

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: Gary Swanhart

Case No.: FEC 11-073
F. O. No.: FOPEC 11-182W

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CONSENT FINAL ORDER

The Respondent, Gary Swanhart, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties agree to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. On November 16, 2010, the Commission received a sworn complaint alleging that Respondent violated Florida election laws.
2. On August 24, 2011, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

On or about July 23, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 F1 report was true, correct, and complete when it was not.

Count 2:

On or about September 17, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 G1 report was true, correct, and complete when it was not.

Count 3:

On or about October 1, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 G2 report was true, correct, and complete when it was not.

Count 4:

On or about October 15, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 G3 report was true, correct, and complete when it was not.

Count 5:

On or about October 29, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 G4 report was true, correct, and complete when it was not.

Count 6:

On or about January 25, 2011, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 Termination report was true, correct, and complete when it was not.

Count 7:

On or about October 14, 2010, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when Respondent accepted a contribution in the amount of \$500 from Realtors Political Action Committee (PAC) Florida and failed to report it on his 2010 G4 report.

Count 8:

On or about October 25, 2010, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when Respondent accepted a contribution "reimbursement" in the amount of \$230 from Mary E. Moss campaign and failed to report it on his 2010 G4 report.

Count 9:

On or about June 18, 2010, Respondent violated Section 106.09(1), Florida Statutes, by accepting a cash contribution in excess of \$50, when Respondent accepted a cash contribution in the amount of \$100 from himself.

Count 10:

On or about September 16, 2010, Respondent violated Section 106.09(1), Florida Statutes, by accepting a cash contribution in excess of \$50, when Respondent accepted a cash contribution in the amount of \$80 from Robert Zelna.

Count 11:

On or about October 7, 2010, Respondent violated Section 106.09(1), Florida Statutes, by accepting a cash contribution in excess of \$50, when Respondent accepted a cash contribution in the

amount of \$200 from himself.

Count 12:

On or about October 12, 2010, Respondent violated Section 106.09(1), Florida Statutes, by accepting a cash contribution in excess of \$50, when Respondent accepted a cash contribution in the amount of \$95 cash from Harry Tomanek.

3. The Respondent and the staff stipulate to the following facts:
 - a. The Respondent was a candidate for Ponce Inlet Town Council in the November 2, 2010 election.
 - b. Counts 1, 2, 4, 6, 7, and 8 are dropped.
 - c. The Respondent accepted excessive cash contributions in the amount of \$275, with \$200 being from himself.
 - b. The Respondent also certified that his 2010 G2 and 2010 G4 campaign treasurer's reports were correct when they contained the following errors:

MISSING AND INCORRECT INFORMATION ON RESPONDENT'S CTRs			
Date Filed	Reporting Period	Missing Information	Incorrect Information
10/01/10	09/11 to 09/24/10 2010 G2 report	<ul style="list-style-type: none"> • A \$100.00 contribution from Thomas H. McSharry on 09/13/10. • A \$50.00 contribution from Stephen P. Lampe on 09/24/10. • A \$20.00 contribution from Helen C. Malaxos on 09/24/10. 	<ul style="list-style-type: none"> • Reported \$970.00 in "Cash & Checks" and "Total Monetary," but should have reported \$1,140.00.
10/29/10	10/09 to 10/28/10 2010 G4 report	<ul style="list-style-type: none"> • A \$500.00 contribution from Realtors Political Action Committee (PAC) Florida on 10/14/10. • A \$230.00 contribution "reimbursement" from Ms. Mary E. Hoss' campaign on 10/25/10. (ROI Exhibit 8.) 	<ul style="list-style-type: none"> • Reported \$847.00 in "Cash & Checks" and "Total Monetary," but should have reported \$1,602.00. • Reported a \$772.00 expenditure to One Hour Printing Signs, but should have reported it to On Time Signs on 10/21/10.

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 Commission staff and the Respondent stipulate that staff can prove all elements to establish violations of Sections 106.07(5), and 106.09(1), Florida Statutes, by the required burden.

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. 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 against Respondent on November 16, 2010, and this Consent Order.

12. 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.

13. If the Commission does not receive the signed Consent Order within 7 days of the date Respondent or his attorney received this order, the staff withdraws this offer of settlement and will proceed with the case.

14. Payment of the civil penalty paid by a money order, 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 Sections 106.07(5), and 106.09(1), Florida Statutes. The Respondent shall pay a civil penalty of \$1,175.

Therefore it is

ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of \$1,175, inclusive of fees and costs. The civil penalty shall be paid with a money order, cashier's check or attorney trust account check, and made payable 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

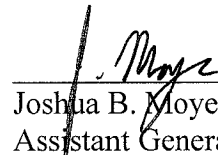
September 22, 2011.



Gary Swanhart, Respondent
32 Coastal Oaks Circle
Ponce Inlet, Florida 32127

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

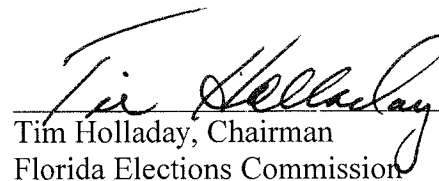
September 28, 2011.



Joshua B. Moye
Assistant 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

11-15 2011.



Tim Holladay, Chairman
Florida Elections Commission

12-7-11

Date

Copies furnished to:

Joshua B. Moye, Assistant General Counsel
Gary Swanhart, Respondent