

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,
PETITIONER,

v.

AGENCY CASE No.: FEC 05-132
F.O. No.: DOSFEC 06-006

MARY BETH McDONALD,
RESPONDENT.

_____ /

CONSENT ORDER

The Respondent, Mary Beth McDonald, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. The Respondent, Mary Beth McDonald, is a member of the Vero Beach City Council.
2. On October 14, 2005, the staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.
3. On December 2, 2005, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

On March 4, 2005, Respondent violated Section 106.1439(1), Florida Statutes, by failing to mark prominently the electioneering communication with the required disclaimer, when the Respondent paid for and published an electioneering communication that failed to contain a disclaimer stating, "Paid electioneering communication paid for by (Name and address of person paying for the communication)."

Count 2:

On March 4, 2005, Respondent violated Section 106.1439(1), Florida Statutes, by failing to mark prominently the electioneering communication with the required disclaimer, when the Respondent paid for and published an electioneering communication that failed to contain a disclaimer stating, "Paid electioneering communication paid for by (Name and address of person paying for the communication)."

4. On December 2, 2005, a copy of the Order of Probable Cause was mailed to Respondent.

5. The Respondent and the staff stipulate to the following facts:

A. The Respondent is a member of the Vero Beach City Council. Respondent was first elected to the city council in 2004. She was not a candidate in the March 8, 2005 election. On March 9, 2005, the day after the election, Respondent was elected by the other members of the city council to serve as the Mayor of Vero Beach.

B. The Complainant was a candidate for re-election to the Vero Beach City Council. She was defeated in the March 8, 2005 election. Complainant was first elected to the city council in 2003.

C. Two advertisements were published in the *Hometown News*, a local newspaper, on March 4, 2005, four days prior to the election. The advertisements appeared in the same edition as a full-page advertisement supporting Complainant's election.

D. The first advertisement was a full-page ad that reproduced a copy of the minutes of the Vero Beach City Council meeting held on November 10, 2004, addressing the possibility of a Gloria Estefan concert. Complainant asserted that in the advertisement, Respondent "altered the minutes of the concert meeting by highlighting the portions she desired to be emphasized in order to place further blame on the complainant." The advertisement concluded with the statement, "SPONSORED BY DR & MRS JOHN W. McDONALD (the content has not been altered)."

E. The second advertisement printed Complainant's name at the top and included the disclaimer, "Paid Advertisement." The advertisement was a copy of a "Memorandum" from Complainant to "David Mekarski, City Manager," and "Dennis Greene, GMS," regarding "Billing for hurricane repairs." Complainant asserted that this advertisement was taken out of context and focused on her questioning the city manager concerning the cost of plywood used on her home in preparation for Hurricane Jeanne.

F. In a telephone interview, Respondent acknowledged that she paid for the two advertisements. Respondent said that she published the full-page advertisement in response to Complainant's comments on television and in the newspaper that Respondent voted against the concert being held. Respondent added that she felt that Complainant had been "lying" about her. Respondent also said that she published the memorandum advertisement because Complainant allegedly had said that she did not know about plywood that had been used to repair her house as a result of a hurricane.

G. When asked about the statements at the bottom of each advertisement, Respondent said that she did not include the statements as part of the advertisements when each advertisement was printed. She added that she thought the newspaper called her about the full-page advertisement, and she told the newspaper to indicate that she and her husband sponsored it. She further added that she did not recall having any conversation with the newspaper about the statement in the memorandum advertisement.

H. Janice Knox of the *Hometown News* said that the newspaper added the statement "Paid Advertisement," on the memorandum advertisement because the newspaper did not want the reader to believe that it was an editorial. She added that she was not sure about the statement used in the full-page advertisement but that she thought Respondent told the newspaper who was sponsoring the advertisement.

I. Section 106.011(18)(a), Florida Statutes, defines an "electioneering communication" as follows:

"Electioneering communication" means a paid expression in any communications media prescribed in subsection (13) ...that:

1. Refers to or depicts a clearly identified candidate...without expressly advocating the election or defeat of a candidate....
2. ... is targeted to the relevant electorate...1,000 or more persons in the geographic area the candidate would represent if elected....
3. ... is published after the end of the candidate qualifying period....
4. ... is published...120 days before the date of the election....

Subsection (13) contains the following definition:

“Communications media” means broadcasting stations, **newspapers**, magazines, outdoor advertising facilities, printers, direct mailing companies, advertising agencies, the Internet, and telephone companies;... (emphasis added)

J. Section 106.1439(1), Florida Statutes, states that an electioneering communication must prominently contain the following disclaimer:

Paid electioneering communication paid for by (Name and address of person paying for the communication).”

K. The two advertisements published in the *Hometown News* on March 4, 2005, were electioneering communications.

L. Respondent possesses a copy of Chapter 106, Florida Statutes, as well as a copy of the candidate’s handbook, and she has read the law and the handbook.

CONCLUSIONS OF LAW

7. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

8. The Commission staff and the Respondent stipulate that all elements of the offenses charged in the Order of Probable Cause can be proven by clear and convincing evidence.

ORDER

9. The Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

10. The Respondent shall bear his own attorney fees and costs that are in any way associated with this case.

11. The Respondent understands that before the Consent Order becomes final

agency action, the Commission must approve it at a public meeting. After approval, the Consent Order constitutes final agency action of the Commission on the violations listed in the Order of Probable Cause.

12. The Respondent voluntarily waives the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

13. This Consent Order is enforceable under Sections 106.265 and 120.69, Florida Statutes. The Respondent expressly waives any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida, and Respondent shall be responsible for all fees and costs associated with enforcement.

14. If the Commission does not receive the signed Consent Order within 20 days of the date you received this order, the staff withdraws this offer of settlement and will proceed with the case.

15. Payment of the civil penalty is a condition precedent to the Commission's consideration of the Consent Order.

PENALTY

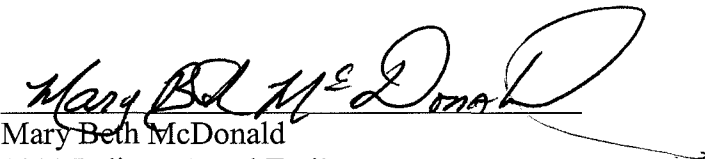
WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

A. Respondent has violated Section 106.1439(1), Florida Statutes, on two occasions for making an expenditure for an electioneering communication and failing to mark prominently the electioneering communication with the required disclaimer. Respondent is fined \$500 for each of the two counts for a total of \$1,000.

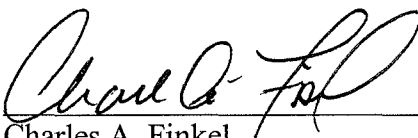
Therefore it is

ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of \$1,000, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050.

The **Respondent** hereby agrees and consents to the terms of this Consent Order on December 16,, 2005.


Mary Beth McDonald
1011 Indian Mound Trail
Vero Beach, Florida 32963

The **Commission staff** hereby agrees and consents to the terms of this Consent Order on December 19, 2005.


Charles A. Finkel
General Counsel
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on February 16-17, 2006 at Tallahassee, Florida and filed with the Clerk of the Commission on February 24, 2006, in Tallahassee, Florida.

Chance Irvine

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

Copies furnished to:

Charles A. Finkel, General Counsel
Mary Beth McDonald, Respondent
Lynne A. Larkin, Complainant
Vero Beach City Clerk, Filing Officer