

Advisory Opinion

IECDB AO 2000-18

August 17, 2000

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11), the Iowa Ethics and Campaign Disclosure Board takes the opportunity to issue its opinion on the issue of the effect of a granted civil penalty waiver request for purposes of determining whether or not a late-filed report is a "repeat delinquency". We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 56 and 68B and rules in Iowa Administrative Code chapter 351. Whether some other statutory system, common law theory or agency rule applies to this issue is not covered by this opinion.

OPINION:

Board rules 351 IAC 6.2(2) and 351 IAC 6.2(3) provide penalty tables for campaign committees that fail to timely file campaign disclosure reports as required by Iowa Code section 56.6. The penalties are increased when a disclosure report is a "repeat delinquency by same treasurer of a committee in a 12-month period."

Procedures for requesting a waiver of the penalty are set out in the Board's rules. If the Board grants the waiver request, or if the request is ultimately granted after litigation, the penalty is not required to be paid. The issue then becomes what effect does the granting of a waiver have if the committee treasurer files another disclosure report late within a 12-month period?

When a waiver is granted to a committee, the Board recognizes that a violation of Iowa Code section 56.6 occurred due to the delinquency, but that the violation was justified and no sanctions should be imposed. However, given that there was a delinquency, even if ultimately justified, another delinquency by the same treasurer of the committee within a 12-month period would be a "repeat delinquency".

Therefore, in situations where a committee is assessed a penalty under rule 351 IAC 6.2 and the committee is granted a waiver of the penalty, another delinquency by the committee's same treasurer within a 12-month period is a "repeat delinquency" and subject to the increased penalty.

The committee could, of course, apply for a waiver of the new penalty if there were "mitigating circumstances" that prevented timely filing.

BY DIRECTION AND VOTE OF THE BOARD

Bernard McKinley, Board Chair

1st Vice-Chair Geraldine Leinen

2nd Vice-Chair James Albert

Gwen Boeke

Mark McCormick

Phyllis Peters

-Submitted by W. Charles Smithson, Board Legal Counsel