

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

---

IN THE MATTER OF THE )  
COMPLAINT AGAINST ) **SUMMARY OF FACTS AND**  
JAMES HAYNES ) **STATEMENT OF FINDINGS**  
)

---

William W. Roche, who refers to himself as a spokesman for a group known as Citizens to Recall Mayor Whitlock, in a complaint dated November 27, 1992, and filed with this office on December 2, 1992, alleges that Hamilton City Attorney James Haynes violated section 13-35-203, MCA. That statute reads as follows:

**Interference with officials.** A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302, MCA.

The results of an investigation of the alleged violation are set forth in the summary of facts that follows.

**SUMMARY OF FACTS**

1. James Whitlock is the former mayor of Hamilton, Montana. While serving as mayor, he was accused of sexually harassing two female City of Hamilton employees. Several legal proceedings ensued following the accusations. On July 30, 1992, the Hamilton City Council approved a settlement agreement between Whitlock and the City of Hamilton whereby Whitlock agreed to resign as mayor and the City of Hamilton agreed to pay a portion of Whitlock's legal fees incurred as a result of the various legal proceedings.

2. Ravalli County Clerk and Recorder Betty T. Lund is the election administrator for Ravalli County.

3. On Tuesday, August 18, 1992, after verifying the validity of its signatures, Lund filed a petition for the recall of Mayor Whitlock, and gave Whitlock the written notice required by section 2-16-621, MCA. The notice advised Whitlock that if he did not resign within five days, the question of his recall would be placed on a separate ballot at the time of the upcoming general election, November 3, 1992. In that event, the letter advised, Whitlock was entitled to submit a statement containing no more than 200 words setting forth reasons why he should not be recalled.

4. Lund was given a copy of a hand-written document signed by Whitlock that stated:

To: Hamilton City Council

I, James Whitlock, Mayor of Hamilton, Montana, tender my resignation effective on September 30, 1992.

The document was dated August 6, 1992, and a copy was delivered to Lund by Haynes. The witnesses interviewed during the investigation of this matter could not recall precisely on what day the resignation was received by Lund, but it was established that she had it in her possession by Monday, August 24, 1992.

5. On August 24, 1992, Lund wrote a letter to Whitlock which stated that pursuant to the provisions of section 2-16-622, MCA, he was required to resign within five days, otherwise the question would have to be placed on the general election ballot. The letter pointed out that Whitlock's letter of resignation stated his resignation was effective September 30, 1992.

6. Whitlock responded with a handwritten note to Lund dated August 25, 1992. The note did not mention the effective date of his resignation, but instead set forth a brief statement to be included with the general election ballot.

7. Lund decided to place the recall question on the general election ballot. She began providing absentee ballots to voters on September 21, 1992, including a separate ballot on the issue of the recall election of Whitlock.

8. Lund received a letter from James A. Haynes, Hamilton City Attorney, on October 21, 1992, which stated the following:

You are hereby notified the Hamilton City Council has accepted the enclosed Addendum to its Settlement Agreement with James Whitlock and you are further notified that the Hamilton City Council determined at its regularly scheduled public meeting on Tuesday, October 20, 1992, the recall election of former Hamilton Mayor, James Whitlock is unnecessary.

You are requested to withdraw this election from the November 1992 election ballot.

The addendum referred to in the letter was an addendum to the settlement agreement between Whitlock and the City of Hamilton referred to in paragraph 1, above. Pursuant to the terms of the addendum, Whitlock agreed that he could "in no event be appointed to fill any vacancy in the office of Mayor of Hamilton within the meaning of § 2-16-635, MCA."

9. After receiving the letter from Haynes, Lund believed that she had the authority to cancel the recall election. She then telephoned the Secretary of State's Office to discuss the matter. She was advised that the chief legal counsel for the office was unavailable, so she telephoned the Attorney General's Office, and

spoke with Judy Browning, who at that time was the Deputy Attorney General. While Lund did not receive an official opinion on the question from the Attorney General's Office, her conversation confirmed her own belief that she had the necessary information and the authority to cancel the recall election.

10. After her conversation with Judy Browning, Lund cancelled the recall election.

11. Lund also consulted with George Corn, the Ravalli County Attorney, during the time that the questions concerning the recall election and its cancellation were pending.

#### **STATEMENT OF FINDINGS**

The complaint alleges Haynes violated section 13-35-203, MCA, which is quoted in full on page one. To establish a violation, it would be necessary to prove that Haynes interfered with election administrator Lund "so as to prevent the election . . . from being fairly held". The facts disclosed through the investigation show there is absolutely no evidence that Haynes interfered in any way with Lund, or prevented her from holding the recall election.

Haynes simply conveyed to Lund the Hamilton City Council's determination that based on the settlement agreement it had reached with Whitlock the recall election was no longer necessary, with a request that the election not be held. The Hamilton City Council notified the election administrator of its determination; action which is required by section 13-1-304, MCA, which provides:

If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the

determination shall immediately notify the election administrator in writing. . . .


After receiving that information, Lund discussed the matter with the Attorney General's Office, and she decided, based on the information she had in her possession, that the election should be cancelled.

The facts also establish that Lund's decision to cancel the election was appropriate. Section 2-16-622(1), MCA, provides that "[i]f the officer named in the petition for recall submits his resignation in writing, it shall be accepted and become effective the day it is offered [emphasis added]". The recall election need only be held if the officer "refuses to resign or does not resign within 5 days after the petition is filed". A copy of Whitlock's written resignation was offered to Lund by August 24, 1992. Thus, under the statute Whitlock's resignation was effective on the day it was offered, notwithstanding the qualifying language he included in the resignation which purported to delay the effective date until September 30, 1992.

Section 1-1-306, MCA, provides that "[t]he time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded [emphasis added]". In this case, the last day in the five-day computation fell on Sunday, August 23, 1992, which under Montana law is a holiday. § 1-1-216(1)(a), MCA. Excluding August 23, 1992 from the computation, Whitlock had until August 24, 1992 to offer his resignation, and he did so by that date.

Based on the facts and these findings, I conclude that no further action is warranted against James Haynes.

DATED this 10<sup>th</sup> day of March, 1993.



---

ED ARGENBRIGHT  
Commissioner of Political Practices