

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

In Re: Robert Carman

Case No.: FEC 99-168

F.O. No.: DOSFEC 01-189

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 9 and 10, 2001, in Orlando, 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, and

No probable cause to believe that the Respondent violated Section 106.08(5), Florida Statutes, prohibiting a person from making a contribution through or in the name of another in any election.

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 22, 2001, in Tallahassee, Florida.



Susan A. MacManus, Chairman
Florida Elections Commission
Room 2002, The Capitol
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:

David F. Chester, Assistant General Counsel
Harrison T. Slaughter, Jr., Attorney for Respondent
Robert O. Carman, Respondent
Mark Herron, Esquire, Complainant
Department of State, Division of Elections, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 99-168

Respondent: Robert Carman

Complainant: Mark Herron

On June 18, 1999, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated a section or sections of the Florida Election Code that the Commission has jurisdiction to investigate and to determine violations. 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 the Commission find 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, and

No probable cause to believe that the Respondent violated Section 106.08(5), Florida Statutes, prohibiting a person from making a contribution through or in the name of another in any election.

Summary of Facts and Conclusions of Law

1. Respondent was the President and CEO of Wuesthoff Hospital from September 7, 1981 to April 29, 1999.
2. Complainant is an attorney specializing in election law and counsel for Respondent's former employer, Wuesthoff Hospital.¹
3. The Commission staff investigated whether the Respondent violated Section 104.091, Florida Statutes, when he, and his hospital staff (at his request), made contributions to various political candidates for which he authorized reimbursement from hospital funds.
4. The evidence (including Respondent's responses to staff's questions) shows that Respondent made contributions to political candidates for which he was reimbursed by the hospital.
5. The evidence (including Respondent's responses to staff's questions) shows that Respondent asked his staff members to make contributions—which they did—to political candidates for which the hospital would—and did—reimburse them.

¹ Wuesthoff Hospital, Inc., is the Respondent in FEC 99-172

6. Respondent asserts that the contribution/reimbursement system was created at the behest of members of the hospital's board of directors, and that board members were aware that the system was in operation. The hospital, through counsel (Complainant), denies this. However, whether the board was aware or not, there is insufficient evidence to find probable cause that Respondent violated Section 104.091.

7. In order for a violation of Section 104.091 to occur, the Respondent must "knowingly aid, abet, or advise the violation" of the Election Code. (Emphasis added.) Section 106.37 states, "[a] person knows that an act is prohibited...if the person is aware of the provision of this chapter which prohibits...the act, understands the meaning of that provision, and performs the act that is prohibited...." (Emphasis added.)

8. While there is evidence that Respondent was "aware of" the provision of the *federal tax code* that prohibits tax-exempt corporations from making political contributions, there is no evidence that Respondent was aware of Section 104.091.² As Section 104.091 requires a violation to be "knowingly" committed, and Section 106.37 defines knowledge (in part) as an "awareness" of the section of the Election Code being violated, there is insufficient evidence to find probable cause that the Respondent violated Section 104.091.³

9. Therefore, staff recommends that the Commission find no probable cause to believe that Respondent violated Section 104.091.

10. The Commission staff investigated whether the Respondent violated Section 106.08(5), Florida Statutes, when instituting and participating in the reimbursement system outlined above.

11. Section 106.08(5) states, "a person may not make any contribution through or in the name of another...." For there to be a violation of Section 106.08(5), the money contributed must have belonged to the Respondent. Even if one accepts the facts as laid out by Complainant, no evidence exists that Respondent violated Section 106.08(5).

12. Respondent contributed, in his own name, money given to him by the hospital. He did not give in another's name—he gave in his own. He did not give through another—the hospital gave through him.⁴ The acts performed by Respondent are not outlawed by the Election Code.

13. Hence, staff recommends that the Commission find no probable cause to believe that Respondent violated Section 106.08(5).

² Though the Legislature could easily have written the relevant portion of Section 106.37 to read, "[a] person knows that an act is prohibited...if the person is aware of the law which prohibits...the act," they did not. Therefore, the words "provision of this chapter" must be given effect.

³ While Respondent may have been reckless in not consulting the Election Code prior to instituting the reimbursement system, and, therefore, his conduct may have been "willful," the Legislature required a higher, "knowing," mental state when enacting Section 104.091.

⁴ See FEC 99-172.

Respectfully submitted,



David F. Chester
Assistant General Counsel

April 12, 2001

Date

Copy furnished to:

Barbara M. Linthicum, Executive Director
Margie B. Wade, Investigator Specialist