

Memo

To: Commission

From: Wayne Barnett

Date: January 21, 2015

Re: Late-filing penalties

BACKGROUND

The Commission's December meeting agenda included two late -filing penalties imposed by the Executive Director for late-filed reports in the final 21 days of an election. Both penalties were for the maximum: \$10 and \$30, respectively.

Staff was asked to advise on options for increasing the penalties to better deter violations.

LAW

Penalties for Elections Code violations have not changed since 1997. Here is the current schedule of late-filing penalties that can be assessed by the Executive Director, subject to appeal to the full Commission:

2.04.330 - Late filing—Civil assessments.

- A. The City Clerk shall stamp, write on, or mark mechanically or electronically on each statement or report filed under this chapter the date and time it is received.
- B. Failure to file any statement or report on the date due or mail the same to the City Clerk, postage prepaid, on the date due, shall subject a candidate, campaign treasurer, political committee or officer of a political committee to a late filing penalty, as follows:
 - 1. A civil assessment of Ten Dollars (\$10) for each day that the report is due but not filed for failing to make a timely filing;
 - 2. A civil assessment of Fifty Dollars (\$50) per day for any statement or report that is due within seven (7) days of an election for each day the statement or report is not filed up to and including election day; and

3. A civil assessment of Ten Dollars (\$10) per day that any other statement or report is due and is not filed, and for each day after election day a statement or report in subsection B2 is due and remains unfiled. Failure to file each statement or report is a separate infraction.

...

D. The Executive Director shall determine and collect the amounts due. A person aggrieved by a determination of the Executive Director may appeal to the Commission. The decision of the Commission after a hearing shall be final.

And here are the civil remedies that can be imposed by the Commission:

2.04.500 - Civil remedies and sanctions.

A. 1. Upon determining pursuant to Sections 2.04.070 through 2.04.090 that a violation has occurred, the Commission may issue an order requiring the party to take particular action in order to comply with the law, and in addition, or alternatively, may impose sanctions up to \$5,000 for each violation.

2. Upon determining that a contribution was illegally made or accepted, in addition to the remedies in subsection A1, the Commission may order the return of a contribution illegally made, and impose a penalty of two times the amount of a contribution illegally made or accepted by a person who violates Section 2.04.180, 2.04.200, 2.04.210, 2.04.215, 2.04.240, 2.04.290, 2.04.300, 2.04.370, or 2.04.480.

3. Upon determining that a report was filed excessively late, in addition to the remedies in subsection A1, the Commission may impose a penalty of two times the amount of each deposit or expenditure for each deposit or expenditure that was reported excessively late. A report is excessively late if it was due more than 21 days before the election in which the candidate or ballot proposition appeared on the ballot, but was not filed at least 21 days before that election. A report is also excessively late if it was due within 21 days before the election in which the candidate or ballot proposition appeared on the ballot, but was not timely filed.

4. In addition to the actions in subsections A1, A2, and A3 above, the Commission may forward the determination of violation to the Seattle City Attorney or the King County Prosecutor for prosecution. If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of the election may be held void and a special election held within 60 days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

Under State law, the Public Disclosure Commission (PDC) is authorized to levy penalties of up to \$10,000 for State Elections Code violations. The PDC's Executive Director is not authorized to impose late-filing penalties.

DISCUSSION

The Commission asked staff to advise on how to provide a more effective deterrent to campaigns late-filing reports, especially in the closing days of an election campaign. Here are a number of options:

1. Amend the late-filing schedule to lengthen the period for enhanced penalties for late-filed reports from seven days to 30 days.

With the advent of all-mail voting extending over a three-week period, the focus on the final seven days before Election Day seems antiquated. Increasing the period in which fines for each day a report is late-filed to \$50 would better align the fee schedule to the way voting is conducted in 2015.

2. Amend the late-filing schedule to increase the maximum fines for late-filed reports in the final days before an election from \$50 to \$75 or \$100.

The Commission could also recommend increasing the amount of the enhanced penalty in conjunction with increasing the time period for imposing the maximum penalty. (This could even be done in tandem with the first option.) Inflation-adjusting \$50 in 1997 dollars yields a total of just under \$75 in 2014 dollars. Doubling the penalty to \$100 would also be an option.

3. Order the Executive Director to bring late-filed reports in the final days of an election campaign to the Commission for disposition under SMC 2.04.500.

Under SMC 2.04.500, the Commission can impose penalties of up to two times the amount of any late-filed contribution or expenditure in the final 21 days before Election Day. One late-reported \$700 contribution, for example, could yield a penalty of up to \$1,400.

This option has drawbacks, though. Chiefly, it could slow down the process for penalizing committees in the closing days of a campaign. While the staff can generate a late-filing penalty letter in a matter of hours, convening a Commission hearing generally takes some time. In the Director's experience, committees would prefer to pay a large fine *after* the votes have been counted than to see a news brief about a modest fine *before* Election Day.

4. Direct the staff to publicize late-filing penalties levied in the final days of an election contest.

As noted in the previous discussion item, the most effective deterrent to late-filed reports is frequently the negative publicity that comes with being fined by the Commission more than the amount of the fine a committee pays. When the Commission's offices were in the old municipal building, Commission documents were placed in a media box, and visitors to the building would frequently stop by the Commission's office to learn what the Commission was doing. With the Commission's offices now on the 40th floor of the Seattle Municipal Tower, and with the reduced size of the City's press corps, the media box ceased to serve any practical purpose several years ago.

The Commission could direct staff to post penalties levied to its web site as soon as is practicable after levying the penalty, or even to transmit news of late-filing penalties to the press corps via e-mail or social media. This would almost certainly deter violations.