- 1986: No Primary activity.
30 Day Pre-Municipal Report; timely filed.
7 Day Pre-Municipal Report, 6 days late, Zero Policy letter sent.
10 Day Post-Municipal/30 Day Pre-General Report, timely filed.
7 Day Pre-General Report; timely filed.
10 Day Post-General Report; timely filed.

January 27-28, 1988 MEETING, COMMISSION ACTION:

- _____ Deny the affidavit and uphold the fine.
_____ Accept the affidavit and waive the fine.
_____ Accept the affidavit in part and reduce the fine to \$_____ if it is paid within 30 days of notice.

Juneau Building & Construction Trade PAC - Dwight Perkins, Treasurer

Appeal: \$700 CPA, 7 Day Pre-Municipal Report, 14 days late.

Staff Recommendation: Accept the affidavit in part and reduce the fine to \$350 or 50%.

This group's report was incomplete as originally filed. The source of \$4701.61 in contributions was not adequately itemized. Staff, however, recommends accepting the original filing date, contingent upon a prompt audit reply addressing the itemization problem. Mr. Perkins has had prior experience in campaign disclosure reporting and should have been aware of the need to see that the reporting responsibilities of his position were delegated to another officer pending the appointment of a new treasurer.

This is, however, a new group, and staff does recommend some allowance for their personnel turnover problems.

Reporting History:

1987: 7 Day Pre-Municipal Report, \$700 CPA, 14 days late, appealing
10 Day Post-Municipal Report, timely

No previous reporting history.

January 27-28, 1988 MEETING, COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit and waive the fine.

_____ Accept the affidavit in part and reduce the fine to
\$_____ if it is paid within 30 days of notice.

Personal Liberties Committee PAC - Grace Mitchell, Treasurer.

Appeal: \$280 CPA; 10 Day Post-Runoff Report, 28 days late

Staff Recommendation: Accept the affidavit and waive the fine.

This group had "zero" activity in the runoff. They would have been eligible for a zero report waiver if the delinquency notice was sent out in staff's customary 5 day time period. It was sent out late because of a member of our staff's absence due to a death in the family. This group had "zero" activity in the runoff. The delinquent report was a "zero" report. They did respond promptly to the delinquency notice and replied within a day of receiving the notice.

Reporting History:

- 1987: 30 Day Pre-Municipal Report; timely filed
7 Day Pre-Municipal Report; timely filed
10 Day Post-Municipal Report; timely filed
7 Day Pre-Municipal Run-off Report; timely filed
10 Day Post-Municipal Run-off Report; \$280 CPA, 28 days late, appealing, above.
- 1986: 30 Day Pre-Primary Report, timely filed.
7 Day Pre-Primary Report; timely filed.
10 Day Post-Primary/30 Day Pre-Municipal Report; timely filed.
7 Day Pre-Municipal Report; \$300 CPA, 6 days late, appealed, upheld, Pd.
10 Day Post-Municipal/30 Day Pre-General Report; timely filed.
7 Day Pre-General Report; timely filed.
10 Day Post-General Report; timely filed.
- 1985: 7 Day Pre-Municipal Report; 1 day late, \$5 CPA, appealed, denied, Pd.
All other reports timely filed.
- 1984: 30 Day Pre-Primary Report; \$1 CPA, 1 day late, Pd.
All other Reports timely filed.

.....
January 27-28, 1988 MEETING, COMMISSION ACTION:

- _____ Deny the affidavit and uphold the fine.
_____ Accept the affidavit and waive the fine.
_____ Accept the affidavit in part and reduce the fine to \$_____ if it is paid within 30 days of notice.

SeaPAC - Robert W. Loescher, Treasurer

Appeal: \$350 CPA; 7 Day Pre-Municipal Report, 7 days late.

Staff Recommendation: Accept the affidavit in part and reduce the fine to \$150.

This group has had a good reporting history and had minimal campaign activity [one \$150 contribution]. This appears to a classic example of a report "slipping between the cracks", as opposed lack of respect for reporting deadlines: the request for a contribution came at the last minute, was not a part of a plan to make contributions, and happened as the person to whom reporting had been delegated was going on leave.

Reporting History:

1987: 7 Day Pre-Municipal Report; \$350 CPA, 7 days late, appealing.
10 Day Post-Municipal Report; timely filed.

1986: All Primary Reports; timely filed.
All General Reports; timely filed.

1984: 30 Day Pre-Primary Report; \$4 CPA, 4 days late, Pd.
7 Day Pre-Primary Report; \$40 CPA, 8 days late, Pd.
10 Day Post-Primary Report; timely filed.
All General Reports; timely filed.

1982: No Primary Reports filed.
All General Reports; timely filed.

January 27-28, 1988 MEETING COMMISSION ACTION:

_____ Deny the affidavit and uphold the fine.

_____ Accept the affidavit and waive the fine.

_____ Accept the affidavit in part and reduce the fine to
\$ _____ if it paid within 30 days of notice.

**CONFLICT
OF
INTEREST
AFFIDAVITS**

Eileen Norbert, member, Alaska State Council on the Arts, fined \$335 for 41 days late filing of the initial 1987 Conflict of Interest Statement.

Recommendation:

Reduce the fine to \$250 payable on a self-monitored schedule of \$10/month.

Summary:

Ms. Norbert was sent the initial notice on October 20 and a delinquency notice on December 21. The Statement was received on December 30.

Ms. Norbert states the delay was due to notarizing more than one filing. However, our office only received one self-certified (i.e., without a notary seal) Statement.

Consistent with mitigation criteria, we recommend a reduction of 25% of the assessment, since Ms. Norbert responded quickly to the first late notice.

AFFIDAVIT

19 ___ MUNI STATE COI

NAME: Eileen Norbert

POSITION: AK. STATE ARTS COUNCIL

INSTRUCTIONS: If you send payment, you need not file this form. An affidavit is required only if you are appealing the civil penalty assessment. An affidavit must be self-certified or notarized by any person authorized to administer oaths.

I do hereby swear and affirm that:

(1) This statement of facts is offered in mitigation of the late filing of my Conflict of Interest Statement.

(2) State reason statement was filed late:

I had one form notarized and did not realize there were more. The notary public at Nome Public Schools can verify this.

(3) State any other reason(s) the civil penalty should not be assessed:

I am a single parent. This civil penalty would cause a financial hardship on me at this time unless I can pay a minimal amount like \$10/month.

CERTIFICATION:

I, the undersigned, certify that the information in this Statement is, to the best of my knowledge, true, correct and complete. In the absence of a Notary Public or other official authorized to administer an oath, I personally certify under penalty of perjury that the Statement is true. By statute, a person who makes a false sworn certification which s/he does not believe to be true is guilty of perjury.

Eileen Norbert 1/11/88 Nome, AK.
Signature Date Location

Thomas R. Tatka, member, Agriculture Revolving Loan Fund, appealing a \$785 fine for 86 days late filing of the initial 1987 Conflict of Interest Statement

Recommendation:

Reduce the fine to \$300 if paid within 30 days

Summary:

Mr. Tatka was sent an initial notice on May 18 and a delinquency notice on June 17. Both notices refer to fines for late filing. On September 8, we called the staff of ARLF to request help in obtaining the Statement before a removal from office action was taken. The filing was received on September 11 and the Commission deferred on proceeding with a removal recommendation.

Mr. Tatka believed he had already filed the Statement and that a fine should not be assessed to board members who are not full-time state employees. However, this law sets uniform penalties for noncompliance, regardless of the type of office held.

While Mr. Tatka does not meet specific mitigation criteria, the criteria allow reduction of fines to \$300 if the assessment exceeds perceived public injury. We believe this is the case. Mr. Tatka's filing appears complete on its face. We are not aware of a public inquiry on its contents during the delinquency period nor does there appear to be a reason Mr. Tatka withheld the information intentionally. Therefore, we recommend a reduction to \$300, if paid within 30 days.

ARRIVED

AFFIDAVIT AND RESPONSE

NOV 27 1987

1987 STATE

Thomas R. Tatka
APOC-ANCH
ARLF Board Member^{PM} HC

As to the factual representations set forth herein, I swear that these statements are true to the best of my recall, knowledge, or belief.

You have proposed to penalize me for late filing of a disclosure statement. I request that you reconsider.

During the period prior to submission of my disclosure statement I was first under the impression that disclosure of my law clients' identities would be illegal. I then resolved to comply. This required preparation of a list by my bookkeeper. After that preparation I mistakenly believed that the statement had been submitted. I was later informed by an ARLF staffer that my disclosure statement was not in. I complied immediately (after having to search through a stack of ARLF work materials to locate the compilation of client information which I provided.

It is inequitable to require th payment of a penalty. The service I provide to the state in not compensated. Several hours of preparation are necessary prior to each ARLF Board meeting. For each meeting day I lose several hundred dollars in revenue.

I did not seek appointment to the ARLF Board. I was sought out and my services were requested.

There has never been a situation in regard to board work where I have had a conflict of interest. On two occasions when there might have been the slightest appearance of conflict, I have withdrawn.

It would be manifestly unjust to penalize me for an inadvertent delay in filing a form, especially since I have most scrupulously and generously performed by duties. No information on an earlier form would have disclosed any conflicts.

The APOC's adjudicatory determination to penalize me appears to have been made prior to my being notified that such a procedure or accusation was pending. I hope that these defenses will be given due consideration after the fact. I propose that no penalty be levied in these circumstances.

As to further action which you may undertake, please be advised that I will be out of state from December 12, 1987 to January 2, 1988.

Thank you for the consideration you will be giving this response.

I personally certify under penalty of perjury that the facts recited above are true to the best of my recollection, knowledge and belief.


Thomas R. Tatka

MEMORANDUM

State of Alaska

Exhibit C

[18]

TO: Alaska Public Offices Commission
FROM: Jane Barcott, *Jane Barcott* Assistant Director
DATE: January 19, 1988
RE: Mitigation Criteria

Attached is a proposal for staff criteria in mitigating Campaign Disclosure fines for late reporting (agenda no. 19). The first document outlines the purpose and rationale of the criteria. The second document is the actual criteria and applicable reduction percentages.

Please review both documents for discussion and adoption at the next meeting.

TO: Alaska Public Offices Commission
FROM: Jane Barcott, ^{Jane Barcott} Assistant Director
DATE: January 11, 1987
SUBJ: Staff Criteria for Campaign Disclosure Civil Penalty Appeals

I. Purpose of the Criteria

Last spring, the Commission reviewed drafts of staff mitigation criteria for civil penalties assessed under the Campaign Disclosure and Conflict of Interest Laws. The Conflict of Interest criteria were subsequently approved. Campaign Disclosure criteria were continued for further work. Staff is now proposing the attached criteria for Commission review and approval.

The Commission routinely acts on affidavits appealing civil penalties assessed for late reports under the disclosure laws. Members review the affidavit and a staff recommendation on its disposition. The Commission is not required to follow a staff recommendation, although the staff advice is often the foundation of a discussion and provides information on filing history. It is important that appellants who appeal assessments on similar grounds receive comparable treatment under the criteria.

The impetus for mitigation criteria arose from discussions with the Department of Law on the process of civil penalty appeals and the burgeoning number of affidavits filed. The proposed criteria reduce the appearance of arbitrary recommendations by staff and of personal bias or inequitable results. This should reduce the potential of successful legal challenges to the Commission's appeal process. The Department of Law may have additional comments about general principles the commission should consider in deciding civil penalty appeals.

The number of affidavits has increased markedly in the past two years. We believe standard staff mitigation criteria will reduce preparation time by codifying current reduction/waiver factors and assigning flat percentages to each. If approved, the criteria would first be used on any affidavits presented at the April meeting.

II. Summary of the Criteria

The criteria reflect many of the complex factors staff reviews in making a recommendation for disposition of affidavits. They set a floor (\$25) and ceiling (\$200) for recommendations of meritorious appeals; outline circumstances in which a reduced fine is contraindicated; and, take a conservative approach to late 24 hour reports, based on the imminence of an election. The basis for waivers is given. A number of modest offenses are outlined that would result in a standard reduction to \$25.

APOC Members
January 13, 1988
Page 2

For somewhat more serious offenses, Section IV directs staff to consider prior filing history, corrective action taken by the filer, and the content of activity reported, as factors permitting a 50% reduction. Section V includes criteria specific to small campaigns in acknowledgment of their more informal organization and general lack of resources.

III. Implementation of Criteria

The criteria were developed through several discussions with the campaign disclosure staff. We are confident they initially reflect most factors considered in developing a recommendation and value such factors appropriately. To monitor implementation, Greg Granquist has volunteered to develop a limited database on affidavit history for analysis and comparison with the criteria. This database and any problematic areas arising in using the criteria, should identify areas of needed revision. The campaign disclosure staff will propose modifications as needed and monitor the effectiveness of the criteria.

Mitigation Criteria for Campaign Disclosure Late Reports

I. Introduction

The following criteria are guidelines for staff recommendations on appeals of civil penalties assessed for late reports. The criteria should standardize recommendations; describe factors used in making a recommendation; assure equitable recommendations; and, reduce time to prepare staff recommendations. The criteria include mitigating factors commonly recognized by the Commission in past appeals. The criteria are not intended to replace sound judgment. In making a recommendation, the staff can override the criteria by describing reasons for an exception. They should be reviewed periodically by staff and amended where necessary. Major amendments will be brought forward for Commission review, if warranted.

II. General Principles

A. Fines will not be reduced below \$25. Staff will recommend either a waiver of the fine or a reduction to \$25, depending on the merits of the affidavit.

B. Appeals based on factors listed herein will result in a recommendation for a reduced fine which does not exceed \$200.

C. Generally, the staff will not recommend mitigation of fines for late 24 hour reports filed by large campaigns or experienced candidates. These reports represent significant contributions received in the week prior to the election. For others, the staff will make a recommendation based on the factors listed below, the nature of the contributor, and the volume of activity during the period. Repeated failure to report or failure to report contributions by regular participants in the political process (lobbyists, political groups, and unions, for example) will indicate a reduction should not be granted.

D. Staff may override the criteria and recommend a fine not exceeding the original assessment, if the affiant:

- * received mitigation for the same reasons stated within the last two years, excluding appeals subject to waiver;

- * has filed more than 2 late reports within the last two years;

- * has filed reports which are significantly incomplete; i.e., the majority of contributions and expenditures cannot be identified;

- * has filed a late report indicating significant violations occurred; e.g., unregistered group activity, unidentified contributors, etc.

- * if agency information contradicts the facts stated in the appeal;

- * if the late report discloses information which may have affected the outcome of an election and would be advantageous to withhold.

III. Waivers and Flat Fees Recommendations:

a. Staff will recommend a waiver if:

- * there is independent proof of timely mailing such as a copy of a certified receipt or postal affidavit, etc.;
- * postmark illegible or nonexistent and it is beyond the knowledge or control of the filer;
- * agency confirms that agency error (sent the wrong reporting schedule, agency entered address wrong, etc) precluded timely filing;
- * candidate or treasurer had an unforeseeable, catastrophic event - a death in immediate family or hospitalization in the 2 weeks preceding the due date - that precluded timely filing;
- * the late report was a zero report, filed within ten days of the due date, and it was the first occurrence of this during the current calendar year;
- * it is a zero report by a group that registered for a reporting cycle in which it is not active, and the registration is properly revised within ten days of the delinquency;

b. Staff will recommend a flat reduction to \$25 or uphold the assessment, whichever is less, if:

- * it is the first report from a candidate or group in the prior four years, the delinquency was promptly rectified upon receipt of the initial late notice, and less than \$1,000 in activity is disclosed;
- * it is the second or more late zero report in the current reporting cycle;
- * if a municipal candidate files an exemption in lieu of the first report within ten days of the delinquency notice

IV. Reduction by 60% or to \$200, whichever is less:

- * there was minimal activity disclosed (less than \$1,000; contributors limited to the candidate and/or more than 4 individuals are guidelines for "minimal activity"); the report revealed no other more serious violations; there is no likely reason to believe the report or activity indicated had any significant effect on the outcome of an election;
- * agency notices were sent to the wrong address, due to failure of candidate/group to notify our office of change in address
- * the report indicated only administrative activity; there were no direct, reportable political contributions; and cash on hand is less than \$1,000.
- * the reporting requirements were misunderstood by a candidate or group which had not been active in the prior two years and had less than \$1,000 cash on hand.
- * the reporting history indicates at least 90% of the past two year's reports were timely filed and complete and there is a supportable reason for the delay in filing;
- * a good faith effort is demonstrated that future compliance problems should not occur - a professional bookkeeper or accountant is retained, adequate recordkeeping systems are in place, and any missing account records have been professionally reconstructed.

Ex-worker criticizes APOC boss

Agency accused of party favoritism

By HAL SPENCER
Daily News reporter

The head of the Alaska Public Offices Commission staff has frustrated agency investigations of Democrats who may have violated campaign finance and reporting laws while vigorously pursuing Republicans. Chris Johansen, a recently resigned APOC investigator, asserted Wednesday.

Johansen, who is a lawyer, also accused Executive Director Theda Pittman of initially misleading VECO International Inc., an Anchorage-based oil services firm, about the legality of its campaign contribution payroll deduction plan that later was determined to violate APOC regulations.

Pittman on Wednesday declined to comment on the allegations, saying she was barred by state law from commenting on anything that could involve a personnel matter. "I have to operate out of caution about what I comment on because the prohibitions (regarding discussion of personnel matters) seems to be extremely narrow," she said.

Pittman was referring to an ugly, ongoing fight between her and Johansen that led Pittman to threaten to fire him and that prompted the associate coordinator to resign, effective July 16. Pittman last week placed Johansen on leave with pay until his resignation date, saying his abrasive letter of resignation made it clear that they no longer could work together.

Johansen's allegations seem likely to further damage the politically fragile campaign watchdog agency. The APOC, formed in the mid-1970s to enforce campaign finance regulations, already is

See Back Page. **CRITICISM**

V. Additional Criteria Specific to Small Campaigns

Reduce by 50% or to \$200, whichever is less, for late reports with year-to-date activity of less than \$10,000, if:

- * there has been a change in treasurers since the last report which resulted in the late filing; or,

- * there was confusion over the due date or place to file the report, and it is the first year of activity for the treasurer/candidate;

- * the report was hand-carried to the office after working hours

- * the candidate was the treasurer and failed to meet the due date because s/he was out of town campaigning.

- * the fine is assessed for failure to file an earlier report, based on information contained in the initial report that was filed AND there is no reason to believe the the failure was intentional;

- * there was a misunderstanding of the reporting requirements and the report had minimal activity that would have affected the outcome of an election.

Appellant:
Candidate for: _____
_____ days late on _____ report. Fine = \$ _____
Staff Recommendation:

Factors:

I. Waiver

proof of timely mailing illness, death in family
 first report of filer illegible postmark
 agency error

Reduce to \$25:

zero report report not required
 late exemption

II. Reduce to 50% or \$150, whichever less:

less than \$1000 activity wrong mailing address
 only administrative activity

III. Campaigns under \$ _____, Reduce by 40% or to \$150, whichever less:

treasurer change first time candidate, treas.
 late hand-carry group inactive for past year
 filed at wrong office candidate, treas. out of town
 first report filed indicates earlier filing was required

IV. Other

Full Fine Upheld:

prior appeal on same reason
 gross negligence in report filed
 more serious violations indicated on report

Additional Mitigation by 50%:

secured professional, experienced recordkeeper
 reconstructed report(s) based on bank statements
 proof of accurate record system in future reports

V. Exceptions and Recommendation:

Ex-worker criticizes APOC boss

Agency accused of party favoritism

By HAL SPENCER
Daily News reporter

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See Back Page. **CRITICISM**

CRITICISM: Alaska Public Offices Commission staff director target of criticism

Continued from Page A 1

under attack by prominent Republican politicians, some of whom sought to financially cripple the agency during the 1986 legislative session.

One of them, Sen. Jan Falks of Anchorage, on Wednesday reacted strongly to Johansen's assertions. "Hullabaloo," she said "I've been saying that for two years."

But two public offices commissioners, Burke Riley of Juneau and Dan O'Tierney of Anchorage, suggested Johansen's statements could have been motivated by personal animosity toward Pittman.

"I'm really shocked" at Johansen's assertions, O'Tierney said. "Apparently he is mad about some things."

Both O'Tierney and Riley said the commission, in executive session, probably would discuss Johansen's assertions as a personnel matter. Neither could say whether the allegations might be investigated to determine their veracity. "I'm sure they (the accusations) won't go unnoticed," Riley said.

Commission chairwoman Jean Rogers of Juneau could not be reached.

Johansen on Wednesday released a fistful of memoranda between him and Pittman that showed they clashed on items ranging from Pittman's alleged refusal to investigate campaign financing practices of Democratic Sen. Jay Kerttula of Palmer to whether Johansen should prop up his

feet on agency furniture.

In April, Pittman performed an employee evaluation of Johansen in which she cited "rumors" that Johansen "blackmails people."

Johansen said Wednesday the written suggestion that "I am an extortionist is one reason for my resignation." He said he was considering filing a libel suit on the statement.

Johansen, in an interview, made the following statements about Pittman's handling of campaign finance and reporting matters involving VECO, Kerttula, and Ashley Reed, a Juneau lobbyist and friend and advisor to Democratic Gov. Bill Sheffield.

• The VECO case: The oil services firm in late 1983 launched a plan in which campaign contributions automatically were deducted from employee paychecks and given to five Republican state senators.

Veco spokesmen insisted during an APOC investigation of the plan that Pittman initially had led the firm to believe its plan was legal. Faiks, who was among recipients of VECO contributions, also contended that Pittman had advised her campaign treasurer that the plan was legal.

She recently dropped a libel suit filed against Pittman on the matter.

Johansen said Wednesday that VECO was the victim of "bad information" from Pittman. Johansen contended that Pittman did not understand APOC regulations when first

approached by VECO attorney Bob Ely in December 1983.

Johansen said he had been on the job for only a short time, and had found APOC regulations generally to be "very confusing."

He said he asked Pittman her view on how to handle inquiries regarding interpretations of regulations not immediately understood by staffers and was told "Do just like I do. Bulls-t them."

Johansen asserted that "she bulls-ted" Ely by failing to tell Ely that the plan was illegal, primarily because she did not know if it was.

"We've said that all along," VECO Vice President John Kerrigan said Wednesday. The firm recently lost a Superior Court appeal of an APOC ruling that the firm acted illegally in deducting contributions from payroll checks, and Pittman's initial advice was an issue raised by VECO in its appeal. VECO has appealed to the Alaska Supreme Court. Kerrigan would not say if Johansen's statements would bolster VECO's case.

• The Kerttula case: In June, 1984, John and Karen Lee, owners of a Wasilla construction company and a Point MacKenzie dairy, gave some employees "tool allowances" of \$1,500 each. Days later, the Lees, their employees and their wives made 21 separate \$1,000 contributions to Kerttula's re-election campaign. Some workers told the Anchorage Daily News that

they had been told the tool allowance was meant to cover the contributions and leave \$500 bonuses.

The Lees acknowledged paying the tool allowance but denied there was any connection between the payments and the contributions to Kerttula.

When the contributions were disclosed by the Daily News in September 1985, Wasilla Republican Barbara Lacher, who lost the 1984 Senate campaign to Kerttula, asked the APOC to investigate. State law limits a contributor to a maximum contribution of \$1,000 a year to a candidate.

Pittman ordered her staff to write letters to Kerttula and the Lees asking for an explanation. That's where the matter rested. She later told Sitka Republican Sen. Dick Ellason that the agency was too busy to pursue the investigation further.

Johansen told a different story Wednesday. He said he had plenty of time in 1985 to investigate the Kerttula contributions, and in fact had been told by Pittman to go ahead and subpoena Lee's financial records.

"When I took the subpoenas into Theda to sign, she didn't want to sign them for reasons I can only speculate about. I don't know. Those subpoenas are probably still in Theda's office," he said.

• The Ashley Reed investigation.

Reed was late eight times in filing his 1985 reports on lobbying clients and finances.

The APOC staff in May recommended that Reed be fined \$8,000 and face possible criminal prosecution for a long history of reporting violations.

Johansen asserted Wednesday that he began an investigation of Reed in January, while Pittman was on vacation. He contended that upon her return, Pittman was "very agitated to have gone on a vacation and to come back and find her friend Ashley Reed was being investigated."

Johansen claimed he wanted to pursue criminal charges against Reed, but Pittman vetoed the idea, and plans instead to seek civil fines of Reed.

Pittman laughed Wednesday when asked her response. She said the APOC currently was pursuing sanctions against Reed and she could not comment further on the matter, including Johansen's assertion she was a "friend" of Reed.

But commission member O'Tierney said he failed to understand how Johansen could assert that Pittman wants to shield Reed from a criminal investigation since the matter has not yet been heard by an APOC hearing officer. "At this point, anything could happen. That case is far from decided," O'Tierney said.

Johansen, in his letter of resignation to the public offices commission and in an interview, makes no secret of his personal contempt for his

former boss.

"Theda's level of rudeness and lack of trust is of paranoid dimensions. Her attack on my credibility, integrity and honor are baseless lies. These attacks have become worse since I began proceedings against her close Democratic associates and friends." Johansen said in his resignation letter.

He also urged the commission, in future proceedings, "to cast a very jaundiced and skeptical eye towards anything Theda says or does in the future."

Johansen's copies of memoranda that flew like darts between him and Pittman range from serious accusations to almost comical disputes.

"Needs to improve planning skills," Pittman wrote of Johansen in an April 9 performance evaluation. "May have good investigative skills but it's hard to tell because of occasional rumors that he blackmails people."

In another memo, Pittman, among other things, criticized Johansen's habit of propping his feet on furniture.

In a memo of response, Johansen wrote: "It is a common trait of those taller people unburdened by the limitations of womanhood and legs to permit them to rise above the confines of floor space and allow them to find a suitable and non-offensive perch. The habit may be genetic, behavioral or imprinted at birth. It may be the result of being borne (sic) feet first."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

Senate State Affairs

March 4, 1987

March 9, 1987 1:30 pm

Alaska State Legislature

Advisory Council Members
Senator Bennett, Chairman
Senator Abood
Senator Kerttula
Senator Sackell



PO Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 485-3114

Senate Advisory Council

MEMORANDUM

TO: Senator Abood
Alaska State Legislature

ATTN: Carol Heros

FROM: Carol R. Berryhill
Researcher

DATE: November 26, 1986

RE: Campaign Finance Investigation Procedures

As requested, following is information regarding the investigative procedures utilized by the Federal Election Commission, as well as the procedures used in several states, when processing campaign finance complaints. There are copies of statutes, along with the administrative regulations which interpret the codified laws, for the Federal Election Commission and the respective states. I have indicated the relevant areas with a yellow tab.

Responses received to date indicate that commission or board members generally do not participate in the initial stages of the investigative process. In addition, it appears that all complaints receive preliminary investigation. I have not located any state in which specific criteria is established for prioritizing complaints.

Unlike Alaska, many states have several agencies that handle different aspects of election related complaints. Some states, i.e., Wyoming, South Dakota, Vermont, and Nevada forward complaints to the Attorney General's office.

Federal Election Commission

Any person may file a complaint if he believes a violation of the Federal election law or Commission regulations has occurred or is about to occur. The complaint must be made in writing and sent to the Office of General Counsel, Federal Election Commission.

Senator Abood
November 26, 1986
Page 2

A complaint must comply with certain requirements. It must (1) provide the full name and address of the person filing the complaint; and (2) be signed, sworn to and notarized. Furthermore, in order for a complaint to be considered complete and proper, it should (1) clearly recite the facts that show specific violations under the Commission's jurisdiction (citation to the law and regulations are not necessary); (2) clearly identify each person, committee or group that is alleged to have committed a violation; (3) include any documentation supporting the allegations, if available; and (4) differentiate between statements based on the complainant's personal knowledge and those based on information and belief. Statements based on personal knowledge should identify the source of the information.

The Office of General Counsel reviews each complaint to determine whether it satisfies the above criteria of a proper complaint. If it does, the complaint is assigned a MUR (Matter Under Review) number, and the complainant is notified. The complainant generally will not hear from the Commission again until the entire case is resolved because, the Commission is required by law to keep all investigations confidential.

If the complainant does not meet the requirements, the General Counsel's Office notifies the complainant of the deficiencies within five days of receipt. If the complaint is corrected and refiled, it is given a MUR number and is assigned to a member of the General Counsel's staff.

Within five days after receiving a proper complaint, the Office of General Counsel sends each respondent a copy of the complaint and a description of the Commission's compliance procedures. The respondent has 15 days to respond in writing, explaining why no action should be taken.

In the case of a complaint that does not satisfy the requirements, the respondent nevertheless receives a copy of the improper complaint and a letter explaining that the matter will remain confidential for 15 days to give the complainant an opportunity to correct the complaint. If the complainant corrects and refiles the complaint, the respondent is sent a copy of the corrected complaint and is given 15 days to submit a response to the Commission.

A respondent who wants to be represented by counsel must inform the Commission by sending a "statement of designation of counsel". This statement, signed by the respondent, must include a statement authorizing the counsel to receive all communications from the Commission on behalf of the respondent and include the counsel's name, address and telephone number.

Once the Commission receives the "statement of designation of counsel", the agency will communicate only with the counsel unless otherwise authorized by the respondent.

Following the receipt of an answer from the respondent or at the end of the 15 day response period, the General Counsel recommends whether or not there is "reason to believe" the respondent has committed or is about to commit a violation of the law. The Commissioners, however, make the final decision by voting for or against a "reason to believe" recommendation. (Four affirmative votes are required to take any enforcement action.) In casting their votes, the Commissioners consider the complaint, the respondent's reply and the General Counsel's analysis and recommendation. (At any point during the complaint process, the Commission has the discretion to take no further action.)

A "reason to believe" finding means the Commission believes that an investigation should be conducted in order to determine whether a violation has occurred or is about to occur. (The law requires a "reason to believe" finding before the Commission may conduct an investigation.) If the Commission decides there is "no reason to believe" a violation has occurred or is about to occur, the case is closed and the parties involved are notified.

If, on the other hand, the Commissioners find that there is "reason to believe" the respondent has violated or is about to violate the law, the Commission sends a letter of notification to the respondent.

The Commission then begins an investigation, usually by sending questions and asking for a written reply. The investigation may include an audit of the respondent. The Commission may also issue orders requiring a person to testify or to produce documents. If necessary, the Commission may ask a Federal district court to enforce its subpoenas.

When the investigation is completed, the General Counsel prepares a brief that explains the factual and legal issues of the case and recommends whether the Commission should find there is "probable cause to believe" or "no probable cause to believe" a violation has occurred or is about to occur. The respondent is sent a copy of the brief and has 15 days to file a reply brief explaining the respondent's position.

Prior to the Commission's vote on the General Counsel's probable cause recommendation, the Commission may agree to resolve the matter informally. The respondent must initiate discussions in writing before the General Counsel's Brief is mailed to the Respondent. These pre-probable cause discussions, which are limited to 30 days (absent an extension), may result in a conciliation agreement between the respondent and the Commission, thereby resolving the matter.

However, if the matter is not resolved, the General Counsel sends the respondent a brief. The respondent must submit its reply brief within 15 days of receiving the General Counsel's Brief.

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Upon completion of the General Counsel's investigation (and assuming that the matter is not resolved through "pre-probable cause" conciliation), the Commissioners vote on whether or not there is "probable cause to believe" that a violation has occurred or is about to occur. (Four affirmative votes are required. If several violations are alleged, the Commission may vote on each one separately.) In making their determination, the Commissioners consider both the General Counsel's and the respondent's briefs.

If the Commission decides there is "no probable cause to believe" the case is closed and the parties are notified.

If the Commission determines that there is "probable cause to believe" the law has been violated, the General Counsel attempts (for at least 30 days, but not more than 90) to correct or prevent the violation through informal methods of conciliation, i.e., by entering into a conciliation agreement with the respondent.

If the General Counsel and respondent negotiate a conciliation agreement, the written agreement becomes effective once it is signed by the respondent and the General Counsel and is approved by an affirmative vote of four Commissioners. The agreement includes a description of the facts, legal conclusions, the actions that must be taken by the respondent and, in most cases, the payment of a civil penalty. The General Counsel sends a copy of the signed agreement to the respondent and, if the case is concluded as to all respondents, to the complainant as well.

If conciliation does not result in an agreement within the 90 day period, the Commission may file suit against the respondent in Federal district court.

A complainant who disagrees with the Commission's dismissal of a complaint or who believes the Commission failed to act in a timely manner may file a petition in the U.S. District Court for the District of Columbia. In the case of a Commission dismissal, the petition has to be filed within 60 days after the date of the dismissal.

To protect the interests of those involved in a complaint, the law requires that Commission activity concerning the complaint be kept strictly confidential until the case is resolved. On the other hand, because the public has the right to know the outcome of any enforcement proceeding, a case file is made available to the public in the Press Office and the Office of Public Records within 30 days after the parties involved have been notified that the entire matter has been resolved.

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Illinois

The Illinois State Board of Elections administers the campaign financing aspects of Illinois' version of sunshine legislation, and the Secretary of State is charged with responsibility to oversee the filing of ethics statements required of legislators and other elected and appointed governmental officials. In addition, lobbyists seeking to do business in Illinois must register with the Secretary of State, while matters involving conflict of interest are generally referred to the Attorney General's office.

As to the Board's responsibility to determine which complaints of Campaign Disclosure violations to pursue, this is generally addressed at the staff level. An auditor will review a number of political committee filings and determine those that are not in compliance with the law. Complaints may also be brought by outside parties. In the event of a complaint filing, the hearing procedures stated in the enclosed pamphlet are then triggered. As indicated in the rules, a two step hearing process - a closed preliminary hearing (Subpart B, page 52) and a public hearing (Subpart C, page 57) - are provided for. Subpart E, "Investigations, Inquiries and Hearings", beginning on page 64 provides interpretation for responsibilities carried by staff and by Board.

Iowa

The Iowa Campaign Finance Disclosure Commission is an independent state agency. The Executive Director, an appointee, reports to a five member policy setting body, who are appointed by the Governor and confirmed by the Iowa Senate. The jurisdiction of the agency is solely campaign finance disclosure reporting laws; they have no jurisdiction in conflict of interest, campaign ethics, personal financial disclosure or lobbying activity.

Any eligible elector may file a complaint with the Commission, or the Commission may initiate a formal complaint on its own motion. If an elector files the complaint, that person must prove up the case. If the Commission files the complaint, the Executive Director serves as the prosecutor and presenter of the evidence. The matter is set for Administrative Hearing, and the Hearing Officer is either the Chair of the Commission or another Commissioner appointed by the Chair. Rules of civil procedure apply, as well as the provisions of the Iowa Administrative Procedures Act. The Commission is a quasi-judicial body, and may convey its powers of discovery, subpoena, etc., to a complainant.

The hearing officer prepares and presents a Findings of Fact, Conclusions of Law and Recommendation to the full Commission. The Commission then votes to (1) dismiss the complaint, (2) enter into an informal settlement

Senator Abood
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agreement, or (3) refer the matter for criminal prosecution. The burden of proof on the Commission is "reason to believe" that a willful violation occurred.

Unless a complaint from an elector is totally without merit or basis, it is automatically accepted for hearing by the Commission. In the case of a Commission complaint, the discussion to file a complaint is made in executive closed session by the Commissioners, and if it is decided to file a complaint, this decision is then announced publicly upon return to open session. Information about a potential complaint is frequently brought to the Commissioners' attention by the Executive Director.

Nebraska

The Nebraska Accountability and Disclosure Commission is responsible for investigating complaints in Nebraska. Complaints are evaluated by staff for completeness and to determine if a violation of the Accountability Act has been alleged. Upon determination that the complaint properly alleges a violation, a preliminary investigation is begun; all Commission proceedings and records related thereto are confidential unless the respondent requests that they be made public. The preliminary investigation is conducted by staff, and its results are presented to the Commission in confidence; the Commission may then terminate the investigation or determine that there is probable cause to believe that a violation has occurred.

New York

In New York, Election Law 3-104 contains the authority for investigations by the State Board of Elections. Complaints are ordinarily handled in the order in which they are received. If, however, there is a danger that the Statute of Limitations may run, the complaint is placed on the top of the pile.

The determination as to which cases will be investigated is made by Counsel-Enforcement. If the complaint is extraordinary, i.e., politically sensitive, it may be brought before the members of the Board before any preliminary disposition.

Washington

Many of Washington's rules were amended a year ago following a fairly comprehensive review of the enforcement practices. The Public Disclosure Commission's staff has become the investigating and prosecutorial arm and the members of the Commission have the task of being judge and jury. The staff has been given considerable latitude for deciding what matters will be pursued and what will not. In WAC 39C-37-060(1) the Commission has established a criteria, albeit quite broad, for guiding the staff in its decisions. When the Executive Director determines a complaint does not merit further consideration he can dismiss it with the concurrence of the Chairman.

April 8, 1987

Senator Mitch Abood
State Affairs Committee
Capital Buidling
Juneau, Alaska

Dear Mr. Chairman:

The enclosed summary legal opinion commissioned at my expense clarifies the reasons I have opposed your committee's wasting time, money and effort on campaign financing problems in Alaska. The problem is not with campaign financing, but with the illegal and unconstitutional agency that you give jurisdiction over such problems.

If your committee insists of using public funds on behalf of judicious regulation of political campaigns in Alaska, I strongly suggest you address the real problem, not its symptoms..


I am a private citizen and intend to remain one; therefore, to avoid being dragged into this issue publicly by a biased and unreasonably hostile press, I am submitting the enclosed legal opinion anonymously.

If your committee is serious about representing the public's best interests, you will pursue the points raised in my document. If you feel its anonymity reduces its credibility, you still owe the Alaska public a thorough independent analysis of the legal points that are now brought to your attention.

In any event, it seems strange that, for all the time and money at the government's disposal, something as fundamental as this has to be paid for by a private party. If you do something about it, tho, it'll be worth the expense to me.

An Interested and Abused Citizen

P.S. I hope you will, in any event, show this to your committee and not ignore it.



April 7, 1987

Dear Mr. [redacted]

In response to your inquiry regarding the Alaska Public Offices Commission, I have prepared and herewith submit the following summary opinion.


It is my opinion that the enabling legislation for the APOC (AS 15.13.010 et seq) is constitutionally infirm. The commission is, by the legislation and regulations promulgated thereunder, purportedly granted regulatory, investigatory and adjudicatory powers.

Article II, Section 26 of the Alaska Constitution provides in pertinent part as follows:

Section 26. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its' members shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law.

The Alaska Public Offices Commission is not in conformity with this provision and, as I suggested to you earlier, all policy arguments and disputes over staffing and staff conduct aside, the exercise by the APOC of what are clearly regulatory and quasi-judicial powers, constitutes a violation of Article III, Section 26 of the Alaska Constitution. I must admit that this opinion does not represent a novel or innovative position. APOC has been aware of the potential and real problems inherent in the APOC statutory structure since at least 1980. Legislation was drafted, introduced and passed by both houses of the legislature that year to modify AS 15.13.020 (a) and (b). That legislation was vetoed by Governor Hammond for reasons not related to the Constitutional issues.

Until or unless APOC is brought within Constitutional requirements, it is my opinion that the commission does not have the power to adopt regulations, conduct investigations or to make adjudications. If you have an interest in pursuing this matter further, I would strongly advise you to hire a recognized expert in the field of Alaska Constitutional law to prepare a formal detailed analysis of the statutes, regulations and



relevant constitutional provisions, and, using that as your
foundation, request the legislature to introduce and adopt
corrective legislation.

Please be assured that, although I have prepared
this opinion as your attorney and not as a specialist in the
field of Constitutional law, I believe the basic conclusions at
which I have arrived are clear and obvious. Another point to
keep in mind is that, once the statute is brought in line with
the constitutional provisions set out above, I believe you still
have a serious problem with an apparent lack of constitutional
due process for the targets of the APOC staff investigations
unless the current process is modified either by statute or
regulation. You might want to review some of the recent
testimony in the legislature and before the commission if you
have any questions about the due process issues.

If I can be of any further assistance to you in this
matter, please, as always, feel free to contact me.

Yours Truly,

