

FILED

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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ELECTIONS COMMISSION

In Re: John Crescimbeni

Case No.: FEC 03-066

F.O. No.: DOSFEC 03-305 W

ORDER OF NO PROBABLE CAUSE

THIS CAUSE came on to be heard by the Florida Elections Commission at its regularly scheduled meeting held on November 12, 2003, in Tallahassee, 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 104.011(1), Florida Statutes, prohibiting a person from falsely swearing or affirming an oath or procuring another to falsely swear or affirm an oath in connection with or arising out of voting or elections.

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 November 21, 2003, in Tallahassee, Florida.

Chance Irvine

Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
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:

Phyllis Hampton, General Counsel
Stephen Durden, Attorney for Respondent
John Crescimbeni, Respondent
Reba DiPerna, Complainant
Ducal County Supervisor of Elections, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
CASE NUMBER: FEC 03-066

RESPONDENT: John Crescimbeni

COMPLAINANT: Reba DiPerna

On March 3, 2003, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 104, Florida Statutes. 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 there is **no probable cause** to charge the Respondent with violating:

Section 104.011(1), Florida Statutes, prohibiting a person from falsely swearing or affirming an oath or procuring another to falsely swear or affirm an oath in connection with or arising out of voting or elections.

SUMMARY OF FACTS AND CONCLUSIONS OF LAW.

1. Respondent was a candidate for City Council District 1 in the April 15, 2003 election. Respondent previously held this office from 1991 through 1999. Respondent faced two other candidates in the April 15, 2003 election—Terry DiPerna and Lake Ray (incumbent). The election results indicated that Respondent received 26.22% of the vote, Mr. DiPerna received 12.77% of the vote, and Mr. Ray received 61.01% of the vote.

2. Complainant is retired and lives in Jacksonville, Florida. She financially supported Terry DiPerna during the municipal election.

I. Section 104.011(1), Florida Statutes.

3. Commission staff investigated whether the Respondent violated this section of the election laws by swearing or affirming an oath in connection with or arising out of voting or elections.

4. According to Complainant, Respondent filed qualification papers with the Duval County Supervisor of Elections for District 1 City Councilman. Complainant stated that Respondent resided in District 7.

5. Complainant submitted a copy of the Duval County Property Appraisers web page showing that Respondent owns a home at 5735 Dickson Road, Jacksonville, Florida. The web page was printed on February 13, 2003. The web site indicated that Respondent claimed homestead exemption for the home on Dickson Road.

6. On March 4, 2003, Respondent signed an Oath of Candidate affirming that he was qualified to hold the office of City Council District 1. The oath reads:

I have resided in and been a qualified elector of Duval County, Florida and Council District 1, for at least 183 days immediately before the date on which I am qualifying to run for office, as required by Section 5.04 of the Charter of the City of Jacksonville.

7. On April 15, 2003, Commission staff received a written response from Respondent's attorney, Stephen Durden. According to this response, on January 1, 2002, Respondent lived at 5735 Dickson Road, and in 2002 this house was declared his homestead. The written response indicated that the homestead exemption was withdrawn in 2003. Respondent included a printout from the Duval County Property Appraiser's office indicating no homestead exemption on the home at 5735 Dickson Road. The printout was dated April 9, 2003.

8. Respondent's attorney indicated that on September 1, 2002, Respondent moved into Images Apartments, number 402, which he shared with Kimberly Nobles. The written statement related, "On October 1, 2002, he moved to apartment 1312, where he continues to reside. He shares this apartment with Kimberly Nobles. He qualified for office 183 days or more after moving to the first apartment."

9. Mr. Durden provided sworn statements from Kimberly and Kevin Nobles. The sworn statements read,

From October 1, 2002, until present, John Crescimbeni has been a co-tenant and resident of 5791 University Club Boulevard North, Apartment 1312. During the month of September 2002, he was a co-tenant and resident of Apartment 402 of the same complex. Although the time demands of both his business and civic affiliations require him to leave home early and/or return home late, he has been here every day/night with only a few exceptions.

10. Mr. Durden provided a copy of a lease that contained Respondent's name as well as Kimberly and Kevin Nobles. The lease is dated September 27, 2002. The monthly rent is \$635.

11. Commission staff interviewed Ms. Pam Spears, manager of Image Apartments, by telephone. Ms. Spears acknowledged that Respondent lived in the apartments and added that he had lived there for almost a year. She indicated that she could not divulge any specific information about a tenant without his or her written consent. Ms. Spears described the apartments as having 1, 2, or 3 bedrooms. She stated that the monthly rent ranged for \$535 to \$765 depending on the size of the apartment.

12. Respondent included with the written statement the electric bills for December 2002 through April 2003. Respondent's name is listed on the account. The table below summarizes the information from the utility bill.

Month	Total Due
December 2002	\$81.72
January 2003	\$111.34
February 2003	\$115.35
March 2003	\$82.56
April 2003	\$73.40

13. According to an article in the local newspaper, the *Florida Times-Union*, Respondent was "renting an apartment in the district because, after council boundaries were realigned based on the 2000 Census, his home was no longer in the core Arlington district." The article also stated that Respondent served on the City Council-District 1 from 1991 to 1999 but could not run for re-election in 1999 "because of term limits."

14. Information from the filing officer also indicated that Respondent successfully ran for City Council District 1 in 1991. He was re-elected in 1995. In 1999, Respondent ran unsuccessfully for Duval County Supervisor of Elections.

15. The filing officer acknowledged that he had received "questions" about Respondent's residence. According to an affidavit from the filing officer, Respondent "presented a copy of a utility bill with his name and address on it when he changed the address on his voter card. ...Our General Counsel advised that if he [Respondent] signed an affidavit stating he lived in the district 183 days prior to Qualifying, it was not up to our office to question him further."

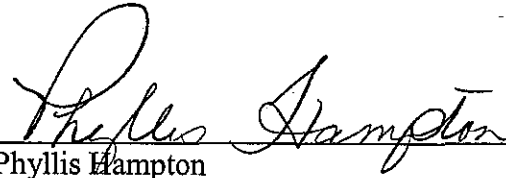
16. Commission staff interviewed Mr. Durden, Respondent's attorney, on August 26, 2003. He stated that Respondent has a post office box and receives the majority of his mail at the post office box. He stated the only final comment is that Respondent attempted to abide by the law by renting an apartment within the district. He added that redistricting was very confusing. It was not clear if a candidate should reside in the district upon qualifying or could he actually run for office and then move into the district.

II. Conclusion.

17. From the information gathered during the Commission's investigation, it appears that the Respondent moved into Images Apartments on September 1, 2002, to establish residency in the City of Jacksonville District 1. This was 186 days prior to qualifying for office. The oath that the Respondent signed stated that he had lived in District 1 for "at least 183 days immediately before the date on which I am qualifying to run for office, as required by Section 5.04 of the Charter of the City of Jacksonville."

18. Under these circumstances, I recommend that the Commission find no probable cause that the Respondent violated Section 106.011(1), Florida Statutes.

Respectfully submitted on October 7, 2003,

A handwritten signature in cursive script that reads "Phyllis Hampton". The signature is written in dark ink and is positioned above a horizontal line.

Phyllis Hampton
General Counsel

Copy furnished to:

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