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STATE OF FLORIDA
ELECTIONS COMMISSION

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

**FLORIDA ELECTIONS COMMISSION,
PETITIONER,**

v.

AGENCY CASE No.: FEC 04-250

04-280

F.O. No.: DOSFEC 05-140

**MARC JACALONE,
RESPONDENT.**

_____ /

CONSENT ORDER

The Respondent, Marc Jacalone, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. The Respondent was an unsuccessful incumbent candidate for the St. Johns County Commission, District 3, in the August 31, 2004 Primary Election.
2. Complainant, Clara A. Cowan, was a candidate for St. Johns County School Board in 2002 and is currently a resident of St. John's County.. Complainant Glen Tilley is a resident of St. John's County.
3. On January 24, 2005, the staff drafted a Statement of Findings recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.
4. On March 4, 2005, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

On or about May 11, 2004, Respondent violated Section 104.071(1)(c), Florida Statutes, prohibiting a candidate or any person supporting a candidate, to aid the nomination or election of such candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate when the Respondent made a \$500 contribution from his campaign account to his county political party.

Count 2:

On or about May 11, 2004, Respondent violated Section 104.071(1)(c), Florida Statutes, prohibiting a candidate or any person supporting a candidate, to aid the nomination or election of such candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate when the Respondent made a \$100 contribution from his campaign account to Randy Brunson, a candidate for the Airport Authority.

Count 3:

On or about May 11, 2004, Respondent violated Section 104.071(1)(c), Florida Statutes, prohibiting a candidate or any person supporting a candidate, to aid the nomination or election of such candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate when the Respondent made a \$100 contribution from his campaign funds to Wiley Deck, a candidate for the Florida House of Representatives.

Count 4:

On or about May 11, 2004, Respondent violated Section 104.071(1)(c), Florida Statutes, prohibiting a candidate or any person supporting a candidate, to aid the nomination or election of such candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate when the Respondent made a \$100 contribution from his campaign funds to Kerry McCarthy, a candidate for the Florida House of Representatives.

Count 5:

On or about July 30, 2004, Respondent violated Section 104.071(1)(c), Florida Statutes, prohibiting a candidate or any person supporting a candidate, to aid the nomination or election of such candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate when the

Respondent made a \$100 contribution from his campaign funds to William Lennon, a candidate for the St. Augustine City Commission.

Count 6:

On or about July 30, 2004, Respondent violated Section 104.071(1)(c), Florida Statutes, prohibiting a candidate or any person supporting a candidate, to aid the nomination or election of such candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate when the Respondent made a \$500 contribution from his campaign funds to candidates running for the offices of President and Vice-President of the United States.

Count 7:

On or about May 11, 2004, Respondent violated Section 106.11(1), Florida Statutes, by using the campaign account for a purpose other than depositing contributions or making expenditures, when Respondent made a \$500 contribution from his campaign account to his county political party.

Count 8:

On or about May 11, 2004, Respondent violated Section 106.11(1), Florida Statutes, by using the campaign account for a purpose other than depositing contributions or making expenditures, when Respondent made a \$100 contribution from his campaign account to Randy Brunson, a candidate for the Airport Authority.

Count 9:

On or about May 11, 2004, Respondent violated Section 106.11(1), Florida Statutes, by using the campaign account for a purpose other than depositing contributions or making expenditures, when Respondent made a \$100 contribution from his campaign funds to Wiley Deck, a candidate for the Florida House of Representatives.

Count 10:

On or about May 11, 2004, Respondent violated Section 106.11(1), Florida Statutes, by using the campaign account for a purpose other than depositing contributions or making expenditures, when Respondent made a \$100 contribution from his campaign account to Kerry McCarthy, a candidate for the Florida House of Representatives.

Count 11:

On or about July 30, 2004, Respondent violated Section 106.11(1), Florida Statutes, by using the campaign account for a purpose other than depositing contributions or making expenditures, when Respondent made a \$100 contribution from his campaign funds to William Lennon, a candidate for the St. Augustine City Commission.

Count 12:

On or about July 30, 2004, Respondent violated Section 106.11(1), Florida Statutes, by using the campaign account for a purpose other than depositing contributions or making expenditures, when Respondent made a \$100 contribution from his campaign funds to candidates running for the offices of President and Vice-President of the United States.

Count 13:

On or about May 11, 2004, Respondent violated Section 106.19(1)(d), Florida Statutes, when the Respondent made an expenditure in violation of Chapter 106, Florida Statutes, by using funds on deposit in his campaign account to make a \$500 contribution to his county political party.

Count 14:

On or about May 11, 2004, Respondent violated Section 106.19(1)(d), Florida Statutes, when the Respondent made an expenditure in violation of Chapter 106, Florida Statutes, by using funds on deposit in his campaign account to make a \$100 contribution to Randy Brunson, a candidate for the Airport Authority.

Count 15:

On or about May 11, 2004, Respondent violated Section 106.19(1)(d), Florida Statutes, when the Respondent made an expenditure in violation of Chapter 106, Florida Statutes, by using funds on deposit in his campaign account to make a \$100 contribution to Wiley Deck, a candidate for the Florida House of Representatives.

Count 16:

On or about July 30, 2004, Respondent violated Section 106.19(1)(d), Florida Statutes, when the Respondent made an

expenditure in violation of Chapter 106, Florida Statutes, by using funds on deposit in his campaign account to make a \$100 contribution to Kerry McCarthy, a candidate for the Florida House of Representatives.

Count 17:

On or about July 30, 2004, Respondent violated Section 106.19(1)(d), Florida Statutes, when the Respondent made an expenditure in violation of Chapter 106, Florida Statutes, by using funds on deposit in his campaign account to make a \$100 contribution to William Lennon, a candidate for the St. Augustine City Commission.

Count 18:

On or about May 11, 2004, Respondent violated Section 106.19(1)(d), Florida Statutes, when the Respondent made an expenditure in violation of Chapter 106, Florida Statutes, by using funds on deposit in his campaign account to make a \$100 contribution to candidates running for the offices of President and Vice-President of the United States.

5. On March 7, 2004, the Respondent was served by certified mail with a copy of the Order of Probable Cause.

6. The Respondent requested a hearing before the Commission within 30 days of receiving the Order of Probable Cause.

7. The Respondent and the staff stipulate to the following facts:

A. Between May 11, 2004 and July 30, 2004, Respondent made six contributions to candidates running for public using campaign funds listed in the following table:

DATE	FULL NAME, STREET ADDRESS & CITY, STATE, ZIP CODE	PURPOSE (ADD OFFICE SOUGHT IF CONTRIBUTION TO A CANDIDATE)	EXPENDITURES TYPE	AMENDMENT	AMOUNT
5/11/04	St. John's County (political party) Executive Committee 301 Royal St. Aug. Hwy. St Aug, FL 32084	Political Donation	Mon		\$500 00

5/11/04	Randy Brunson for Airport Authority 82 Comers Ave St. Aug , FL 32084	Political Donation	Mon		\$100.00
5/11/04	Wiley Deck for State Rep (20) 3080 N Ponce de Leon St. Aug , FL 32084	Political Donation	Mon		\$100.00
5/11/04	Kerry McCarthy for State Rep. (20) 3520 Redbud Trail St. Aug , FL 32084	Political Donation	Mon		\$100.00
7/30/04	William Lennon for City Commission 27 Dolphin Drive St. Aug , FL 32084	Political Contribution	Mon		\$100.00
7/30/04	Major Political Party Presidential Campaign ¹	Political Contribution	Mon		\$100.00

B. Respondent made the six contributions with a check drawn on Respondent's campaign account. Section 106.11(1), Florida Statutes, prohibits the use of a campaign account for anything except depositing contributions and making expenditures on that candidate's campaign

C. Respondent is not a first-time candidate. Respondent was initially elected to the St. Johns County Commission in 1996. Respondent was re-elected in 2000 and was the incumbent candidate when he was defeated in the August 31, 2004 Primary Election.

D. The St. John's County Supervisor of Elections Office provided Respondent with the following information when he qualified as a candidate on July 13, 2004:

1. Notice of Late Filing of Campaign Treasurer's Reports;
2. Notice of False or Malicious Charges;
3. Willful violations;
4. Notice of Usage and Removal of Political Campaign Advertisements;

¹ The actual name and address of the candidate receiving the contribution was properly reported on Respondent's CTR.

5. Supervisor of Elections Web Page Link information;
6. 2004 Election Cycle Calendar of Reporting Dates; and
7. 2004 Campaign Finance Legislative Changes Political Advertisements Disclaimers.

E. Respondent executed Statement of Candidate forms acknowledging that he had received, read, and understood the requirements of Chapter 106, Florida Statutes, on April 1, 1996, February 22, 2000, and January 29, 2004. Respondent has acknowledged receiving and reading a copy of Chapter 104, Florida Statutes. Additionally, Respondent received and read the *2004 Candidate and Campaign Treasurer Handbook* published by the Division of Elections.

CONCLUSIONS OF LAW

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

9. The Commission staff and the Respondent stipulate that the facts set forth in paragraph seven of this Consent Order constitute willful² violations of Sections 104.071(1)(c), 106.11(1), and 106.19(1)(d), Florida Statutes.

ORDER

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

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

11. The Respondent understands that before the Consent Order becomes final agency

² §106.37, Fla. Stat., provides that a person willfully violates Ch. 106, Fla. Stat.:

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

action, the Commission must approve it at a public meeting. After approval, the Consent Order constitutes final agency action of the Commission on the violations listed in the Order of Probable Cause.

12. The Respondent voluntarily waives the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

13. This Consent Order is enforceable under Sections 106.265 and 120.69, Florida Statutes. The Respondent expressly waives any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida, and Respondent shall be responsible for all fees and costs associated with enforcement.

14. If the Commission does not receive the signed Consent Order along with a cashier's check, bank check or attorney's trust account check for the agreed upon penalty by the close of business on May 17, 2005 at 5:00 p.m., the staff will withdraw this offer of settlement and will proceed with the informal hearing scheduled for May 19, 2005 at 1:00 p.m.

PENALTY

WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

A. Respondent has violated Section 104.071(1)(c), Florida Statutes, on six occasions for using campaign funds to make contributions to other candidates for elected office. Respondent is fined a total of \$2500 for the six violations.

B. Respondent has violated Sections 106.11(1), Florida Statutes, on six occasions for using his campaign account for a purpose other than depositing

the person wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation.

contributions or making expenditures in connection with Respondent's campaign. Respondent is fined a total of \$2500 for the six violations

C. Respondent has violated Sections 106.19(1)(d), Florida Statutes, on six occasions for making an expenditure prohibited by Chapter 106. Respondent is fined a total of \$2500 for the six violations. Therefore it is,


ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of \$7500, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050

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

_____ May 17 _____, 2005.



Marc Jacalone - Respondent



R.J. Larizza, Esq.
28 Cordova Street
St. Augustine, FL 32084
Attorney for Respondent, Marc Jacalone

The **Commission staff** hereby agrees and consents to the terms of this Consent Order on

_____ 5.17. _____, 2005.

Eric M. Lipman

Eric M. Lipman
Assistant General Counsel
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on May 19 & 20, 2005 at Tallahassee, Florida and filed with the Clerk of the Commission on

June 3, 2005, in Tallahassee, Florida.

Chance Irvine

Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Copies furnished to:

Eric M. Lipman, Assistant General Counsel
Marc Jacalone, Respondent
R.J. Larizza, Attorney for Respondent
Glen Tilley, Complainant (FEC 04-250)
Clara Cowan, Complainant (FEC 04-280)
St. John's County Supervisor of Elections, Filing Officer