

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

FILED  
11 MAY 24 PM 1:17  
STATE OF FLORIDA  
ELECTIONS COMMISSION

Florida Elections Commission,  
Petitioner,

v.

Agency Case No.: FEC 10-194

Jacinto Garcia,  
Respondent.

F.O. No.: FOFEC 11-101W

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**ORDER OF PROBABLE CAUSE AND ORDER OF DISMISSAL**

**THIS CAUSE** came on to be heard before the Florida Elections Commission at its meeting held on May 10, 2011.

The Commission has reviewed the complaint, Report of Investigation, Staff Recommendation, all relevant documents and written statements submitted by the Respondent and considered all oral statements made at the probable cause hearing. Based on the facts set forth in the Staff Recommendation, which is incorporated herein and attached to this order, the Commission finds that there is probable cause for the following count(s):

**Count 1:**

On April 8, 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 an in-kind contribution from himself in the amount of \$119.50 and failed to report it on the 2010 Q1 campaign report.

Additionally, the Commission finds no probable cause for the following count(s):

**Count 2:**

On March 23, 2010, Respondent violated Section 106.11(4), Florida Statutes, by failing to have sufficient funds on deposit in the campaign account to pay the full amount of the authorized expense, to honor all other checks drawn on the account which are outstanding and to meet all expenses previously authorized but not yet paid, when Respondent incurred an expense to ThoughtEater Technical Solutions, Inc. for \$300 and did not have sufficient funds to cover the expense because he did not have a campaign account.

**Count 3:**

On March 23, 2010, Respondent violated Section 106.19(1)(d), Florida Statutes, by making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes, when Respondent incurred an expense to ThoughtEater Technical Solutions, Inc. for \$300 and did not have sufficient funds to cover the expense because he did not have a campaign account.

Section 106.25(4)(j), Florida Statutes, empowers the Commission, at its discretion, to dismiss any complaint at any stage of disposition if it determines that the public interest would not be served by proceeding further. Because the in-kind contribution was from himself to the campaign account, and because Respondent was a first time candidate, the Commission finds that the public interest would not be served by pursuing any further action in this matter. Therefore, it is

**ORDERED** and **ADJUDGED** that this matter is hereby **DISMISSED**.

**DONE AND ORDERED** by the Florida Elections Commission on May 18<sup>TH</sup>, 2011,

in Tallahassee, Florida.



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Jose Luis Rodriguez  
Vice-Chair / Acting Chair  
Florida Elections Commission

Copies Provided:

Rosanna Catalano, Executive Director

Jacinto Garcia, Respondent

Jeffrey P. Ensminger, Complainant

Deltona City Clerk, Filing Officer

Attachment: Staff Recommendation

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

In Re: Jacinto Garcia

Case No.: FEC 10-194

STAFF RECOMMENDATION FOLLOWING INVESTIGATION

Pursuant to Section 106.25(4)(c), Florida Statutes, undersigned staff counsel files this written recommendation for disposition of the complaint in this case recommending that there is **probable cause** to charge Respondent with violating **Sections 106.11(4), 106.19(1)(b) and 106.19(1)(d), Florida Statutes**, and that there is **no probable cause** to charge Respondent with violating **Section 106.07(5), Florida Statutes**. Based upon a thorough review of the Report of Investigation submitted on February 24, 2011, the following facts and law support this staff recommendation:

1. On August 23, 2010, the Florida Elections Commission (“Commission”) received a sworn complaint from Jeffrey P. Ensminger (“Complainant”), alleging that Jacinto Garcia (“Respondent”) violated Chapter 106, Florida Statutes.

2. By letter dated August 30, 2010, the Executive Director notified Respondent that staff would investigate an alleged violation of the following statutory provisions:

**Section 106.07(5), Florida Statutes.** The complaint alleges that Jacinto Garcia, initially a mayoral candidate for the City of Deltona in 2010 and then later a candidate for the Deltona City Commission, District 1, certified his 2010 Q1 and F1 (which was labeled Q2) campaign reports as true, correct, and complete when these reports were not. Jacinto Garcia did not include any expenditures or in-kind contributions related to the *garcia4mayor.com* website on these reports nor did he report any expenditure made for the Chili Cook-Off event in April 2010.

**Section 106.19(1)(b), Florida Statutes.** The complaint alleges that Jacinto Garcia, initially a mayoral candidate for the City of Deltona in 2010 and then later a candidate for the Deltona City Commission, District 1, failed to report all contributions required to be reported by Chapter 106.

**Section 106.11(4), Florida Statutes.** The complaint alleges that Jacinto Garcia, initially a mayoral candidate for the City of Deltona in 2010 and then later a candidate for the Deltona City Commission, District 1, incurred expenses related to the *garcia4mayor.com* website and the Chili Cook-Off event in April

2010 without sufficient funds on deposit in the candidate's primary depository account.

**Section 106.19(1)(d), Florida Statutes.** The complaint alleges that Jacinto Garcia, initially a mayoral candidate for the City of Deltona in 2010 and then later a candidate for the Deltona City Commission, District 1, made or authorized an expenditure in violation of section 106.11(4), Florida Statutes.

3. Respondent was a first-time candidate for Mayor of Deltona, Florida in the 2010 election. However, on May 21, 2010, Respondent withdrew his candidacy for Mayor of Deltona and became a candidate for Deltona City Commissioner, District 1. All of the allegations in the complaint pertain to Respondent's candidacy for Mayor.

4. Respondent filed his Appointment of Campaign Treasurer and Designation of Campaign Depository form ("DS-DE 9") for the 2010 election for Mayor of Deltona with the filing officer on February 19, 2010, and appointed himself as campaign treasurer. (ROI Exhibit 9)<sup>1</sup>

**Section 106.19(1)(b), Florida Statutes.**

5. Complainant alleged that Respondent failed to report an expenditure or in-kind contribution pertaining to a campaign website, GARCIA4MAYOR.COM.

6. On March 23, 2010, Respondent used his personal credit card to purchase the domain name, GARCIA4MAYOR.COM, and web hosting services from Network Solutions, L.L.C. for \$119.50. (ROI Exhibits 1, 3, 5 & 6)

7. The \$119.50 that Respondent spent to purchase the domain name and web hosting from Network Solutions, L.L.C. was an in-kind contribution from himself to his campaign and should have been reported on the 2010 Q1 report. However, Respondent failed to report the in-kind contribution. (ROI Exhibit 7)

**Sections 106.11(4) and 106.19(1)(d), Florida Statutes.**

8. Complainant also alleged that when Respondent incurred the expenses for website design and maintenance, there were insufficient funds on deposit in his campaign depository to cover the expenses.

9. On March 23, 2010, Respondent contacted ThoughtEater Technical Solutions, Inc. about designing his campaign website. ThoughtEater Technical Solutions, Inc. agreed and performed work on the website design. (ROI Exhibits 1 & 4)

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<sup>1</sup> The Report of Investigation is referred to herein as "ROI"

10. On April 27, 2010, Respondent received an invoice from ThoughtEater Technical Solutions, Inc. for \$300 for website design and maintenance. (ROI Exhibits 1 & 3)

11. Respondent did not have a campaign depository when he incurred the \$300 expense to ThoughtEater Technical Solutions, Inc. for website design and maintenance. (ROI Exhibits 3, 7 & 8) Therefore, Respondent incurred expenses when he did not have sufficient funds to cover the expense.

12. "Probable cause" is defined as reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person in the belief that the person has committed the offense charged. *Schmitt v State*, 590 So.2d 404, 409 (Fla. 1991). Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. *Dept. of Highway Safety and Motor Vehicles v. Favino*, 667 So.2d 305, 309 (Fla. 1<sup>st</sup> DCA 1995).

13. The above facts show that Respondent was a first-time candidate for Mayor of Deltona, Florida in the 2010 election. Respondent failed to report a \$119.50 in-kind contribution from himself for the domain name, GARCIA4MAYOR.COM, and web hosting services by Network Solutions, L.L.C. Additionally, Respondent did not have a campaign depository when he incurred a \$300 expenditure to ThoughtEater Technical Solutions, Inc. for website design and maintenance on his campaign website; therefore, he did not have sufficient funds to cover the expense.

Based upon these facts and circumstances, I recommend that the Commission find **probable cause** to charge Respondent with violating the following:

**Count 1:**

On April 8, 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 an in-kind contribution from himself in the amount of \$119.50 and failed to report it on the 2010 Q1 campaign report.

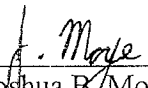
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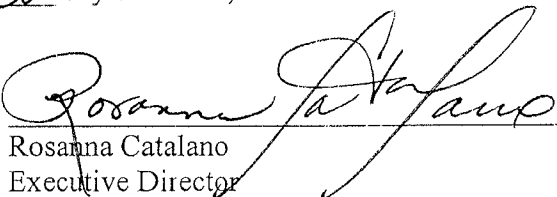
**Count 3:**

On March 23, 2010, Respondent violated Section 106.19(1)(d), Florida Statutes, by making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes, when Respondent incurred an expense to ThoughtEater Technical Solutions, Inc. for \$300 and did not have sufficient funds to cover the expense because he did not have a campaign account

Respectfully submitted on March 28, 2011,

  
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Joshua B. Moye  
Assistant General Counsel

I reviewed this Staff Recommendation this 30<sup>th</sup> day of March, 2011.

  
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Rosanna Catalano  
Executive Director