

FILED

05 DEC -2 AM 10: 28

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,
PETITIONER,

v.

AGENCY CASE No.: FEC 04-404
F.O. No.: DOSFEC 05-215

WAYNE SLATON,
RESPONDENT.

CONSENT ORDER

The Respondent, Wayne Slaton, 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. The Respondent is the Mayor for the Town of Miami Lakes, Florida.
2. On June 17, 2005, the staff drafted a Staff Recommendations recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.
3. On August 26, 2005, 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 before September 8, 2004, Respondent violated Section 106.11(4), Florida Statutes, by incurring an expense for the purchase of goods or services without sufficient funds on deposit in the primary depository account, when the Respondent placed an order for polling with Marin & Sons, Inc. for \$4,500.

4. On August 29, 2005, the Respondent was served by certified mail with a copy of

the Order of Probable Cause.

5. The Respondent requested a hearing before the Commission within 30 days of receiving the Order of Probable Cause.

6. The Respondent and the staff stipulate to the following facts:

A. The Respondent, Wayne Slaton, was re-elected Mayor for the Town of Miami Lakes, Florida on October 5, 2004 with 51.74% of the vote. He has served as Mayor since 2001 when he was elected on February 13, 2001 with 70.93% of the vote. Respondent also states he was elected to the Dade County Community Council in 1996 and remained on that council until Miami Lakes was incorporated in 2001.

B. The Complainant, Mirtha Mendez has been a registered voter in Miami-Dade County for approximately 20 years and has never run for public office. She stated that she worked as a volunteer for Respondent's 2004 opponent, and that she served as a campaign treasurer for a candidate in 2000.

C. Complainant alleged that on September 12, 2004, she was contacted by telephone and polled by a company named Marin & Sons. Complainant stated that she reviewed Respondent's campaign treasurer's reports and found a \$4500 expenditure to Marin & Son for polling on September 28, 2004. She also found that Respondent had an insufficient balance in his account when he incurred the \$4500 expenditure to Marin & Son on September 13, 2004, the day after she was polled.

D. In a written response, Respondent stated that he contacted Marin & Sons about conducting a poll in September 2004, but said there were no contracts or work orders associated with the polling project. When questioned, Respondent stated that did not know the precise date the poll was to be conducted or when the results were to be tabulated. He stated that he received a \$4500 invoice on September 27, 2004, and paid it on September 28, 2004. The bank records reflect there were insufficient funds in his campaign account to pay the bill until September 21, 2004. The authorization on the check bears the name of the Respondent.

E. Steve Marin, owner of Marin & Sons, told staff that the polling was conducted between September 8, 2004 and September 12, 2004. Although he does not have a record of when Respondent initially contacted him to discuss the polling project, he stated that it occurred before the actual polling began. Mr. Marin provided staff with copy of the \$4500 invoice (#765) for the polling project dated September 9, 2004. Mr. Marin stated that Marin & Sons probably faxed this invoice to Respondent's treasurer on either September 10, 2004 or September 11,

2004. This invoice appears to be the same invoice Respondent provided the staff.

F. The table below reflects the status of Respondent's campaign account during the time period when Respondent incurred the polling expense.

FUNDS IN CAMPAIGN ACCOUNT WHEN RESPONDENT INCURRED EXPENSE				
Transaction Date	Check #	Description of Transaction	Amount	Funds Available to Campaign
08/29/04		Amount of funds Available to Campaign.		\$1,608.00
08/30/04	1003	Marin & Sons	\$460.00	\$1148.00
08/30/04	1004	Sir Speedy Printing	\$315.65	\$832.35
09/07/04		Deposit	\$500.00	\$1,332.35
09/08 to 09/12/04		Marin & Sons Polling Takes Place.	\$4,500.00	(\$3,167.65)
09/16/04		Deposit	\$625.00	(\$2,542.65)
09/17/04		Check Printing Fee Refund	\$112.00	(\$2,430.65)
09/20/04		Deposit	\$750.00	(\$1,680.65)
09/21/04		Deposit	\$2,175.00	\$494.35

G. Respondent does not dispute that there were insufficient funds in his campaign account before September 21, 2004, to pay for the polling project. Respondent stated that he did not receive the invoice until September 27, 2004, and then paid the bill. A review of the \$4,500 invoice submitted by Respondent shows that the invoice was faxed from Respondent's campaign treasurer Manny Figueroa to Respondent on September 27, 2004.

H. Manny Figueroa is a CPA and stated that he has served as a campaign treasurer for several candidates approximately eleven times, including for Respondent's 2001 and 2004 campaigns. Mr. Figueroa confirmed Respondent signed all of his 2004 campaign's expense checks because Mr. Figueroa was not a signatory on the campaign account.¹

I. Mr. Figueroa stated he received the \$4,500 invoice from Marin & Sons and held onto it until the latter part of September 2004, when he faxed it and several other Marin & Sons invoices to Respondent for payment. Mr. Figueroa stated it was his error if this caused a problem.

¹ A review of the records received from the institution where Respondent's 2004 campaign depository was located confirmed that Respondent was the only signatory on this account.

J. Section 106.11(4), Florida Statutes, prohibits a candidate from incurring an expense for the purchase of goods or services without sufficient funds on deposit in the primary depository account to pay the full amount of the incurred expense. "Incur," as defined in Webster's Ninth New Collegiate Dictionary, means to become liable or subject to. Clearly, Respondent did not have sufficient funds available in his primary campaign account at the time he incurred the \$4,500 obligation for polling.

CONCLUSIONS OF LAW

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

8. The Commission staff and the Respondent stipulate that all elements of the offense charged in the Order of Probable Cause can be proven by clear and convincing evidence.

ORDER

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

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

11. The Respondent understands that before the Consent Order becomes final agency action, the Commission must approve it at a public meeting. After approval, the Consent Order constitutes final agency action of the Commission on the violations listed in the Order of Probable Cause.

12. 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.

13. 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.

14. If the Commission does not receive the signed Consent Order within 20 days of the date you received this order, the staff withdraws this offer of settlement and will proceed with the case.

PENALTY


WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent has violated Section 106.11(4) Florida Statutes, on one occasion by incurring an expense for the purchase of goods or services without sufficient funds on deposit in the primary depository account to pay the full amount of the incurred expense. Respondent is fined \$500.

Therefore it is

ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of \$500, inclusive of fees and costs. The civil penalty shall be paid 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 Consent Order on

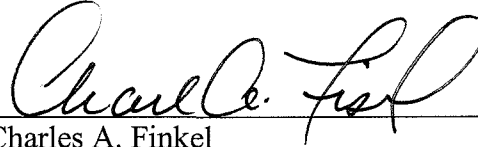
Oct. 12, _____, 2005.



Wayne Slaton
8540 Menteith Terrace
Miami Lakes, Florida 33016

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

October 14, 2005.



Charles A. Finkel
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 17-18 at Tallahassee, Florida and filed with the Clerk of the Commission on

December 2, 2005, in Tallahassee, Florida.



Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Copies furnished to:

Charles A. Finkel, General Counsel
Wayne Slaton, Respondent
Mirtha Mendez, Complainant
Miami Lakes City Clerk, Filing Officer