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**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

STATE OF FLORIDA
ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,
Petitioner,

vs.

FEC 96-183
DOAH Case No. 98-1256
F.O. No.: DOSFEC 98-277-W


CATHERINE KING,
Respondent.

FINAL ORDER

THIS CAUSE came on to be heard before the Florida Elections Commission at a regularly scheduled meeting held in Miami, Florida, on December 2, 1998, pursuant to a Recommended Order entered by Administrative Law Judge P. Michael Ruff on July 10, 1998.

The Commission hereby accepts the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge. Said Recommended Order is hereby declared to be and this Order becomes the Final Order of the Florida Elections Commission.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on December 11, 1998, in Tallahassee, Florida.


Valerie M. Crotty, 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 appeal by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeal. The notice must be filed within 30 days of the date this Final Order was filed and must be accompanied by the appropriate filing fee.

Attachment: Statement of Findings

Copies furnished to:

Kristi Reid Bronson, Assistant General Counsel
J. David Holder, Attorney for Respondent
Harry Riley, Complainant
Nellie Thompson, Filing Officer

STATEMENT OF FINDINGS

Case Number: FEC 96-0183

Respondent: Catherine King

Complainant: Harry Riley

On October 8, 1996, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, Florida Statutes. The Commission investigated whether the Respondent violated the following statutes:

Section 106.07(5), Florida Statutes, prohibiting a campaign treasurer, candidate or political committee chairman from certifying to the correctness of a campaign treasurer's report that is incorrect, false, or incomplete;

Section 106.19(1)(b), Florida Statutes, failure of a person to report a contribution required to be reported by this chapter; and

Section 106.19(1)(c), Florida Statutes, prohibiting a person from falsely reporting, or deliberately failing to include any information required by this chapter.

Summary of Facts and Conclusions of Law

1. The Respondent was the Clerk of the Court for Walton County who unsuccessfully sought re-election to the post in 1996. The Complainant is a citizen of Walton County.

2. The Commission staff investigated whether the Respondent violated Sections 106.07(5), 106.19(1)(b), 106.19(1)(c), Florida Statutes, when she sold campaign tee shirts to her employees but failed to list the names of the contributors on her campaign treasurer's report, listed these cash contributions as in-kind contributions, and failed to report the expenditure her campaign made for the tee shirts.

3. The Respondent served as the treasurer for her campaign. On her campaign treasurer's report for the period of July 1, 1996 through July 26, 1996, the Respondent reported an in-kind contribution of tee shirts valued at \$562.14 from "Employees of Clerk of Courts DeFuniak Springs, Fl 32433." The expenditure portion of this report contained an entry that had been crossed out for a campaign expenditure of \$562.14 to King Enterprises for "campaign tees."

4. The Respondent states that her campaign did not purchase the tee shirts but that they were an in-kind contribution from her employees who collected the money, designed the logo and purchased the shirts. The Respondent states that the following employees paid the following amounts for the tee shirts:

Ingrid Burmeister \$8.03

Louise Pippin

\$240



Bernice McGinnis	\$8.03	Tracy Marsh	\$16.06
Martha Ingle	\$237.90	Dede Hinote	\$8.03
Janice Anderson	\$20	Tracy Marsh	\$8.03
Cindy Reddick	\$8.03	Joy Mason	\$8.03

5. The Respondent also states that after filing her campaign treasurer's report for the period of July 1, 1996 through July 26, 1996, she asked the Supervisor of Elections, Nellie Thompson, to review it for accuracy. The Respondent states that Thompson directed her to alter her report, by listing the contribution from the "Employees of the Clerk of Courts" as an in-kind contribution of tee shirts rather than as cash. The Respondent states that later on the same day, Thompson called her and asked her to come by her office. The Respondent states that she met with Thompson and was instructed to mark through the expenditure item for the tee shirts.

6. Thompson states that she did not instruct the Respondent regarding the report, did not review it for accuracy and would not have done so. She states that she would always advise a candidate that individual contributions must be listed separately. Further, the report was date and time stamped as having been filed at 4:22 p.m. Thompson's office closes at 4:30 p.m.

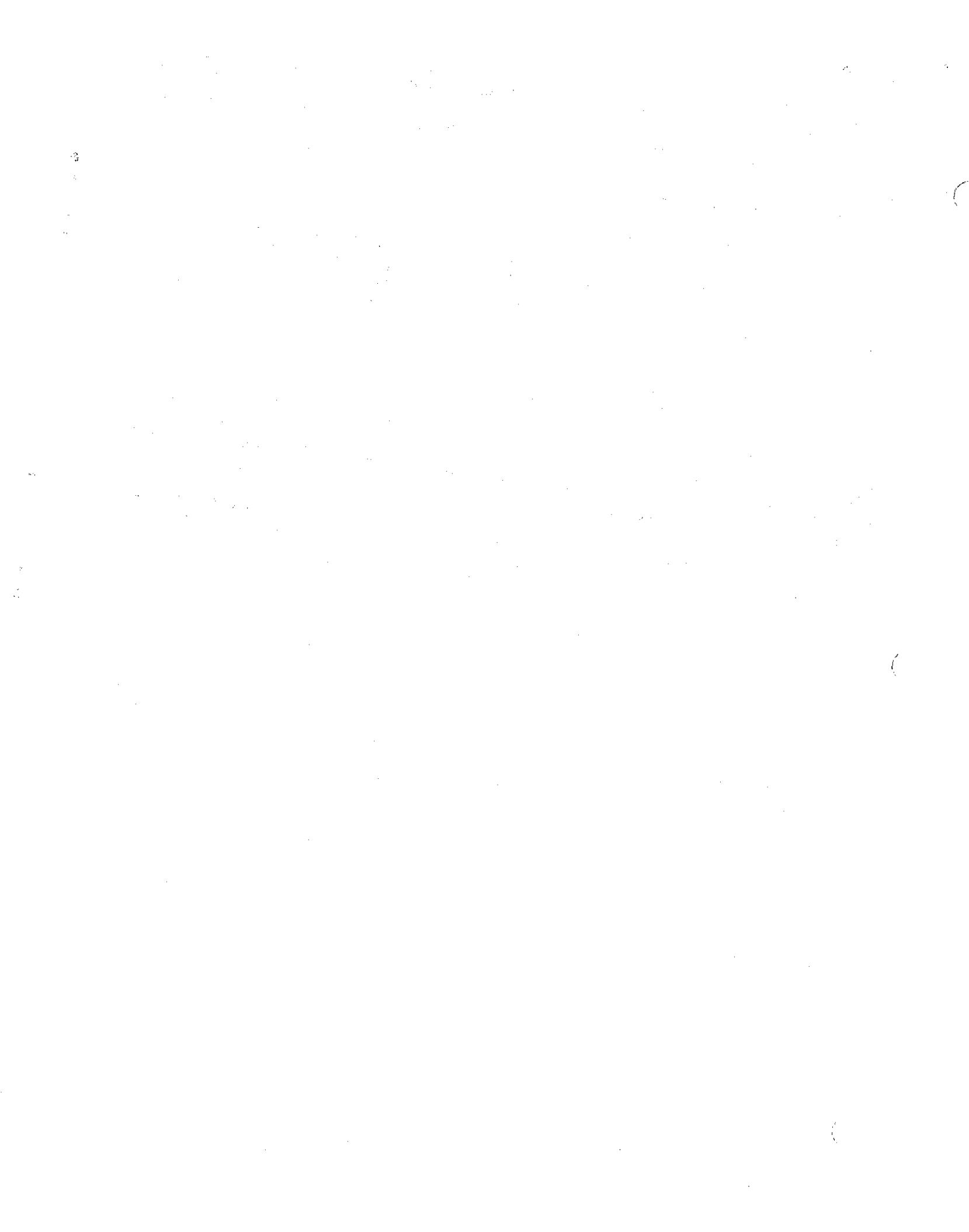
7. The evidence supports a finding that on July 17, 1996, the Respondent's campaign purchased 52 campaign tee shirts and one campaign staff shirt from King Enterprises, Inc., for \$562.14. The purchase price included a \$25 "set up fee." The invoice for the shirts listed "Catherine King; Campaign Account" as the purchaser. The Respondent did not report this expenditure. If willful, this conduct is in violation of Sections 106.07(5) and 106.019(1)(c), Florida Statutes.

8. On August 1, 1996, the Respondent's campaign purchased seven campaign tee shirts and one campaign staff shirts from King Enterprises, Inc., for \$71.16. The invoice for the shirts listed "Catherine King Campaign Shirts" on the line provided for the name of the purchaser. The Respondent did not report this expenditure. If willful, this conduct is in violation of Sections 106.07(5) and 106.019(1)(c), Florida Statutes.

9. Two of the Respondent's employees from whom she states she received an in-kind contribution of tee shirts have stated under oath that they contributed cash to the Respondent's campaign and received campaign tee shirts. Specifically, Janice Anderson contributed \$20 to the Respondent's campaign and received two campaign tee shirts, and Louise Pippin purchased five tee shirts from the campaign for \$40. The Respondent did not report these contributions. If willful, this conduct is in violation of Sections 106.07(5) and 106.019(1)(b), Florida Statutes.

10. The Respondent did not report the contributions from the people identified in paragraph four, above. If willful, this conduct is in violation of Sections 106.07(5) and 106.019(1)(b), Florida Statutes.

11. It appears that the Respondent willfully violated the elections law. She was an experienced candidate, having served as Clerk of the Court for four terms and having run for



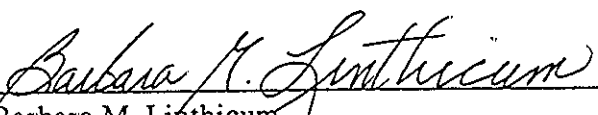
office with opposition for three of those terms. The Respondent had been provided a copy of the elections law and certified that she had read and understood its provisions.

The Commission finds probable cause to believe that the Respondent violated Section 106.07(5), Florida Statutes.

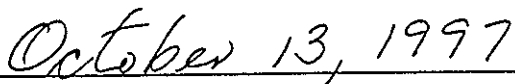
The Commission finds probable cause to believe that the Respondent violated Section 106.19(1)(b), Florida Statutes.

The Commission finds probable cause to believe that the Respondent violated Section 106.019(1)(c), Florida Statutes.

Respectfully submitted,



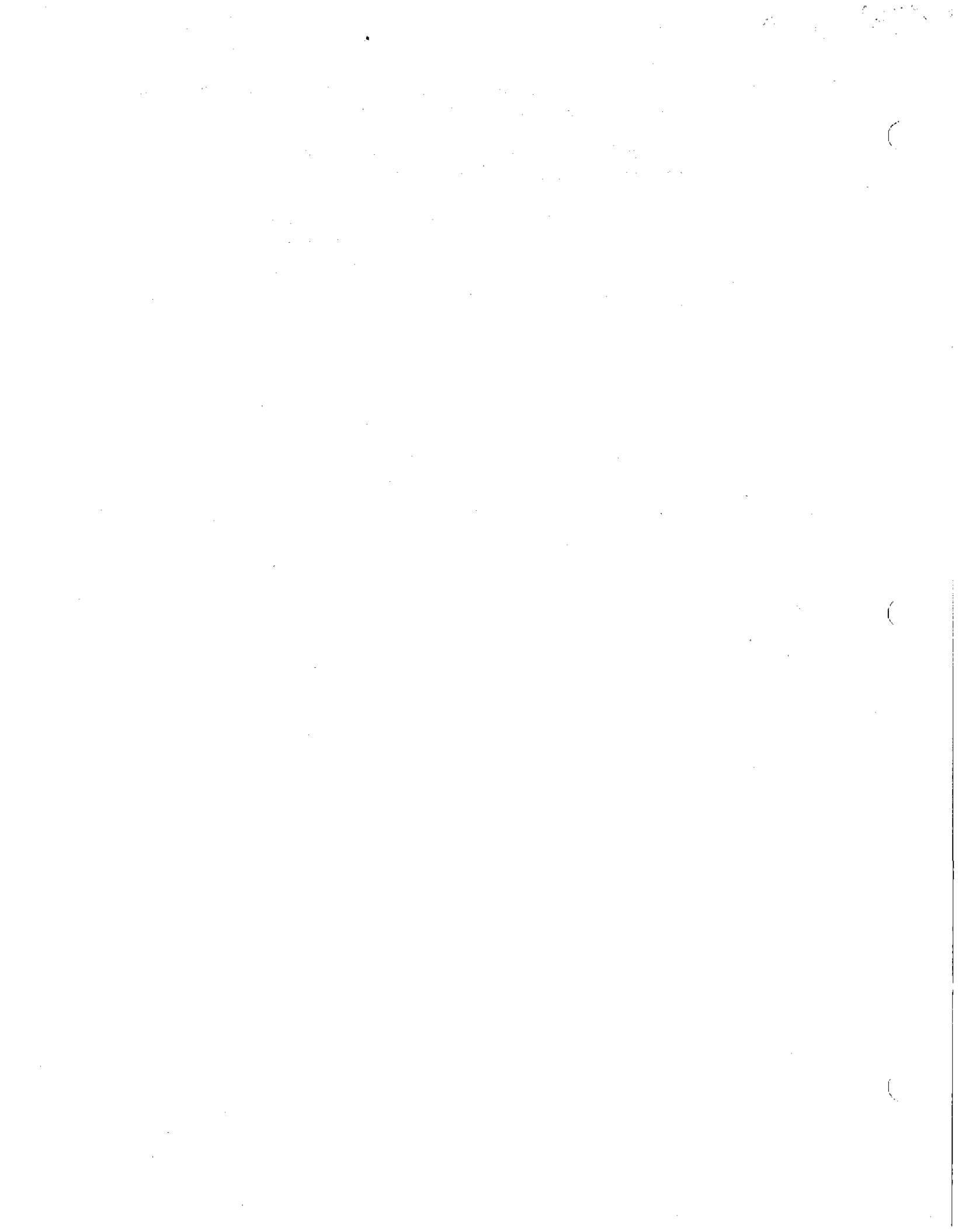
Barbara M. Linthicum
Commission Advocate



Date

Copies furnished to:

Julia P. Forrester, Commission Advocate
Catherine King, Respondent
Diana Fuchs, Investigation Specialist



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,)
)
 Petitioner,)
)
 vs.)
)
 CATHERINE KING,)
)
 Respondent.)
 _____)

Case No. 98-1256

RECEIVED
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STATE OF FLORIDA
ELECTIONS COMMISSION

RECOMMENDED ORDER

In accordance with notice, this cause came on for formal hearing before P. Michael Ruff, duly designated Administrative Law Judge, at the Division of Administrative Hearings. The hearing was conducted in DeFuniak Springs, Florida on July 10, 1998.

APPEARANCES

For Petitioner: Kristi Reid Bronson, Esquire
The Capitol, Room 2002
Tallahassee, Florida 32399

For Respondent: J. David Holder, Esquire
Post Office Box 489
DeFuniak Springs, Florida 32435

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Respondent willfully violated Section 106.07(5), Florida Statutes, by filing a campaign treasurer's report which was allegedly incorrect, false or incomplete, and whether the Petitioner agency had jurisdiction to proceed against the Respondent.

PRELIMINARY STATEMENT

This cause arose upon the receipt of a "complaint" by the Florida Elections Commission (commission) from a citizen alleging violation of the election laws embodied in Chapter 106, Florida Statutes. An investigation was conducted by the commission and a probable cause finding ultimately made to the effect that the Respondent had violated Sections 106.07(5), 106.19(1)(b), and 106.19(1)(c), Florida Statutes. That probable cause finding was entered in an Order of Probable Cause on November 7, 1997. Thereafter, the Respondent timely requested a formal hearing to contest the matter. The probable cause finding had been based upon a "Statement of Findings" submitted to the commission by its staff, recommending that probable cause be found concerning the subject statutory violations. Other than the Statement of Findings no administrative complaint, notice of charges or other charging document was ever filed or served upon the Respondent setting forth the specific allegations the Petitioner is charging against the Respondent and providing notice to the Respondent of those charges. However, the Judge found at hearing that the Statement of Findings coupled with the information derived during discovery afforded ample notice to the Respondent of the basis of the charges and sufficient specificity concerning them so that the Respondent had an adequate opportunity and time to prepare to meet them.

In response to the order of probable cause the Respondent submitted a request for formal hearing on November 25, 1997, disputing the allegations in paragraphs 6 through 11 of the

Statement of Findings dated October 13, 1997. She denied willfully violating the law referenced by the Petitioner and requested appointment of an Administrative Law Judge from the Division of Administrative Hearings, also requesting dismissal and award of attorneys fees and costs incurred in the proceeding. On December 22, 1997, the Respondent filed a "Motion to Transfer" with the Division of Administrative Hearings for formal administrative hearing. The Petitioner granted the motion and forwarded that matter to the Division on March 11, 1998.

The cause was ultimately assigned to the undersigned Administrative Law Judge and came on for formal hearing, as noticed, on the above-referenced date. At the out-set of the hearing the Respondent moved to dismiss the proceeding on the basis that the Petitioner lacked jurisdiction to act, in that there was no sworn complaint upon which to base a finding of probable cause, as required by law, and on the basis that the Respondent had been deprived of fundamental due process of law because the Petitioner never filed or served upon her any formal charging document setting forth with specificity the material factual allegations against her. For the reasons referenced above and in the Judge's ore tenus ruling at hearing, the second reason for the motion for dismissal has been denied.

Counsel for the Petitioner conceded that the Petitioner was proceeding upon an un-sworn complaint, a letter. The undersigned, upon review of Section 106.25, Florida Statutes, is persuaded that the commission has jurisdiction and that the

remaining ground for the Motion to Dismiss should be denied, for reasons explained in the Conclusions of Law below.

The Petitioner presented the testimony of five witnesses and offered four exhibits which were admitted into evidence. Respondent produced the testimony of nine witnesses as well as the testimony of Cindy Reddick, adduced through deposition because of her inability to attend the hearing due to medical reasons and by agreement of the parties. Upon conclusion of the proceeding, the transcript was ordered and duly submitted and the parties have timely submitted Proposed Recommended Orders. Those Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Respondent, Catherine King, was Clerk of the Circuit Court in Walton County, Florida, from her first elected term of office beginning January 1, 1981, continuously until December 31, 1996, when she was deposed in an election. The Respondent is a member of the Democratic party and ran for re-election for the office of Clerk of the Court in the 1996 elections. She was opposed by one Newton Peters in the Democratic party primary.

2. On August 29, 1996, a political advertisement supporting the Respondent appeared in the DeFuniak Herald newspaper. Photographs and comments of thirteen employees of the clerk's office appeared in that advertisement in support of the Respondent.

3. A Mr. Harry Riley saw that advertisement in the newspaper and accosted the Respondent at two separate political

functions concerning the content and import of the newspaper advertisement, as he perceived it. He told the Respondent that he intended filing a complaint against her based on this advertisement. Mr. Riley apparently has a penchant for filing numerous complaints against public officials in Walton County, all of whom are members of the Democratic party. Mr. Riley is a Republican. He did not express any complaint or concern to the Respondent about any matter other than the advertisement in question. On September 2, 1996, Mr. Riley indeed filed a Sworn Complaint against the Respondent with the Florida Elections Commission, the Petitioner, and a similar complaint with the Florida Ethics Commission. In the complaints he alleged that the employees whose photographs and comments appeared in the August 29, 1996 political advertisement in the newspaper had been coerced into participating in the advertisement.

4. His complaint was investigated by both commissions and both the Florida Ethics Commission and the Petitioner, the Florida Elections Commission, found his complaint to be unfounded. In fact, all of the evidence showed that the employees whose photographs and comments were used in the advertisement participated freely and voluntarily and that Mr. Riley never spoke to any of them concerning their participation in the advertisement.

5. On October 7, 1996, Mr. Riley sent an un-sworn letter to the Petitioner agency in which he referenced the Respondent's campaign treasurer's report of July 1, 1996 through July 26, 1996. He suggested that that report might contain a violation of

campaign finance laws. The issue raised in this report was the reporting of an "in-kind contribution" of T-shirts.

6. Prior to sending this letter to the Petitioner, Mr. Riley had not spoken to any persons about their involvement in the production, purchase or sale of the T-shirts, nor the circumstances in which it was done. He had not spoken with the Respondent even to voice a complaint about that activity, nor to any individual who participated in the concept of purchase of campaign T-shirts or their production. Mr. Riley, nor any other person, has ever filed any sworn complaint with the Petitioner agency concerning any campaign treasurer's report filed by the Respondent or the Respondent's campaign treasurer.

7. The specific item or items in the campaign treasurer's report at issue because of Mr. Riley's un-sworn letter to the commission involved the reporting of \$562.14, for payment for campaign T-shirts and another \$71.16, for additional campaign shirts. All the evidence is clear and consistent to the effect that a group of supervisors in the Clerk of Court's office, including Martha Ingle, Janice Anderson, Cindy Reddick and Louise Pippen, had a meeting in which they discussed ways to assist in the Respondent's campaign. They had seen individuals wearing T-shirts supportive of other candidates at political rallies and concluded among themselves that it would be a good idea for their group to show their support for the Respondent by obtaining such T-shirts. Janice Anderson volunteered to follow-up on the concept by contacting a silk screen T-shirt production shop near her residence.

8. The Respondent did not attend that meeting of supervisors concerning the T-shirt issue and had no role in the conceptualization or acquisition of the T-shirts, nor the circumstances under which they were acquired. In fact, Janice Anderson went to James King Sr. of Westville, Florida (no relation to the Respondent), and ordered the T-shirts. Mr. King then billed Ms. Anderson \$562.14 for the T-shirts. Ms. Anderson subsequently ordered several more shirts from Mr. King which were of a different type, and Mr. King billed her \$71.16, for these shirts. The Respondent was unaware at the time of either of the shirt orders, or the whole concept.

9. The T-shirts were ultimately delivered to the Walton County Courthouse. Employees were advised by Ms. Anderson, or Martha Ingle that they were there and that the employees could pick up their T-shirts. Ms. Anderson collected the money from those employees who wished to purchase T-shirts.

10. The Respondent had no involvement in the ordering, receiving, selling, or payment for any of the T-shirts. The Respondent neither collected nor received any money for T-shirts. The Respondent did not sell any of her employees a shirt or T-shirt during her re-election campaign in 1996.

11. After the supervisors ordered, received, paid for and distributed the T-shirts for those employees who wished to purchase them, it became apparent to them that they would have to report their activity in some manner pursuant to the provisions of Chapter 106, Florida Statutes. These employees approached the Respondent concerning their belief that their activity needed to

orted. The Respondent told the employees she would report T-shirts on her campaign treasurer's report form. When she filled out her treasurer's report form (exhibit 3), she first listed the amount Janice Anderson collected, the \$562.14, as cash and showed a corresponding expenditure to King Enterprises, the maker of the T-shirts.

12. Respondent was uncertain that this was the correct way to report the item, however, because she had had no involvement in the T-shirts being ordered, paid for or sold and had never actually received the \$562.14, as cash in her campaign. Additionally, she had never had any situation arise before similar to this one in any earlier election she was involved in. Because of this she sought the advice of the Supervisor of Elections, Miss Nellie Thompson, concerning how to properly account for and report the T-shirts effort.

13. The Respondent knew that Miss Thompson had been Supervisor of Elections for fourteen years and felt that she had the knowledge and expertise to advise her if she had entered these items on her campaign treasurer's report correctly.

14. The Respondent went to Miss Thompson's office shortly after lunch on August 22, 1996, showed Miss Thompson the report she had prepared and explained what the employees in the clerk's office had done with respect to the issue of T-shirts. Near the end of that day Miss Thompson called the Respondent who returned to Miss Thompson's office. Miss Thompson advised the Respondent to strike through the letters "CAS" (meaning cash) in column (9) of "itemized contributions" and insert "T-shirts" in column (10).

She also advised the Respondent to strike through "King Enterprises" and its address in column (7) of itemized expenditures. The Respondent then suggested to Miss Thompson that she would take her report back upstairs to her office and rewrite it. Miss Thompson told her to just mark through it and leave it like it was.

15. Miss Thompson concedes that her memory of the conversation with the Respondent and the sequence of events concerning submittal of the report, when it was "stamped in" and when the corrections or adjustments to the report were done at her suggestion by the Respondent is unclear. She believes that she did not talk to the Respondent until after 4:18 o'clock that afternoon because the report shows, according to Miss Thompson's testimony, that it was stamped in at 4 o'clock, and that such reports are always stamped in immediately upon their receipt. She professed to not have any recollection of the nature and time of any conversation had with Miss King, the Respondent. The Respondent, on the other hand, appeared to have a clear memory of events that day surrounding her contact and communication with Miss Thompson and testified in a clear, logical, forthright fashion about them. The Respondent's testimony was not contradicted by any other evidence and by her own admission, Miss Thompson's recollection of events that day is either non-existent or not clear. Accordingly, the Respondent's testimony in these particulars is fully credited and accepted in making the foregoing Findings of Fact. It can thus be inferred that the fact that the document in question was stamped as received after

p.m., that day could just as easily have resulted from the document not being considered "filed" and not "stamped in" until Miss Thompson's suggested adjustments had been made. It can easily be inferred that when the Respondent made the change in Miss Thompson's presence and then handed the report back to her that it would have logically been then stamped as filed in final form.

16. The evidence is clear and uncontradicted that the Respondent never intended to submit an inaccurate or incomplete report nor did she intend to submit a false report. There is no evidence to show that the Respondent willfully submitted an inaccurate, incomplete or false report. On the contrary, the Respondent clearly intended to disclose all facts concerning her campaign finances and events, for the time period to which the report related. In fact she did fully disclose them in terms of reporting the T-shirts on her report form and the value of the campaign contribution they represented. Even if the report is technically incorrect for the Respondent's failure to itemize an individual dollar amount per T-shirt per employee contributing that amount instead of simply giving the total amount involved in the T-shirt "in kind contribution" there was no intent to submit a false, inaccurate or misleading report and the Respondent did not willfully do so.

17. The Respondent did not report the expenditure of \$71.16, for the collared campaign shirts because she had no knowledge of that expenditure. She could not have reported the expenditure when she was unaware that it had occurred.

18. There was no evidence adduced to indicate that the Respondent intended to evade, avoid or conceal any campaign contribution or expenditure. No evidence was offered to say that she intended to submit an inaccurate, false or incomplete report and all of the evidence shows that she made an extra effort to be sure that she reported the T-shirt situation correctly by consulting with the Walton County Supervisor of Elections before she filed the report.

19. In conducting its investigation, the Petitioner simply relied upon phone calls to several employees of the clerk's office, Miss Thompson and James King, Sr., the maker of the shirts, by a commission representative. That person, Ms Fuchs, never conversed or attempted to converse with any witness in person and never conversed with the Respondent or, for instance, the Respondent's husband at all. She never conferred with a number of employees who had purchased the T-shirts. In an investigation involving a purported violation of a statute involving the element of willfulness and intent on the part of such a Respondent, an interview of the Respondent and persons who might best be able to give information relevant to her intent underlying the submittal of such a campaign treasurer's report would seem to be well-advised. Such was not done, however. Moreover, the Petitioner never dispatched an investigator or any other officer or agent of the Petitioner to Walton County to conduct an investigation, including conversations with other employees and persons who might have knowledge of this situation, as the Florida Ethics Commission had done in its own

investigation. Hence the investigation was conducted in a cursory fashion and facts revealed by the testimony and evidence adduced at the formal hearing were unknown to the Petitioner but could have been known to it had it more thoroughly investigated the case before issuing the Statement of Findings.

20. There is a substantial likelihood that if a more thorough investigation had been conducted by the Petitioner, that probable cause would not have been found, as with the case of the complaint against the Respondent which Mr. Riley had filed with the Florida Ethics Commission and which was determined by it and by the Elections Commission to be unfounded.

21. The testimony presented in this case establishes that the Respondent is a truthful and honest person. Her testimony which was largely uncontradicted by any other evidence, is therefore fully credited and accepted in making the foregoing Findings of Fact.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. Section 120.57(1), Florida Statutes.

22. The Petitioner has the burden of proof in this proceeding. When agency action is initiated in which the agency seeks to impose sanctions which are penal in nature, the evidence by which it must prove its charges must be clear and convincing. Ferris v. Turlington, 510 So. 2d 292 (Fla.1987).

23. The Petitioner contends that the Respondent violated Section 106.07(5), Florida Statutes, which prohibits a campaign

treasurer, candidate or political committee chairman from certifying to the correctness of a campaign treasurer's report that is incorrect, false or incomplete. The Petitioner has, however, failed to produce any evidence to support this conclusion. To prove a violation of Section 106.07(5), Florida Statutes, the commission must show that the Respondent signed a campaign treasurer's report which was incorrect, false or incomplete, and did so willfully.

24. It is understood that the Respondent signed the campaign treasurer's report dated July 26, 1996. The second element to be proven was whether the report was incorrect, false or incomplete. Section 106.07(1), Florida Statutes, provides in part that each campaign treasurer designated by a candidate or political committee shall file regular reports of all contributions received and all expenditures made by, or on behalf of such candidate or political committee. Section 106.07(4)(a)1., Florida Statutes, provides that each report required by this section will contain the full name, address and occupation, if any, of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. The Respondent failed to list the name, address and occupation, as well as individual amounts of contributions from each employee of the clerk's office who made an in-kind contribution by purchasing a T-shirt. Thus the report might be deemed incorrect or incomplete. The last element to be proved, however, is that the Respondent acted willfully. "Willfulness"

is defined at Section 106.37, Florida Statutes, which provides:

A person willfully violates a provision of this chapter if the person commits in act while knowing that, or showing reckless disregard for whether the act is prohibited under this chapter, or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this chapter. A person knows that an act is prohibited or required if the person is aware of the provision of this chapter which prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or failed to perform the act that is required. A person shows reckless disregard for whether an act is prohibited or required under this chapter if the person wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation of this chapter.

See also Division of Elections v. Tanner, DOSFEC 950130

(August 29, 1995).

25. The evidence in this case indicates that although the candidate, the Respondent, generally knew of the requirements of the Chapter concerning such reports, that she had less than a full understanding of the meaning of the provisions in question, charged and referenced above. She certainly did not show a reckless disregard for the relevant statutory provisions because she clearly attempted to file a complete, true and accurate report. When she was uncertain about her understanding of what was required, she consulted with the person she believed to have the most accurate knowledge of reporting requirements, the Supervisor of Elections. Thus, and in accordance with the quoted provision Section 106.37, Florida Statutes, she also must be concluded to have made a "reasonable effort" to determine whether

her act, or acts, would or would not constitute a violation of Chapter 106.

26. The evidence clearly shows that the Respondent had no intent to violate the law and was unaware that her treasurer's report might be incorrect or incomplete merely because of not providing sufficient detail as to the names of contributors although she reported collectively all moneys of in-kind contributions contributed by the employees in question. Although she had multiple experiences as a candidate for the position of clerk, with elections falling only every four years it is understandable if her understanding of the precise requirements of the law was not as clear and sharp as might be that of an official or employee of the Petitioner agency, who in essence works with the statutes in question on a daily basis. Her uncontradicted testimony shows that the situation involving the contribution in the form of T-shirt purchases was unique to her experience as a candidate and it is understandable that she might have less than a clear understanding of how to handle reporting such a matter.

27. Even though she understood that she was required by the relevant provisions of Chapter 106, to read the campaign reporting law and become familiar with the requirements of Chapter 106, each time she became a candidate, failure to understand the reporting nuance of such an unusual situation for her candidate experience is understandable under the circumstances represented by the above Findings of Fact. In any event the last element in the above quoted statute necessary for

a finding of willfulness is not present. That is, it was not proven that the Respondent made no reasonable effort to determine the law's requirements. Rather, she made a very reasonable effort to determine the reporting law's requirement by consulting with the one person at hand that she deemed had the best knowledge of the legal requirements for campaign contribution reporting, the Supervisor of Elections. She did so, received her advice and assurance that reporting in the manner recommended by the Supervisor of Elections would ensure an accurate report. She reported it that way and filed it. Consequently, there simply can be no finding that Respondent acted willfully in submitting an incorrect or inaccurate campaign report.

28. The Respondent has also been charged with a violation of Section 106.19(1)(b), Florida Statutes, and Section 106.19(1)(c), Florida Statutes. The commission has conceded that there is insufficient evidence to support a finding that a violation of Section 106.19(1)(b), Florida Statutes, has occurred based upon the Judge's ruling that certain evidence was inadmissible. Moreover, it concedes that there is no evidence to support a finding that the Respondent's conduct was deliberate or "knowing and willful" with regard to the charged violation of Section 106.19(1)(c), Florida Statutes. In consideration of the above discussions, considerations, and conclusions, it is determined that no persuasive evidence supports a conclusion that the Respondent is guilty of the violations charged.

MOTION TO DISMISS

29. The Respondent has made a Motion to Dismiss for Lack of Jurisdiction for the reasons referenced above. The Respondent cites the language of Section 106.25(2), Florida Statutes, which provides that the Commission shall investigate all violations of Chapter 106, but only after having either a sworn complaint or information reported to it by the Division of Elections. That statutory language, however, only took effect on January 1, 1998. See 1997 Florida Laws Chapter 13, Subsection 49, 50 and 55.

30. The investigation in this case was initiated in 1996. In 1996, the staff of the Florida Elections Commission was within the Department of State, Division of Elections. Consequently all investigations then were performed by the Division of Elections. At that time Section 106.25(1)(2), Florida Statutes, provided:

Jurisdiction to investigate and determine violations of this chapter is vested in the Division of Elections and the Florida Elections Commission

The Division of Elections shall investigate and report to the Florida Elections Commission all violations of this chapter with or without having received a sworn complaint. . . . However, any person, other than the division, having information of any violation of this chapter shall file a sworn complaint with the Division of Elections. (Emphasis added).

Further, Section 106.26, Florida Statutes, (1996), provided that the commission shall, pursuant to rules adopted and published in accordance with Chapter 120, consider all matters reported to it by the Division of Elections or otherwise coming to its attention. Thus it seems that prior to January 1, 1998, a sworn

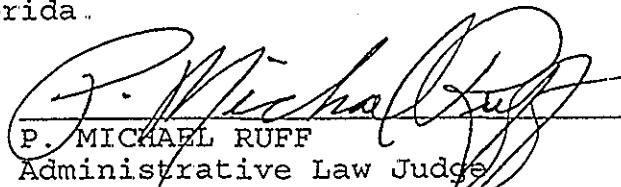
plaint was not required in order for the Commission to obtain jurisdiction. Thus, because of the statutory scheme prevailing when the investigation was initiated and probable cause found, it would seem that the commission has jurisdiction of the subject matter and parties of this cause pursuant to Section 106.26, Florida Statutes (1996).

31. Therefore the Motion to Dismiss should be denied.

In consideration of the foregoing Findings of Fact, Conclusions of Law and the evidence of record it is,

RECOMMENDED that a Final Order be entered by the Florida Elections Commission finding the Respondent not guilty of the violations charged.

DONE AND ENTERED this 8th day of October, 1998, in Tallahassee, Leon County, Florida.


P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of October, 1998.

COPIES FURNISHED:

J. David Holder, Esquire
Post Office Box 489
DeFuniak Springs, Florida 32345

Kristi Reid Bronson, Esquire
Florida Elections Commission
The Capitol, Room 2002
Tallahassee, Florida 32399-1050

Julia P. Forrester, Esquire
Florida Elections Commission
The Capitol, Room 2002
Tallahassee, Florida 32399-1050

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.