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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

In Re: Barry Rutenberg

Case No.: FEC 02-301

F.O. No.: DOSFEC 03-146 W

ORDER OF NO PROBABLE CAUSE

THIS CAUSE came on to be heard by the Florida Elections Commission at its regularly scheduled meeting held on May 21 and 22, 2003, in Tallahassee, Florida.

After considering the Statement of Findings and the recommendations of counsel, the Commission finds that there is no probable cause to believe that the Respondent violated:

Section 104.091, Florida Statutes, prohibiting a person from knowingly aiding, abetting, or advising another person to violate a provision of the Florida Election Code.

Therefore, it is **ORDERED** that this case is **DISMISSED**.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on May 30, 2003, in Tallahassee, Florida.

Chance Irvine

Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399-1050

NOTICE OF RIGHT TO APPEAL

Pursuant to Section 120.68, Florida Statutes, the Respondent may appeal the Commission's final order to the appropriate district court of appeals by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeals. The notice must be filed within 30 days of the date this final order was filed with the Clerk of the Commission and must be accompanied by the appropriate filing fee.

Copies furnished to:

Phyllis Hampton, General Counsel
John French, Attorney for Respondent
Tom Garner, Complainant
Dept. of State, Division of Elections, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 02-301

Respondent: Barry Rutenberg

Complainant: Tom Garner

On September 10, 2002, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 104 or 106, Florida Statutes. The Commission staff investigated the allegations and based on the facts and conclusions of law contained in the Complaint, the Report of Investigation, and this statement, the staff recommends that there is **no probable cause** to charge the Respondent with violating:

Section 104.091, Florida Statutes, prohibiting a person from knowingly aiding, abetting, or advising another person to violate a provision of the Florida Election Code.

Summary of Facts and Conclusions of Law.

1. Respondent is Barry Rutenberg. In the 2000 calendar year, he served as treasurer of the Florida Home Builders Association (FHBA).

2. Complainant is an environmental activist and a resident of Escambia County; he filed similar complaints in September 2001 against various building-industry related CCEs. Complainant is the leader of a Pensacola-based environmental group entitled Neighbors for a Quality Future.

3. All dates regarding campaign treasurer's reports (CTRs) contributions and expenditures are for the 2000 calendar year unless stated otherwise. In addition, where the acronym "PAC" or the phrase "political committee" is used, the entity is actually a CCE.

I. Sections 104.091, Florida Statutes.

4. The Commission staff investigated whether Respondent violated Section 104.091, Florida Statutes, by knowingly aiding, abetting,¹ or advising another person to violate Section 106.08(1), Florida Statutes.

¹ Abet is a French word which combines "a" with "beter"—to bait or excite an animal. Abettor means a person who commands, advises, instigates, or encourages another to commit a violation of the code. *Black's Law Dictionary*, 5 (6th ed.1990)

5. Complainant alleged that Respondent colluded with one of the Florida Home Builders Association's (FHBA) directly sponsored CCE's, the Florida Home Builders Association PAC (FHBA CCE), to funnel financial support to "targeted" legislative "pro-building industry" candidates in the 2000 elections. It is Complainant's belief that this was done to circumvent the \$500 contribution limit.

6. The FHBA is the statewide association and it directly sponsors four CCEs, one of which is the FHBA CCE. In addition, the FHBA has 29 homebuilder associations in seven geographic regions as its "local affiliates." The local associations are all not for profit corporations. Many of the local associations have committees of continuous existence, which serve as the associations' political arms.

7. The FHBA is also a not-for-profit corporation registered with the state Division of Corporations. According to its web-site, www.fhba.com, FHBA proclaims that it is a "15,000 corporate-member professional and trade association representing the residential construction industry in Florida." The FHBA was established in 1947 "to represent the interests of Florida's home building and remodeling industry professionals along with 'associate' members allied with the industry." The FHBA CCE registered with the Division of Elections on July 21, 1978, and is the oldest CCE that is directly sponsored by the FHBA. According to its constitution and bylaws, the purpose of the committee is "to promote sound and stable economic growth and to promote the improvement of state government in Florida."

8. The "2002 Handbook for Committees" defines a CCE as "any group, organization, association or other such entity which is certified pursuant to the provisions of Section 106.04, Florida Statutes." One of the differences between a CCE and a political committee (PAC) is that contributions to a PAC, supporting or opposing one or more candidates or supporting or opposing issues and candidates, is limited to \$500 per election. A CCE does not have this limitation. An individual contributing to a PAC is limited to giving \$500 per election; an individual or "member" contributing to a CCE is allowed to contribute any amount to a CCE as long as 25% of the CCE's income is derived from dues.

9. Complainant reported that the FHBA CCE transferred \$92,000 to its local associations' PAC's during a two-month time period in August and September 2000. The following chart outlines these contributions:

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Date	Amount	Name of CCE
August 1 st	\$3,000 each	BACPAC, BACPC, BUGG, CEG, CBCBG, FSG, GCAJ, HBALC, HFT, HOPEPAC, HOPECCE, LBIA, NFBCBG, PCBA
August 17 th	\$4,000 each	CEG, FAH, GCAJ, FSG, HBAB
September 13 th	\$2,000* \$3,000** \$4,000***	BACPC*, CBCBG*, HBAB*, HBALC*, NFBCBG**, PCBA**, CEG***, FAH***, FSG***, GCAJ***

BACPAC is Bay Area Construction Political Action Committee located in Hillsborough County;
 BACPC is Builders & Associates Combined PAC located in Hernando County;
 BUGG is Business United for Good Government located in Pinellas County;
 CEG is Citizens for Economic Growth located in Palm Beach County;
 CBCBG is Charlotte Builders and Contractors for Better Government located in Charlotte County;
 FSG is Floridians for Sensible Growth located in Palm Beach County;
 GCAJ is Gold Coast Alliance for Jobs located in Palm Beach County;
 HBALC is Home Builders Association of Lake County located in Lake County;
 HFT is Housing for Tomorrow located in Volusia County;
 HOPEPAC is Home Ownership Possibilities for Everyone PAC located in Escambia County;
 HOPECCE is Housing Opportunities for People Everywhere PAC located in St. Lucie County;
 LBIA is Lee Building Industry Association located in Lee County;
 NFBCBG is Northeast Florida Builders Committee for Better Government located in Duval County;
 PCBA is Polk County Builders Association located in Polk County;
 FAH is Families for Affordable Housing located in Palm Beach County; and
 HBAB is Home Builders Association of Brevard located in Brevard County.

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10. FHBA CCE contributed in its own name to 19 legislative candidates. The following chart shows contributions the FHBA CCE made to these candidates.

Office sought	Name of candidate	Date(s) and amount(s) of contributions rec'd from FHBA CCE
Senate District 3	Janegale Boyd	\$500 on 08/24/00; and \$500 on 09/18/00
Senate District 9	Lee Constantine	\$500 on 08/22/00
Senate District 11	Anna Cowin	\$500 on 08/11/00; \$500 on 09/28/00; and \$500 on 10/09/00
Senate District 13	Victor Crist	\$500 on 08/11/00; \$500 on 09/28/00; and \$500 on 10/09/00
Senate District 15	Harry Goode	DID NOT RECEIVE FUNDS FROM FHBA CCE.
Senate District 21	Doug Jamerson	\$500 on 08/07/00
Senate District 1	Durrell Peaden	\$500 on 08/24/00; \$500 on 09/18/00; and \$500 on 10/09/00
Senate District 27	Ken Pruitt	DID NOT RECEIVE FUNDS FROM FHBA CCE.
House District 67	Michael Bennett	\$500 on 08/07/00
House District 50	Kim Berfield	\$500 on 08/07/00; \$500 on 09/18/00; and \$500 on 10/09/00
House District 65	Marsha Bowen	\$500 on 08/07/00; \$500 on 09/18/00; and \$500 on 10/09/00
House District 106	Joseph Geller	\$500 on 08/24/00
House District 23	Ed Jennings	\$500 on 08/07/00
House District 35	James Kallinger	\$500 on 08/07/00; \$500 on 09/18/00; and \$500 on 10/09/00
House District 117	Carlos Lacasa	DID NOT RECEIVE FUNDS FROM FHBA CCE.
House District 94	Matthew Meadows	\$500 on 08/07/00; and \$500 on 09/18/00
House District 4	Jerry Melvin	\$500 on 08/15/00
House District 71	Jerry Paul	\$500 on 08/07/00
House District 21	Joe Pickens	\$500 on 08/07/00; and \$500 on 10/09/00

11. Complainant reported in his complaint narrative that the local CCEs were given funds from FHBA CCE to contribute to the campaign of certain legislative candidates that were targeted for contributions from the FHBA CCE, thus allowing FHBA CCE to circumvent the campaign contribution limits contained in Section 106.08(1), Florida Statutes.

12. Many of the "targeted" legislative candidates received contributions from the FHBA CCE and the local homebuilder CCEs. However, Commission staff could find no evidence that there was collusion between the FHBA and the local homebuilder CCEs to violate Section 106.08(1), Florida Statutes.

13. Commission staff requested any and all records of communication between the various local CCEs, their local home builder associations, and FHBA and FHBA CCE for the months of July 1st through November 30th in an attempt to determine whether there was communication regarding FHBA CCE's contributions to the local CCEs. The following communications are the only communications staff could locate.

14. Joseph Narkiewicz, the keeper of the records for the Builders Association of Greater Tampa, Inc., responded on behalf of Commission staff's request. Mr. Narkiewicz stated that there are "no written notes, messages, e-mails, or anything else that I can find that deals with the subject." However, Mr. Narkiewicz did not address whether or not any communication records ever existed.

15. In a "Memo" dated July 27th, Wayne Bertsch, 2000 FHBA political affairs coordinator, communicated with Michael Reitmann, executive officer of the Lee County Building Industry Association, whose directly sponsored CCE is the Lee Building Industry Association PAC. Mr. Bertsch stated that the FHB-PAC (also known as the FHBA CCE) requests a \$500 contribution to candidate Harry Goode. The message concludes with "Please act immediately and mail the contribution directly to the campaign. If you have any questions or problems please contact me, we are relying on this money being sent before Friday, August 4, 2000."

16. On August 8th, Wayne Bertsch faxed Michael Reitmann. This particular facsimile includes the names and addresses of five legislative candidates targeted by the FHBA CCE. The message concludes with "Please forward the contributions to my attention at the FHBA office. Thank you in advance for your assistance."

17. In a "Memo" to Michael Reitmann, dated August 25th, Wayne Bertsch asks that a check in the amount of \$500 be prepared for legislative candidate Lee Constantine. The memo continues with "Please have this check overnighted to me Monday, August 28." The memo concludes with "Thank you in advance for assistance. Feel free to call me at 850-508-8894 if you have any questions."

18. In an e-mail message from Wayne Bertsch to Michael Reitmann, dated October 6th, Mr. Bertsch stated, "I need \$500 checks for the following candidates" and includes the name and addresses for three legislative candidates targeted by the FHBA CCE. The message concludes with "Please forward these checks to FHBA to my attention. You have been a great help this election cycle! Keep up the good work. Wayne."

19. One of the records of communication is a facsimile from Wayne Bertsch to Jean Kaminsky dated September 8th. Ms. Kaminsky is the executive officer of the Home Builders Association of Lake County, whose directly sponsored CCE is the Home

Builders Association of Lake County PAC. This particular facsimile includes the names and addresses of four legislative candidates targeted by the FHBA CCE. The message concludes with "Please forward the contributions to my attention at the FHBA office. Thank you in advance for your assistance.

20. Another communication record is that of an electronic mail message, dated September 14th, from Wayne Bertsch to David Peaden, executive officer of the Building Industry Association of West Florida, Inc., located in Escambia County, whose directly sponsored CCE is H.O.P.E. PAC. This particular facsimile begins with "FHBAPAC requests \$500 contributions for the following:" and includes the names and addresses of three legislative candidates targeted by the FHBA CCE. The message concludes with "In order to not screw up the your upcoming Treasurers report, you can cut the checks on Monday and then please overnight to FHBA to my attention."

21. Commission staff requested and reviewed many of the local associations and their corresponding CCEs meeting minutes from July 1st through November 30th. Commission staff sought to determine whether or not there was discussion regarding the local CCE's support of the candidates whose name appeared on the "targeted" candidate list.

22. Commission staff also obtained meeting minutes from the FHBA CCE. One particular document is the "minutes" from the committee's "Summer Builders Conference," held in Orlando, Florida on July 20, 2000. According to the "minutes," the FHBA's political affairs director Wayne Bertsch discussed the targeted candidates' list.

II. Conclusion.

23. While the building industry in Florida was certainly "targeting" certain legislative candidates in the 2000 elections, Commission staff has not located any evidence to indicate that the Respondent was involved in activities which violated Section 104.091 or 106.021(3), Florida Statutes, namely colluding with others to violate campaign contribution limitations by giving money intended for candidates to others to donate to the candidates so that the \$500 campaign contribution limitation could be exceeded.

24. Florida, unlike other states, has two types of committees: CCEs and political committees. What a political committee may do is quite different than what a CCE can do. There is no limit under the law as to how many CCEs a group, organization, association, or other such entity which is involved in making contributions to candidates, political committees, or political parties may form. Thus, the FHBA could form multiple CCEs to contribute to candidates.

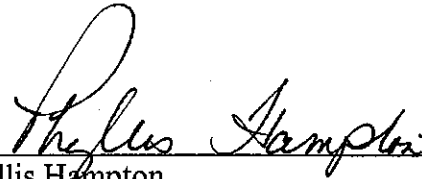
25. A CCE may also accept contributions of more than \$500, including transfers from other CCEs, as long as at least 25% of its income comes from dues of its members. Thus, the transfer of funds of more than \$500 from FHBA CCE to a local affiliated CCE is not a violation of the election laws as long as at least 25% of the CCE's income comes from dues of its members.

26. In addition, there are no restrictions on a CCE that prohibit it from informing others which candidates it is supporting and in encouraging others to support those candidates. Thus, the FHBA CCE could encourage the local affiliates to support candidates who were viewed as being pro-building industry and could ask the local affiliates to send campaign contributions to those candidates. It also is not a violation of Florida law to request that the contributions be sent to a particular person so the contributions may be "bundled" together for delivery, allowing the candidate to know how much support an industry is giving that candidate.

27. There is no evidence that the FHBA CCE transferred money to the local CCEs with the understanding that it would go to particular candidates thus allowing FHBA CCE to violate the \$500 campaign contribution limit.

28. Under these circumstances, I recommend that the Commission find no probable cause that the Respondent violated Section 104.091, Florida Statutes.

Respectfully submitted on April 15, 2003,

A handwritten signature in cursive script, reading "Phyllis Hampton", is written over a horizontal line.

Phyllis Hampton
General Counsel

Copy furnished to:

Barbara M. Linthicum, Executive Director
Mark W. O'Brien, Investigator Specialist