

**BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

**LLOYD A. JOHNSON FOR WEST COVINA CITY COUNCIL 2015,
LLOYD JOHNSON, and JOHN SHEWMAKER,**

Respondents.

FPPC No. 2015/2076

OAH No. 2020090823

PROPOSED DECISION

Administrative Law Judge (ALJ) Deena R. Ghaly, Office of Administrative Hearings, State of California, heard this matter on August 30, 2021, by videoconference.

Theresa Gilbertson, Senior Commission Counsel, and Jenna Rinehart, Commission Counsel, represented Complainant Enforcement Division, Fair Political Practices Commission (FPPC).

Respondent Lloyd Johnson (Johnson) was present and represented himself and his committee, Respondent Lloyd A. Johnson for West Covina City Council 2015 (Johnson Committee). Respondent John Shewmaker (Shewmaker) was present and represented himself.

The record was closed on August 30, 2021.

SUMMARY

Johnson ran for a seat on the West Covina City Council in the 2015 General Election. Lloyd A. Johnson for West Covina City Council 2015 (Committee) was his candidate-controlled committee. In the month before the election, Shewmaker arranged for two mass mailings to be created and mailed to constituents. The mailers advocated against some of Johnson's opponents. Both mailers identified senders which proved to be fabricated and did not contain the "paid for by" text.

Under the Political Reform Act (the Act), codified at Gov. Code, §§ 81000-91014, qualifying committees must timely file campaign statements disclosing all their political activity. Additionally, the Act requires that committees sending mass mailings identify the name, street address, and city of the sender on the outside of each piece of mail. Sender identification information shall be preceded by the words "paid for by."

In this case, Complainant established by a preponderance of the evidence that Shewmaker, in his capacity as an agent of Johnson's campaign, designed and paid for the mass mailings at issue. While there is no evidence of Johnson's involvement in, or even knowledge of, the mailers, by operation of law, he and his controlled committee, bear legal responsibility for the resulting violations of the Act. Specifically, because Shewmaker continued to act as Johnson and the Johnson Committee's agent, they bear liability for his misdeeds. Shewmaker, as the main actor arranging for the mailers, also bears some responsibility under the Act.

Violations of the Act are punishable by monetary penalties of up to \$5000 per count. The penalty amount is determined by applying factors set out in regulations

promulgated pursuant to the Act. Here, applying those factors, the appropriate penalty amount for Johnson and the Johnson Committee's failure to report the mailer activity is \$1,500 per count and the appropriate penalty for falsifying the mailer sender information, attributable to all the respondents, is \$3,000 per count.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant is the Enforcement Division of the Fair Political Practices Commission (Commission), which has the legal duty to administer, implement, and enforce the Act.
2. Johnson was the successful candidate for a City Council of West Covina seat in the November 3, 2015 General Election.
3. The Johnson Committee was Johnson's candidate-controlled committee for the November 3, 2015 General Election.
4. Shewmaker was a paid consultant for the Committee during the 2015 election and served as the Committee's treasurer through September 2015. After September 2015, Johnson served as his own treasurer.
5. On July 27, 2018, Complainant initiated an administrative action against Johnson, the Johnson Committee, and Shewmaker (collectively, Respondents) by serving them with various documents, including a Report in Support of a Finding of Probable Cause. A hearing officer conducted a probable cause conference, in which Respondents participated and, on April 10, 2019, the hearing officer issued an order

finding that there was probable cause for Complainant to file an accusation against Respondents for violating the Act.

6. On October 1, 2019, Complainant filed the Accusation against Respondents, alleging multiple violations of the Act. Respondents timely requested a hearing to challenge the Accusation and this hearing followed.

Mass Mailings

7. On October 14, 2015, a mass mailing issued. On the front of the piece there is text reading "Which Fred Sykes is Running in 2015" (Exh. 10.1, p. A261). Sykes was an opponent of Johnson in the General Election. The mailing has additional text critical of Sykes and stating that he "wants to turn West Covina into a sanctuary city." (*Id.* at p. A262.) The mailer does not bear the required "Paid for by" language. The identified sender on the mailer is "West Covina Voters Committee" (*Ibid.*) The purported address of the sender, 216 S. Citrus Avenue, West Covina, 91791, is not a valid address. West Covina Voters is not a validly established committee, having no statement of organization filed with the Secretary of State or an assigned committee identification number.

8. A. On October 26, 2015, a second mass mailing issued. On the front of the piece there is text reading "Follow the MONEY. Gives you the REAL story" (Exh. 10.2, p. A288) [capitalized text in the original]. The mailer names three candidates also running in the 2015 West Covina City Council race: Kimberly Caceres, Joe Lara-Gardner, and Tony Wu. The text within the mailer includes the following: "Do you want to close our police and Fire Departments? Do you want new taxes on your utilities and homes? Do you really believe anything these candidates tell you? If you said 'NO', then say 'NO' to these 3!" (*Id.* at A272.)

B. As with the October 15, 2015 mailer, this mailer lacked the required "Paid for by" language. The identified sender on the mailer is the "Please Save Our Police Committee." The purported address of the sender, 136 N. Grand Ave. West Covina, CA 91791, is a mail center; however, the center had no record of a mailbox rental to the Please Save Our Police Committee. Additionally, the Police Save Our Police Committee is not a validly established committee, having no statement of organization filed with the Secretary of State or an assigned committee identification number.

Evidence of Shewmaker's Role in the Mass Mailings

9. A. Chicas Graphics and Designs is the vendor which printed 2000 copies of mailer targeting candidate Fred Sykes at a cost of \$215. Chicas Graphics and Designs' payment receipt reflect an apparent credit card payment with a number ending in 4077 for that amount. Shewmaker stated at the hearing that he had a debit card with a number ending in 4077. The cards were sent with mailing permit number 114, which belongs to Shewmaker's business, J.C.S. Consulting, and Shewmaker's wife, Caryn Shewmaker. According to United States Postal Service records, the cost for mailing the postcards was \$245.75. (See Exh. 10.3.)

B. Emails between Chicas Graphics and Designs indicate that it also produced and printed the Save Our Police mailer and charged Shewmaker \$130 for the work. The cards were also sent with mailing permit number 114 at a cost of \$118.87. (*Ibid.*)

Evidence Regarding Whether Johnson had a Role in the Mass Mailings

10. Throughout the FPPC investigation and during the hearing, both Johnson and Shewmaker adamantly maintained that Johnson had no involvement in, or even knowledge of, the mailers. According to both Johnson and Shewmaker, Shewmaker's involvement with the Johnson's campaign ended on September 9, 2015, when Johnson terminated his services as the Johnson Committee's treasurer. Shewmaker has made different and contradictory statements to FPPC investigators about his involvement with the mailers, including denying it altogether. Toward the end of the FPPC investigation and also at the hearing, Shewmaker admitted his responsibility for creating and distributing them, but stated his work was on behalf of another client. Shewmaker could not produce any documentation of this other client either during the FPPC investigation, which started in February 2016, nor at the hearing. His representations that this client materialized at a City Council meeting and that their dealings all occurred in person and in cash are not credible.

11. A. Contrary to Johnson and Shewmaker's assertions, there is significant evidence of Shewmaker's ongoing involvement with Johnson's campaign after September 9, 2015: In an email between Shewmaker and Bessie Escobar, Chicas Graphics and Design's proprietor, dated September 14, 2015, Shewmaker, wrote:

You recently printed some large postcards for Lloyd Johnson.

I have another set I would like to have printed, as the cards you printed for Lloyd were great.

[¶] . . . [¶]

Also, I plan to send you another set for Lloyd in a couple of weeks, along with another set for another candidate.

Thanks

John Shewmaker

(Exh. 10.19, p. A546.)

B. Shewmaker exchanged emails with Escobar on October 11 and 12, 2015 ("Lloyd needs 3000 of postcard 5.5 x 8.5 size color on both sides."). (Exh. 13.7, p. A694)

C. A Chicas Graphics & Designs receipt reflects an order from Shewmaker for 3000 pro-Johnson flyers dated October 12, 2015. (Exh. 10.8, p. A314.)

D. Checks from Johnson after he assumed the treasurer role for the Johnson Committee bear the notation "Permit Number 114," the mailing permit number owned by Shewmaker's company and his wife. (Exh. 10.10, p. A321.)

E. Johnson made payment of \$2,163.44 from the Committee to J.C.S. Consulting dated November 1, 2015. (Exh. 10.12, p. A375.) The only documentation for the payment was an email from Shewmaker listing expenses:

Last Mailer	\$240
Phone List	\$301.25
Signs	\$310
RoboCall	\$56.43

Mailer Cost \$1255.73

Total \$2,163.41

(Exh. 10.15, p. A452.)

F. No payment receipts, invoices, orders, description of services or other proof of the stated expenses or any time reference for when they were incurred was provided by either Johnson or Shewmaker. Both Johnson and Shewmaker maintained the one-time payment was for work Shewmaker had done or paid for before September 9, 2015. Given the complete lack of documentation or explanation, the significant amount in proportion to the size of the campaign, its timing, which was shortly after the two mass mailers had been created and distributed, and the legal requirements to maintain receipts and other proof of expenses known to both Johnson and Shewmaker, this explanation is not credible.

12. As further evidence of his noninvolvement, Johnson maintained that he has always assiduously avoided negative campaigning for many reasons, but especially that, in his opinion, his own supporters disliked such tactics. One such supporter, Jerri Potras, to Johnson states that, based just on Shewmaker's involvement with Johnson's campaign, Potras would be withdrawing his support of Johnson. Another Johnson supporter concerned about Shewmaker's negative campaigning and its implications for Johnson, Steve Cox, contacted Johnson noting that Shewmaker had created a website critical of another opponent. Johnson sent the following response to Cox: "Steve. I must tell you John Shewmaker is no longer connected to my campaign as my treasure [sic]. I haven't talked to john in Two weeks [sic] One thing for sure [,] my campaign will not tolerate any negative campaigning." (Exh. 10.12, p. A383.) These communications support a finding that Johnson would avoid negative campaigning

attributable to himself. It does not indicate that Johnson would not tolerate such activity or at least turn a blind eye to it if it could occur without his apparent involvement.

Analysis

13. Johnson testified in a straightforward and consistent manner. Particularly in expressing his longstanding commitment to avoiding negative campaigning, Johnson was credible. Shewmaker, too, is adamant that Johnson was not involved in creating or distributing the mailers. The underlying assumption in their testimony and the evidence they presented is that if Johnson did not participate in ordering, creating, distributing or paying for the mailers, he and the Johnson Committee had no legal responsibility for them.

14. Further, both Johnson and Shewmaker testified that the mailings were created during a period when Shewmaker was no longer affiliated with the Johnson campaign. Complainant produced evidence to the contrary. In particular, the October 2015 communications and evidence of ongoing transactions between Shewmaker and Escobar, the payments made with Johnson Committee checks bearing the notation "mail permit 114," and the November 1, 2015 payment from the Johnson Committee to Shewmaker, support a finding that Shewmaker continued to work for the Johnson Committee long beyond September 9, 2015 termination date and certainly during the periods Shewmaker arranged for the mailers at issue. As such, Shewmaker remained an agent of the Johnson Committee throughout the course of the campaign. As set out in the Legal Conclusions below, as an agent, Shewmaker's actions implicated and created liability for Johnson and the Johnson Committee regardless of Johnson's knowledge of Shewmaker's actions.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof rests upon the party making the charges, here Complainant. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.)

2. Because no law provides otherwise, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916–918.) Preponderance of evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

General Provisions of the Act

3. Government Code section 81003 requires the Act to be liberally construed to achieve its purposes.

4. There are many purposes of the Act, including ensuring that voters are fully informed and improper practices are inhibited by requiring committees to disclose all political activity occurring throughout a campaign. (Gov. Code, § 81002, subd. (a).)

Definitions and Disclosure Requirements of Committees

5. During periods relevant to the instant matter, “committee” was defined to include any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year, including candidate-

controlled committees. (Gov. Code, § 82103, subd. (a).) Committees must file campaign statements disclosing information regarding contributions received and expenditure made by the committee. Reportable contributions are monetary or nonmonetary contributions of \$100 or more. (Former Gov. Code, § 84203.5.)

6. "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Gov. Code, § 82015, subd. (a).) "Expenditure" means any payment, "unless it is clear from the surrounding circumstances that the payment is not made for political purposes. . . (Gov. Code, § 82025, subd. (a).) For reporting purposes, the date an expenditure is made on the date payment is made or on the date any consideration for the payment is received, whichever is earlier. (CCR, tit. 2, § 18225, subd. (b).)

Persons and Entities Liable under the Act

7. A. Under the Act, there is a presumption that an expenditure funding a communication expressly advocating for the defeat of a clearly identifiable candidate is not independent of the candidate for whose benefit the expenditure is made when it is made by an agent of the benefitted candidate in the course of the agent's involvement in the current campaign. (CCR, tit. 2, §§ 18225.7 and 18550.1 [repealed effective 12.9/2015, consolidated and amended into current CCR, tit. 2, § 18255.7])

B. "Agent" is defined as "one who represents another, called the principal, in dealings with third persons." (Civ. Code, § 2295.) Agency does not have to be established by intentional or affirmative acts of a principal. Referred to as "ostensible agency," it can be established when a principal fails to exercise ordinary care in

clarifying that a person does not have the authority to act on the principal's behalf. (See Civ. Code, § 2300) Here, Johnson's continued interactions with Shewmaker about campaign matters, and continued financial dealings established Shewmaker's status as Johnson's and the Johnson Committee's agent even after Johnson terminated Shewmaker as the Johnson Committee's treasurer on September 9, 2015.

C. A "presumption" is "an assumption of fact that the law requires be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence." (Evid. Code, § 600.) As noted in the comments for Evidence Code 600, a presumption is a conclusion of law. Unless there is persuasive evidence to the contrary, the presumption stands as a legal conclusion.

D. Johnson presented evidence of his longstanding commitment to personally avoid negative campaigning and evidence that some of his supporters were willing to withdraw that support if he partakes in negative campaigning. (Factual Finding 12.) While this evidence supports a finding that he did not directly involve himself in such a campaign tactic, it does not prove that he actively prevented it. Indeed, Johnson's willingness to pay Shewmaker for services without demanding the receipts and other clear documentation for what was being reimbursed is evidence that Johnson did not actively monitor what campaign expenditures were being made on his behalf. As the treasurer, Johnson had a legal duty to demand this type of documentation.

Causes for Monetary Penalties

8. Complainant has proffered two theories for imposing monetary penalties on all or some of the respondents. Under the first theory, Shewmaker, in his capacity as agent for Johnson and the Committee, arranged for the mailers. As agent,

Shewmaker's actions are presumed to be imputed to Johnson and the Johnson Committee. Based on this theory, the Accusation sets out four causes for imposing monetary penalties, Counts 1 through 4 of the Accusation. The preponderance of the evidence supports this theory and the resulting violations as follows:

(i) A preponderance of the evidence established that on or about October 14, 2015 and October 26, 2015, Shewmaker, acting as agent to Johnson and the Johnson Committee, produced and mailed a mass mailing advocating for Johnson's opponents, (Factual Finding 7 & 8.) The Committee and Johnson failed to report this political activity in the relevant campaign filings in violation of Government Code section 84211.

(ii) A preponderance of the evidence established that on or about October 14, 2015 and October 26, 2015, Shewmaker, acting as agent to Johnson and the Johnson Committee, produced and mailed two mass mailings without accurately identifying the sender or including the preceding required text in violation of Government Code section 84305, subdivision (a). (Factual Finding 8.)

9. An alternate theory based on the same facts is that Shewmaker acted independently in developing, printing, and distributing the two mailers. Under this theory, there are still violations of the Act, as set out in Counts 5 through 8 of the Accusation. The two theories are mutually exclusive as it is not possible for Shewmaker to simultaneously act as an agent for Johnson and the Johnson Committee while also

acting independently. As the preponderance of the evidence established the first theory, Counts 5 through 8 of the Accusation are dismissed.

Disposition

10. Each violation of the Act is punishable by imposition of a monetary penalty of up to \$5,000 per violation, which must be paid to the General Fund of the State of California. (Gov. Code, § 83116, subd. (c).)

11. A. California Code of Regulations, title 2, section 18361.5, subdivision (d) states that, in framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the ALJ shall consider all the surrounding circumstances, including but not limited to enumerated criteria. The criteria and their application to the instant case are set out below:¹

B. As to Counts 1 and 2 (failure to report political activity) as set out in the Accusation (against Respondents Johnson and the Johnson Committee only).

(1) the seriousness of the violation(s). Johnson, as the candidate and treasurer of his committee committed a serious violation in paying campaign funds to Shewmaker for political activity he did not monitor. The result was

¹ Complainant also proffered evidence of fines proposed in similar cases for consideration in developing an appropriate disposition in the instant case. The facts of the instant case do not lend themselves to a direct comparison to the earlier cases and so, for that reason, the fines of the earlier cases were not considered in formulating penalties here.

campaign statements that were not entirely reflective of the political activity occurring on his behalf. In partial mitigation, Johnson was credible in testifying that he was not aware of Shewmaker's activities.

(2) The presence or absence of any intention to conceal, deceive or mislead. Evidence against Johnson and the Johnson Committee did not establish an intent to conceal. If anything, Johnson's testimony indicated some substantial lack of understanding about the Act and how liability is apportioned under its provisions.

(3) Whether the violation was deliberate, negligent or inadvertent. Johnson's failure to monitor Shewmaker's activities and his continued funding of those activities without demanding and retaining documentation thus resulting in incomplete reporting of political activity on the campaign statements is deemed negligent, rather than deliberate or inadvertent.

(4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114, subdivision (b). The record did not reflect that any of the respondents consulted with the Commission or any other government agency.

(5) Whether the violation was isolated or part of a pattern, and whether the violator has a prior record of violations of the Act or similar laws. Johnson and the Johnson Committee have no prior record of violations of the Act or similar law.

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure. Johnson has not filed corrective amendments to his campaign statements.

Considering all the criteria together, the violations attributable solely to Johnson and the Johnson Committee are serious but is tempered by a lack of intention to violate the Act. Johnson has been consistent in his statements and seems mostly to be a victim of his own misunderstandings about his responsibilities to his campaign. His involvement was primarily passive. Under these circumstances, the penalties assumed by him and his committee alone should not be overly onerous and are fixed at \$1,500 per count.

C. As to Counts 3 and 4 of the Accusation (against all Respondents):

(1) The seriousness of the violation. Unlike the first two counts, these counts revolve around the affirmative misconduct of one of the respondents, Shewmaker. The weight of the evidence strongly supports the finding that Shewmaker not just failed to correctly identify the sender information for each mailer, but took steps to obfuscate the truth, creating false names and addresses. This type of infraction is a violation of the public trust and resulted in wide dispersion of false information, and unnecessary expenditures of public moneys to investigate Shewmaker's fabrications. Though there is no evidence of Johnson's direct involvement, by operation of law, he and the Johnson Committee are responsible for Shewmaker's serious misconduct.

(2) The presence or absence of any intention to conceal, deceive or mislead. Again, Shewmaker's actions in this matter involved multiple instances of concealment and deception. Initially denying his involvement in the mailers altogether, Shewmaker let FPPC investigators through an extensive and unnecessary investigation. The stated senders on the mailers were Shewmaker's fabrications. At the hearing, some of Shewmaker's statements, particularly his

assertions about another client for whom the mailers were ostensibly created, was not credible.

(3) Whether the violations were deliberate, negligent, or inadvertent. As with criterion 2, there is ample evidence of deliberate malfeasance on the part of Shewmaker. It is difficult to find an alternate explanation for fabricating the names and addresses of the mailers senders other than that it was a deliberate attempt to violate the Act's requirements regarding disclosing senders of mass mailers.

(4) Whether the violator demonstrated good faith by consulting with FPPC staff or any other government agency in a manner not constituting a complete defense under Section 83114, subdivision (b). There is no evidence of any of the respondents consulting with the FPPC or any other government agency.

(5) Whether the violation was isolated or part of a pattern and whether violator has a prior record of violations of the Act or similar laws. Respondents' violations do not appear to be part of a pattern and they have no history of violating the Act beyond the instant matter.

(6) Whether the violator, upon learning of a reportion violation, voluntarily filed amendments to provide full disclosure. None of the filings at issue have been amended.

Considering the criteria as a whole, Shewmaker's extremely serious and deliberate misconduct establishes a basis for a fine at the highest end of the spectrum. He is, however, one of three respondents, not all of whom are equally culpable. As noted with respect to the first two counts, Johnson and the Johnson Committee were not actively involved in Shewmaker's tactics. At best, the evidence only supports a finding of willful ignorance on the part of Johnson. Reaching an

equitable penalty amount for these last two counts requires balancing the respective roles of the responsible parties. An appropriate penalty under these circumstances is a fine of \$3,000 for each of Counts 3 and 4.

ORDER

1. Respondents Lloyd Johnson and the Lloyd A. Johnson for West Covina City Council 2015 shall pay \$3,000 to the General Fund of the State of California pursuant to terms and conditions acceptable to the FPPC commissioners as a penalty for violating the Political Reform Act as set out in Counts 1 and 2 of the Accusation.

2. Respondents Lloyd Johnson, the Lloyd A. Johnson for West Covina City Council and John Shewmaker shall pay \$6,000 to the General Fund of the State of California pursuant to terms and conditions acceptable to the FPPC commissioners as a penalty for violating the Political Reform Act as set out in Counts 3 and 4 of the Accusation.

3. Counts 5 through 8 of the Accusation are dismissed.

DATE: 09/30/2021

Deena R. Ghaly
Deena R. Ghaly (Sep 30, 2021 13:55 PDT)
DEENA R. GHALY

Administrative Law Judge
Office of Administrative Hearings