

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

IN RE: ROBERT D. MOORE,

Case No. 96-388

F. O. No.: DOSFEC 99-079-W

FINAL ORDER

THIS CAUSE came on to be heard at a formal hearing held before the Florida Elections Commission (Commission) on February 11, 1999, in Tallahassee, Florida.

APPEARANCES

For Commission: Michael T. McGuckin
Assistant General Counsel
Florida Elections Commission
Room 2002, The Capitol
Tallahassee, Florida 32399-1050

For Respondent: Ronald E. Clark, Esquire
501 St. Johns Avenue
Post Office Box 2138
Palatka, Florida 32178-2138

STATEMENT OF THE ISSUE

Whether the Respondent willfully violated Section 106.08(1), Florida Statutes, when he made contributions to a candidate that exceeded \$ 500 for an election, and whether the Respondent willfully violated Section 106.08(5), Florida Statutes, when he made a contribution to a candidate, and gave a false name.

PRELIMINARY STATEMENT

On December 16, 1996, the Commission received a complaint alleging violations of Florida's election laws. The 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 Chapter 106, Florida Statutes.

On March 3, 1998, the staff drafted a Statement of Findings recommending to the Commission that there was probable cause to believe that Chapter 106, Florida Statutes, was violated. On April 10, 1998, the Commission entered an Order of Probable Cause finding that there was probable cause to believe that the Respondent violated Sections 106.08(1), and 106.08(5), Florida Statutes. The Respondent timely requested a formal hearing. At the formal hearing, the Commission presented the oral testimony of three witnesses and offered nineteen exhibits which were admitted into evidence; the Respondent presented the oral testimony of two witnesses and offered eight exhibits which were admitted into evidence.

On or before April 1, 1999, pursuant to direction of the Commission, the parties submitted proposed final orders. The proposed final orders were considered by the Commission at its regularly scheduled meeting on May 5, 1999, in Orlando, Florida.

FINDINGS OF FACT

1 On July 13, 1995, Respondent was appointed Tax Collector of Putnam County, Florida by a letter from Governor Lawton Chiles to Secretary of State Sandra B. Mortham, and served in that office for a term that began on July 13, 1995, and ended on January 6, 1997

2 On January 18, 1996, Respondent signed a Statement of Candidate form for the office of Tax Collector, stating: "I have received, read and understand the requirements of Chapter 106, Florida Statutes." Respondent did receive, read and understand the requirements of Chapter 106, Florida Statutes

3 On April 29 1996, Respondent withdrew as a candidate for the office of Tax Collector.

4 On July 11, 1996, Respondent contributed \$ 250 to Kerry Rowell, a candidate in

the September 3, 1996, election for Tax Collector of Putnam County, Florida.

5. Respondent's July 11, 1996 \$ 250 contribution to the Kerry Rowell campaign was made by check signed only by Respondent; it was reported on candidate Rowell's campaign treasurer's report.

6. On July 24, 1996, Respondent and his wife contributed \$ 20 to Kerry Rowell, a candidate for Tax Collector. Respondent and his wife gave \$ 10 each for campaign T-shirts.

7. On or before August 29, 1996, Respondent delivered a political advertisement that he authored to candidate Rowell for his review and approval prior to its publication in the *Palatka Daily News*.

8. On August 29, 1996, Respondent signed a withdrawal slip for \$ 270.22 from savings account number 3524098 at the First Federal Savings and Loan Association of Putnam County. Respondent requested the withdrawal be in the form of a \$ 270 22 cashier's check, numbered 17639, made payable to the *Palatka Daily News*.

9. On August 29, 1996, five days prior to the September 3, 1996 election, Respondent delivered the political advertisement that he authored to the *Palatka Daily News* for publication in its September 2, 1996 issue. Respondent paid for the ad with the \$ 270.22 cashier's check numbered 17639, and was issued a receipt

10. On or a day after August 29, 1996, Respondent informed candidate Rowell of the \$ 270.22 cost for the political advertisement authored and paid for by Respondent that would be published one day prior to the September 3, 1996 election in the *Palatka Daily News*. At this time, Respondent indicated to candidate Rowell that Respondent was approaching the \$ 500 campaign contribution limit and told candidate Rowell to report that the \$ 270 22 contribution came from Judy Moore. On his treasurer's report Rowell listed an 8-29-96 \$ 270 22 in-kind contribution, described as a "Political Ad- Daily News," in the name of Judy Moore.

11. On September 2, 1996, the *Palatka Daily News* published the political advertisement delivered and paid for by Respondent. The ad was in the form of a personal letter to the voters of Putnam County with the Tax Collector letterhead and seal. The letter/ad was signed by Respondent with the title Tax Collector and contained the following disclaimer at the bottom of the page: "Pd. Political Adv. Pd For By Robert D. Moore."

12. The September 2, 1996 advertisement was paid for with funds that came from a joint savings at the First Federal Savings and Loan Association of Putnam County under account number 3524098.

13. First Federal Savings and Loan Association of Putnam County joint savings account number 3524098 was opened on January 11, 1996, under the account title and signatures of Robert D. Moore or Judy L. Moore. It required only one signature for the withdrawal of funds, and listed only Respondent's social security number as the Taxpayer Identification Number. From the opening of the account until September 30, 1996, Respondent made eight (8) deposits totaling \$ 8,543.15 and five (5) withdrawals, while his wife made no deposits and five (5) withdrawals.

14. On March 18, 1996, Judy Moore received \$ 11,500 pursuant to the Last Will and Testament of her mother, which she deposited in the State Employees Credit Union, not in the First Federal Savings and Loan Association of Putnam County.

15. On August 12, 1997, Respondent and his wife, Judy L. Moore, executed sworn affidavits before Myra B. Hall, Notary Public.

CONCLUSIONS OF LAW

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

17. The Respondent is charged with violating Section 106.08(1), Florida Statutes,

based on Respondent making contributions to a candidate that exceeded \$ 500 for an election.

18. As to limitations on contributions, Section 106.08(1)(a), Florida Statutes(1996), in pertinent part clearly states that:

No person, political committee, or committee of continuous existence may, shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:

1. To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, \$ 500.

19. To prove a violation of this section, the Commission must find the following elements: Respondent willfully made contributions to a candidate, and that the contributions made by Respondent exceeded \$ 500 for an election.

20. The first element to be proven is that Respondent made contributions to a candidate. It is undisputed that Respondent made a \$ 250 contribution to the Kerry Rowell campaign by signing a check and delivering it to candidate Rowell on or about July 11, 1996.

21. It is undisputed that Respondent made a \$ 10 contribution for a T-shirt to the Kerry Rowell campaign on or about July 24, 1996.

22. The second element to be proven is that the contributions exceeded \$ 500 for an election. It is undisputed that a \$ 270.22 in kind contribution was made to the Kerry Rowell campaign by the publication in the *Palatka Daily News* of the political advertisement in the form of the letter to Putnam County voters

23. It is undisputed that the \$ 270.22 in kind contribution to the Rowell campaign came from funds deposited primarily by Respondent in the First Federal Savings and Loan Association of Putnam County under the account title and signatures of Robert D. Moore or Judy L. Moore, as account number 3524098, and that only one of their signatures was required for the withdrawal of funds.

24. Contributions from joint accounts have been discussed extensively in Division

of Election Opinions DE 82-16 (July 8, 1982) and DE 93-10 (November 15, 1993). Both opinions are clear that under Florida's campaign finance laws full disclosure requires the signature (on the check or accompanying documents) of the person intending to have a contribution attributed to him or her.

25. In DE 82-16, the Division clearly articulated its policy that funds in joint accounts are the property of both depositors, and "that a contribution by a check drawn on a joint account must be signed by each owner of the account when the contribution is intended to be a contribution from each owner."

26. In DE 93-10, the Division determined whether a contribution received in the form of a check drawn on a joint account and signed by only one of the joint owners can be presumed to be an equal contribution from both owners. The result reached by the division was that a check drawn on a jointly owned account, signed by only one owner is presumed to be a contribution only from the signee.

27. In the instant case, only Respondent signed the \$ 250 check and the \$ 270.22 withdrawal slip. The facts also show that Respondent: wrote and signed the political ad, brought his ad to the candidate for approval, withdrew the funds from the bank to pay for his ad, directed the bank to make the cashier's check payable to the newspaper, delivered the cashier's check to the paper, delivered his ad to the paper for publication, accepted a receipt in his name from the paper, indicated to the candidate that Respondent was approaching the \$ 500 campaign contribution limit, told the candidate to report that the \$ 270.22 contribution came from Judy Moore, and did not mention his wife or her name in his ad or its disclaimer.

28. Respondent claims it was the intent of him and his wife that the funds in account number 3524098 at the First Federal Savings and Loan Association of Putnam County were the separate and distinct property of Judy L. Moore. However, the facts of this case cannot support

such a conclusion of law. This account was opened on January 11, 1996; on that date, Respondent endorsed and deposited a \$ 5,812.27 check made payable to him. Subsequently, Respondent made seven (7) other deposits while his wife made none. The inheritance received by Ms. Moore from her mother's estate in March of 1996, was deposited in another joint account at a different bank, and was never deposited in account number 3524098. Assuming arguendo, that these funds were originally separate and distinct as suggested by Respondent, the nature and activity in the account and the failure of Respondent's wife to sign any document supporting their claim that she intended the contribution to be only from her is far from the full disclosure required by Florida's election laws, and is not supported by the law as opined in DE 82-16 and 93-10.

29. Respondent and his wife executed affidavits to support Respondent's claim that the \$ 270.22 used to pay for the ad came from the separate funds of his wife, Judy L. Moore. Respondent swore in his affidavit: "Since these funds came from her mother's estate, she kept them segregated in the savings account." Mrs. Moore swore in her affidavit: "In order not to confuse the contribution by using their joint checking account which contained both Mr. Moore's funds and her funds, she chose to use a savings account which contained only her funds." But the facts adduced prior to and during the hearing, established that the alluded to separate inheritance of Mrs. Moore was never deposited in the First Federal savings account that provided the funds for Respondent's ad. Unable to testify at the hearing that the inheritance funds had remained separate, as reflected in their affidavits, Respondent and his wife now swore that it had always been their intent that the funds in First Federal were the separate property of Mrs. Moore. As evidenced by the history of activity of account number 3524098 in the preceding paragraph, the testimony and affidavits of Respondent and his wife are not credible regarding the separate and distinct nature of the funds in this account number.

30. Therefore, the \$ 270.22 in kind contribution represented by the political advertisement can only be attributed to Respondent. Consequently, Respondent's total contributions to the Kerry Rowell campaign for the September 3, 1996 election were \$ 530.22, an excess of \$ 30.22 above the statutory limit.

31. The last element to be proved is that Respondent acted willfully. The applicable standard for willfulness is articulated in *Division of Elections v. Tanner*, DOSFEC 95-130 (August 29, 1995), wherein this Commission enumerated certain factors to be used in determining whether a candidate acted willfully, including:

- A. If a respondent has political experience;
- B. If a respondent has any previous history of violations;
- C. If a respondent has previously complied with provisions of Chapter 106;
- D. If a respondent had specific notice of a particular provision of Chapter 106;
- E. If a respondent failed to establish a procedure in his campaign to ensure that the law was complied with;
- F. If a respondent maintains purposeful ignorance of the law, or "willful blindness."

32. When the factors from *Tanner* are applied to the instant case, Respondent's conduct appears willful. Section 106.023, Florida Statutes, requires each candidate to file a statement with the qualifying officer within ten days after filing the appointment of campaign treasurer and designation of a campaign depository, stating that the candidate has read and understands the requirements of Chapter 106. Respondent received a copy of Chapter 106, Florida Statutes and had been a candidate from January 18 through April 29, 1996. Clearly, Respondent was required by law to read and become familiar with the requirements of Chapter 106 and had apparently complied with election laws when he was a candidate. Furthermore, the

testimony established that Respondent had specific notice of a particular provision of Chapter 106, namely the \$ 500 limitation on campaign contributions. Therefore, since Respondent knew the law and acted contrary to it, his conduct was willful.

33. Thus, the facts show that all elements necessary to prove a violation of Section 106.08(1), Florida Statutes(1996), have been proven. The Respondent's actions, in light of his political experience and knowledge of election law, show that his conduct was willful when he made contributions to a candidate that exceeded \$ 500 for an election

34. The Respondent is also charged with violating Section 106.08(5), Florida Statutes (1996), based on Respondent making a contribution to a candidate, and giving a false name.

35. Section 106.08(5), Florida Statutes (1996), addresses violations related to contributions, and states in pertinent part that:

No person shall make any contribution in support of or opposition to a candidate for election or nomination, in support of or opposition to an issue, or to any political committee, through or in the name of another, directly or indirectly, in any election.

36. To prove a violation of this section, the Commission must find the following elements: Respondent willfully made a contribution to a candidate or political committee, and Respondent gave a false name

37. The first element to be proven is that Respondent made a contribution to a candidate. As articulated in previous paragraphs, the evidence and testimony clearly show that the cumulative actions of Respondent, from the creation to the distribution of the ad, were so predominant, that the in-kind contribution represented by the ad can only be attributed to Respondent. The defense raised relative to joint bank accounts is without merit, in light of Division of Election Opinions DE 82-16 (July 8, 1982) and DE 93-10 (November 15, 1993).

38. As stated earlier, Respondent went through exhaustive efforts to ensure that his ad appeared in the paper the day before the election. He also made certain that it was reported on the last day candidates could accept contributions, the fifth day before the election. On that date, Respondent instructed candidate Rowell to report his ad on the candidate treasurer's report as an in-kind contribution of \$ 270.22 from Judy Moore. Respondent did this because he knew that attributing the \$ 270.22 in-kind contribution to him was an election law violation.

39. Since the \$270.22 in kind contribution represented by the political advertisement could only be attributable to Respondent, a violation of Section 106.08(5), Florida Statutes (1996), occurred when Respondent gave the false name of Judy Moore to candidate Rowell as the contributor of the \$ 270.22 in-kind contribution to the candidate's campaign for the September 3, 1996 election.

40. The last element to be proven is that Respondent acted willfully. As noted earlier, the applicable standard for willfulness can be found in *Division of Elections v. Tanner*, DOSFEC 95-130 (August 29, 1995). The rationale for a finding of willfulness previously discussed is also applicable here.

41. One of the *Tanner* factors to be considered is political experience. Respondent, Rowell and Respondent's wife all testified that there was a need to set the political record straight relative to whom the Respondent Tax Collector was supporting in the election on September 3, 1996. Apparently one candidate had been circulating an earlier letter of Respondent supportive of her. Respondent's political experience told him there was a need for him to personally respond. His response took the form of his letter advertisement to the voters. To maximize its political impact, and give the greatest advantage to Respondent's candidate, the letter could only come from Respondent. To accomplish this end, the letter was written under his signature only, as Tax Collector, and was printed on Tax Collector letterhead with the State

seal and stated: "Pd Political Adv. Pd For By Robert D. Moore." A letter from Judy Moore to voters would certainly not have had the same impact. In addition, Respondent displayed political acumen by his efforts at ensuring that his ad appeared in the paper the day before the election so it could not be rebutted, and made certain that it was reported on the last day candidates could accept contributions.

42. When applying the *Tanner* factors to the instant violation, Respondent's conduct appears willful. Respondent filed a statement that he had received, read and understood the requirements of Chapter 106; he had been a candidate from January 18 through April 29, 1996. Thus, Respondent was required by law to read and become familiar with the requirements of Chapter 106 and had apparently complied with election laws when he was a candidate. Furthermore, the testimony established that Respondent had specific notice of the \$ 500 limitation on campaign contributions. Since Respondent knew the law and acted contrary to it, his conduct was willful.

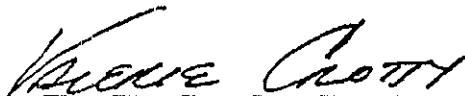
43. Therefore, the facts show that all elements necessary to prove a violation of Section 106.08(1), Florida Statutes (1996), have been proven. The Respondent's actions in light of his political experience and knowledge of election law show that his conduct was willful when he made a contribution to a candidate and gave a false name in order to avoid exceeding the limitation of \$ 500 for an election.

ORDER

Based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent violated Section 106.08(1), Florida Statutes (1996), on one occasion, and Section 106.08(5), Florida Statutes (1996), on one occasion. Therefore, it is

ORDERED that the Respondent shall remit a civil penalty in the amount of \$ 2,060.44. The civil penalty shall be paid to the Commission, Room 2002, The Capitol, Tallahassee, Florida 32399-1050, within 30 days of the date this Final Order is received by the Respondent.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on May 17, 1999, in Tallahassee, Florida.



Valerie M. Crotty, Chairman
Florida Elections Commission
Room 2002, The Capitol
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 appeal by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeal. The notice must be filed within 30 days of the date this Final Order was filed and must be accompanied by the appropriate filing fee.

Copies furnished to:

Michael T. McGuckin, Assistant General Counsel
Ronald E. Clark, Attorney for Respondent
Mary K. Engleking, Complainant
Putnam County Supervisor of Elections