

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

DEC 13 2006
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STATE OF FLORIDA
ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,
PETITIONER,

v.

AGENCY CASE No.: FEC 06-026
F.O. No.: DOSFEC 06-221 W

KENNETH S. LUNKINS,
RESPONDENT.

_____ /

FINAL ORDER

THIS CAUSE came on to be heard before the Florida Elections Commission (Commission) at its regularly scheduled meeting held on November 14, 2006, in Tallahassee, Florida.

FINDINGS OF FACT

1. The Respondent is Kenneth S. Lunkins, a candidate for the Florida Senate, District 32, in the 2006 elections. The Complainant was the Division of Elections.

2. On April 24, 2006, the staff of the Commission drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that the Respondent committed violations of The Florida Election Code.

3. On May 26, 2006, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Respondent violated Section 106.07(1), Florida Statutes, when the Respondent failed to file with the candidate's filing officer the candidate's campaign report due on October 11, 2005, listing all contributions received, and all expenditures made, by or on behalf of the candidate.

4. On July 27, 2006, the Respondent was served by certified process server with a

copy of the Commission's Order of Probable Cause to which the Staff Recommendations was attached and incorporated by reference. The Order of Probable Cause included a Notice of Right to a Hearing that advised Respondent that he was entitled to a hearing and described how he obtained such a hearing.

5. The Respondents failed to request a hearing before the Commission within 30 days of receiving the Order of Probable Cause. By failing to exercise their right to seek administrative review within the time specified in the notice, Respondents have waived the right to a hearing. See Lamar Advertising Company v. Department of Transportation, 523 So.2d 712 (Fla. 1st DCA 1988); Environmental Resource Associates of Florida, Inc., v. State of Florida, Department of General Services, 624 So.2d 330 (Fla. 1st DCA 1993); and Eric Patz M.D. v. Department of Health, Florida Board of Medicine, 864 So.2d 79 (Fla. 3rd DCA 2003) (affirming a default judgment entered by the Board).

6. On September 20, 2006, the staff filed a Motion for Determination of Waiver of Hearing and for Final Order that was sent to Respondent by U. S. mail.

7. On October 26, 2006, the Commission issued a Notice of Hearing on the Motion for Determination of Waiver of Hearing and for Final Order notifying the Respondent that the Commission would hear the motion on November 14, 2006, in Tallahassee, Florida. Neither the Respondent nor anyone on Respondent's behalf responded to the motion or appeared at the Commission's meeting.

8. Attached to the motion was a copy of Respondent's financial disclosure forms for 2005. The Respondent did not provide any information regarding his financial resources.

CONCLUSIONS OF LAW

9. The Commission has jurisdiction over the parties to and subject matter of this

cause, pursuant to Section 106.26, Florida Statutes.

10. Based on the information in the Staff Recommendation, the Commission finds that Respondent committed the violations set forth in the Order of Probable Cause and this order.

11. At the hearing, the Commission reviewed a copy of Respondent's financial disclosure forms for 2005. The Commission finds that Respondent has sufficient financial resources to pay the fine imposed by the Commission. In addition, the Commission considered the other mitigating and aggravating circumstances in Section 106.265, Florida Statutes.

ORDER

Based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent waived the right to a hearing and that Respondent committed one count of violating Section 106.07(1), Florida Statutes. Therefore, it is

ORDERED that the Respondent shall remit a civil penalty in the amount of \$1,000, exclusive of fees and costs. The penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, 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 December 8, 2006, in Tallahassee, Florida.



Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
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:

Barbara M. Linthicum, Executive Director
Kenneth S. Lunkins, Respondent (certified mail)
Dept. of State, Division of Elections, Filing Officer