

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

In Re: Jay Wheeler

**Case No.: FEC 10-021
F.O. No.: FOFEC 11-183W**

CONSENT FINAL ORDER

The Respondent, Jay Wheeler, 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. On February 15, 2010, a complaint was filed with the Commission alleging that Respondent violated Florida's election laws.
2. The Respondent has expressed a desire to enter into negotiations directed toward reaching a consent agreement.
3. The Respondent and the staff stipulate to the following facts:
 - a. Respondent was a candidate for re-election to the Osceola County School Board, District 1, in the 2008 elections.
 - b. Respondent was required to file periodic reports of all contributions received and all expenditures made by his campaign. Respondent was required to certify that each report was true, correct, and complete.
 - c. Respondent certified that his 2009 Q4 report was true, correct, and complete when it was not.
 - d. Additionally, Respondent made the following campaign expenditures prohibited by Chapter 106, Florida Statutes:

Embarq, Exxon/Mobil, and Traveler's Insurance.

CONCLUSIONS OF LAW

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

5. Section 106.25(4)(i)3., Florida Statutes, allows the Commission to approve a consent agreement with a Respondent prior to the Commission finding probable cause that a violation of the election laws occurred. The consent agreement has the same force and effect as a consent agreement reached after the Commission finds probable cause.

6. The parties stipulate the staff could prove the facts contained in paragraph 3 by clear and convincing evidence.

ORDER

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

8. The Respondent shall bear his own attorney fees and costs that are in any way associated with this case.

9. The Commission will consider the Consent Order at its next available meeting.

10. 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.

11. 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.

12. If the Commission does not receive the signed Consent Order within 5 days of the

date Respondent or her attorney received this order, the staff withdraws this offer of settlement and will proceed with the case.

13. Payment of the civil penalty by cashier's check or attorney trust account check 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 the following provisions of Chapters 106, Florida Statutes, and imposes the following fines:

A. Respondent violated Sections 106.07(5), Florida Statutes, on 1 occasion. Respondent is fined \$500 for this violation.

B. Respondent violated Sections 106.19(1)(d), Florida Statutes, on 20 occasions. Respondent is fined \$825 for each of the 20 counts for a total of \$16,500.

Therefore it is

ORDERED that Respondent shall remit to the Commission a civil penalty in the amount of \$17,000 inclusive of fees and costs. The Respondent shall pay \$10,000 of the civil penalty at the time the Consent Order is executed, and \$7,000 to be received by the Commission on or before September 23, 2011.

IT IS FURTHER ORDERED that the civil penalty shall be paid by cashier's check or attorney trust account check payable to the Florida Elections Commission, and sent to 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 August 4, 2011.

Benedict P. Kuehne

Benedict P. Kuehne
Miami Tower, Suite 3550
100 S.E. 2nd Street
Miami, Florida 33131

Jay Wheeler

Jay Wheeler
1524 Four Winds Boulevard
Kissimmee, Florida
34746

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

October 17, 2011.

Eric M. Lipman

Eric M. Lipman
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 15 & 16, 2011, in Tallahassee, Florida.

Tim Holladay

Tim Holladay, Chairman
Florida Elections Commission

12-7-11

Date

Copies furnished to:

Eric M. Lipman, General Counsel
Benedict P. Kuehne, Attorney for Respondent