



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION

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Department of General Services

February 3, 2011

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Subject: Raymond Haynes
OAH number 2010100426
Agency number 09/258

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision.
- Exhibits numbered: 1-11 and A.
Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.
- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing.

JIE:cw

Encl.

Transmittal Form
OAH 60 (Rev. 04/09)

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BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of

FPPC No. 09/258

RAYMOND N. HAYNES, JR.,
RAYMOND P. HORSPOOL, JR. and
HAYNES FOR ASSEMBLY 2004

OAH No.: 2010100426

Respondent.

PROPOSED DECISION

Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on December 22, 2010.

Gary S. Winuk, Chief, Enforcement Division, represented the Fair Political Practices Commission (Commission or complainant).

Raymond N. Haynes, Jr. (respondent Haynes), Attorney at Law, appeared on his own behalf and on behalf of Raymond P. Horspool, Jr. (respondent Horspool) and Haynes for Assembly 2004 (respondent committee).

Oral and documentary evidence was received. Two witnesses, respondent Horspool and Mary Mooney, appeared by telephone from Riverside California. The record closed and the matter was submitted for decision on December 22, 2010.

SUMMARY

Respondents do not dispute the four violations alleged by complainant: 1) that they failed to timely file two semi-annual campaign statements and a statement of termination for the respondent committee; and 2) that they made an improper contribution after the 2006 election. The only disputed issue is the appropriate penalty for these violations. Respondents offered several reasons for their failure to timely file three campaign statements, but none of those reasons justified or excused their conduct. Likewise, respondents' explanations about their improper use of funds after the election did not justify or excuse that violation. Considering and weighing the various factors affecting the penalty determination, it is appropriate to fine the respondents \$10,000, jointly and severally, for the four violations.

FACTUAL FINDINGS

Background

1. Respondent Haynes has been involved in local and state politics for approximately 20 years. He served six years in the California State Assembly from 1992 through 1994, and from 2002 through 2006. He served eight years in the California State Senate from 1994 through 2002.

2. Respondent committee was formed by respondent Haynes as a candidate-controlled committee for his 2004 Assembly campaign.¹ Respondent Horspool was the treasurer of respondent committee. Respondent Horspool has served as treasurer for respondent Haynes' campaign committees for approximately 16 years.

Procedural Matters

3. Sometime in early 2009, the Commission initiated a routine audit of respondent committee. As a result of that audit, the Commission found four violations of the Political Reform Act (Government Code sections 81000 through 91014²). After a finding of probable cause made pursuant to section 83115.5, Roman G. Porter, Executive Director of the Commission, made and filed the Accusation in his official capacity on July 21, 2010. In the Accusation, complainant seeks a monetary penalty "of at least Two Thousand Dollars (\$2,000) and not more than Five Thousand Dollars (\$5,000) for each of the violations... ."

4. Respondents timely filed a Notice of Defense, pursuant to section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to section 11500, et seq.

Late Filings

5. 2007 Campaign Statement. Respondents failed to file a semi-annual campaign statement with the Secretary of State for the reporting period of July 1 through December 31, 2007 by the deadline, January 31, 2008 (2007 campaign statement). They filed the 2007 campaign statement with the Secretary of State on July 20, 2010.

¹ Under Government Code section 82016, subdivision (a), a "Controlled committee" means a committee that is "controlled directly or indirectly by a candidate ... or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate ... controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee."

² All further statutory references are to the Government Code unless otherwise indicated.

6. Respondents did not timely file the 2007 campaign statement for a variety of reasons. In a legal brief submitted to the Commission in June 2010, respondent Haynes claimed that the failure to file was “an oversight.” At hearing, he claimed to have no knowledge that the 2007 campaign statement had not been filed until late March 2010 when he was contacted by Grant Beauchamp with the enforcement division of the Commission.

7. Respondent Horspool did not file because he was out of the country on business, and did not return until January 30, 2008. He did not file upon his return because his computer was not functioning and needed repair. He could not file after the deadline because he had to leave town for his son’s wedding, and respondent committee no longer had access to the necessary computer software. Respondent Horspool left the country again on business after his son’s wedding and was gone “most of the time” until July 2010.

8. None of the reasons respondents offered for their failure to timely file the 2007 campaign statement justified or excused their conduct.

9. 2008 Campaign Statement. Respondents failed to file a semi-annual campaign statement with the Secretary of State for the reporting period of January 1 through June 30, 2008 by the deadline, July 31, 2008 (2008 campaign statement). They filed the 2008 campaign statement with the Secretary of State on July 20, 2010.

10. Respondents did not timely file the 2008 campaign statement for reasons similar to those which delayed the filing of the 2007 campaign statement. Respondent Haynes did not know that the 2008 campaign statement had not been filed until sometime in March 2010. Respondent Horspool was out of the country on business much of the time between early 2008 and July 2010.

11. None of the reasons respondents offered for their failure to timely file the 2008 campaign statement justified or excused their conduct.

12. Statement of Termination. Commission regulations require that a Statement of Termination be filed within certain specified timelines, depending on whether the committee has “net debts outstanding.” (Cal.Code Regs., tit. 2, §18404.1.) The longest period of time a candidate has to file the form is 24 months after his term of office has ended, if he has “net debts outstanding.” Respondent Haynes last day in the Legislature due to term limits was August 31, 2006. It is not clear when his term of office actually ended. Respondents terminated respondent committee on January 10, 2008. They filed the Statement of Termination with the Secretary of State on July 20, 2010, which is well beyond the maximum time for filing allowed by regulation. Respondents’ filing of the Statement of Termination for respondent committee was untimely.

13. Before January 2008, when respondent Horspool was overseas, he spoke with the Secretary of State’s office. He learned that “a couple accounts needed closure” but that it was more important for him to close the bank account than file the form terminating respondent committee. Respondent Horspool believes he closed the bank account for

respondent committee in January 2008. However, bank account records for the respondent committee indicate that the account was actually closed in June 2008.

14. The Statement of Termination was not filed until July 2010 for the same reasons which delayed the filing of the 2007 and 2008 campaign statements. (See Factual Findings 6, 7 and 10.)

15. None of the reasons offered by respondents for their delay in filing the Statement of Termination justified or excused their conduct.

Improper Use of Funds after Election

16. Under the Government Code, respondent committee could accept a contribution after the date of the election to pay expenses associated with holding office, but could not use the funds to contribute “to any state or local committee.” (Gov. Code § 85316, subdiv. (b).)³ On November 2, 2004, a statewide election was held, and respondent Haynes was re-elected to the Assembly. Respondent committee continued to operate after that election, but there was no evidence that it also continued to receive contributions. Nevertheless, at hearing, respondents stipulated that on November 7, 2006, respondent committee made an improper contribution to the state committee of another candidate, i.e. Guy Houston for Assembly 2006. The amount of the contribution was \$2,000.

17. In his June 2010 legal brief, respondent Haynes argued that the contribution to the Guy Houston committee, “was not too large, or unusual in any way, it simply came out of the wrong committee.” However, respondent Haynes had no other open committee available to make the contribution in November 2006. At hearing, respondent Haynes explained that it was “common practice” in the Legislature to contribute to candidates who were facing a tough election. He instructed respondent Horspool to write the check and “did not pay attention to the law.” Respondent Haynes was not aware of the provision of the Act concerning improper use of funds until the Commission brought it to his attention. Respondent Horspool did not verify that the check to the Guy Houston committee was “okay.”

³ Section 85316 provides, in pertinent part, “(a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election. (b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. ...”

18. Respondents' explanations about the contribution to the Guy Houston committee made after the November 2004 election do not justify or excuse respondents' conduct.

Aggravating Factors⁴

19. Respondent Haynes served in the Legislature for 14 years. During that time, he was required to file campaign statements and other documents required by the Political Reform Act (Act). As an experienced officeholder and filer, respondent Haynes knew or should have known the requirements of the Act. At hearing, respondent Haynes acknowledged that it was his obligation "to ensure compliance" with the provisions of the Act.

20. Respondent Horspool served as treasurer for respondent Haynes' campaign committees for approximately 16 years. In that role, respondent Horspool was responsible to know the law and file all reports and documents in accordance with requirements of the Act. Given these responsibilities and his extensive experience in filing, respondent Horspool knew or should have known the requirements of the Act.

21. Respondent Horspool received two letters from the Secretary of State in 2008, notifying him that the 2007 campaign statement was late and subject to a \$10 per day penalty until filed. He received four letters from the Secretary of State in 2008 and 2009, notifying him that the 2008 campaign statement was late and subject to a \$10 per day penalty until filed.

22. Respondents Haynes and Horspool have a history of filing campaign disclosure statements after the deadline. This was documented by numerous letters from the Secretary of State to respondent Horspool notifying him of various missing campaign disclosure statements for "Ray Haynes for Assembly" (2005 through 2006) and for "Raymond N. Haynes for State Assembly" (2003 through 2004).

23. Respondent Horspool's approach in filing campaign statements is to get the report done correctly the first time. If this means that the report is late, he accepts this as essentially a cost of doing business. He prefers to pay the \$10 per day fine for a late filing rather than file an inaccurate report on time and then later amend, because the cost of amending is higher than simply paying the fines. Respondent Haynes concurred that "fines are what happens." He also believes that it is better that the report be complete and accurate and filed late rather than filed timely but inaccurate. Respondents' approach to filing

⁴ Complainant alleged other unspecified "violations of the Act disclosed during the FPPC audit [but] not charged in this accusation" and respondent Haynes' "failure to properly report transactions made with [his] personal credit card within the required time period" as aggravating factors. These vaguely-worded "violations" were the subject of some testimony, but were not proven and will not be addressed here.

campaign statements reflects a conscious and knowing choice to file late and accept the consequences as a cost of doing business.

*Mitigating Factors*⁵

24. Respondents have not been previously prosecuted by the Commission despite respondent Haynes' 20 years serving in political officer, and respondent Horspool's 16 years as a treasurer. Respondents were cooperative with this investigation. They consulted and worked with the Commission after the audit was completed in 2009.

25. The 2007 and 2008 campaign statements were both post-election statements, which were required to be filed well after respondent Haynes left office in 2006. Those statements had no effect on any election campaign as none was pending. The amount of reportable activity on the two statements was relatively small.

26. The improper contribution was a relatively small amount.

LEGAL CONCLUSIONS

Burden of Proof and Standard of Proof

1. Evidence Code section 500 provides that, "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief ... that he is asserting." Because the Commission is alleging violations of the Act and seeking a penalty, it has the burden of proof in this matter.

2. California Code of Regulations, title 2, section 18361.5, subdivision (c), provides that the standard of proof in an administrative hearing on Commission matters is preponderance of the evidence.

The Political Reform Act

3. Section 81002 sets forth the purposes to be accomplished by the Act. Among these are the following two which are relevant here:

- (a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.

⁵ Complainant included facts in the Mitigating Factors section of the Accusation which were not subsequently proved, i.e. the total contributions and total expenditures by respondent committee, and that the improper contribution was "correctly reported on campaign statements."

[¶] ... [¶]

(f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.

4. Section 81003 requires that the Act be “liberally construed to accomplish its purposes.”

Late Filing of Semi-Annual Campaign Statements

5. Section 84200, subdivision (a), provides that all candidates and committees shall file semiannual statements each year, “no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.” This filing obligation continues until the committee is terminated by filing a statement of termination with the Secretary of State. (Gov. Code § 84214; Cal.Code. Regs., tit. 2, § 18404.)

6. Candidates, elective officers and their controlled committees must file campaign statements with the Secretary of State and their home county elections official. (Gov. Code § 84215.) The candidate must verify “to the best of his or her knowledge that the campaign statements filed by a committee he or she controls are true and complete and that the treasurer has used all reasonable diligence in the preparation of the statements.” (Cal. Code Regs., tit. 2, § 18427, subdiv. (c).) This regulation also spells out several steps which the candidate must take to oversee the treasurer’s work and to ensure that the campaign statements are properly filed.

7. The committee’s treasurer must sign and verify the campaign statement before it is filed. (Gov. Code § 81004.) The treasurer must “... use all reasonable diligence in the preparation of the statements. (Cal. Code Regs., tit. 2, § 18427, subdiv. (a).) Under section 18427, subdivision (a)(3), the treasurer is charged with taking steps “to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds and the reporting of funds.”

8. Respondents Haynes and Horspool and respondent committee had a duty to timely file the 2007 and 2008 semi-annual campaign statements for respondent committee, according to legal requirements set forth in Legal Conclusions 3 through 5. By failing to do so (Findings 5 through 11), respondents violated section 84200, subdivision (a), as set forth in Legal Conclusion 3.

Late Filing of Statement of Termination

9. Under section 84214, “Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the commission which insure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination.”

10. California Code of Regulations, title 2, section 18404.1, subdivision (b)(1), provides that candidate controlled committees formed after 2001 with no “net debts outstanding” must be terminated “no later than 9 months after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends” Under subdivision (b)(2), “Candidate controlled committees with ‘net debts outstanding,’ ... must be terminated no later than 24 months after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends”

11. Respondents Haynes and Horspool and respondent committee had a duty to file a timely statement of termination either nine months or 24 months after respondent Haynes left office, as required by the regulation set forth in Legal Conclusion 8. They failed to do so (Findings 12 through 15), and thereby violated section 84214 and the related regulation as set forth in Legal Conclusions 7 and 8.

Improper Use of Funds after Election

12. Section 85316, subdivision (b), provides in pertinent part that, “ ... an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee.”

13. Respondents Hayne and Horspool and respondent committee admitted that they made an improper \$2,000 contribution to the state committee of Guy Houston for Assembly 2006 after the November 2004 election. (Findings 16 through 18.) By making this contribution, respondents violated section 85316, subdivision (b), as set forth in Legal Conclusion 10.

Factors to be Considered by the Commission

14. Under California Code of Regulations, title 2, section 18361.5, subdivision (d), the Commission must consider all the surrounding circumstances in framing a proposed order following a determination that violations of the Act have occurred. There are six factors to be considered. Those factors and an evaluation of each are set forth below.

15. The seriousness of the violation[s]. Although failure to file timely campaign statements is a serious offense, under the circumstances of this case, the three late filing violations are less serious. Respondent Haynes left office sometime in 2006. All his filing violations occurred post-election and after he left office. The campaign disclosures in those filings would have little significance for voters as respondent Haynes was “termed out” and no longer serving in the Legislature. (Finding 25.)

The improper use of funds violation is more serious because it was a blatant violation of the law and denied information to voters participating in the November 2006 election about respondent Haynes’ support for Guy Houston.

16. The presence or absence of any intention to conceal, deceive or mislead. There was no evidence that either respondent Haynes or respondent Horspool intended to conceal, deceive or mislead by filing the three campaign statements late. They described various extenuating circumstances which impacted their ability to file timely, but did not justify or excuse the delay. (Findings 6 through 8, 10 through 11, and 13 through 15.) There was likewise no evidence that respondents intended to conceal, deceive or mislead, by improperly using funds to contribute to Guy Houston's committee in 2006.

17. Whether the violation was deliberate, negligent or inadvertent. Respondents' late filings were, in part, the result of an approach adopted by respondents Haynes and Horspool which accepted late filings as a cost of doing business. (Finding 23.) Although there were extenuating circumstances affecting the three filings, respondent Horspool knew that the campaign statements were due. By not filing timely, he effectively placed a higher priority on his overseas business. Therefore, the three filing violations were deliberate or knowing and intentional.

The violation for improper use of funds was the result of negligence because respondents Haynes and Horspool did not know the law and did not check it before contributing to Guy Houston's committee. (Finding 17.) Respondent Haynes' and respondent Horspool's lack of knowledge of the law is inexcusable.

18. 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(b). Respondent Horspool consulted with the Secretary of State's office about the Statement of Termination filing and apparently followed what he understood to be their advice. (Finding 13.) Both respondents Haynes and Horspool consulted with the Commission after the audit in 2009. (Finding 24.)

19. Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws. The late filing violations were clearly part of a pattern of late filings practiced by respondents. (Findings 21 through 23.) The improper use of funds violation was the only violation of its kind and thus, was not part of a pattern. Respondents have no record of prior violations of the Act. (Finding 24.)

20. Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure. Respondents filed the three late campaign statements in July 2010. It is not clear whether this filing was voluntary or precipitated by the probable cause hearing held at that time.

Penalty

21. Government Code section 83116, subdivision (c), provides for, "a monetary penalty of up to five thousand dollars (\$5,000) per violation [payable] to the General Fund of the state."

22. Respondents' argument for a "cease and desist order" in lieu of a monetary penalty was not availing. Such an order would have no meaning as the violations are not ongoing and respondent Haynes is no longer in public office. A monetary penalty against all three respondents, jointly and severally, is the appropriate remedy.

23. Considering the aggravating and mitigating factors (Findings 19 through 26), the violations committed, and the six factors which the Commission must evaluate, the appropriate monetary penalties are as follows:

Against Raymond N. Haynes, Jr., Raymond P. Horspool, Jr. and Haynes for Assembly 2004, jointly and severally, for the three late filing violations, \$2,000 each, for a total of \$6,000.

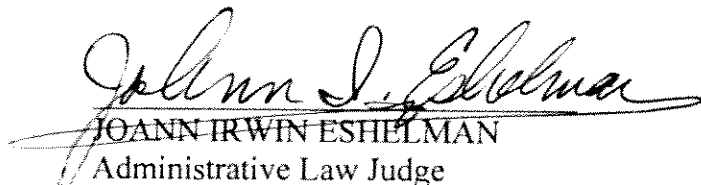
Against Raymond N. Haynes, Jr., Raymond P. Horspool, Jr. and Haynes for Assembly 2004, jointly and severally, for the improper use of funds violation, \$4,000.

24. The total penalty assessed against all respondents, jointly and severally, is \$10,000.

ORDER

Respondents Raymond N. Haynes, Jr., Raymond P. Horspool, Jr. and Haynes for Assembly 2004 shall pay the sum of ten thousand dollars (\$10,000) to the General Fund of the State of California.

Date: February 3, 2011


JOANN IRWIN ESHELMAN
Administrative Law Judge
Office of Administrative Hearings



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

EXHIBIT / WITNESS LIST

OAH 23 (rev. 2/03)

OAH No. 2010 100426

Agency No. 09/258

ALI: John Schulman

Agency / Complainant: ~~Ray Haynes~~ FPAC

Attorney / Rep.: Gary Winnik

Case Name / Respondent: Ray Haynes, Ray Hospital, Hwy 04
Attorney / Rep.: Ray Haynes

Marked For I.D.	Hearing Dates: Evidence Offered - (via Witness)	Exhibits Submitted Pursuant to Paragraph	Marked For I.D.	Evidence Offered - (via Witness)	Exhibits Submitted Pursuant to Paragraph
1	✓ Accept state cert. re: no rept.	✓	A	✓ Admin Htg. Brief	✓
2	✓ Accept state cert. forms filed 7/20/04	✓	B		
3	✓ Haynes problem by letter from SOS	✓	C		
4	✓ Campaign Mt. Haynes SoS letter 05-08-04	✓	D		
5	✓ Campaign Mt. Haynes SoS letter 08-03-04	✓	E		
6	✓ No term. form SoS cert.	✓	F		
7	✓ Bank acct. records for Haynes	✓	G		
8	✓ Gary Houston's forms SoS	✓	H		
9	✓ Haynes ltr. to FPAC 6/17/10	✓	I		
10	✓ Comp sheet from FPAC website NOT young only	✓	J		
11	✓ Accusation	✓	K		
12			L		
13			M		
14			N		
15			O		
16			P		
17			Q		

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19			Q		
20			I		
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23			W		
24			X		
25			Y		
26			Z		

COMPLAINANT WITNESSES		RELEASED	RESPONDENT WITNESSES		RELEASED
1	<i>Grant Beauchamp</i>	<input checked="" type="checkbox"/>	1	<i>Raymond Horvath Jr.</i>	<input checked="" type="checkbox"/>
2			2	<i>Mary Morley</i>	<input checked="" type="checkbox"/>
3			3	<i>Raymond Hefner Jr.</i>	<input checked="" type="checkbox"/>
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