

California Fair Political Practices Commission

*1 MICHAEL BENNETT, EXECUTIVE DIRECTOR OF THE FAIR POLITICAL PRACTICES
COMMISSION, COMPLAINANT

v.

SENATOR BILL GREENE, BILL GREENE FOR SENATE COMMITTEE, I.D. NO. 744730, AND
HARVEY ENGLANDER, TREASURER, RESPONDENTS
MICHAEL BENNETT, EXECUTIVE DIRECTOR OF THE FAIR POLITICAL PRACTICES COMMISSION,
COMPLAINANT

v.

SENATOR BILL GREENE, BILL GREENE FOR SENATE COMMITTEE, I.D. NO. 744730, AND
JAMES SHELTON, TREASURER, RESPONDENTS

No. H 1/77 L-14665

No. H 2/77 L-14666

October 5, 1977

These matters were consolidated for hearing before the Fair Political Practices Commission on July 7, 1977, at Los Angeles, California. Philip V. Sarkisian, Administrative Law Judge of the Office of Administrative Hearings, presided at the hearing. All members of the Commission were present.

The Complainant was represented by Barbara Campbell, Counsel. Respondent Bill Greene appeared in person and on behalf of respondent Bill Greene for Senate Committee Respondent James Shelton appeared on his own behalf. There was no appearance by respondent Harvey Englander Evidence consisting of written stipulations and oral testimony was introduced.

DECISION

The Political Reform Act, Government Code Sections 81000 et seq. [FN1] requires candidates and committees to file periodic statements disclosing certain information about their receipts and disbursements. Among other information, every campaign statement must contain the name of each person who made contributions totaling \$50.00 or more during the period covered, as well as that person's address, occupation, employer, if any, or his principal place of business if self-employed, the amount contributed, the date the contribution was received and the cumulative amount contributed by that person. Section 84210(g). In addition, the campaign statement must identify each person to whom expenditures totaling \$50.00 or more were made during the period, including the person's name, address, the amount of the expenditure, a brief description of

the consideration for which the expenditure was made, and the name and address of the person providing the consideration if different from the payee. Section 84210(h). [FN2]

Every committee must have a treasurer. Both the candidate and the treasurer are responsible for the accuracy and completeness of campaign statements filed by any committee controlled by that candidate. Section 81004 requires the treasurer to verify that he has used all reasonable diligence in the preparation of the campaign statement and that to the best of his knowledge it is true and complete. Section 84209 requires the candidate to verify that to the best of his knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement.

This proceeding involves violations of the campaign disclosure requirements which occurred in connection with the 1975 primary and special elections for the 29th Senatorial District. Respondent Bill Greene was a candidate in the primary election held on March 4, 1975, and in the special election on April 1, 1975. The respondent Bill Greene for Senate Committee ("Greene Committee") was a "controlled committee" as defined in Sections 82013(a) and 82016. Respondent Harvey Englander was treasurer of the Greene Committee until March 18, 1975. At that time, James Shelton, an administrative assistant in respondent Greene's Assembly District office, assumed the responsibilities of committee treasurer.

*2 Pursuant to the filing schedule set forth in Section 84201, the Greene Committee was required to file campaign statements not later than thirty-three days prior to the primary election, not later than seven days prior to the primary election, not later than seven days prior to the special election, and not later than sixty-five days after the special election. Two of the four statements failed to disclose fully the committee's receipts and disbursements.

Case No. H 1/77, L-14665 pertains to the statement which was required to be filed not later than February 25, 1975, seven days prior to the primary election. On February 27, 1975, the Greene Committee filed the campaign statement in question. [FN3] The statement covered the period from January 28, 1975, through February 22, 1975, and was verified by the treasurer, Harvey Englander, and the candidate, Bill Greene. The statement failed to report a contribution of \$250 that had been given to the Committee by Carmen Warschaw by means of a check dated January 29, 1975. At the time the accusation was filed in this matter, the Committee had still failed to disclose receipt of the \$250 contribution.

Case No. H 2/77, L-14666 involves the postelection statement required to be filed not later than June 6, 1975, 65 days after the special election. The Committee filed its postelection statement on June 5, 1975. The statement covered the period from March 23, 1975, through May 30, 1975. Respondent James Shelton had assumed the responsibilities of treasurer and he verified the statement, as did the candidate. The postelection statement failed to disclose

\$6,597.30 in contributions of \$50 or more that had been received from ten individuals. The contributors, amounts and dates of the contributions were as follows:

Date Contribution Made	(\$2 (\$Contributor	(\$3 (\$Amount
March 20, 1975	Marion Laboratories	\$1,500.00
March 21, 1975	Gilbert Lindsay Organization Fund	3,000.00
March 21, 1975	Woods and Ballou	200.00
April 2, 1975	Theta Cable of California	100.00
April 3, 1975	Joseph Saunders, M.D.	200.00
April 3, 1975	Law Offices of Pizante and Gregg	\$ 250.00
April 9, 1975	The Pharmaceutical Institute	200.00
April 11, 1975	Abraham McIntosh, M.D.	125.00
April 22, 1975	C.R.E.P.A.C. (California Real Estate Political Action Committee)	500.00
On or before April 8, 1975	Operating Engineers Local Union No. 3 ("in kind" contribution of printing)	522.30
		(\$3 (\$
		\$6,597.30

*3 On January 20 and 22, 1977, the Committee filed amendments to its 1975 campaign statements reporting the \$200 contribution from the Pharmaceutical Institute and the \$200 contribution from Woods and Ballou. On May 18, 1977, the Committee filed another amended statement disclosing the \$3,000 payment from the Gilbert Lindsay Organization Fund as a "loan." At the time the accusations were filed in these matters, the committee had failed to disclose receipt of the remaining \$3,197.30.

In addition, the postelection campaign statement failed to disclose at least \$9,417.46 in expenditures made by the Committee during the period covered. Specifically, the Committee failed to disclose the following nineteen payments of \$50 or more made by the Committee.

Date	(\$2 (\$Payee	(\$3 (\$Description of Payment	(\$4 (\$Amount
March 24, 1975	U.S. Postmaster	Deposit on Postal Account	\$3,000.00
March 24, 1975	Jeanie Myers	Contract Services	500.00
March 27, 1975	Republic Bank	Purchase of Cashier's Check to Postmaster for bulk rate account	400.00

April 2, 1975	Republic Bank	Interest Payment	230.28
April 2, 1975	Kyttan Brady	Contract Services	500.00
April 3, 1975	Dale's Secret Harbor Restaurant	Fundraiser Dinner	65 6.99
April 4, 1975	Jim Shelton	Reimbursement of miscellaneous expenses	74.97
April 7, 1975	William Thomas	Photographs of Victory Party	\$ 51.00
April 11, 1975	Jeanie Myers	Contract Services	500.00
April 14, 1975	Robert Neorcis	Reimbursement of miscellaneous expenses (\$101) and loan (\$300)	401.00
April 22, 1975	Pacific Advertising Consultants	Printing (Partial Payment)	500.00
April 26, 1975	American Express	Payment of bill for Americana Lodge and Holiday Inn expenses	126.54
April 25, 1975	Jeanie Myers	Contract Services	500.00
April 25, 1975	Robert Neorcis	Contract Services	135.00
April 29, 1975	Pacific Advertising Consultants	Printing (Partial Payment)	500.00
May 1, 1975	Republic Bank	Interest on Loans	241.68
May 1, 1975	Bill Greene	Transfer of money to new bank account	100.00
March 24, 1975	Kyttan Brady	Contract Services	500.00
May 16, 1975	Pacific Advertising Consultants	Printing (Partial Payment)	500.00

			\$9,417.46

*4 In the stipulations executed by respondents and the complainant, all respondents stipulated that they had violated the Act by failing to disclose the reportable transactions described above.

The parties further stipulated that respondents did not intend to violate Section 84210 or any other provision of the Act, that the violation of Section 84210(g) by respondent Englander was isolated and inadvertent, and that the violations of Sections 84210(g) and 84210(h) by Greene, Greene Committee and Shelton were the result of negligence. We accept these stipulations and, accordingly, dispose of the cases before us in the following manner:

Pursuant to the authority granted by Sections 83116(a) and (b) of the Act, we order respondents, to the extent they have not already done so, to file amended campaign statements correcting past errors. [FN4] In addition we have determined to impose a civil penalty of \$4,000 in Case H 2/77.

In determining whether these cases are appropriate for the imposition of a civil penalty, pursuant to Section 83116(c), we considered several factors. In the first case, H 1/77, respondents' only violation was their failure to disclose a reportable contribution of \$250. With respect to Mr. Englander's violation of the law, his error was inadvertent and was not intentional or willful. Furthermore, he had no prior record of violations of the Political Reform Act or similar laws. While the failure to report a \$250 contribution is not an insignificant error, we do not believe, upon a consideration of all the surrounding circumstances, that this would be an appropriate case for imposition of a monetary penalty on any of the respondents. For these reasons, we decline to impose a civil penalty in case H 1/77.

The second case, H 2/77, presents a different situation. On March 18, 1975, respondent James Shelton became treasurer of the Committee. The postelection campaign statement verified by him and by respondent Greene failed to disclose ten contributions and nineteen expenditures of \$50 or more. Although Mr. Shelton's errors were the result of negligence, rather than any intent to conceal, deceive, or mislead, this pattern of repeated error cannot be excused on grounds of inexperience. Mr. Shelton had previously served as a committee treasurer and was familiar with the campaign reporting requirements imposed by the Political Reform Act as well as its predecessor law, the Waxman-Dymally campaign disclosure law. Respondents Greene and Shelton had filed previous campaign statements which had been audited by the Board of Equalization. Most importantly, at all times material to this proceeding, Mr. Shelton was Senator Greene's administrative assistant.

In recent years there has been considerable comment on the advantage of incumbents who maintain employees on the state payroll while these employees do "volunteer" work in political campaigns on their own time. We emphasize that there has been no allegation that there was anything illegal or improper about Mr. Shelton serving as treasurer of the Greene Committee. Nevertheless, we do not believe that the purposes of the Political Reform Act would be served by extending the same consideration to a person in Mr. Shelton's situation that we would extend to an inexperienced private citizen who participates in a political campaign. Consequently, we believe that a fine of four thousand dollars imposed on the candidate, his committee, and treasurer Shelton is appropriate in this case. Pursuant to Section 91006, the three respondents are jointly and severally liable. Payment of the fine shall be made no later than sixty (60) days after the effective date of this decision.

*5 Dated this 5th day of October, 1977.

FAIR POLITICAL PRACTICES COMMISSION

By Daniel H. Lowenstein
Chairman

FN1 All statutory references are to the Government Code unless otherwise noted.

FN2 Other sections of the Act and regulations adopted thereunder further explain these reporting requirements. See e.g., Section 82013 ("committee"); Section 82015 and 2 Cal.Adm.Code Section 18215 ("contribution"); Section 82025 and 2 Cal.Adm.Code Section 18225 ("expenditure").

FN3 As noted, the statement was required to be filed not later than February 25, 1975. The tardy filing is a separate violation of the Act which is not at issue in this proceeding. See Section 91013.

FN4 We were advised at the hearing that subsequent to the filing of the accusations, the committee filed amended campaign statements. Our order applies only to any transactions that may still not have been properly reported.

Commissioners Lowenstein, McAndrews and Remcho concur.

Commissioners Lapan and Quinn concur with the majority decision except insofar as it imposes a monetary penalty on respondent Shelton.