

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA

Florida Elections Commission,

Petitioner,

v.

Agency Case No.: FEC 11-016

F.O. No.: FOFEC 12-004W

Mark L. McCarty,

Respondent.

\_\_\_\_\_ /

**CONSENT FINAL ORDER**

The Respondent, Mark L. McCarty, 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. On August 10, 2011, the staff of the Commission issued an Amended Staff Recommendation, recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.

2. On August 24, 2011, 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 or about November 1, 2010, Respondent violated Section 106.08(3)(a), Florida Statutes, by failing to return or using a contribution received on the day of the election or less than five days before the election, when Respondent had opposition in an election on November 2, 2010, and failed to return a contribution received on November 1, 2010, from Mark McCarty Carpentry, Inc. for \$300.

**Count 2**

On or about November 4, 2010, Respondent violated Section 106.08(3)(b), Florida Statutes, by failing to return or using a contribution received after the date the candidate withdraws, becomes unopposed, is eliminated or elected, when Respondent was elected on November 2, 2010, and failed and/or used a contribution received on November 4, 2010, from Mark McCarty Carpentry, Inc. for \$250.

**Count 3**

On or about November 9, 2010, Respondent violated Section 106.08(3)(b), Florida Statutes, by failing to return or using a contribution received after the date the candidate withdraws, becomes unopposed, is eliminated or elected, when Respondent was elected on November 2, 2010, and failed and/or used a contribution received on November 9, 2010, from Mark McCarty Carpentry, Inc. for \$250.

**Count 4**

On or about January 31, 2011, Respondent violated Section 106.11(5), Florida Statutes, prohibiting a candidate who withdraws his candidacy, becomes unopposed, is eliminated or elected to office from expending funds in his campaign account for purposes other than those listed in Section 106.11(5)(a)-(d), Florida Statutes, when he made a \$385.89 prohibited expenditure to the City of Sanford for copies of public records.

**Count 5**

On or about January 31, 2011, Respondent violated Section 106.19(1)(d), Florida Statutes, prohibiting a person from making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes, when he made a \$359.89 expenditure to the City of Sanford.

3. On August 31, 2011, the Respondent was served by certified mail with a copy of the Order of Probable Cause.
4. The Respondent and the staff stipulate to the following facts:
  - a. The Respondent was a candidate for the Sanford City Commission in the November 2, 2010 election.

- b. Respondent received contributions from his own businesses after, and within five days of, the election.
- c. Respondent made an expenditure to the City of Sanford from his campaign account after the conclusion of his campaign

### **CONCLUSIONS OF LAW**

- 5. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.
- 6. The Commission staff and the Respondent stipulate that the Commission could prove the facts set forth in paragraph four above by the required burden of proof.

### **ORDER**

- 7. The Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.
- 8. The Respondent shall bear his own attorney fees and costs that are in any way associated with this case.
- 9. The Respondent understands that before the Consent Order becomes final agency action, the Commission must approve it at a public meeting. The Commission will consider the Consent Order at its next available meeting.
- 10. 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.
- 11. 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.

12. If the Commission does not receive the signed Consent Order within 15 days of the date Respondent receives this order, the staff withdraws this offer of settlement and will proceed with the case.

13. Payment of the civil penalty by money order, cashier's check, or attorney trust account check 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 106.08(3), Florida Statutes, on three occasions. Respondent is fined \$50 for each of the three counts, for a total of \$150.

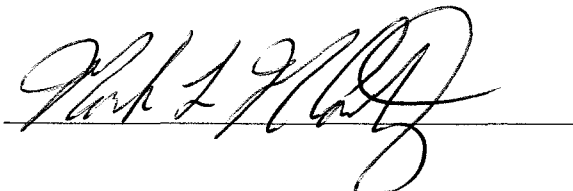
B. Respondent has violated Section 106.19(1)(d), Florida Statutes, on two occasions. Respondent is fined \$50 for each of the two counts, for a total of \$100.

Therefore it is

**ORDERED** that the Respondent shall remit to the Commission a civil penalty in the amount of \$250, inclusive of fees and costs. The civil penalty shall be paid by money order, cashier's check, or attorney trust account check, and sent 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 Order on


December 15<sup>th</sup>, 2011.

  
\_\_\_\_\_

Mark L. McCarty  
459 South Summerlin Avenue  
Sanford, Florida 32771

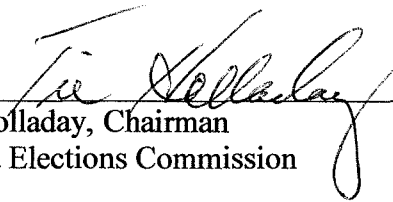
The **Commission staff** hereby agrees and consents to the terms of this Consent Order on

December 27, 2011.



Eric M. Lipman  
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 27 2012.



Tim Holladay, Chairman  
Florida Elections Commission

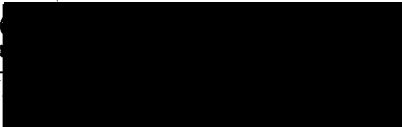
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Date

Copies furnished to:

Eric Lipman, General Counsel  
Mark L. McCarty, Respondent

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Official Check

64-79/611

2130249105

Fraud Protected  
by Positive Pay

Purchaser

Mark McCarty

Date

Dec. 19, 2011 \$

Initials ~~167073~~ 215580

PAY

\*\*\*\*\$250.00\*\*\*\*

\*\*250.00\*\*

To the  
Order  
of

Florida Election Commisson

SunTrust Banks, Inc. by its Authorized Agent  
SunTrust Bank



*M. Sanchez*  
Authorized Signature

MP

