

FILED

06 DEC -1 PM 1:38

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

STATE OF FLORIDA
ELECTIONS COMMISSION

**FLORIDA ELECTIONS COMMISSION,
PETITIONER,**

V.

**AGENCY CASE No.: FEC 06-021
F.O. No.: DOSFEC 06-126 W**

**HOWARD ALAN POHL,
RESPONDENT.**

_____ /

CONSENT FINAL ORDER

The Respondent, Howard Alan Pohl, 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 is the Chief Assistant State Attorney for the Eleventh Judicial Circuit.
2. On April 26, 2006, the staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.
3. On May 26, 2006, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with eight violations of the Election Code.
4. On May 31, 2006, the Respondent was served by certified mail with a copy of the Order of Probable Cause.
5. The Respondent requested a formal administrative hearing before the Division of Administrative Hearings within 30 days of receiving the Order of Probable Cause.

6. The Respondent and the staff stipulate to the following facts and conclusions:

A. The Respondent was a deputy campaign treasurer for Katherine Fernandez Rundle. Ms. Rundle was re-elected State Attorney for the Eleventh Judicial Circuit in the November 2, 2004 general election. Respondent has been an Assistant State Attorney and Certified Public Accountant for more than 20 years.

B. The Complainant, John Rivera, is the president of the Dade County Police Benevolent Association. He took issue with several entries in Ms. Rundle's campaign treasurer's reports (CTR) pertaining of the use of petty cash.

C. Complainant initially raised the petty cash issues in the complaint he filed against Ms. Rundle in case FEC 04-309. Mr. Pohl appeared at the probable cause hearing and acknowledged that he was responsible for the petty cash and advising Ms. Rundle concerning its use. The Commission found no probable cause in that case because it was Respondent and not Ms. Rundle who handled the petty cash. Thereafter, Complainant filed a complaint against the Respondent herein.

D. The table below lists the candidate's petty cash withdrawals and expenditures during the 2004 campaign. Investigator Brainard obtained this information from Ms. Rundle's 2004 Q1, Q2, F1, F2, F3, G2, G3, and G4 CTRs. Respondent made all petty cash withdrawals by a campaign check made payable to him and signed by him.

Date of Check/ Report	Purpose/ Expenditure Type	Amount of Transaction	Balance in Petty Cash Fund
01/31/04 2004 Q1	Petty Cash Withdrawn PCW	\$500.00	\$500.00
03/30/04 2004 Q1	Petty Cash Spent PCS	\$284.75	\$215.25
03/31/04 2004 Q1	Petty Cash Withdrawn PCW	\$284.75	\$500.00
6/29/04 2004 Q2	Petty Cash Spent PCS	\$311.11	\$188.89
06/29/04 2004 Q2	Petty Cash Withdrawn PCW	\$311.11	\$500.00
07/23/04 2004 F1	Petty Cash Spent PCS	\$8.60	\$491.40
07/23/04 2004 F1	Petty Cash Withdrawn PCW	\$8.60	\$500.00
08/06/04 2004 F2	Petty Cash Spent PCS	\$115.50	\$384.50
08/06/04	Petty Cash Withdrawn	\$115.50	\$500.00

2004 F2	PCW		
08/25/04 2004 F3	Petty Cash Spent PCS	\$102.18	\$397.82
08/25/04 2004 F3	Petty Cash Withdrawn PCW	\$102.18	\$500.00
09/24/04 2004 G2	Petty Cash Spent PCS	\$8.60	\$491.40
09/24/04 2004 G2	Petty Cash Withdrawn PCW	\$8.60	\$500.00
10/08/04 2004 G3	Petty Cash Spent PCS	\$52.76	\$447.24
10/08/04 2004 G3	Petty Cash Withdrawn PCW	\$52.76	\$500.00
10/28/04 2004 G4	Petty Cash Spent PCS	\$71.88	\$428.12
10/28/04 2004 G4	Petty Cash Withdrawn PCW	\$71.88	\$500.00
01/14/05 2004 TR	Petty Cash Spent PCS	\$75.99	\$424.01
01/12/05 2004 TR	REF	\$424.01	\$0.00

E. As outlined in the table, Respondent established a petty cash fund for \$500 on January 31, 2004. The 2004 Q1 showed that as of March 30, 2004, the campaign had spent \$284.75 in petty cash, and on March 31, 2004, Respondent withdrew \$284.75 from the campaign account for petty cash. The last transaction brought the petty cash fund back up to the original \$500 level. Respondent followed this procedure in each subsequent reporting period.

F. In FEC 04-309, Ms. Rundle's attorney submitted copies of the checks used to withdraw funds for petty cash from the campaign account. The attorney also submitted receipts for most of the petty cash purchases. Investigator Brainard reviewed the documents and confirmed that the petty cash withdrawals and the petty cash expenditures reported on Ms. Rundle's CTRs were consistent with the amounts and dates of the checks withdrawing funds for petty cash from the campaign account and the petty cash receipts.

G. The CTRs did not contain the name and address of the vendor from whom the individual purchased the goods or services on behalf of the campaign and the name of the individuals who Respondent reimbursed with petty cash. Respondent certified to the correctness of the 2004 F3 CTR, the 2004 G3 CTR, and the 2004 TR. The omissions resulted from Respondent's misinterpretation of Section 106.11(1), Florida Statutes.

H. Respondent used petty cash to reimburse him and other individuals for expenditures they made on behalf of the campaign. Section 106.11(1), Florida Statutes, requires that each candidate designate a campaign account pursuant to Section 106.021(1) and make expenditures from funds on deposit in the account only by means of a bank check drawn on the campaign account. Section 106.021(3), Florida Statutes, specifically requires that reimbursements must be made by a check from the campaign account.

I. Respondent's interpretation of Section 106.11(1), Florida Statutes, exempts petty cash expenditures. However, the exemption is only applicable when petty cash is properly used, as provided in Section 106.12, Florida Statutes, which does not include reimbursements. *See*, DE 06-10.

J. Respondent reported on the 2004 F1 and F2 CTRs an \$8.60 petty cash withdrawal on July 23, 2004, and a \$115.50 withdrawal on August 6, 2004. However, the backs of the checks indicated that the funds were actually withdrawn from the campaign account on August 5, 2004. The total amount of petty cash withdrawn exceeded the \$100 weekly limit by \$24.10.

K. Respondent reported on the 2004 F3 CTR a \$102.18 petty cash withdrawal on August 25, 2004. However, the back of the check indicated that the funds were withdrawn from the campaign account on September 12, 2004. The total amount of petty cash withdrawn exceeded the \$100 weekly limit by \$2.18. At no time did the campaign expend more than \$ 100.00 from the petty cash fund in any given week.

L. As concerns such withdrawals, the Florida Legislature has drawn the line at \$100 per week for non-statewide candidates. Accordingly, staff recommended that there was probable cause that Respondent violated these sections. Nevertheless, Ms. Rundle's campaign collected in excess of \$ 750,000 in contributions, and expended the entire amount. The amount of money involved in the campaign establishes the *deminimis* nature of the amounts described in paragraphs J and K.

M. The filing officer stated that Ms. Rundle's campaign was provided with a copy of Chapter 106, Florida Statutes, and a candidate's handbook.

CONCLUSIONS OF LAW

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

8. The Commission staff and the Respondent stipulate

A. In response to the Commission's request for a formal opinion, the Division of Elections issued DE 06-10 on August 22, 2006, that concluded that the term "necessities" was intended to refer to an item costing no more than \$99.99 which is purchased to meet an essential, urgent need that is unavoidable due to conditions or circumstances.

B. Respondent concedes that when viewed in light of the Division of Elections' formal opinion DE 06-10, issued on August 22, 2006, some of the petty cash expenditures may not have been "other necessities" within the meaning of the statute, although Respondent thought them to be urgent and necessary during the 2004 campaign. Lacking a clear definition of the phrase "other necessities" prior to DE 06-10, any improper use of petty cash by Respondent was not willful.

C. However, DE 06-10 also concluded that items purchased by campaign workers may not be reimbursed using petty cash, but must be done using a campaign check.

D. Although the violation of Section 106.11(1), Florida Statutes, charged in the Order of Probable Cause was not knowingly committed, all elements of the violation can be proven by clear and convincing evidence.

ORDER

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

10. 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 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. The Respondent and the staff of the Commission agree that this Consent Order

and the terms contained herein shall not constitute an admission against interest or acknowledgement of guilt as to any criminal charge that might arise from the allegations that form the basis of the complaint filed on January 26, 2006, against Respondent and this Consent Order.

14. 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.

15. If the Commission does not receive the signed Consent Order within 20 days of the date you received this order, the staff withdraws this offer of settlement and will proceed with the case.

16. Payment of the civil penalty is a condition precedent to the Commission's consideration of the Consent Order.

PENALTY

WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent has violated Section 106.11(1) Florida Statutes, on one occasion for reimbursing individuals for campaign expenditures by using the petty cash fund. Respondent is fined \$500.

Therefore it is

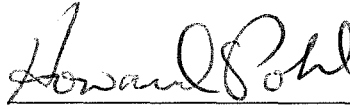
ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of \$500, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050.

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

September 26, 2006.



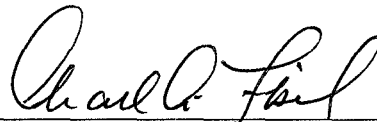
Rodolfo Sorondo, Jr.
Holland & Knight, LLP
700 Brickell Avenue, Suite 3000
Miami, Florida 33131



Howard Alan Pohl
1350 N.W. 12th Avenue
Miami, Florida 33136

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

September 27, 2006.



Charles A. Finkel
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 November 14-15, 2006 at Tallahassee, Florida and filed with the Clerk of the Commission on

December 1, 2006, in Tallahassee, Florida.



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

Tallahassee, FL 32399-1050

Copies furnished to:

Charles A. Finkel, General Counsel
Howard Alan Pohl, Respondent
Rodolfo Sorondo, Jr., Attorney for Respondent