

12 AUG 31 2011 9:00

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

**Florida Elections Commission,
Petitioner,**

v.

**Agency Case No.: FEC 11-300
F.O. No.: FOFEC 12-083**

**Randy Ross,
Respondent.**

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on August 14, 2012.

APPEARANCES

For Commission Eric M. Lipman
General Counsel
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399

For Respondent No appearance

STATEMENT OF THE ISSUE

Whether the Respondent violated Sections 106.143(1)(a) & 106.143(3), Florida Statutes, as alleged in the Order of Probable Cause.

PRELIMINARY STATEMENT

On December 30, 2011, the Commission received a sworn complaint alleging violations of Florida's election laws. 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 March 21, 2012, staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On or about May 22, 2012, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

During his 2012 election, Respondent violated Section 106.143(1)(a), Florida Statutes, when Respondent paid for and published a political advertisement logo without prominently marking the advertisement with the required political disclaimer.

Count 2:

During his 2012 election, Respondent violated Section 106.143(1)(a), Florida Statutes, when Respondent paid for and published a political advertisement soliciting campaign contributions without prominently marking the advertisement with the required political disclaimer.

Count 3:

During his 2012 election, Respondent violated Section 106.143(3), Florida Statutes, when Respondent stated his political party affiliation on a political advertisement logo while running for non-partisan office.

Count 4:

During his 2012 election, Respondent violated Section 106.143(3), Florida Statutes, when Respondent stated his political party affiliation on a political advertisement soliciting campaign contributions while running for nonpartisan office.

At the informal hearing, the Commission accepted the undisputed facts and conclusions of law contained in the Staff Recommendation.

FINDINGS OF FACT

1. The Respondent was a candidate for the Orlando City Council, District 1, in the

April 3, 2012 election.

2. Complainant alleged that Respondent failed to mark his political advertisement with a proper disclaimer, and that Respondent, as a candidate for a nonpartisan office, disclosed his political party affiliation in his political advertisements. Complainant included a copy of two political advertisements that appear to be downloaded from Respondent's original campaign website.

3. Respondent's first political advertisement was Respondent's campaign logo. The disclaimer on Respondent's campaign logo stated, "Paid political ad by the campaign to elect Randy Ross (Democrat) for Orlando City Council District 1. Betty Parker Ross Treasurer."

4. The second flyer at issue was used for the purpose of soliciting campaign contributions. This political advertisement contained has two disclaimers. The first disclaimer stated, "Paid political ad by the campaign to elect Randy Ross (Democrat) for Orlando City Council District 1. Betty Parker Ross Treasurer." The second disclaimer stated, "Paid political ad. Paid for and approved by Randy Ross, Candidate for Orlando City Council District 1 (Democrat). Betty Parker Ross, Treasurer."

5. A proper disclaimer for each of the political advertisements would have stated, "Political advertisement paid for and approved by Randy Ross for Orlando City Council, District 1," or "Paid by Randy Ross for Orlando City Council, District 1."

6. Respondent received a copy of Chapter 106, Florida Statutes, and the *Candidate and Campaign Treasurer Handbook* ("Handbook") published by the Division of Elections on or about April 13, 2011. The *Handbook* has several examples of proper disclaimers for political advertisements. Respondent read Chapter 106, Florida Statutes and the *Handbook* during the summer of 2011.

CONCLUSIONS OF LAW

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

8. The Respondent committed two counts of violating Section 106.143(1)(a), Florida Statutes, when and committed two counts of violating Section 106.143(3), Florida Statutes.

9. Respondent's conduct was willful.

10. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

ORDER

WHEREFORE the Commission finds that Respondent has violated Sections 106.143(1)(a), and 106.143(3), Florida Statutes. Therefore, it is

ORDERED and **ADJUDGED** that Respondent shall remit a civil penalty in the amount of \$450. 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, within 30 days of the date this Final Order is received by Respondent.

DONE AND ORDERED by the Florida Elections Commission on

August 14, 2012.



Tim Holladay, Chairman
Florida Elections Commission

NOTICE OF RIGHT TO APPEAL

This order is final agency action. Any party who is adversely affected by this order has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, Florida 32399-1050, and by filing a copy of the notice of appeal with the appropriate district court of appeal. The party must attach to the notice of appeal a copy of this order and include with the notice of appeal filed with the district court of appeal the applicable filing fees. **The notice of administrative appeal must be filed within 30 days of the date of this order is filed with the Commission.** The date this order was filed appears in the upper right-hand corner of the first page of the order.

Copies furnished to:

Eric Lipman, General Counsel
Randy Ross, Respondent (certified mail)
Stephen Rayle, Complainant
City of Orlando Clerk, Filing Officer

40