

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

IN RE: Jon Thaxton

Case No.: FEC 00-270

F.O. No.: DOSFEC 01-044 W

STATE OF FLORIDA  
ELECTIONS COMMISSION

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ORDER OF NO PROBABLE CAUSE

**THIS CAUSE** came on to be heard by the Florida Elections Commission at its regularly scheduled meeting held on January 31 and February 1, 2001, in Miami, Florida.

After considering the Statement of Findings and the recommendations of counsel, the Commission finds that there is:

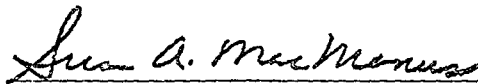
**No Probable cause** to believe that the Respondent violated Section 106.07(5), Florida Statutes, prohibiting a candidate from certifying to the correctness of a campaign treasurer's report that is incorrect, false, or incomplete;

**No Probable cause** to believe that the Respondent violated Section 106.19(1)(a), Florida Statutes, prohibiting a person or organization from accepting a contribution in excess of \$500 for each election; and

**No Probable cause** to believe that the Respondent violated Section 106.19(1)(b), Florida Statutes, failure of a person or organization to report a contribution required to be reported by this chapter.

Therefore, it is **ORDERED** that this case is **DISMISSED**.

**DONE AND ENTERED** by the Florida Elections Commission and filed with the Clerk of the Commission on February 13, 2001, in Tallahassee, Florida.



Susan A. MacManus, 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 appeals by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeals. The notice must be filed within 30 days of the date this final order was filed with the Clerk of the Commission and must be accompanied by the appropriate filing fee.

Copies furnished to:

Phyllis Hampton, General Counsel  
Mark Herron, Attorney for Respondent  
Jon Thaxton, Respondent  
James P. Herbert, Complainant  
Sarasota County Supervisor of Elections, Filing Officer

Attachment: Statement of Findings

## STATEMENT OF FINDINGS

Case Number: FEC 00-270

**Respondent:** Jon Thaxton

**Complainant:** James P. Herbert

On September 20, 2000, 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:

**No Probable cause** to believe that the Respondent violated Section 106.07(5), Florida Statutes, prohibiting a candidate from certifying to the correctness of a campaign treasurer's report that is incorrect, false, or incomplete;

**No Probable cause** to believe that the Respondent violated Section 106.19(1)(a), Florida Statutes, prohibiting a person or organization from accepting a contribution in excess of \$500 for each election; and

**No Probable cause** to believe that the Respondent violated Section 106.19(1)(b), Florida Statutes, failure of a person or organization to report a contribution required to be reported by this chapter.

### Summary of Facts and Conclusions of Law

1. Respondent was a candidate for the Sarasota County Commission. He won the primary election in September and defeated a write-in candidate on November 7, 2000. Respondent was a first-time candidate.

2. Complainant is a realtor and the chairman of a non-profit organization, The Midnight Pass Society, whose purpose is the restoration of an inlet in Sarasota County. A similar complaint was filed by Marilyn S. Angers in FEC 00-287.

3. Commission staff investigated whether an advertisement, costing more than \$4000, published in the *Sarasota Herald-Tribune* on election day, September 5, 2000, was an in-kind contribution to the Respondent's campaign or an independent expenditure by Mr. Jeff Jones. If the advertisement was an in-kind contribution, the Respondent failed to report the contribution as required by Section 106.19(1)(b), Florida Statutes; accepted a contribution in excess of \$500 in violation of Section 106.19(1)(a); and violated Section 106.07(5), Florida Statutes, by certifying to the correctness of a campaign treasurer's report that is incorrect, false,

or incomplete.

4. As part of the complaint filed in FEC 00-270, Complainant submitted a newspaper article that appeared in the September 6<sup>th</sup> edition of the *Sarasota Herald-Tribune*. The article discusses the advertisement and states that an individual, Jeff Jones, paid more than \$4,000 for it. In addition, the article stated that Mr. Jones faxed Respondent notifying him of the advertisement and its contents.

5. Respondent's campaign treasurer's report for September 1 through September 8, 2000, does not show an in-kind contribution from Jeff Jones. Respondent filed the report with the Sarasota County Supervisor of Elections' office on September 15, 2000. He certified that the report was correct, true and complete.

6. The political advertisement contains Respondent's campaign logo, a picture of Respondent, and a list of various committees that he has served on. At the bottom of the advertisement is the political disclaimer, "Paid political advertisement paid independently of any candidate or committee. No candidate has approved this advertisement for newspaper publication, display or other distribution." To review the advertisement, refer to Exhibit 3 in the Report of Investigation.

7. Respondent submitted his non-sworn response to the complaint on October 20, 2000. Responding to Complainant's allegation that he signed an incorrect campaign treasurer's report, Respondent's assertion is that the advertisement was an independent expenditure. Respondent stated that the independent expenditure was not controlled by, coordinated with, nor made upon consultation by him.

8. Respondent explained that he was first made aware of the political advertisement on August 31<sup>st</sup> when a representative from the newspaper called him asking whether he had been notified of an advertisement that was to run in the newspaper concerning his campaign. Respondent said that he advised the caller that he had not been notified and asked who was placing the advertisement. Respondent went on to explain that he was advised that a Jeff Jones had placed the advertisement and that the caller said she would have Jeff Jones fax him notification of the advertisement. Respondent added that he received a faxed description of the advertisement from Jeff Jones on August 31, 2000. To review the response to the complaint and the fax that Respondent received from Jeff Jones, refer to Exhibit 4 in the Report of Investigation.

9. Respondent stated in his response that:

The Complainant is incorrectly asserting that "notification" is synonymous with "control," "coordinate," and or "consultation." The Sarasota Herald-Tribune mandated that Mr. Jones fax me notification of the advertisements general description and content before they would publish it. After being notified of the advertisement, I did mention the possibility of the ad to some supporters.

10. Responding to whether the advertisement was a coordinated effort since the advertisement contained Respondent's campaign logo, picture, and list of committees,

Respondent said that the newspaper supplied the campaign logo and picture for the advertisement. In addition, the list of committees had been published on Respondent's web-site since January of 2000. To review the page from Respondent's web-site that list the various committees, refer to Exhibit 5 in the Report of Investigation.

11. Commission staff interviewed Mike Ponce, retail account supervisor with the *Sarasota Herald-Tribune*, who stated that the newspaper was aware that an individual who makes an independent expenditure in excess of \$1,000 must provide a written notice to the candidate. He added that they asked Mr. Jones to notify Respondent of the advertisement. Mr. Ponce said that the advertisement would not have been published without the required notification. Mr. Ponce also confirmed that the newspaper furnished the Respondent's logo and picture. Mr. Ponce also stated that it was the newspaper's fault that the political advertisement did not state who paid for the advertisement, as Mr. Jones had it on what was presented to the newspaper but the newspaper accidentally omitted it. He added that they proofread the advertisement prior to publishing it and simply overlooked Mr. Jones' name.

12. When the newspaper contacted the Respondent, he told the caller that he was not aware of the advertisement. After this call, he received the fax from Jeff Jones. The Respondent said that he did not respond to the fax, nor make any changes or suggestions. Respondent added that draft copy of the advertisement he received included a few "scribbled" hand-written notes on it as well as a "fuzzy" picture of himself. Respondent submitted a copy of the advertisement that he said he received from Mr. Jones. To review a copy of the advertisement that Respondent from Mr. Jones, refer to Exhibit 7 in the Report of Investigation.

13. Jeff Jones was interviewed by telephone on November 6, 2000. Mr. Jones said that the newspaper informed him that in order for him to publish the advertisement, he would have to notify Respondent. Mr. Jones added that he intended for the advertisement to be published without the Respondent knowledge, but when the newspaper insisted that he notify Respondent, he sent the fax to the Respondent. He said that he did not hear back from the Respondent after he faxed Respondent notification of the advertisement. He added that he and his son were solely responsible for creating the advertisement and that his son had downloaded some of the information that was used in the advertisement from Respondent's web-site.

14. Jeff Jones filed an independent expenditure report with the Sarasota County Supervisor of Elections' office on October 6, 2000, 31 days after the advertisement was published in the newspaper. Mr. Jones said that he had hired a "couple of lawyers" who advised him that he should file a report of the independent expenditure.<sup>1</sup> He said that he hired a lawyer as a result of the controversy that the advertisement had created.

15. Complainant James P. Herbert noted in his complaint that an individual overheard the Respondent discussing the advertisement with one of his supporters, Ruth Tacy. According to Mr. Herbert, the Respondent acknowledged that he was aware of who had paid for the advertisement and that he had approved of the advertisement before it was published.

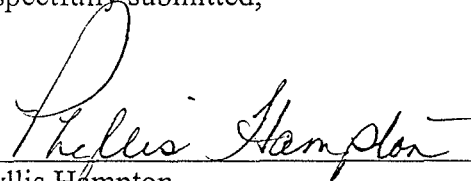
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<sup>1</sup> Section 106.144, Florida Statutes, requires that independent expenditures of more than \$1000 must be reported to the filing officer prior to publishing the advertisement. However, this section was found unconstitutional in *Right to Life v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla.)

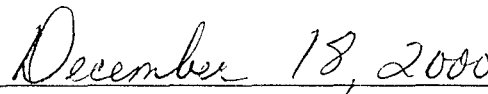
16. Commission staff interviewed Ruth Tacy by telephone on October 5, 2000. Ms. Tacy stated that she is the mother of Rick Tacy, who was defeated by Respondent in the primary election. When asked, Ms. Tacy said that she was working at her precinct and had been outside and struck up a conversation with another individual who was also working at the precinct, who supported Respondent. She said that they began talking and a few minutes later, Respondent came walking up towards them. She added that Respondent and the other individual began a conversation and that the supporter mentioned the advertisement, which had been published in the paper that morning. Ms. Tacy said that Respondent told his supporter that someone in Nokomis had paid for the advertisement and that he had been faxed a copy of the advertisement for his approval on August 31, 2000. Ruth Tacy submitted a sworn affidavit. To review the sworn affidavit of Ruth Tacy, refer to Exhibit 8 in the Report of Investigation.

17. It appears that the advertisement that appeared in the *Sarasota Herald-Tribune* on September 5, 2000 was made by the independent expenditure of Mr. Jeff Jones and was not an in-kind contribution to the Respondent's campaign. Section 106.011(5)(a), Florida Statutes, defines an independent expenditure as one which is "not controlled by, coordinated with, or made upon consultation with, any candidate." The greater weight of evidence in this case indicates that while the Respondent was made aware of the advertisement prior to its being published in the newspaper, he did not control or coordinate nor was he consulted<sup>2</sup> about the advertisement prior to its being published. Under these circumstances, the Respondent did not violate Sections 106.07(5), 106.19(1)(a), or 106.19(1)(b), Florida Statutes.

Respectfully submitted,



Phyllis Hampton  
General Counsel



Date

Copy furnished to:

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

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<sup>2</sup> Consult is defined in *The American Heritage Dictionary* as "to seek advice or information of...to exchange views; confer...to give expert advice as a professional." (Second College Edition, 1985)