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STATE OF FLORIDA
ELECTIONS COMMISSION

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

**Florida Elections Commission,
Petitioner,**

v.

**Jay Wheeler,
Respondent.**

**Agency Case No.: FEC 14-006
F.O. No.: FOFEC 15-120W**

FINAL ORDER

THIS MATTER was heard at an informal hearing held before the Florida Elections Commission (Commission) on May 20, 2015

APPEARANCES

For Commission	Eric M. Lipman General Counsel 107 West Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
For Respondent	Mark Herron Messer Caparello P.A 2618 Centennial Place Tallahassee, Florida 32308-0572

STATEMENT OF THE ISSUE

Whether Respondent violated Sections 106.07(5) and 106.19(1)(c), Florida Statutes, as alleged in the Commission's November 21, 2014, Order of Probable Cause.

PRELIMINARY STATEMENT

On January 6, 2014, the Commission received a sworn complaint alleging violations of Florida's election laws. Staff of the Commission conducted an investigation to determine whether the facts alleged in the complaint constituted probable cause to believe that Respondent violated the Florida Election Code.

On September 19, 2014, staff recommended to the Commission that there was probable cause to believe that the Florida Election Code was violated. On November 21, 2014, the Commission entered an Order of Probable Cause finding that there was probable cause to charge Respondent with the following violations:

Count 1:

On or about April 9, 2013, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2013 Q1 Report was true, correct, and complete when it was not.

Count 2:

On or about December 8, 2013, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his amended 2013 Q1 Report was true, correct, and complete when it was not.

Count 3:

On or about April 9, 2013, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting, or deliberately failing to include information required to be reported by Chapter 106, Florida Statutes, on his 2013 Q1 Report.

Count 4:

On or about December 8, 2013, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting, or deliberately failing to include information required to be reported by Chapter 106, Florida Statutes, on his amended 2013 Q1 Report.

Respondent did not timely elect to have a formal administrative hearing before an administrative law judge from the Division of Administrative Hearings and, therefore, the matter

was set for an informal hearing before the Commission. At the informal hearing, the Commission adopted the undisputed facts set forth in the Staff's Recommendation as its findings of fact.

FINDINGS OF FACT

1. Respondent was a candidate for the Osceola County School Board, District 1, in the 2014 election.

2. Respondent is an experienced and knowledgeable politician. Respondent ran for the Osceola County School Board in 1998 and the Osceola County Commission in 2000. Respondent also ran for the Osceola County Commission in 2012, but withdrew from the race prior to qualifying. Respondent was elected to the Osceola County School Board in 2002. He was re-elected in 2006, and 2010. This was Respondent's seventh campaign.

3. On or about January 28, 2013, Respondent signed two contracts (for two events) and issued a \$1,300 campaign check to Celebration Residential Owners Association, Inc (CROA) for deposits for two facility rentals. The first event was Respondent's child's January 16, 2014 Bar Mitzvah. The second event was a January 17, 2014 community get-together.

4. The facility rental for Respondent's son's Bar Mitzvah was \$800. The deposit for Respondent's child's Bar Mitzvah facility rental was an unauthorized campaign expense because it was not for the purpose of influencing the results of an election.

5. Respondent filed his original 2013 Q1 Report with the Osceola County Supervisor of Elections (OCSE) on April 9, 2013. Respondent certified the report was true, correct, and complete when it was not. On Respondent's 2013 Q1 Report, Respondent reported the check expenditure to CROA as being for the purpose of "facility deposits." Respondent failed to include that part of the "purpose" was an \$800 deposit for his child's Bar Mitzvah.

6. On December 8, 2013, Respondent filed an amended 2013 Q1 Report with the OCSOE. Respondent certified the report was true, correct, and complete when it was not. On the itemized expenditure page, Respondent deleted the expenditure to CROA and also added the expenditure to CROA.

7. Respondent's actions were willful. Respondent knew or should have known that he certified his original and amended 2013 Q1 Reports as true, correct, and complete when they were not. Additionally, Respondent knew or should have known that he falsely reported, or deliberately failed to include information required to be reported on his original and amended Q1 Reports.

CONCLUSIONS OF LAW

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

9. Respondent's conduct was willful. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited, or failed to perform the acts while knowing that, or showing reckless disregard for whether, the acts were required.

10. Respondent committed 2 counts of violating Section 106.07(5), Florida Statutes, when he certified his original and amended 2013 Q1 Reports were true, correct, and complete when they were not; and committed 2 counts of violating Section 106.19(1)(c), Florida Statutes, when he falsely reported, or deliberately failed to include information on his 2013 Q1 Report required by Chapter 106, Florida Statutes.

11. In determining the amount of the civil penalty, The Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

ORDER

12. The Commission finds that Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

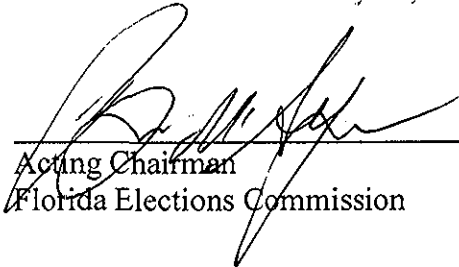
A. Respondent violated Section 106.07(5), Florida Statutes, on 2 occasions for certifying his original and amended 2013 Q1 Reports were true, correct, and complete when they were not. Respondent is fined \$500 for each of the 2 counts for a total of \$1,000; and

B. Respondent violated Section 106 19(1)(c), Florida Statutes, on 2 occasions for falsely reporting, or deliberately failing to include information required to be reported on his 2013 Q1 Report. Respondent is fined \$250 for each of the 2 counts for a total of \$500.

Therefore it is

ORDERED that Respondent shall remit a civil penalty in the amount of \$1,500 inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, Collins Building, Suite 224, 107 West Gaines Street, Tallahassee, Florida 32399, within 30 days of the date this Final Order is filed with the Commission and must be paid by money order, cashier's check or attorney trust account chec

DONE AND ORDERED by the Florida Elections Commission on May 20, 2015.



Acting Chairman
Florida Elections Commission

Copies furnished to:
Eric M. Lipman, General Counsel
Jay Wheeler, Respondent
Benedict P. Kuehne, Attorney for Respondent
Mark Herron, Attorney for Respondent
Keith Thompson, Complainant

NOTICE OF RIGHT TO APPEAL

This order is final agency action. Any party who is adversely affected by this order has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, Florida 32399-1050 and by filing a copy of the notice of appeal with the appropriate district court of appeal. The party must attach to the notice of appeal a copy of this order and include with the notice of appeal filed with the district court of appeal the applicable filing fees. **The notice of administrative appeal must be filed within 30 days of the date this order is filed with the Commission.** The date this order was filed appears in the upper right-hand corner of the first page of the order.