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STATE OF FLORIDA
ELECTIONS COMMISSION

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

**FLORIDA ELECTIONS COMMISSION,
PETITIONER,**

V.

**AGENCY CASE No.: FEC 09-164
F.O. No.: FOFEC 11-023W**

**VIBERT WHITE,
RESPONDENT.**

_____ /

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on February 8, 2011.

APPEARANCES

For Commission Eric M. Lipman
 General Counsel
 107 W. Gaines Street
 Collins Building, Suite 224
 Tallahassee, FL 32399

For Respondent Frederic O'Neal
 PO Box 842
 Windermere, FL 34786

STATEMENT OF THE ISSUE

Whether the Respondent violated Section 106.09(1), Florida Statutes, by accepting four cash contributions in excess of the legal limit.

PRELIMINARY STATEMENT

On July 23, 2009, 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 the Respondent violated The Florida Election Code.

On April 1, 2010, staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On May 26, 2010, 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 May 15, 2009, Respondent violated Section 106.09(1), Florida Statutes, prohibiting a person from accepting a contribution in cash or by a cashier's check in excess of \$50, when Respondent accepted a \$100 cash contribution from Virginia Howell.

Count 2:

On or about May 15, 2009, Respondent violated Section 106.09(1), Florida Statutes, prohibiting a person from accepting a contribution in cash or by a cashier's check in excess of \$50, when Respondent accepted a \$100 cash contribution from Enrique Howell.

Count 3:

On or about May 15, 2009, Respondent violated Section 106.09(1), Florida Statutes, prohibiting a person from accepting a contribution in cash or by a cashier's check in excess of \$50, when Respondent accepted a \$100 cash contribution from Judith White.

Count 4:

On or about May 15, 2009, Respondent violated Section 106.09(1), Florida Statutes, prohibiting a person from accepting a contribution in cash or by a cashier's check in excess of \$50, when Respondent accepted a \$100 cash contribution from Sam Cahman

Respondent failed to elect to have a formal or informal hearing within 30 days of receiving the Order of Probable Cause, and the Commission transmitted the case to the Division of Administrative Hearings on September 1, 2010. Thereafter, the parties agreed to proceed with an informal hearing before the commission.

At the informal hearing, staff presented the undisputed facts contained in the Staff Recommendation.

FINDINGS OF FACT

1. Respondent was a candidate for the Orlando City Commission, District 5, in the March 2010 election.

2. On July 13, 2009, Respondent filed his 2009 Q2 campaign treasurer's report covering the period of April 1, 2009, through June 30, 2009. Respondent certified that the report was true, correct, and complete. Respondent's report listed four \$100 cash contributions received on May 15, 2009.¹ The four cash contributions were from Virginia Howell, Enrique Howell, Judith White, and Sam Cahman.

3. On July 20, 2009, Alana Brenner, the Orlando City Clerk, sent Respondent a letter notifying him that she discovered what appeared to be several items on his 2009 Q2 report which may be election law violations. Ms. Brenner listed the four excessive cash contributions as possible violations.

4. On the bottom of page 23 of the June 2008 *Candidate's Handbook* (Handbook), it states in bold letters that effective January 1, 2008, the maximum contribution a person can accept in cash or by means of a cashier's check is \$50.

5. Respondent testified in his November 5, 2009, affidavit that he possessed and had read the Handbook.

6. On August 29, 2009, Respondent sent the Commission's investigator, Cedric Oliver, a letter that stated:

In response to Commission Daisy Lynum's complaint to the election office in regards to the acceptance of four cash contribution[s] of \$100.00, the Vibert White Campaign committee has taken steps to reverse this benign and small error. Due to our mistake in following the guidelines of an older election manuscript that allows for \$100.00 cash gifts we failed to consult the newer

¹ Respondent mislabeled the 2009 Q2 report as a G1 report.

instructional guide that allows for only \$50.00 cash offerings.
Thus, we are sending the contributions back to the donors.

7. Despite Respondent's promise to send back the excessive cash contributions, there was no record of the cash being returned to the contributors.

8. On October 12, 2009, after the complaint was filed in this case, Respondent filed an amended 2009 Q2 campaign report. Respondent certified the report was true, correct, and complete. On the report, Respondent changed the four May 15, 2009, \$100 cash contributions to four August 11, 2009, \$100 check contributions.

9. There was no record of the four checks being deposited in Respondent's campaign bank account.

10. Respondent's conduct was willful. Respondent accepted the four excessive cash contributions while showing reckless disregard for whether he was prohibited from accepting cash contributions in excess of \$50.

CONCLUSIONS OF LAW

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

2. The Respondent committed four counts of violating Section 106.09(1), Florida Statutes, when he accepted four cash contributions in excess of the legal limits

3. Respondent's conduct was willful. Respondent accepted the four excessive cash contributions while showing reckless disregard for whether he was prohibited from accepting cash contributions in excess of \$50.

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

5. The gravity of Respondent's actions in this case is great. Accurate reporting of contributions and expenditures is one of the most important basic requirements of the election

laws.

6. If a defending party wishes his or her financial position to be taken into account as a matter in mitigation, that party should produce evidence of his or her financial resources. Respondent failed to produce any evidence of lack of financial resources to mitigate the amount of fine. Therefore, the Commission finds that Respondent has sufficient financial resources to pay the fine imposed by the Commission. *Diaz de la Portilla v. Florida Elections Commission*, 857 So. 2d 913 (Fla. 3d DCA 2003)

7. Respondent's good faith efforts to comply with the requirements of Chapter 106 were minimal. Respondent amended his 2008 Q2 report to make it appear that the four excessive cash contributions were checks.

ORDER

WHEREFORE the Commission finds that Respondent has committed four violations of Section 106.09(1), Florida Statutes, and imposes a fine of \$1,000 per count for a total of \$4,000. It is thereupon,

ORDERED that Respondent shall remit a civil penalty in the amount of \$4,000 to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050, within 30 days of receipt of Final Order.

DONE AND ORDERED by the Florida Elections Commission on February FEBRUARY, 2011.



Jose Luis Rodriguez Vice-Chair
Acting Interim Chairman
Florida Elections Commission

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 of 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.

Copies furnished to:

Eric M. Lipman, General Counsel
Vibert White, Respondent (certified mail)
Frederic O'Neal, Attorney for Respondent (certified mail)
Daisy W. Lynum, Complainant
Florida Division of Elections, Filing Officer