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**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

**In Re: Firefighters and Paramedics for Public
Safety PAC.**

**Case No.: FEC 99-298
F.O. No.: DOSFEC 01-298 W**

CONSENT ORDER

The Respondent, Firefighters and Paramedics for Public Safety PAC 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 3, 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 Sections 106.11(3) and 106.19(1)(d), Florida Statutes.
2. The facts set forth in the Statement of Findings, which is attached hereto and incorporated by reference, are deemed admitted as true. Attachment 1.
3. On May 22, 2001, the Commission entered an Order of Probable Cause finding there was probable cause to believe that the Respondent violated Sections 106.11(3) and 106.19(1)(d), Florida Statutes.
4. On May 22, 2001, the Respondent was served by certified mail with a copy of the Order of Probable Cause.
5. The Respondent requested a hearing before the Commission within 30 days of receiving the Order of Probable Cause.

CONCLUSIONS OF LAW

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

7. The Commission staff and the Respondent stipulate to the facts set forth in the Statement of Findings and to the ability of the Commission to impose a civil penalty in accordance with Section 106.265, Florida Statutes.

ORDER

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

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

10. The Respondent understands that before the Consent Order is final agency action, the Commission must approve it at a public meeting.

11. After it is approved by the Commission, this Consent Order constitutes final agency action on the violations charged in the Order of Probable Cause, and resolves all the issues raised by the Commission in its Order of Probable Cause.

12. 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.

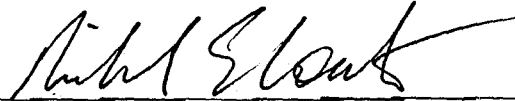
13. This Consent Order is enforceable under Sections 106.265 and 120.69, Florida Statutes. The Respondent expressly waives any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida, and Respondent shall be responsible for all fees and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

14. The Respondent shall remit to the Commission a civil penalty in the amount of \$1,000 for violating Sections 106.11(3) and 106.19(1)(d), Florida Statutes. The civil penalty

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

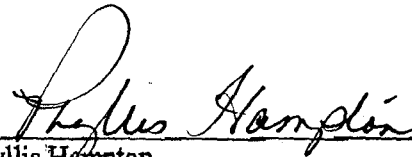
November 6, 2001.



Richard E. Coates
200 West College Avenue, Suite 311 B
Tallahassee, Florida 32301

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

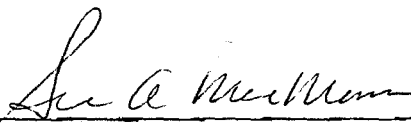
November 6, 2001.



Phyllis Hampton
General Counsel
Florida Elections Commission
Room 2002, The Capitol
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on November 7 & 8 at Tallahassee, Florida and filed with the Clerk of the Commission on

November 16, 2001, in Tallahassee, Florida.



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

Copies furnished to:

Phyllis Hampton, General Counsel
Firefighters and Paramedics for Public Safety PAC; and A.E. Dogota, Chr., Respondent
Richard E. Coates, Attorney for Respondent
Dan O'Connell, Complainant
Division of Elections, Filing Officer

Attachment: Statement of Findings

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**RICHARD E. COATES
ATTORNEY AT LAW**

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PH. 850-681-1029
200 W. COLLEGE AVE., STE. 311B
TALLAHASSEE, FL 32301-7710

DATE 11/6/01 \$

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PAY
TO THE
ORDER OF

Florida Election Commission

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One thousand & no

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FOR

FEC 99-298

Richard E. Coates

MP

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 99-298

Respondent: Firefighters and Paramedics for Public Safety and
A. E. "Skip" Dogoda, Chairman

Complainant: Dan O'Connell

On November 1, 1999, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, 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 the Commission find that there is:

Probable cause to believe that the Respondent violated Section 106.11(3), Florida Statutes, prohibiting a political committee from incurring an expense for the purchase of goods or services without sufficient funds on deposit in the primary campaign depository to pay the full amount of the incurred expenses, to honor all outstanding checks, and to pay the full amount of the authorized expenses, to honor all outstanding checks, and to pay all previously authorized but unpaid expenses on two separate occasions;

No Probable cause to believe that the Respondent violated Section 106.147(1)(a), Florida Statutes, failure of a person or organization sponsoring a telephone call supporting or opposing a candidate, elected public official, or ballot proposal to state that the call was "paid for by" or "paid for on behalf of" and to identify the person or organization authorizing the call;

No Probable cause to believe that the Respondent violated Section 106.087(2), Florida Statutes, prohibiting a political committee that accepts the use of public resources from making independent expenditures to support or oppose candidates or public officials; and

Probable cause to believe that the Respondent violated Section 106.19(1)(d), Florida Statutes, prohibiting a person or organization from making or authorizing any expenditure prohibited by this chapter on two separate occasions.

Summary of Facts and Conclusions of Law

1. Respondent is a political committee that originally filed its statement of

organization with the Division of Elections on December 21, 1989, to “provide contributions and in kind support to any selected candidate or issue.” At the time that the political committee filed its statement of organization, it was known as the “Sarasota Professional Firefighters Local #2546 P.A.C.”

2. The political committee has undergone three subsequent name changes. On August 31, 1990, its name was changed to the Sarasota Firefighters for Public Safety; on April 13, 1992, its name was changed to Firefighters for Public Safety; and on April 8, 1994, its name was changed to Firefighters and Paramedics for Public Safety (FPPS). The political committee is affiliated with International Association of Firefighters – Florida. Anthony Dogoda resigned as the political committee’s chairman, effective July 4, 2000.

3. Complainant is a former radio and television personality in Bradenton. Complainant supported the candidacy of the city’s incumbent mayor, Bill Evers. Evers was defeated in a run-off election on November 23, 1999 and was opposed by the political committee. The Complainant also filed the complaint in FEC 99-297 alleging that the Florida Police Benevolent Association Justice PAC also violated Section 106.087(2), Florida Statutes, when it opposed Bill Evers.

4. The Commission staff investigated whether Respondent violated Section 106.11(3), Florida Statutes, by incurring expenses without having sufficient funds on deposit in the checking account to pay for the incurred expenses.

5. Complainant submitted a printout of the political committee’s campaign finance activity that is available through the Division of Elections web-site. This printout indicates that Respondent has expended more funds than it received in contributions over the past three years. The report shows \$63,788.75 in contributions and \$86,893.03 in expenditures. Complainant also included a copy of a political advertisement that has a political disclaimer that reads, “Pd. Pol. Adv. Paid for independently of any candidate by Firefighters and Paramedics for Public Safety PAC, P.O. Box 4323, Sarasota, Florida 34230.”

6. Respondent’s counsel, Richard E. Coates, submitted a response to the complaint on April 7, 2000. Counsel contends that Complainant’s allegation that the political committee “overspent its reported resources by thousands of dollars” is based solely on information obtained from the web-site. Counsel related that Complainant did not cite any specific instance where the political committee authorized or incurred an expense or wrote a check in violation of this section of the election laws.

7. Counsel provided the monthly bank statements FPPS for 1997, 1998, and 1999. Counsel asserted that each monthly bank statement, with the exception of the statements for August, September, and November of 1999, indicates that the account maintained sufficient funds to cover expenses. Counsel explained that on August 3, 1999 FPPS wrote two checks, check number 1185 and 1186, totaling \$905.78 to the Florida Elections Commission for automatic fines for the late filing of campaign treasurer’s reports. Prior to the checks being written to the Commission, the account had a balance of \$519.44. Check number 1185 was for \$250 and check number 1186 was for \$655.78.

8. According to counsel, FPPS “was not aware that it did not have sufficient funds in

the account to cover the checks. The checks, however, were honored because FPPS had secured overdraft protection in order to shield itself from adverse consequences resulting from inadvertent bookkeeping errors such as the one that occurred in this instance.” Counsel further added that on August 26, 1999, when FPPS realized that the account was overdrawn by \$386.34, a deposit of \$400 was made to the account. However, the monthly bank statement for August contained a negative balance due to bank fees that totaled \$75.35. Counsel explained that the account had no activity during the month of September 1999, other than the monthly service fees assessed by the bank. In October 1999, the political committee realized that the account had a negative balance and made a deposit of over \$4,000 to the account. The bank assessed a \$15 monthly maintenance fee to the account on the last day of the month as it had done since January 1997.

9. Counsel was asked to explain why the Respondent's campaign treasurer's reports show that FPPS spent more than it had taken in over the past three years. Counsel related that after conferring with FPPS's accountant, it appears that Respondent, in some years, may not have reported money transferred from the union account to the political committee account. This does not seem to have been a problem during the past two years.¹

10. Commission staff secured a copy of the invoice and check for the political advertisement submitted by the Complainant. The check was written November 4, 1999 for \$1,337.50 and, according to counsel, included payment for the political advertisement that accompanied the complaint, as well as payment for a second advertisement. The accompanying invoice shows the first advertisement cost \$668.75 and was ordered on October 17, 1999—a date when the campaign depository had a balance of \$1,607.78.

11. Counsel provided a copy of the bank statement for November 1999, indicating that a deposit of \$2,600 was made to the account on November 1, 1999, three days prior to the date that the check was authorized. The bank paid the check on November 9, 1999.

12. Under these circumstances, it appears that Respondent did not comply with Section 106.11(3), Florida Statutes, when check number 1186² was written to the Florida Elections Commission and when the committee's bank assessed fees in August 1999 resulting in a negative balance of \$75.35. It appears that the non-compliance was willful.³ The Respondent

¹ Pursuant to Section 106.28, Florida Statutes, “Actions for violation of this chapter must be commenced before 2 years have elapsed from the date of the violation.”

² The Respondent's balance prior to Checks 1185 and 1186 being written was \$519.44. Check number 1185 was for \$250 and the Respondent had sufficient funds in the account to cover this check; however, when check number 1186 was written for \$655.78, the account's balance would have been a negative \$386.34.

³ 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

is an experienced political committee, having first registered in 1989, and is well aware that sufficient funds must be maintained in the bank account to cover all incurred expenses. The political committee's chairman served as the political committee's treasurer from 1992 until June of 1998, and in a sworn affidavit he acknowledged that has a copy of Chapter 106, Florida Statutes, and that he has read the law.

13. However, it does not appear that the Respondent violated Section 106.11(3), Florida Statutes, when it arranged for the \$668.75 political advertisement, as it had sufficient funds in the account to pay for the expenditure.

14. The Commission staff investigated whether Respondent violated Section 106.147(1)(a), Florida Statutes, by making telephone calls that supported a candidate without stating that the telephone calls were "paid for by ..." or "paid for on behalf of ..." with an additional statement as to the identity of the person authorizing the call.

15. Complainant alleged that Respondent conducted a "clandestine" phone bank asking that the individuals being called vote for Wayne Poston, an opponent of the incumbent mayor, Bill Evers. Complainant further alleged that the caller identified himself as a firefighter with the local fire department. It is Complainant's opinion that the telephone call was "deceiving the voters."

16. Commission staff interviewed Complainant by telephone on December 9, 1999. In the complaint, Complainant stated that he had retained a voice-mail recording of one of the calls that had been made. Complaint admitted that he did not actually receive the telephone calls but that a close friend of his actually received the call. In another telephone interview with Complainant on April 14, 2000, Complainant related that he was unable to provide staff with the voice-mail recording of the telephone, however, he did provide staff with the name of his friend who received the call.

17. Gene Brown, the friend, was interviewed by telephone on April 19, 2000. Mr. Brown related that he received the telephone call at his home approximately a week prior to the election and that the call lasted less than five minutes. Mr. Brown further related that the caller made favorable comments about Wayne Poston, a candidate for the office of mayor, as well as some negative comments about the incumbent candidate, Bill Evers. Mr. Brown said that at no time did the caller tell him who paid for or sponsored the calls. He added that he did manage to get the caller to give him his name and that he was with the Bradenton Fire Department. During a subsequent telephone interview, Mr. Brown related that he could not recall the man's name. And when asked, Mr. Brown explained that the man who called him had asked him to vote for Wayne Poston.

18. Counsel asserted that the political committee was "aware of the fact that Bradenton firefighters made personal calls in support of Wayne Poston. The firefighters made

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 ...

personal calls on their own time.” Counsel stated that the political committee did not sponsor or pay for the telephone calls.

19. Counsel provided a sworn statement from the political committee’s chairman that stated that he had personal knowledge that several Bradenton firefighters made personal calls in support of Wayne Poston and that the firefighters made the calls on a volunteer basis while off-duty. In addition, the political committee’s chairman stated that the political committee did not sponsor or pay for the calls. Counsel also provided a sworn statement from Douglas Huffman, a fireman with the Bradenton Fire Department. Mr. Huffman stated that the calls were made voluntarily by Bradenton firefighters, while off duty, and were not paid for or sponsored by the political committee. In addition, the Respondent’s campaign treasurer’s reports show no expenditures for phone banks, phone calls, or polling.

20. Under these circumstances, it appears that there is no violation of Section 106.147(1)(a), Florida Statutes.

21. The Commission staff investigated whether Respondent Section 106.087(2), Florida Statutes, by making an independent expenditure that opposed a candidate while accepting the use of public resources.⁴

22. As previously discussed, Complainant submitted a copy of a political advertisement that opposed the incumbent mayor of the City of Bradenton, Florida. The political advertisement included a disclaimer that read, “Pd. Pol. Adv. Paid for independently of any candidate by Firefighters and Paramedics for Public Safety PAC, P.O. Box 4323, Sarasota, Florida 34230.”

23. The candidates for the office of mayor were Wayne Poston, Bob Nolan, and the incumbent mayor, Bill Evers. Commission staff interviewed candidates Poston and Nolan to determine whether they had any involvement with the advertisement at issue. Both candidates denied that they had any involvement with the advertisement and stated that they were not aware of the advertisement prior to its distribution.

24. In the response to the complaint, counsel explained that Respondent did not violate this section of the election laws “because it did not use public funds, equipment, personnel, or other resources to collect dues from its members.” Counsel added that union dues are collected from firefighters pursuant to section 447.303, Florida Statutes. This statute provides:

Any employee organization which has been certified as a

⁴ Section 106.087(2)(a), Florida Statutes, reads:

Any political committee or committee of continuous existence that accepts the use of public funds, equipment, personnel, or other resources to collect dues from its members agrees not to make independent expenditures in support of or opposition to a candidate or elected public official. However, expenditures may be made for the sole purpose of jointly endorsing three or more candidates.

bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.⁵ However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. Said deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked pursuant to s. 447.507, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.

25. Counsel further explained that in accordance with Section 447.303, Florida Statutes:

... the dues of firefighters are payroll deducted and forwarded to the unions. A portion of these dues is transferred by the unions to FPPS. The unions pay the public employers the reasonable cost of their dues collection services. Because the unions, and not FPPS, collect the dues and subsequently reimburse public employers for their services, FPPS firmly believes that it may make independent expenditures in support of or in opposition to a candidate or elected public official.

26. As part of the response to the complaint, counsel contends that the unions pay the public employers the reasonable cost of their dues collection services. Counsel provided Commission staff with an invoice from the city to the union indicating payment of reasonable compensation for dues collection services, as well as one page from the city's agreement with the union for "service charges" of \$150 per fiscal year.⁶ This information substantiates that it is the union, which receives the payroll deduction for its dues, and it is the union that makes a contribution to the political committee.

⁵ In FEC 96-287, *Marion Education Association and Pat Claus, President*, the Respondent argued that statutory prohibitions against collecting political contributions in public buildings did not apply to the collection of dues by a labor union, and, if it were construed to prohibit dues collections by a labor union, it would run afoul of Section 447.303, Florida Statutes. However, the Commission determined in that case, that the collection of dues and "uniform assessments" did not include the collection of contributions to the union's committee of continuous existence or political committee. The FPPS is a political committee so that the monies transferred to FPPS are not those envisioned by Section 447.303, Florida Statutes.

⁶ The agreement reads, in pertinent part: "The City shall deduct from the amount of dues to be paid to the Union the following expenses of bookkeeping, retention and transmittal of funds: one hundred and fifty dollars (\$150.00) per fiscal year."

27. Counsel reiterated to Commission staff during a telephone interview on June 15, 2000 that they are of the position that it's the union that collects dues and not the political committee. Additionally, counsel added that the union transfers those funds to the political committee.

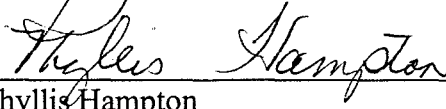
28. Counsel is correct that it is the union that has its dues from members payroll deducted and not the political committee and that the political committee has not violated Section 106.087(2), Florida Statutes, under these circumstances. However, this being the case, it appears that the International Association of Firefighters (IAFF) violated Section 106.08(5), Florida Statutes, prohibiting a person from making a contribution through or in the name of another when it made contributions from the withheld dues to FPPS in the names of its members. It also appears that IAFF violated 106.08(1)(a), Florida Statutes, prohibiting a person from making contributions to a political committee in excess of \$500 when it sent a portion of the dues to the political committee as contributions for its members and those amounts exceeded \$500. And, finally, it appears that IAFF violated Section 106.19(1)(d), Florida Statutes, prohibiting a person or organization from making or authorizing any expenditure prohibited Chapter 106, Florida Statutes. The amount forwarded to FPPS in violation these sections was \$8,856 during calendar year 1999.

29. Commission staff also investigated whether FPPS violated Section 106.19(1)(d), Florida Statutes, when its checking account was overdrawn twice in August 1999. First, check number 1186 was written to the Florida Elections Commission for an automatic fine in the amount of \$655.78 for the late filing of a campaign treasurer's report, resulting in a negative checking account balance of \$386.34. When FPPS realized that the account was overdrawn by \$386.34, a deposit of \$400 was made to the account. However, the monthly bank statement for August contained a negative balance of \$61.62 due to bank fees that totaled \$75.35.

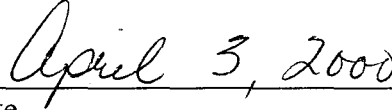
30. Section 106.19(1)(d), Florida Statutes, prohibits a person or organization from making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes. It appears that the non-compliance was willfully and knowingly done. As stated in Paragraph 12, the Respondent is an experienced political committee, having first registered in 1989, and is well aware that sufficient funds must be maintained in the bank account to cover all incurred expenses. The political committee's chairman served as the political committee's treasurer from 1992 until June of 1998, and in a sworn affidavit he acknowledged that he has a copy of Chapter 106, Florida Statutes, and has read the law. In addition, the bank furnished monthly statements to the Respondent showing the beginning balance, expenditures and other debits, and the ending balance.

31. Violations of Section 106.19(1)(d), Florida Statutes, are subject to a civil penalty equal to three times the amount involved in the illegal act in addition to the regular penalty of up to \$1,000 per count authorized by Section 106.265, Florida Statutes. In this case, the regular penalty could be up to \$1,000. The amount involved in the illegal act is \$386.34 and three times \$386.34 would be \$1,159.02, for a total possible penalty of \$2,159.02.

Respectfully submitted,

A handwritten signature in cursive script, reading "Phyllis Hampton", written over a horizontal line.

Phyllis Hampton
General Counsel

A handwritten date in cursive script, reading "April 3, 2000", written over a horizontal line.

Date

Copy furnished to:

Barbara M. Linthicum, Executive Director
Keith Smith, Investigator Specialist