

BEFORE THE CITY ETHICS COMMISSION  
CITY OF LOS ANGELES

In the Matter of:

JACK WEISS, JACK WEISS CITY  
COUNCIL GENERAL ELECTION  
COMMITTEE, COMMITTEE TO  
ELECT JACK WEISS LOS ANGELES  
CITY COUNCIL-5TH DISTRICT,  
JACK WEISS OFFICEHOLDER  
ACCOUNT, and JAN WASSON,  
TREASURER,

**CEC Case No. 2004-08**

**FINDING, DECISION and ORDER**

Respondents.

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**DECISION**

The Commission considered this matter at a public hearing held on November 8, 2005 at which respondent Jack Weiss, Ronald B. Turovsky, attorney for the respondents, and Deena R. Ghaly, Director of Enforcement representing the complainant, were present. After hearing argument by the parties and having fully considering the proceedings on this matter, including a hearing before Administrative Law Judge Timothy S. Thomas on September 23, 2005 and his proposed decision, the Commission makes the following Finding in support of its decision and the penalty imposed, and the following Order reflecting its decision in this matter.

**Preliminary Matters**

On April 12, 2005, the Commission referred this matter to be heard by an outside hearing officer pursuant to Los Angeles Administrative Code Section 24.1.2(e)(1). On September 23, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, in Los Angeles, California, heard this matter. Deena R. Ghaly, Director of Enforcement, represented the complainant, Executive Director of the Los Angeles City Ethics Commission, and Ronald B. Turovsky and Randall W. Keen, Attorneys at Law, represented all respondents.

During the proceedings prior to the September 23, 2005, hearing, respondents formally requested that complainant produce 20 categories of documents at trial and further requested the production be made by person(s) most qualified to testify at trial concerning 15 "subjects of examination." The documents and witnesses were proposed to be offered at trial

on the subjects, generally, of the Commission's practices regarding enforcement of similar cases, the manner in which it calculates proposed fines, and the specific settlement offer made to respondents in this matter. Complainant moved to quash the requests for production of documents and witnesses, and in the alternative moved for a continuance in order to comply with the requests. The motion to continue was denied by the hearing officer. The motion to quash the requests for the production of documents and witnesses was granted by the hearing officer.

Also, during the September 23, 2005, proceeding respondents offered Exhibit B, pages 2019 and 2020, into evidence. Complainant objected and the matter was taken under submission to allow for review of the material. The outside hearing officer overruled the objection and the cited pages were received as administrative hearsay.

Respondents offered Exhibit C, pages 40 to 52, into evidence. Complainant objected and the matter was taken under submission to allow for review of the material. The objection was overruled in part and sustained in part by the outside hearing officer. Pages 40 to 43 (up to "Recommendation No. 25") were received as administrative hearsay. The remaining pages of the exhibit are excluded as irrelevant.

The hearing officer transmitted the proposed decision and exhibits to the Commission on October 24, 2005. Complainant and respondents filed briefs in response to the proposed decision on November 3, 2005.

### **FACTUAL FINDINGS**

1. Pursuant to Los Angeles City Charter provisions, the Commission conducted an audit of respondents' records to determine whether they complied with applicable state and local laws relating to political campaign finance and disclosures requirements. As a result of the audit, complainant made a finding of probable cause sufficient to proceed by administrative action. LeeAnn Pelham, Executive Director of the Commission, filed this Accusation in her official capacity.

2. Respondent Jack Weiss (hereinafter Weiss) became a candidate for election to the Los Angeles City Council in April of 2000. He formed the Committee to Elect Jack Weiss Los Angeles City Council 5th District (hereinafter "Primary Election Committee"), which raised and spent approximately \$330,000 leading up to the primary election held April 10, 2001. Weiss placed second in a field of 11 candidates, thus earning the opportunity to face the candidate who received the most votes in the primary in a runoff election. Weiss then formed the Jack Weiss City Council General Election Committee (hereinafter "General Election Committee"), which raised and spent approximately \$370,000 in the runoff election against Weiss' opponent, Tom Hayden. Weiss won the city council seat by a margin of 369 votes on June 5, 2001. He was re-elected in 2005. Following his initial election in 2001, Weiss established the Jack Weiss Officeholder Account ("Officeholder Account"), which has been utilized to pay for expenses connected with his official duties as a councilman.

3. Weiss is a member of the State Bar of California. He graduated from Princeton University as an undergraduate in 1986, and UCLA School of Law in 1992. He was an attorney with the United States Attorney's Office from 1994 to 2000, after serving as a clerk to a United States District Court judge. He was in private practice for nine months after leaving the U.S. Attorney's Office, when he resigned to seek the position he currently holds. Weiss had never run for public office prior to his successful campaign for the Los Angeles City Council position.

4. When Weiss determined to seek the City Council seat in 2000, he retained various consultants to assist in the effort and to advise him regarding campaign rules and regulations. He retained legal counsel. He hired a professional campaign treasurer, respondent Jan Wasson (hereinafter Wasson), and a professional campaign consultant, Larry Levine (Levine). Wasson represented to Weiss that she had experience in campaign rules compliance issues. Levine has been a political consultant for 35 years and involved in 180 campaigns, including more than a dozen Los Angeles City elections. Levine assured Weiss that he was familiar with the rules and regulations governing the conduct of campaigns locally. In fact, Levine participated in drafting the campaign ethics initiative that became part of the Los Angeles City Charter.

5. Despite the steps taken to comply with applicable campaign and elected official rules and regulations, Weiss ran afoul of two provisions of the City's ethics rules. First, on 32 separate occasions<sup>1</sup> between June 12, 2000, and June 7, 2001, his campaign sent out mailers to more than 200 prospective voters in the 5th District but failed to simultaneously deposit copies of the mailers with the Commission, as required by Municipal Code section 49.7.11, subdivision (C).<sup>2</sup> Second, on eight occasions after his election Weiss failed to timely report officeholder expenditures paid for through his Officeholder Account, as required by Municipal Code section 49.7.12, subdivision (E)(3)(a), and Los Angeles Administrative Code section 24.10, subdivisions (C)(2), (C)(3) and (C)(4).<sup>3</sup> The expenditures varied in amounts from \$55.07 to \$500.00, and totaled \$1,534.81.

6. Contact with voters by direct mailings was critical to Weiss' campaign strategy, as there was not enough money available to purchase television advertising. Weiss relied on Levine to recommend particular direct mail pieces, to identify the recipients of the mailers, to manage the budget for them and to establish the timing of their delivery to voters. Levine, who managed three separate campaigns in the 2001 election period, in turn relied on Weiss' campaign manager, Susan Shaw (Shaw), for certain tasks. Early in the primary election campaign, Levine and Shaw had a conversation, apparently never memorialized in any memorandum by either party, in which Levine and Shaw discussed responsibility for

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<sup>1</sup> A 33rd document was determined to be a handout that was not mailed to voters.

<sup>2</sup> The specific mailers and dates of mailings are delineated at pages 5 and 6 of the Accusation, and are incorporated herein by this reference.

<sup>3</sup> The specific expenditures and dates the expenditures were made are delineated at pages 7 and 8 of the Accusation, and are incorporated herein by this reference.

ensuring compliance with the City's requirement that all mailers be deposited with the Commission. Unfortunately, Levine's and Shaw's memories of the conversation differ: Levine thought he had instructed Shaw to send the mailers to the Commission, and Shaw thought Levine was going to do so. Consequently, no one filed any mailer that was sent to voters with the Commission. This failure occurred 32 times.

7. City ethics rules permit a public officeholder to accept contributions for the purpose of defraying the costs associated with official business that is not permissible to pay from tax revenues. An officeholder may not accept more than \$75,000 annually into the Officeholder Account, which may be used for expenses such as staff or holiday parties, gifts that are expressions of congratulations, appreciation or condolences, and lunches at which official business is conducted. An audit of the Officeholder Account found eight expenditures averaging \$191.85 between July 2001 and October 2002 that had not been reported to the Commission as required. Weiss relied on the staff treasurer, Wasson, to correctly and completely submit the proper forms to the state and to the Commission. In fact, Wasson had reported the relevant expenditures to the state on a form 460, but had not duplicated the information to the Commission on a form 38. Form 38 requires more information, such as the nature of the government business involved in a luncheon paid for through an Officeholder Account, than the state form. Weiss was not personally aware that the local reporting requirements included a form 38. Upon learning of the violations, Weiss and Wasson filed the necessary form 38 documents pertaining to the eight expenditures.

8. As a candidate, Weiss was required to and did attend a seminar sponsored by the Commission that explained the detailed requirements of the City's campaign rules and regulations. Weiss was aware he was required to provide a copy of all mass mailers sent to voters to the Commission. In addition, Weiss received a "reminder" of the requirement in the form of a letter from the Commission in August of 2000. Weiss, however, relied upon Levine to comply with this and other provisions of the law, and at one point in time, when Levine showed Weiss a copy of one of the mailers, Weiss asked his campaign consultant if copies were being provided the Commission and received Levine's assurances that they were. There is no evidence that Weiss became aware that he was not in compliance with the rule prior to the Commission's audit of his campaign, which occurred well after the runoff election.

9. Complainant does not dispute Weiss' claim that all rules infractions at issue in this matter were inadvertent. There is no evidence of intent by Weiss or Levine or Shaw or Wasson to mislead or deceive the Commission or the citizens of the 5th District. There is no evidence that the meals or entertainment paid for by Weiss' Officeholder Account were improper or illegal. Weiss cooperated in the Commission's investigation of these matters.

10. Professor Daniel Lowenstein, who teaches at UCLA School of Law and is an expert in election law, testified on behalf of respondents. He was a principal drafter of the California Political Reform Act of 1974 and served as the first chairman of the Fair Political Practices Commission (FPPC). The original version of the Political Reform Act included a provision that required candidates to lodge copies of all mass mailers with the FPPC,

although the provision was repealed after Professor Lowenstein left the FPPC. According to the witness, the purpose of the Los Angeles City ordinance regarding mass mailings is to 1) monitor for "scurrilous" material in the hope that public disclosure will serve as a deterrent, and 2) create an archive of political campaign materials for purposes of research. Professor Lowenstein agrees that the deterrent effect of the law is "slight."

Professor Lowenstein opined that enforcement of campaign rules is properly concerned with what he refers to as "first category" offenders, that is, the small number of cases that represent the most serious or flagrant offenses of intentional misconduct. The second category, involving people who habitually fail to comply with the technical requirements, should also receive attention so that those offenders may be sent the appropriate message. The third category of offenders is comprised of those "well-intentioned" candidates who sometimes "slip up" in their efforts to comply with the law. The goal as to third category offenders should be educational, according to Professor Lowenstein. The Bipartisan Commission on the Political Reform Act of 1974, of which Professor Lowenstein was a member, advised the Governor, the Secretary of State and the legislature in its final report that

[T]he goal of enforcement should be sufficient (i) to deter serious or intentional violations and to detect and punish those who are not deterred, and (ii) to encourage conscientious and diligent effort on the part of those who have no intent to violate the Political Reform Act. Enforcement procedures and penalties that go beyond what is required to attain these primary objectives are not only unfair to those who are directly affected but also counterproductive to the Political Reform Act's most general goal of assuring an honest and freely competitive political process.<sup>4</sup>

11. Robert Stern, who graduated from Pomona College in 1966 and Stanford University in 1969, testified in rebuttal on behalf of complainant. Mr. Stern was "elections counsel" for former Secretary of State Jerry Brown and is now the president of the Center for Governmental Studies. He also participated in the drafting of model laws for campaign finance reform and was involved with Professor Lowenstein in drafting the Political Reform Act. He was general counsel to the FPPC until assuming his current duties in 1983.

Mr. Stern helped draft the LA City ordinance that was approved by the voters and has served as an unpaid consultant to the Commission. His view of the purpose of the campaign literature repository does not differ substantively from Professor Lowenstein's: 1) to provide disclosure to the public and one's opponent, and 2) to reduce "negativity" in the literature mailed to voters. He also agrees that the impact in the latter regard has been "slight."

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<sup>4</sup> See Exhibit C, page 40.

12. There is no empirical evidence available regarding the actual use to which the repository of campaign literature has been put. Complainant provided anecdotal accounts of members of the press reviewing the documents (not necessarily the Weiss fliers) "ten or twenty times" in the past six years, but no log of visitors to the repository has been maintained. Weiss' opponent in the 2001 election campaigns was aware of some of the mailers, as they were the subject of some debate and responsive mailers. However, it is not known whether Mr. Hayden was aware of all of the materials before the dates of the two elections.

## LEGAL CONCLUSIONS

1. It was established by the evidence that respondents, individually and collectively, violated provisions of the Los Angeles Municipal Code and Los Angeles Administrative Code.

2. On 32 separate occasions, respondents failed to provide copies of mass mailings sent to voters to the Commission in violation of Los Angeles Municipal Code section 49.7.11, subdivision (C).

3. On eight occasions, respondents failed to timely report officeholder expenditures paid from the Officeholder Account in violation of Los Angeles Municipal Code section 49.7.12, subdivision (E)(3)(a), and Los Angeles Administrative Code section 24.10, subdivisions (C)(2), (C)(3) and (C)(4).

4. Los Angeles City Charter section 706, subdivision (c)(3), provides for the payment of penalties of up to \$5,000 for each violation, or three times the amount that respondents failed to report to the Commission, whichever is greater. Complainant urges the imposition of fines of \$750 per violation of the mass mailing requirements, and \$150 per form 38 deficiency, or an aggregate fine of \$25,200. Respondents counter that a mere warning, or very small fine, is sufficient to punish their unintentional conduct.

5. Respondents also argue that the failure to lodge copies of campaign mailings constituted but one violation of law, not 32 violations, since the mistake was the failure of Levine and Shaw to clearly and definitively assign responsibility for the task. Respondents then argue that the authority of *Ralph's Grocery Company v. Department of Food and Agriculture* (2003) 110 Cal.App.4th 694 should apply. In that case, separate fines against appellant for overcharging for packages of certain foods were imposed for each package of food, rather than for the entire lot of packages. The court held that Penal Code section 654, which requires an act punishable by more than one provision of law be punished by only the provision carrying the more severe penalty, is applicable to administrative actions. But the *Ralph's* court also held that each offending package of food represented a separate violation and was subject to a separate fine, and is generally supportive of complainant's position in this matter.

## **Penalty**

Regardless, respondents are correct in their final argument that whether the offenses are characterized as one or many acts, the gravamen and seriousness of the offense(s), as a practical matter, influences the outcome here. Does a relatively low fine, as argued by complainant, “minimize and dilute the law, and diminish the public’s interest in full accounting,” or would a larger fine discourage would-be officeholders and ignore the educational goal in the treatment of minor violators, as posited by Professor Lowenstein?

There is no strictly right or wrong answer to either question, and no formula exists to apply to these facts. But under all of the circumstances, there would appear to be little public good that would be accomplished by the imposition of a significant fine. Complainant does not contend that Weiss, or any other respondent, intended to deceive or gain an unfair advantage by means of the violations, and no such advantage can be proved or should be assumed under these facts.

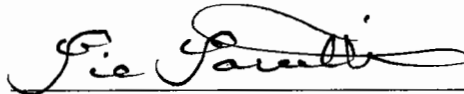
On the other hand, respondents’ suggestion that no fine be imposed is also rejected. The public faith in the system of campaign regulation requires that these violations be upheld in more than mere words that even the strongest “warning letter” would convey. Those who choose to accept campaign contributions cannot complain that the accounting of those funds is too complicated or burdensome. Those who choose to intrude in the lives of the electorate through the mail cannot fail to adhere to reasonable regulations of that activity with impunity. Strict compliance is demanded and shall be sought at every turn so that the societal goal of untainted and fair elections will be assured.

Considering the factors set forth by Los Angeles Administrative Code Section 24.1.2(e)(7)(E), the Commission determined unanimously that no monetary penalty be assessed for the respondents’ failure to timely report officeholder expenditures paid from the Officeholder Account on eight occasions in violation of Los Angeles Municipal Code Section 49.7.12(E)(3)(a), and Los Angeles Administrative Code Section 24.10(C)(2), (C)(3) and (C)(4). Additionally, the Commission determined by a vote of three to one, that the respondents be fined \$150 for each of 32 violations of Los Angeles Municipal Code section 49.7.11(C) for failing to provide copies of mass mailings sent to voters to the Commission.

## ORDER

The Commission hereby orders the respondents to cease and desist from future violations of the City's Campaign Finance Laws and to pay to the General Fund of the City of Los Angeles a fine in the sum of \$4,800, which represents \$150 for each of 32 violations of Los Angeles Municipal Code section 49.7.11(C) for failing to provide copies of mass mailings sent to voters to the Commission. Said fine shall be paid within 30 days of the adoption of this Order.

DATED: 12-8-05

A handwritten signature in black ink, appearing to read "Gil Garcetti", written over a horizontal line.

GIL GARCETTI, President  
CITY ETHICS COMMISSION