

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

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STATE OF FLORIDA
ELECTIONS COMMISSION

**FLORIDA ELECTIONS COMMISSION,
PETITIONER,**

V.

**JEFFREY D. PORTER,
RESPONDENT.**

**AGENCY CASE No.: FEC 04-221
F.O. No.: DOSFEC 05-189**

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on August 19, 2005, in Tallahassee, Florida.

APPEARANCES

For Commission	Eric M. Lipman Assistant General Counsel 107 W. Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
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For Respondent	Richard E. Coates 200 West College Avenue Suite 311B Tallahassee, FL 32301
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STATEMENT OF THE ISSUE

Whether the Respondent violated Section 106.07(5), Florida Statutes, when Respondent certified three campaign treasurer's reports (CTR) were true, correct, and complete when they were not; Section 106.12(3), Florida Statutes, prohibiting a person from spending petty cash on unauthorized items and in an amount greater than \$100; and Section 106.125, Florida Statutes, by using a credit card for campaign expenses when Respondent was not a statewide candidate.

PRELIMINARY STATEMENT

On July 14, 2004, the Commission received a sworn complaint alleging violations of Florida's election laws. The staff of the Commission conducted an investigation to determine whether the facts alleged in the complaint constituted probable cause to believe that the Respondent violated The Florida Election Code.

On April 27, 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. On June 3, 2003, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:¹

Count 1:

On or about October 17, 2003, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of his G1 campaign treasurer's report that was incorrect, false, or incomplete, when he failed to report two campaign checks written to petty cash, listed six expenditures as being made by his campaign that were made by other individuals, and failed to report reimbursement information in accordance with Section 106.07, Florida Statutes.

Count 2:

On or about October 31, 2003, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of his G2 campaign treasurer's report that was incorrect, false, or incomplete, when incorrectly reported two expenditures for petty cash that occurred during a different reporting period, and failed to report reimbursement information in accordance with Section 106.07, Florida Statutes.

Count 3:

On or about February 2, 2004, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of a

¹ The Order of Probable Cause did not include a Count 4.

second termination report that was incorrect, false, or incomplete, when he incorrectly reported two checks as being made out for petty cash, when they were not, failed to fully report all required information in connection with a reimbursement to Respondent, and failed to report all required information in connection with a reimbursement to his campaign treasurer in accordance with Section 106.07, Florida Statutes.

Count 5:

Between September 25, 2003 and November 4, 2003 Respondent violated Section 106.12(3), Florida Statutes, prohibiting a person from spending petty cash on unauthorized items, when Respondent spent \$75 per person on four campaign worker's salaries.

Count 6:

Between September 25, 2003 and November 4, 2003, Respondent violated Section 106.12(3), Florida Statutes, prohibiting a person from spending petty cash on unauthorized items, and in an amount exceeding \$100, when Respondent spent \$681.11 to reimburse himself for spending funds for campaign meetings at Ruby Tuesdays.

Count 7:

On or about September 22, 2003, Respondent violated Section 106.125, Florida Statutes, by using his Sunoco credit card for campaign expenses, when Respondent was not a statewide candidate.

Count 8:

On or about October 31, 2003, Respondent violated Section 106.125, Florida Statutes, by using a MasterCard credit card for campaign expenses, when Respondent was not a statewide candidate.

Count 9:

Between September 10, 2003 and October 31, 2003, Respondent violated Section 106.125, Florida Statutes, by using his American Express credit card for campaign expenses, when Respondent was not a statewide candidate.

Respondent timely requested an informal hearing and was noticed to appear before the Commission on August 19, 2005. At the informal hearing, the staff presented the undisputed

facts contained in the Staff Recommendations. Staff also introduced a report of Respondent's financial resources. Respondent appeared at the hearing with his counsel.

FINDINGS OF FACT

1. Respondent was the incumbent candidate for the City of Homestead City Council, Seat Three, in the November 4, 2003 general election. Respondent was first elected to that seat on November 4, 1997. He was re-elected on November 7, 2001 and again on November 4, 2003.

2. Complainant is the Advocate for the Miami-Dade Commission on Ethics and Public Trust in Miami-Dade County (COE).

3. Respondent and Respondent's campaign treasurer made campaign expenditures with personal funds that the campaign later reimbursed. The reimbursements to Respondent and his campaign treasurer were mischaracterized on Respondent's termination report as "Cash" instead of being reported as reimbursements for campaign expenses, campaign food, and campaign worker salaries.²

4. Respondent filed periodic campaign treasurer's reports (CTR) during his campaign. Respondent certified each CTR was true, correct and complete. The table below sets forth the deficiencies in three of Respondent's CTRs.

² At the time the events occurred in this case, §106.021(3), Fla. Stat., provided only for reimbursement for travel, food and beverage, office supplies, and mementos expressing gratitude to campaign supporters. Respondent would not have been permitted to reimburse himself, or the treasurer, for payment of campaign worker salaries. In 2004 the Florida Legislature passed, and Governor Bush signed into law, Ch. 2004-252, Laws of Fla., that amended §106.021(3), permitting a campaign to reimburse an individual for expenses incurred in connection with the campaign, and the Legislature made the new law effective July 1, 2004 and operating retroactively to January 1, 2002. Therefore, reimbursements for incurred expenses associated with the campaign to the Respondent were proper.

MISSING AND INCORRECT INFORMATION ON RESPONDENT'S CTRS		
Reporting Period	Missing Information	Incorrect Information
08-02-03 to 10-10-03 18 days prior to General Election Report (G1)	<ul style="list-style-type: none"> Failed to report the full name, full address, including city, state and zip code of person/vendor to whom Respondent made expenditures and later received reimbursement from campaign. Failed to report \$300 cash expenditures paid to four campaign workers with funds from campaign check that was cashed for \$500. 	<ul style="list-style-type: none"> Failed to report check 331 written to "PETTY CASH" on 09-25-03 on this CTR. Failed to report check 333 written to "Cash" on 09-29-03 on this CTR. Six expenditures listed as purchased with petty cash by campaign that were actually made by Respondent and reimbursed by campaign.
10-11-03 to 10-30-03 Four days prior to General Election Report (G2)		<ul style="list-style-type: none"> Incorrectly reported check 331 written to "PETTY CASH" written on 09-25-03 on this CTR. Incorrectly reported check 333 written to "Cash" written on 09-29-03 on this CTR. 10/12/03 expenditure to Home Depot expenditures listed as purchased with petty cash by campaign that were actually made by Respondent and reimbursed by campaign.
10-31-03 to 02-02-04 Second Termination Report		<ul style="list-style-type: none"> Reimbursement check to Respondent for campaign items reported as "CASH." Failed to report the full name, full address, including city, state and zip code of person/vendor to whom Respondent and campaign treasurer made expenditures from personal funds and received reimbursement from campaign.

5. On September 25, 2003, Respondent's campaign wrote a campaign check for \$500 (check number 331) payable to "PETTY CASH." On Monday, September 29, 2003, Respondent's campaign wrote a second \$500 campaign check (check number 333) payable to "Cash."³

6. Respondent's campaign cashed two \$500 campaign checks for cash. Respondent

³ The date on the face of the check is 09-29-02 instead of 09-29-03. However copies of the cancelled check and bank records reflect that the check was cashed on 09-29-03 at 10:20 a.m.

used the \$1000 cash to pay four campaign workers \$75 each, and to reimburse himself for seven campaign meetings listed in the following table.

Improper Cash Payments to Respondent		
Date on Receipt	Expenditure Amount	Nature of the Expense
09/23/03	\$30.96	Ruby Tuesdays Campaign Meetings
10/01/03	\$120.85	Ruby Tuesdays Campaign Meetings
10/01/03	\$97.03	Ruby Tuesdays Campaign Meetings
09/10/03	\$43.96	Ruby Tuesdays Campaign Meetings
09/17/03	\$190.17	Ruby Tuesdays Campaign Meetings
09/18/03	\$45.77	Ruby Tuesdays Campaign Meetings
09/19/05	\$151.37	Ruby Tuesdays Campaign Meetings

7. Respondent used three personal credit cards to make 14 campaign expenditures during his campaign as follows:

Respondent's Campaign Expenditures Made with Credit Card				
Card Type	Transaction Date	Expenditure To	Purpose	Amount
AMEX	09/21/03	Minors Market	Food and Drink for Campaign Workers	\$20.30
Sunoco Card	09/22/03	Sunoco	Gas for Campaign	\$38.25
AMEX	09/21/03	Home Depot	Campaign Sign Accessories	\$64.58
AMEX	09/20/03	Home Depot	Campaign Sign Accessories	\$68.55
AMEX	09/23/03	Ruby Tuesday	Campaign Meeting	\$30.96
AMEX	10/01/03	Ruby Tuesday	Campaign Meeting	\$120.85
AMEX	10/01/03	Ruby Tuesday	Campaign Meeting	\$97.03
AMEX	09/10/03	Ruby Tuesday	Campaign Meeting	\$43.96
AMEX	09/17/03	Ruby Tuesday	Campaign Meeting	\$190.17
AMEX	09/18/03	Ruby Tuesday	Campaign Meeting	\$45.77
AMEX	09/19/03	Ruby Tuesday	Campaign Meeting	\$151.77
AMEX	09/23/03	Ruby Tuesday	Campaign Meeting	\$30.96
MasterCard	10/31/03	Office Max	Office Supplies	\$149.77
AMEX	10/30/03	Speedway	Gas for Campaign	\$20.01
TOTAL				\$1,651.21

8. The City Clerk provided Respondent with a copy of Chapter 106, Florida Statutes, the *2002 Handbook for Candidates* published by the Division of Elections, information about political advertisements and disclaimers, and a calendar of election dates for July 2003. However, Respondent did not seek any additional advice or help from the city clerk's office about the proper use of petty cash, personal credit cards, or campaign funds during his 2003 campaign

9. Respondent is a third time candidate. Respondent signed Statement of Candidate forms during his 1997, 2001, and 2003 campaigns stating he had received, read and understood the requirements of Chapter 106. During his previous campaigns, Respondent signed all his CTR that were submitted to the filing officer.

10. Respondent read Chapter 106, Florida Statutes, and the *2004 Candidate Handbook*. The *2004 Candidate Handbook* contained specific instructions on the use of petty cash (pp. 43-44), the use of personal credit cards for campaign activities (p. 47), regulations about campaign expenditures (pp. 43-47), and how to report campaign expenses (pp. 29-33).

CONCLUSIONS OF LAW

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

12. In *Diaz de la Portilla v. FEC*, 857 So.2d 913 (Fla. 3rd DCA 2003), the Third District Court of Appeal addressed the issue of a candidate's obligation prior to signing the certification required by Section 106.07(5), Florida Statutes. The district court held in pertinent part that:

[I]t is the duty of the candidate to read the treasurer's report before signing it, and be alert for any errors which, based on the candidate's own knowledge, appear on the face of the report. Failure to do so results is a violation of subsection 106.07(5) by the filing of an incorrect treasurer's report. *Id.*, at 921

13. When reviewing his 2003 G1, G2, and second termination report, it should have become readily apparent that each of the three CTRs was incomplete and incorrect. Respondent cashed one of the \$500 campaign checks, Respondent personally delivered cash to campaign workers for their salary, and Respondent was the recipient of improper cash reimbursements.

14. Section 106.12(3), Florida Statutes, permits petty cash to be spent only for office supplies, transportation expenses, and other necessities, and only in an amount of \$100 or less.

15. Payment of campaign employee's salaries is not an office supply, transportation expense, or other necessity. Similarly, campaign meetings or campaign dinners are not included in the list of expenditures that can be paid with petty cash. Therefore, Respondent was prohibited from reimbursing himself for the seven campaign meetings at Ruby Tuesday's. Additionally, any reimbursement for expenses incurred in connection with a campaign must be made by a check drawn on the campaign account and reported pursuant to Section 106.07(4), Florida Statutes.

16. Section 106.125, Florida Statutes, permits candidates for statewide office to use credit cards for travel related campaign expenditures. Respondent was a candidate in a municipal election for a seat on the Homestead City Commission. Therefore, Respondent was not permitted to make campaign expenditures with credit cards.

17. Respondent's conduct was willful. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required.

18. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes. The Commission also considered that during the investigation, Respondent and his campaign

treasurer were cooperative and responsive to the staff's requests for documents and other information.

19. The Commission finds that Respondent has sufficient financial resources to pay the fine imposed by the Commission.

ORDER

WHEREFORE the Commission finds that Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

A) Respondent violated Section 106.07(5), Florida Statutes, on three occasions. Respondent is fined \$100 for each of the three counts for a total of \$300.00

B) Respondent violated Section 106.12(3), Florida Statutes, on two occasions. Respondent is fined \$100 for the violation charged in Count 5 of the Order of Probable Cause and Respondent is fined \$300 for the violation charged in Count 6 of the Order of Probable Cause for a total of \$400.

C) Respondent violated Section 106.125, Florida Statutes, on three occasions. Respondent is fined \$33.33 for each of the three counts for a total of \$99.99.

Therefore, it is

ORDERED that Respondent shall remit a civil penalty in the amount of \$799.99. The civil penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050, within 30 days of the date this Final Order is received by Respondent.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on August 26, 2005, in Tallahassee, Florida.



Chance Irvine, Chairman
Florida Elections Commission

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.

Copies furnished to:

Eric M. Lipman, Assistant General Counsel
Jeffrey D. Porter, Respondent (certified mail)
Richard E. Coates, Attorney for Respondent (certified mail)
Michael Murawski, Complainant
City of Homestead City Clerk, Filing Officer