

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

In Re: Robert W. Neumann
_____ /

Case No.: FEC 00-376
F.O. No.: DOSFEC 01-219 W

CONSENT ORDER

The Respondent, Robert W. Neumann, candidate for the Palm Beach County Sheriff, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties. The parties jointly stipulate to the following facts, conclusions of law, and order.

FINDINGS OF FACT

1. On April 19, 2001, the staff of the Commission issued a Statement of Findings, recommending to the Commission that there was probable cause to believe that the Respondent violated Section 106.143(3), Florida Statutes, when Respondent represented in a political advertisement that a person supports the candidate before obtaining the written approval of that person, on six separate occasions.

2. On May 22, 2001, the Commission entered an Order of Probable Cause finding there was probable cause to believe that the Respondent violated Section 106.143(3), Florida Statutes.

CONCLUSIONS OF LAW

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

4. The Respondent neither admits nor denies that he violated Section 106.143(3), Florida Statutes.

ORDER

5. The Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

6. The Respondent shall bear his own attorney fees and costs that are in anyway associated with this case.

7. The Respondent understands that before the Consent Order is final agency action the Commission at a public meeting must approve it. After approval, the Consent Order is final agency action of the Commission on the violations listed in the Order of Probable Cause.

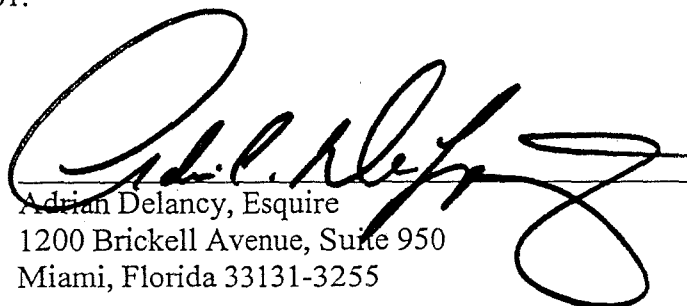
8. The Respondent voluntarily waives the right to any further proceedings under Chapters 106 and 120, Florida Statutes, and the right to appeal the Consent Order.

9. The Respondent will carefully review Chapter 106, Florida Statutes, and avoid any future violation of the chapter.

10. The Respondent shall remit to the Commission a fine in the amount of \$1200.00. The fine shall be paid to the Florida Elections Commission, Room 2002, The Capitol, Tallahassee, Florida, 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.


The Respondent hereby agrees and consents to the terms of this Consent Order on

June 12, _____, 2001.


Adrian Delancy, Esquire
1200 Brickell Avenue, Suite 950
Miami, Florida 33131-3255

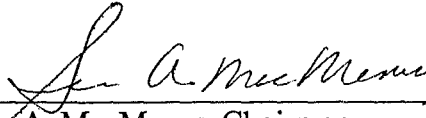
The Commission staff hereby agree and consent to the terms of this Consent Order on

June 14, 2001.


Barbara M. Linthicum
Executive Director
Florida Elections Commission
Room 2002, The Capitol
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on July 25 ~~and 26~~, 2001 in Tampa, Florida and filed with the Clerk of the Commission on

August 7, 2001, in Tallahassee, Florida.


Susan A. MacManus, Chairman
Florida Elections Commission
Room 2002, The Capitol
Tallahassee, FL 32399-1050

Copies furnished to:

Barbara M. Linthicum, Executive Director
Adrian Delancy, Attorney for Respondent (certified mail w OPC)

NO. 780 P. 5

JUN. 12. 2001 2:23PM S F A MIAMI OFFICE

ROBERT W. NEUMANN
212 CANTERBURY DR. W.
PALM BEACH GARDENS, FL 33418-7177

520

DATE June 10, 2001

63-6/830 FL
1024

PAY TO THE ORDER OF Florida Election Commission - \$ 1,200

Twelve Hundred AND 00/100 DOLLARS

NationsBank

NationsBank, N.A.

Premium CreditLine

ACH RT 063000047

FOR

Robert W. Neumann



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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

01 MAY 22 PM 1:49
STATE OF FLORIDA
ELECTIONS COMMISSION

In Re: Robert W. Neumann

Case No.: FEC 00-376

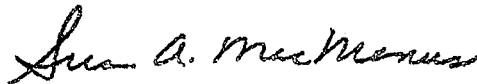
ORDER OF PROBABLE CAUSE

THIS CAUSE came on to be heard before the Florida Elections Commission at its meeting held on May 9 and 10, 2001, in Orlando, Florida.

Based on the facts set forth in the Complaint, Report of Investigation, and Statement of Findings, that are incorporated as a part of this order, the Commission finds that there is:

Probable cause to believe that the Respondent violated Section 106.143(3), Florida Statutes, prohibiting a candidate from representing in a political advertisement that a person supports the candidate before obtaining the written approval of that person, on six separate occasions.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on May 22, 2001, in Tallahassee, Florida.



Susan A. MacManus, Chairman
Florida Elections Commission
Room 2002, The Capitol
Tallahassee, FL 32399-1050

NOTICE OF RIGHT TO A HEARING

As the Respondent, you are entitled to a hearing before the Florida Elections Commission or the Division of Administrative Hearings on those violations of the Florida Statutes on which the

Commission has found probable cause. The hearing is held according to Chapter 120, Florida Statutes, and Chapters 2B-1 and 28-106, Florida Administrative Code. To obtain a hearing, you must send a written petition that complies with the rules to the Commission Clerk requesting a hearing. The address of the Commission Clerk is Room 2002, The Capitol, Tallahassee, Florida 32399-1050. The Clerk must receive your petition within 30 days of the date that you received this order.

In the petition, you may request either a formal or an informal hearing before the Commission or a formal hearing before the Division of Administrative Hearings. If you request a formal hearing, the Commission reserves the right to refer the case to the Division of Administrative Hearings. To determine whether to request a formal or an informal hearing, review Chapter 28-106, Florida Administrative Code. No mediation is available.

To request an **informal hearing**, you must include in the petition requesting the hearing all the information listed in Rule 28-106.301(2), Florida Administrative Code. At the informal hearing, you will have the right to make written or oral arguments to the Commission concerning the legal issues related to the violation and the potential fine. Live witness testimony is unnecessary at an informal hearing.

To request a **formal hearing**, you must include in the petition requesting the hearing all the information listed in Rule 28-106.201(2), Florida Administrative Code, including a statement of all issues of material fact in the Statement of Findings that you dispute. At the formal hearing, you will have the right to present evidence relevant to the violation(s) listed in this order, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against you.

If you do not timely file a written petition requesting a hearing, you will have waived your right to both a formal and an informal hearing. This case will be scheduled for a Commission meeting, and the Commission will consider this document, the Statement of Findings, and the Report of Investigation and issue a final order that may include a substantial fine.

Copies furnished to:

David F. Chester, Asst. General Counsel
Adrian Delancy, Esquire, Attorney for Respondent (certified mail)
The Honorable Ed Bieluch, Complainant
Supervisor of Elections, Palm Beach County, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 00-376

Respondent: Robert W. Neumann

Complainant: Ed Bieluch

On November 3, 2000, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated a section or sections of the Florida Election Code that the Commission has jurisdiction to investigate and to determine violations. 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 the Commission find that there is:

Probable cause to believe that the Respondent violated Section 106.143(3), Florida Statutes, prohibiting a candidate from representing in a political advertisement that a person supports the candidate before obtaining the written approval of that person, on six separate occasions.

Summary of Facts and Conclusions of Law

1. Respondent was the one-term incumbent candidate for Palm Beach County Sheriff. He was defeated during the November 7, 2000, election. Prior to running for a public office, Respondent was an FBI field manager for approximately 20 years. Respondent has been a registered voter in Palm Beach County since 1982.
2. Complainant was a retired deputy sheriff prior to his defeating Respondent in the November 7, 2000, election. Complainant has been a registered voter since 1968.
3. The Commission staff investigated whether the Respondent violated Section 106.143(3), Florida Statutes, when he published an advertisement including the endorsements of 13 people without first getting written permission from all of them.
4. Complainant alleged that Respondent claimed the endorsement of several area chiefs of police, including Wes Smith of Lake Clarke Shores, Anthony Cervasio of Highland Beach, and Jeff Lindskoog of Lake Park. In a November 2, 2000, *Ft. Lauderdale Sun-Sentinel* article provided by Complainant, Chiefs Smith, Cervasio, and Lindskoog were quoted as saying that they did not endorse Respondent orally or in writing.
5. The advertisement provided by Complainant is a double-sided flyer measuring 5 ½" x 11". The relevant text appears as follows:

**“As law enforcement professionals
we support Sheriff Bob Neumann**
because he provides effective leadership
and is a staunch supporter of
the law enforcement community.”

State Attorney, Barry Krischer

***West Palm Beach** Chief of Police, Ric L. Bradshaw

***Boca Raton** Chief of Police, Andrew J. Scott III

***Delray Beach** Chief of Police, Richard Overman

***Juno Beach** Former Chief of Police, Mitch Tyre

***Boynton Beach** Chief of Police, Marshall Gage

***Lake Park** Chief of Police, Jeffrey Lindskoog

***Atlantis** Chief of Police, Robert Mangold

***Lark Clarke Shores** Chief of Police, Wes Smith

***Palm Beach** Chief of Police, Frank Croft

***Highland Beach** Chief of Police, Anthony Cervasio

Democratic Primary Candidates for Sheriff:

Rafael Duran and Karl Tozzi

6. Respondent submitted a sworn statement on December 19, 2000. He wrote:

During the course of the campaign, I or my campaign representatives contacted the chiefs of police of West Palm Beach, Boca Raton, Delray Beach, Juno Beach (former chief of police, Mitch Tyre), Boynton Beach, Lake Park, Atlantis, Lake Clarke Shores, Palm Beach and Highland Beach, to request their support for my re-election campaign. My campaign sent written authorization forms to all ten police chiefs seeking their written endorsements. I was told, and I believed, that all authorization forms had been signed, returned and were being kept on file with my campaign. I subsequently learned that my campaign had only received seven (7) signed endorsement forms. We could not locate signed endorsement forms for Chiefs Wes Smith ('Chief Smith'), Anthony Cervasio ('Chief Cervasio'), and Jeffrey Lindskoog ('Chief Lindskoog'). Although Chiefs Smith, Cervasio, and Lindskoog had apparently not returned their signed endorsement forms, Chief Smith and Chief Lindskoog advised me personally of their support, and Chief Cervasio advised a staff worker of his support for my campaign. The failure to notice the absence of the missing authorization forms was an honest, administrative oversight that was not willful or intentional in any way.

Respondent provided copies of the seven signed endorsement forms in his possession.

7. On January 31, 2001, Respondent submitted a supplemental sworn statement. Respondent wrote:

During the course of my re-election campaign for the office of Sheriff of Palm Beach County, Florida, I personally spoke to Chief Wes Smith ('Chief Smith') regarding his endorsement of my candidacy. Chief Smith told me that he would endorse my candidacy. I do not recall exactly where or when I spoke with Chief Smith. To the best of my recollection, I spoke to Chief Smith regarding my endorsement at an official law enforcement function of some type. I sincerely believe the conversation with Chief Smith took place before the publication of any written materials representing that Chief Smith supported my candidacy.

8. On February 14, 2001, Commission staff interviewed Mr. Wes Smith, the Lake Clarke Shores Police Chief. Mr. Smith stated that Respondent had asked him whether he would endorse his candidacy. Mr. Smith stated that he told Respondent, "I support you, but not publicly." Mr. Smith related that he did support Respondent's policies, but he wanted to remain publicly neutral. Mr. Smith continued that "this issue was mostly miscommunication. For [Respondent] to use my name in a political brochure, he should have had my signed letter of endorsement."

9. The November 2, 2000, *Ft. Lauderdale Sun-Sentinel* article stated, "Wes Smith, police chief of Lake Clarke Shores, said he wanted to remain neutral in the sheriff's race because he also serves as president of the county's chiefs of police association. 'I did not know my name was going on a brochure,' Smith said. Smith said he simply expressed support for some Neumann initiatives but never agreed to a political endorsement."

10. In Respondent's January 31, 2001, statement, Respondent wrote, "At this time I do not recall when or where I spoke to Chief Jeffrey Lindskoog ('Chief Lindskoog'), or if I or a member of my staff spoke to Chief Lindskoog regarding his endorsement of my candidacy."

11. Commission staff interviewed Mr. Jeffrey Lindskoog, the Lake Park Police Chief, on February 13, 2001. Mr. Lindskoog stated that he, "did support Mr. Neumann 100% and wholeheartedly." Mr. Lindskoog related that he recalls that Respondent personally called him and asked him if he would endorse his campaign. Mr. Lindskoog stated that he orally authorized Respondent to print his name. Commission staff asked Mr. Lindskoog whether he received a fax from Respondent asking him to sign a written authorization. Mr. Lindskoog replied that his office's fax machine is not reliable, as it is located in a public area and other employees have direct access to the fax machine. Mr. Lindskoog did not eliminate the possibility of whether the faxed copy could have been picked up by others.

12. On February 1, 2001, Respondent's counsel submitted the sworn statement of Ms. Dawn Guzzetta, one of Respondent's campaign workers. The statement read, "I worked on the re-election campaign of Mr. Neumann for the office of Sheriff of Palm Beach County, Florida. I personally spoke to Chief Anthony Cervasio ('Chief Cervasio') regarding his endorsement of Mr. Neumann. Chief Cervasio told me that he would endorse Mr. Neumann."

13. On February 13, 2001, Commission staff interviewed Mr. Anthony Cervasio, the Highland Beach police chief. Mr. Cervasio was asked about his position on the advertisement at issue. Mr. Cervasio stated that he recalled Respondent's secretary calling to ask him about endorsing Respondent. Mr. Cervasio stated that he told Respondent's secretary that he "had no problem with Sheriff Neumann and they had a very good rapport...."

14. The *Sun-Sentinel* article provided by Complainant stated, "Another official included in Neumann's announcement, Highland Beach Police Chief Anthony Cervasio, said he has no problem with the sheriff but never officially endorsed him. 'I don't like to get involved in politics,' he said, adding that he would not sign an official endorsement."

15. On February 16, 2001, Respondent's counsel provided a written statement stating that, "Rafael Duran and Karl Tozzi publicly endorsed Mr. Neumann on television and in the newspaper article.... Their endorsement came after they lost in the Democratic primary and were no longer candidates for office. Their support has never been an issue. Mr. Neumann has no records of any formal written endorsements from them on file." As support for his position, Respondent's Counsel submitted a copy of a September 9, 2000, *Palm Beach Post* article, which read, "Neumann, a Republican, picked up the endorsements of Democrats Rafael Duran and Karl Tozzi, who were distant finishers in the Sept. 5 primary...."

16. Finally, staff investigated whether former Juno Beach Chief of Police, Mitch Tyre, provided Respondent with a written endorsement. On February 22, 2001, Commission staff contacted Respondent's counsel to seek assistance in contacting Mr. Tyre. Respondent's counsel advised staff that Mr. Tyre is currently residing in the Bahamas and that there is no way to contact him telephonically. Respondent faxed staff a written statement that reads:

Dear Sir: Former Chief of Police Mitchell Tyre of the Juno Beach Police Department advised me that he would gladly endorse my campaign for re-election as Sheriff of Palm Beach County. He advised that he had submitted his resignation as Chief to enter into the legal profession as a practicing attorney. He stated that his town manager would not allow him to endorse any individual running for any elective office while he served as Chief of Police, but upon leaving that position we had his permission to announce his endorsement and to publicize same. I advised my staff of this information and had no further contact with former Chief Tyre.

17. Although some of the six individuals for whom Respondent provided no written endorsement offered Respondent their oral support, Respondent never obtained or received written authorizations from them. Therefore, Respondent did not comply with Section 106.143(3).

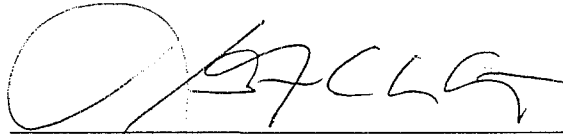
18. Respondent was not a first-time candidate during the election at issue. Furthermore, at the time of the election, Respondent was the highest-ranking law enforcement officer in his county, sworn not only to follow, but to uphold the law.

19. There is no question that Respondent was aware of Section 106.143(3) or that he understood it, as he admitted the same. It is also clear that he failed to perform the act required

by Section 106.143(3), that is, to obtain the *written* endorsement of anyone who he wished to represent as an endorser in an advertisement prior to publication of the advertisement. Therefore, under Section 106.37, Florida Statutes, Respondent's acts were legally willful.¹

20. Hence, staff recommends that the Commission find probable cause to believe that Respondent violated Section 106.143(3), Florida Statutes, on six occasions.

Respectfully submitted,



David F. Chester
Assistant General Counsel

April 19, 2001

Date

Copy furnished to:

Barbara M. Linthicum, Executive Director
Faye Basiri, Investigator Specialist

¹ Section 106.37, Florida Statutes, provides that a person willfully violates Chapter 106, Florida Statutes, if the person:

...commits an act while knowing that, or showing reckless disregard for whether, the act is prohibited...or does not commit an act while knowing that, or showing reckless disregard for whether the act is required...A person knows that an act is prohibited or required if the person is aware of the provision...which prohibits or required the act, understands the meaning of that provision, and performs the act that is prohibited or fails 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....