

FILED**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION** 02 MAY 20 PM 3:40STATE OF FLORIDA
ELECTIONS COMMISSION**In Re: Maurice Ferre**

Case No : FEC 00-079 85
F.O. No.: DOSFEC 02-085W**CONSENT ORDER**

The Respondent, Maurice Ferre, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties. The parties jointly stipulate to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. The Respondent was the Chairman of the Transit Not Tolls, A Committee of Continuous Existence.
2. On April 27, 2001, the staff of the Commission issued a Statement of Findings recommending to the Commission that there was probable cause to believe that the Respondent violated Sections 106.07(5) and 106.19(1)(c), Florida Statutes.
3. On May 22, 2001, the Commission entered an Order of Probable Cause finding there was probable cause to believe that the Respondent violated Sections 106.07(5) and 106.19(1)(c), Florida Statutes.
4. On May 24, 2001, 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 parties stipulate to the following facts:
 - a. Respondent was the Chairman of Transit Not Tolls, a Committee of

Continuous Existence

b. As the chairperson, Respondent signed the requisite Campaign Treasurer's Reports which were filed with the Miami-Dade Supervisor of Elections Office as required by law.

c. Four of the reports filed with Respondent's signature were inaccurate, incomplete, or false. The reports had multiple omissions and inaccuracies. The dates of the inadequate reports are:

i. 04-01-99 to 06-30-99

ii. 07-01-99 to 07-10-99

iii. 07-11-99 to 07-25-99

iv. 07-26-99 to 09-30-99

d. On the report which covered 07-26-99 through 09-30-99, checks written to 250 people working at polling places on election day were combined together into six separate entries of "Various Poll Workers."

e. Additionally, 19 donations from local non-profit organizations, individuals and attorneys were never reported at all. The 19 separate donations were given to the Florida International University Foundation (FIUF), which deposited the checks into its account, and made one large donation to Transit Not Tolls in the name of FIUF.

f. Respondent knew or should have known of the inadequacies of the reports which were submitted and the legal requirements of him as the Chairman of Transit Not Tolls.

g. Respondent has an extensive history as a candidate for public office, spanning 34 years. He most recently ran for Mayor of the City of Miami in 2001 and

Mayor of Miami-Dade County in 1996.

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 to the facts set forth in paragraph six above and to the ability of the Commission to impose a civil penalty in accordance with Section 106.265, Florida Statutes.

ORDER

9. The Respondent and the staff of the Commission have entered into this Consent Order voluntarily. Respondent has been afforded the opportunity to consult with counsel of his choosing prior to executing this document.

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

11. The Respondent understands that before the Consent Order is final agency action, the Commission must approve it at a public meeting.

12. After it is approved by the Commission, this Consent Order constitutes final agency action on the violations charged in the Order of Probable Cause.

13. The Respondent voluntarily waives the right to any further proceedings under Chapters 106 and 120, Florida Statutes, and the right to appeal the Consent Order.

14. 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 on April 13, 2000, against Respondent and this Consent

Order.

15. 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.

16. The Respondent shall remit to the Commission a civil penalty in the amount of \$20,000 plus \$15,000 for investigative and attorneys fees for a total of \$35,000, as full and final settlement for violating Sections 106.07(5) and 106.19(1)(c), Florida Statutes. The civil penalty shall be paid to the Florida Elections Commission, The Collins Building, Suite 224, 107 West Gaines Street, Florida, 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.


17. The Respondent hereby agrees and consents to the terms of this Consent Order this 14 day of March, 2002.



Maurice Ferre
2655 Le June Road, Suite 504
Coral Gables, FL 33124
(905) 779-3051

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

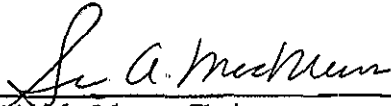
April 19, 2002



Eric M. Lipman
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 May 9 and 10, 2002 at Miami, Florida and filed with the Clerk of the Commission on
May 20, 2002, in Tallahassee, Florida.


Susan A. MacManus, Chairman
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Copies furnished to:

Eric M. Lipman, Assistant General Counsel
Maurice Ferre, Respondent
Honorable Annie Betancourt, Complainant
David C. Leahy, Filing Officer

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MAY 20 2002 3:31

13862

ADORNO & ZEDER, P.A.
IOTA TRUST ACCOUNT
2601 SOUTH BAYSHORE DRIVE SUITE #1600
MIAMI, FL 33133

CITIBANK, F.S.B. 95
MIAMI, FL 33131
63-8655-2660

13862

Date: April 18, 2002

TO THE ORDER OF Florida Elections Commission

\$ ***20,000.00***

Twenty thousand and 00/100***** DOLLARS

MEMO Fine



Michael R. Berley

MP

13863

ADORNO & ZEDER, P.A.
IOTA TRUST ACCOUNT
2601 SOUTH BAYSHORE DRIVE, SUITE #1600
MIAMI, FL 33133

CITIBANK, F.S.B. 95
MIAMI, FL 33131
63-8655-2660

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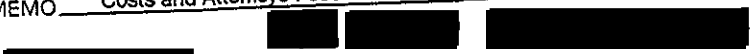
Date: April 18, 2002

TO THE ORDER OF Florida Elections Commission

\$ ***15,000.00***

Fifteen thousand and 00/100***** DOLLARS

MEMO Costs and Attorneys Fees



Michael R. Berley

MP

Security features included. Details on back.

Security features included. Details on back.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
AND
FLORIDA ELECTIONS COMMISSION**

RECEIVED
02 MAR 18 PM 3:31
STATE OF FLORIDA
ELECTIONS COMMISSION

Maurice Ferre,
Petitioner,

v.

DOAH Case No.: 01-2569
Agency Case No.: FEC 00-079

Florida Elections Commission,
Respondent

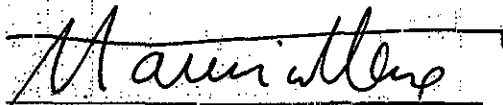
STIPULATION

COMES NOW, the Florida Elections Commission, (Respondent or Commission) by and through its undersigned attorney, and Maurice Ferre, (Petitioner or Ferre), *pro se*, and stipulate as follows:

1. Concurrently with the execution of this Stipulation, the parties have entered into a Consent Order with Petitioner paying Respondent \$35,000 as full and final settlement of all issues pending before the Florida Elections Commission and the Division of Administrative Hearings.
2. By execution of this Stipulation, and the Consent Order, Petitioner, Maurice Ferre, hereby withdraws his petition for a Formal Administrative Hearing or any other hearing he may otherwise have been entitled to in relation to the Order of Probable Cause in Case Number FEC 00-079.
3. The parties will request the Final Hearing in DOAH Case Number 01-2569, scheduled for Miami, Florida on March 18, 2002, as it relates to Maurice Ferre be cancelled.
4. Not later than close of business on Friday, April 19, 2002, Petitioner Ferre shall cause a money order, cashier's check, or attorney's trust account check in the amount of \$35,000 to be delivered to Petitioner at its place of business at the Collins Building, Suite 224, 107 West Gaines Street, Tallahassee, Florida 32399-1050.
5. In the event Respondent does not receive from Petitioner a money order, cashier's check or attorney's trust account check in the amount of \$35,000 by the close of business on Friday, April 19, 2002, Petitioner unconditionally agrees to the entry of an Order of Default against him in Case Number FEC 00-079. Petitioner acknowledges that in the event an Order of Default is entered against him for failing to comply with the terms of this Stipulation, he will be subject to a potential fine of \$276,000.

6. Respondent hereby waives notice of greater than 48 hours of a hearing before the Florida Elections Commission on May 9 and 10, 2002 in Miami, Florida. Respondent agrees to accept the notice with at least 48 hours in advance at the fax number set forth below

Respectfully submitted:



Maurice Ferre
2655 Le June Road, Suite 504
Coral Gables, FL 33134
(305) 779-3051
(305) 779-3061 (fax)



Eric M. Lipman
Florida Bar Number 958247
Florida Elections Commission
The Collins Building, Suite 224
107 West Gaines Street
Tallahassee, FL 32399-1050

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FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 00-079

Respondent: Maurice Ferre, Chairman, and Transit Not Tolls Committee

Complainant: Annie Betancourt

On April 13, 2000, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated a section or sections of the Florida Election Code that the Commission has jurisdiction to investigate and to determine violations. The Commission staff investigated the allegations and based on the facts and conclusions of law contained in the complaint, the Report of Investigation, and this statement, the staff recommends that the Commission find that there is:

Probable cause to believe that the Respondent violated Section 106.07(5), Florida Statutes, prohibiting a campaign treasurer from certifying to the correctness of a campaign treasurer's report that is incorrect, false, or incomplete on four separate occasions; and

Probable cause to believe that the Respondent violated Section 106.19(1)(c), Florida Statutes, prohibiting a person or organization from falsely reporting or failing to report information required by this chapter on 272 separate occasions

Summary of Facts and Conclusions of Law

1. Respondent is Maurice Ferre and his political committee, the Transit Not Tolls Committee (TNT). TNT was formed to support a July 29, 1999 referendum to increase the Miami-Dade sales tax by a penny for transportation projects. Miami-Dade County Mayor Alex Penelas spearheaded the referendum. Mr. Ferre was the TNT chairman and has an extensive history as a candidate for public office, spanning 34 years. Mr. Ferre is currently a candidate for Mayor of the City of Miami in the fall 2001 election.

2. Complainant is the Representative for District 116 of the Florida House of Representatives.

3. Commission staff investigated whether Respondent violated Section 106.07(5), Florida Statutes, when he certified to the correctness of campaign treasurer's reports that were incorrect, false, or incomplete.

4. Complainant alleged that Respondent filed false or incomplete reports when the campaign treasurer's reports showed expenditures of over \$21,000 to "Various Individuals." Complainant included portions of three of TNT's campaign treasurer's reports with her complaint. These summaries were for the 1999 reporting periods of July 1-10, July 11-25, and July 26 through September 30. During the course of the investigation, Commission staff also

reviewed TNT's April 1 through June 30, 1999 report and found other potential deficiencies

5. Complainant authored a letter to the Commission dated February 29, 2000. Complainant wrote, "The reason I bring this to the attention of the Florida Elections Commission is because after carefully reviewing the Campaign Treasurer's Report I notice that there are some questionable expenditures described as 'Various Individuals' where more than \$21,000 were paid. I share this concern with a few civic minded leaders, who deeply care about ethical government and have suggested that I bring this issue before the Florida Elections Commission."

6. Commission staff mailed a registered letter to Respondent informing him of an official complaint against the Respondent on April 20, 2000. This registered letter was addressed to Mr. Maurice Ferre, Transit Not Tolls Committee, 601 Brickell Key Drive, Suite 201, Miami, FL 33131. This is the address designated by TNT on its Statement of Organization of Political Committee form filed with the MDCSOE. This registered letter was signed for as having been received on April 26, 2000 by M. Melendez. Commission staff sent a follow-up letter to Respondent, dated June 20, 2000, stating that the Commission had received no response and again afforded Respondent the opportunity to respond

7. On June 15, 2000, Commission staff contacted Respondent's office and spoke with Manny Melendez. Staff asked to talk with Respondent and was told the request would be forwarded to Respondent. On June 26, 2000, Commission staff talked to TNT's treasurer, Mr. Reto. Mr. Reto said that he would be "handling the inquires" into the TNT investigation. Staff reiterated its desire to speak directly with Mr. Ferre. On March 29, 2001, Commission staff again contacted Respondent's office and spoke with a Mr. Alfonso. Staff again asked to speak with Respondent in reference to TNT. Mr. Alfonso stated that he would relay the request to Respondent. During the course of this investigation, Respondent has never, in any manner, chosen to respond directly to the complaint through Commission staff.

8. Commission staff received a copy of TNT's campaign file from the Miami-Dade County Supervisor of Elections (MDCSOE). This file included a copy of the Statement of Organization of Political Committee, signed by Mr. Ferre as chairman on May 25, 1999, which designated him as chairman of the TNT Committee, and a copy of the Appointment of Campaign Treasurer form, signed by James Reto, accepting the appointment of treasurer. Mr. Reto is a certified public accountant and the Respondent in FEC 00-078. This file also included notifications of report deficiencies from the MDCSOE to Respondent dated more than a month before the Commission received this complaint

9. There were three initial Incomplete Notices sent to TNT by the MDCSOE: two on March 9, and one on March 10, 2000. Notices were again sent on June 7, 2000. The notices from the MDCSOE included the statement that, "Pursuant to Florida Statutes 106.07(2), this information must be furnished within three (3) days of your receipt of this notice." The three notices were sent to:

Transist Not Tolls Committee
Hon. Maurice Ferre
601 Brickell Key Drive, Suite 201
Miami, FL 33131

The deficiencies are outlined on the chart below:

Date of Notices	Period Covered*	Deficiencies as Noticed
March 9, 2000 June 7, 2000	4/1/99 to 7/9/99	1. Contribution items need complete address or principal place of business 2. Items need the occupation of the contributor for contributions over \$100 3. Expenditure items need complete address or principal place of business.
March 9, 2000 June 7, 2000	7/10/99 to 7/25/99	4. Contribution items need complete address or principal place of business
March 10, 2000 June 7, 2000	7/1/99 to 9/30/99	5. Contribution items need complete address or principal place of business 6. Expenditure items need the full name of the individual or principal place of business. 7. Expenditure items need the complete address or principal place of business 8. "Various Individuals" as the name on the Itemized Expenditures is not acceptable. Name, address and amount paid to each individual must be provided. Purpose of expenditure listed as Pollworkers is incorrect

*It appears that the "Period Covered" dates in the Incomplete Notices are incorrect; however, the deficiencies cited are very specific. The actual dates the reports were to cover were 4-1-99 to 6-30-99; 7-1-99 to 7-10-99; 7-11-99 to 7-25-99; and, 7-26-99 to 9-30-99.

10 Also included in the Respondent's campaign file was a letter from Mr. Reto to the MDCSOE dated July 12, 2000. This letter stated that he was enclosing copies of three amended reports for the reporting periods of April 1 through June 30, July 1-10, and July 10-25, 1999. He also wrote that the July 26 through September 30 report "was filed with your office in early June 1999."¹ Mr. Reto further stated that both the July 1-10 and July 10-25 reports were complete "except for two occupations." Mr. Reto made no mention as to why he had not complied with the three-day mandatory response time frame for the Incomplete Notices.

11. On March 19, 2001, Commission staff interviewed Ms. Maria Acosta of the MDCSOE. She stated that she had researched TNT's campaign file and MDCSOE's records show TNT submitted only one amended campaign report and that report was for July 26 through September 30, 1999. Ms. Acosta sent a copy of the amended campaign treasurer's report stamped date-received as June 8, 2000. She stated that contrary to Mr. Reto's assertions in his letter to the MDCSOE, her office had not received any amended reports for the periods of April 1 through June 30, July 1-10, or July 11-25, 1999. She stated that the MDCSOE would provide Commission staff with a letter stipulating to those facts. As of the date of the Statement of Findings, staff has not received this written statement. To be official, a campaign treasurer's report must be filed with the filing officer. In this case, the filing officer is MDCSOE.

12. TNT's November 2 through December 31, 1999 Waiver of Report, contained a statement stating that they were abolishing TNT and would not be filing any further reports.

¹ The correct year is 2000, not 1999

13. When Commission staff scrutinized TNT's reports, a major reporting deficiency was noted in the treasurer's report for July 26 through September 30, 1999. TNT reported payments to 250 individuals who worked the polls on election day in six entries each of which stated the name and address was "Various Individuals" and combined the 250 payments into six entries totaling \$21,113. The following chart illustrates the problems with the expenditure section of Respondent's report for this period:

Date	Name & Address	Purpose	Amount
July 28	Various Individuals	Poll Workers	\$6,075
July 28	Various Individuals	Poll Workers	\$2,700
July 28	Various Individuals	Poll Workers	\$8,900
July 28	Various Individuals	Poll Workers	\$1,440
July 28	Various Individuals	Poll Workers	\$1,575
August 3	Various Individuals	Poll Workers	\$ 423
		TOTAL	\$21,113

14. On June 2, 2000, Commission staff received an amended report from TNT for July 26 through September 30, 1999 reporting period as well as a sworn response to the complaint, dated June 1, 2000. Mr. Reto wrote that the expenditures of \$21,113 for poll workers were expenditures representing payments to 250 individual poll workers and that the expenditures were reported in "summary format" to expedite the preparation and filing of the report. He said that he did not believe this caused the campaign report to be incorrect or incomplete.

15. The following chart shows the problems with TNT's campaign treasurer's reports:

ACTUAL REPORTING PERIOD	REPORTING PERIOD GIVEN BY RESPONDENT	MISSING/ INCORRECT INFORMATION	DOES MDCSOE HAVE AMENDED REPORT?
4/1/99 to 6/30/99	4/1/00 to 6/30/00	Incomplete or no address for 4 contributors	
Amended report for 4/1/99 to 6/30/99 (Received by FEC 6/1/00)		None	No
7/1/99 to 7/10/99		Incomplete or no address for 5 contributors	
		No occupation for 33 contributors who gave more than \$100	
		Incomplete or no address for 3 recipients of expenditures	
Amended report for 7/1/99 to 7/10/99 (Received by FEC 6/1/00)		Incomplete address for 1 contributor	No
		No occupation for 33 contributors who gave more than \$100	

Second Amended report for 7/1/99 to 7/10/99 (Received by FEC 7/12/00)		No occupation for 2 contributors who gave more than \$100	No
7/11/99 to 7/25/99		Incomplete or no address for 8 contributors	
		No occupation for 8 contributors who gave more than \$100	
Amended report for 7/11/99 to 7/25/99 (Received by FEC 6/1/00)		Incomplete or no address for 3 contributors	No
		No occupation for 8 contributors who gave more than \$100	
Second Amended report for 7/11/99 to 7/25/99 (Received by FEC 7/12/00)		No occupation for 2 contributors who gave more than \$100	No
7/26/99 to 9/30/99		No name and address for 250 individuals who were poll workers for campaign on election day 6 expenditures totaling \$21,113 were designated to "Various Individuals" for "Poll Workers"	
		Incomplete or no address for 3 contributors who gave more than \$100	
		Incomplete or no address for 16 recipients of expenditures	
Amended Report For 7/26/99 to 9/30/99 (Received by FEC 6/1/00)		Incomplete or no address for 3 contributors who gave more than \$100	Yes (Received 6/8/00)

16 Under these circumstances, it appears that the Respondent did not comply with Section 106 07(5), Florida Statutes, when he signed the three original campaign treasurer's reports and the one amended campaign treasurer's report² The Respondent is an experienced

² The MDCSOE office reports that it has only one amended report from the Respondent

candidate having run for office on at least 19 occasions.³ When the Respondent ran for Mayor of Miami-Dade in 1996 he signed a Statement of Candidate form that said that he had received, read, and understood Chapter 106, Florida Statutes

17. In addition, the Commission has found that the Respondent violated the election laws two times: Respondent was the Respondent in FEC 83-40, a case where probable cause was found to believe that Respondent accepted \$35,000 in post-election contributions that were not returned. Respondent paid a fine of \$70,000 in that case on July 15, 1996. Respondent was also the Respondent in FEC 97-040, where Respondent failed to pay for previously authorized goods and services upon final delivery. Respondent paid a fine of \$1,000 on November 11, 1998 in this case. The local filing officer said that the Respondent was fined \$250 for filing his campaign treasurer's report for the period of August 10, 1996 through August 29, 1996, five days late. This fine was paid by Respondent's personal check dated October 10, 1996. Respondent was also fined \$4,650 for filing his termination report for his 1996 campaign 93 days late. This fine was paid December 15, 1999.

18. The campaign treasurer's report form itself clearly puts the chairman and treasurer on notice as to the importance of the report being "true, correct and complete." The report form contains the following information above the chairman and treasurer's certification:

CERTIFICATION

It is a first degree misdemeanor for any person to falsify a public record (ss. 839.13, F. S.).

I certify that I have examined this report and it is true, correct and complete.

X _____
Signature

19 In addition, the campaign treasurer's report form is self-explanatory regarding what information is required for contributions. The form clearly instructs the treasurer to include the full name including, the last, suffix, first and middle, and the full address, including street address, city, state and zip code. The top of the contribution page of the campaign treasurer's report appears as follows:

³ See Exhibit 1 in the Report of Investigation.

CAMPAIGN TREASURER'S REPORT – ITEMIZED CONTRIBUTIONS

(1) Name _____ (2) I.D. Number _____

(3) Cover Period ___/___/___ through ___/___/___ (4) Page _____ of _____

(5) Date	(7) Full Name <small>(Last, Suffix, First, Middle)</small>	(8) Contributor	(9)	(10)	(11)	(12)
(6) Sequence Number	Street Address & City, State, Zip Code	Type/Occupation	Contribution Type	In-kind Description	Amendment	Amount

20. The filing officer sent TNT Incomplete Notices on March 9 & 10 and again on June 7, 2000, citing specific deficiencies in the report and included the statement that, "Pursuant to Florida Statutes 106.07(2), this information must be furnished within three (3) days of your receipt of this notice." According to the MDCSOE, INT has thus far filed only one amended report with that office and that report still lacked the requisite street addresses and zip codes for three contributors ⁴

21. Under these circumstances, it appears that the Respondent's non-compliance was willful as defined in Section 106 37, Florida Statutes ⁵

⁴ See Paragraph 11.

⁵ Section 106.37, Florida Statutes, provides that a person willfully violates Chapter 106, Florida Statutes, if the person:

... commits an act while knowing that, or showing reckless disregard for whether, the act is prohibited ... or does not commit an act while knowing that, or showing reckless disregard for whether the act is required ... A person knows that an act is prohibited or required if the person is aware of the provision which prohibits or required the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. A person shows reckless disregard for whether an act is prohibited or required under this chapter if the person wholly disregards the law without making any reasonable effort to determine whether

22. Commission staff also investigated whether the Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting contributors' names. Respondent reported receiving two contributions totaling \$299,000 from Florida International University Foundation (FIUF) in July 1999. The first was a \$150,000 contribution reported from FIUF on July 9, 1999. The second was a \$149,000 contribution from FIUF on July 23, 1999. However, the facts show the \$149,000 contribution was an amalgamation of contributions funneled through FIUF to Respondent. On April 3, 2001, Commission staff received copies of the two contribution checks from FIUF. The check for \$150,000 is dated July 1, 1999. The check for \$149,000 is dated July 23, 1999.⁶

23. On June 9, 2000, Commission staff received a sworn statement from FIUF counsel Peter Prieto. Mr. Prieto confirmed that FIUF received the money that it contributed to TNT from third parties:

In light of these direct and substantial benefits to the University, the Foundation committed to contributing, and eventually contributed, approximately \$300,000 to the political action committee ("PAC") eventually formed to support the referendum, also named Transit Not Tolls. Neither the Foundation nor any of its representatives were employed by or associated with the PAC. Of the approximate \$300,000 in contributions, \$170,000 was contributed by the Foundation. The remainder, approximately \$130,000, was donated to the Foundation from third parties, most of which were local charitable institutions representing the arts.⁷

24. In late 1998, Miami-Dade Mayor Alex Penelas discovered that Miami-Dade County could lose out on potentially hundreds of millions of dollars in federal matching funds for transit system improvements. The county was required to demonstrate to the federal government a reliable and dedicated ongoing source of its own funding for these projects before it would be considered eligible to apply for matching funds. At that time, Miami-Dade County had no demonstrable source of revenue acceptable to the federal government to meet its eligibility criteria. In the spring of 1999, facing a September 1999 federal deadline to apply for the matching funds, Mayor Penelas championed a one-cent tax increase referendum to achieve the needed source of revenue.

25. In May of 1999, Mayor Penelas announced his plan, entitled Transit Not Tolls, to seek a sales tax increase referendum. This plan advocated raising the sales tax from 6.5 to 7.5 percent in exchange for repealing the tolls on four highways in the county. According to

the act would constitute a violation

⁶ See Exhibits 28A & 28B in the Report of Investigation

⁷ The \$19,000 discrepancy between the \$149,000 figure cited in the previous paragraph and the \$130,000 figure cited by FIUF counsel stems from the facts that 1) FIUF's \$130,000 figure was an estimate; the actual figure was \$129,000; and 2) FIUF counted \$20,000 of its \$149,000 contribution as coming from itself, FIUF, when, in fact, \$20,000 came from two not-for-profit sub-entities of Florida International University, the FIU Art Foundation and the Wolfsonian Art Museum

projections, it would raise \$15.8 billion over 20 years, including the federal matching funds.

26. In order to gain support for the tax increase, up to \$54.9 million a year of the new money was designated to be used for non-transit programs, specifically targeting funding for various cultural groups throughout the county. The Mayor's strategy to sway the electorate into voting for higher taxes was to form a reliable and experienced political committee to spearhead the campaign. This committee, in turn, would derive its funding by soliciting financial support from the various segments of the community, which were poised to benefit significantly should the Mayor's plan pass.⁸

27. The Respondent committee, TNI, was organized at Mayor Penelas' behest to support the July 29, 1999 sales tax increase referendum. Maurice Ferre was chairman and Mr. Reto was treasurer. Mr. Ferre is a former Mayor of the City of Miami and former opponent of Mayor Penelas. Brian May was hired as the primary campaign strategist and spokesperson. Mr. May was Mayor Penelas' former campaign manager, onetime deputy campaign treasurer, and former chief of staff. Also actively participating in the fundraising for TNI was Eric "Rick" Sisser, Chairman of the Miami-Dade Cultural Affairs Council. Mr. Sisser is the former campaign manager of a number of Mr. Ferre's 1980s political campaigns. Mr. Sisser is also a prominent longtime Miami-Dade county lobbyist.⁹

28. On May 24, 1999, Mayor Penelas addressed a meeting of the Miami-Dade Cultural Affairs Council, chaired by Mr. Sisser. Mayor Penelas solicited support for the TNI referendum from the member institutions and distributed checks, totaling about \$900,000 from Miami-Dade county's first Major Institutions Grants Program. In his address, the Mayor stated, "This is a campaign and it needs substantial support, quickly, for us to win it."¹⁰ He further

⁸ According to a *Miami Herald* article dated February 24, 2001:

Penelas set up a team and gave them stiff fundraising quotas ... The overall campaign strategy was described internally as "the Christmas tree." There was something in the plan for everyone: scholarships for FIU and Miami-Dade Community College, millions more for arts funding.

On April 12, 2001, Commission staff obtained from local law enforcement a copy of a synopsis of an interview, dated 10/17/00, with Mr. Eric Katz. Mr. Katz is the president of a public relations firm, *Communikatz, Inc.*, which was hired by the TNI to do work on the campaign. On page two of this document, Mr. Katz explained the "Christmas tree effect" strategy and stated that it was what he himself decided to use in the *Transit Not Tolls* campaign. Mr. Katz stated that:

...this is basically just surrounding or "decorating" your main issue (transportation issue) with shiny, more attractive issues that would appeal to the voters in a positive way, like children's charities, enhancement for the arts community and local universities.

⁹ Mr. Sisser's political resume includes: campaign aide to former U. S. Senator Richard Stone; member of the campaign committee of William Turner's successful 1992 bid for state senate; and, senior advisor to Gwen Margolis in her 1992 congressional race. In addition to his lobbying activities, he is politically active and, according to the Federal Elections Commission public disclosure web site (www.publicdisclosure.org), contributed \$34,750 during the 1999-2000 campaign cycle to federal candidates and committees on 20 separate occasions. A copy of Mr. Sisser's federal contributions for the 1999-2000 campaign cycle is available as Attachment C on the last page of the case file.

¹⁰ Information accessed from Mayor Penelas' web site (www.co.miami-dade.fl.us/mayor)

stated, "I will also need commitments from each of the board leaders in this room to help raise funds for what will be a tough, but I firmly believe, winnable campaign." The organizations that received grant funds, relative to this investigation, are as follows:

INSTITUTION	AMOUNT	INSTITUTION	AMOUNT
MIAMI MUSEUM of SCIENCE	\$69,981	ACTORS PLAYHOUSE	\$36,707
MIAMI ART MUSEUM	\$69,473	FL. PHILHARMONIC	\$42,602
MIAMI CITY BALLET	\$40,915	HIST ASS'N OF SF	\$47,295
FAIRCHILD TROPICAL GARDEN	\$67,048	ART MUSEUM AT FIU	\$27,427
CONCERT ASS'N of FLORIDA	\$35,742	THE WOLFSONIAN	\$50,918
NEW WORLD SYMPHONY	\$90,000	TOTAL	\$578,108

29 Mayor Penelas told the members that he and the Council and Mr. Sisser had "worked closely" to develop a plan to quadruple the amount of money currently funding the Major Institutions Grants Program and that this plan, "will dramatically increase the size of grants you receive from Miami-Dade County each year." Mayor Penelas stated that he was "committed to a dedicated transit revenue source, and for it to include a dedicated funding source for the arts."

30. In the weeks immediately following the May 24, 1999 Miami-Dade Cultural Affairs Council meeting, the not-for-profit arts groups (NFPAGs) that received the county grants were approached and solicited by Mr. Sisser to contribute funds in support of the Mayor's referendum. They received a memo from Mr. Sisser stating that the contribution checks were to be written to FIUF and FIUF would use the money for "public information and research"¹¹ Commission staff obtained a copy of the memorandum from FIUF, written on the personal letterhead of Mr. Sisser, which FIUF stated was presented to the numerous targeted NFPAGs. The memorandum, dated June 9, 1999, is an apparent form letter. The text is as follows:

As per our conversation we need a check in the amount of \$5,000[*] payable to the Florida International University Foundation and we need the check by next week. Please send the check to me at my office.

Contributions to the "F. I. U. Foundation" will be used for public information and research related to Miami-Dade County's proposed referendum to secure a one-cent sales tax to partially

¹¹ A February 23, 2001 article from the *Miami Herald* offered a theory as to why the FIUF was used as a conduit for the funneling of the arts groups' contributions. The article stated, citing sources familiar to the case, that "arts organizations were reluctant to give directly to Penelas' penny campaign, for fear they would offend their own donors by spending their money on a political cause." To reference this article, refer to Exhibit 37 in the Report of Investigation.

serve as dedicated revenue source for cultural activities.

Once again thank you for your help, support and understanding with this effort ¹²

* This amount varied according to the organization solicited

31. FIUF gave its version of the events that led it to support the referendum to Commission staff in a written statement ¹³ According to this statement, the Mayor and his representatives held "several meetings" during the spring of 1999 to discuss the referendum and funding. FIUF was represented at "some of these meetings." FIUF agreed to support the referendum "because of the benefits the University would have received had the referendum passed" Florida International University published an endorsement of the Mayor's plan and its potential benefits to FIU on its website (www.fiu.edu/tax.html) during the campaign. ¹⁴

32 According to a *Miami Herald* article dated February 24, 2001, FIUF was given a quota in terms of its contribution by the Mayor. The article stated, "Florida International also had a quota: originally \$150,000. Penelas said they were later asked to raise more. 'I do believe they met their quota,' Penelas said. Penelas said that he first asked the college to raise money, but the idea was vetoed by the college's lawyers because FIU is a public university. According to Penelas, FIU's lawyers said any fundraising had to be handled by the foundation, FIU's private fundraising arm." ¹⁵

33 Some time in the spring of 1999, FIUF was approached to contribute to Respondent. The following are excerpts from FIUF's written statement:

The Mayor, as well as his representatives, began discussing whether the referendum would pass, and how much funding would be needed to support a successful referendum. The industry groups represented at these meetings included education and the arts. The Foundation was also represented at some of these meetings.

The Foundation eventually agreed to support the referendum. It agreed to support it because of the benefits that the University would have received had the referendum passed.

¹² See Exhibit 39 in Report of Investigation. A June 8, 1999 *Miami Herald* newspaper article quoted Mr. Sisser as saying that, "For somewhere in the neighborhood of 12 to 14 years, the cultural community has been trying to find a dedicated source of revenue. This (TNT campaign) is our best opportunity." Further, the article stated that the Mayor's plan (should it pass) included an additional \$7 million a year for the Cultural Affairs Council. To reference this article, refer to Exhibit 39 in the Report of Investigation.

¹³ See Exhibit 29 in the Report of Investigation.

¹⁴ See Exhibit 40 in the Report of Investigation.

¹⁵ See Exhibit 31 in the Report of Investigation.

...[T]he Foundation committed to contributing, and eventually contributed, approximately \$300,000 to the political action committee ("PAC") eventually formed to support the referendum, also named Transit Not Tolls. Neither the Foundation nor any of its representatives were employed by or associated with the PAC. Of the approximate \$300,000 in contributions, \$170,000 was contributed by the Foundation. The remainder, approximately \$130,000, was donated to the Foundation from third parties, most of which were local charitable institutions representing the arts.

Before deciding to contribute to the PAC, both the Foundation and the University's President, Modesto "Mitch" Maidique, sought legal advice to determine if the Foundation's contributions to the PAC were lawful. Both the University's General Counsel and the accounting firm of KPMG concluded that contributing approximately \$300,000 to a single issue referendum would not endanger the Foundation's tax exempt status.

34. On August 16, 2000, Commission staff interviewed Peter Prieto, the attorney representing the FIUF. Mr. Prieto stated that in mid-June of 1999, FIUF became aware that Mr. Sisser had in his possession checks written to FIUF that Mr. Sisser had solicited for supporting the referendum. Mr. Prieto stated that FIUF had been approached earlier with this idea and that its in-house attorney was in the process of examining the legality of third-party contributions.

35. On June 9, 2000, FIUF provided Commission staff with a copy of the minutes of a FIUF's Board of Trustees Finance Committee meeting held by conference call on Friday, July 23, 1999.¹⁶ This meeting was held six days prior to the referendum. FIUF's counsel advised that it would be legal to accept the third-party contributions and contribute them to Respondent. The board voted to do so. FIUF received and accepted the contributed monies that day and contributed \$149,000 in its name to Respondent.

36. On April 3, 2001, Commission staff again interviewed Mr. Prieto, the attorney representing FIUF. Mr. Prieto stated that FIUF received the collection of nine checks made out in FIUF's name by the various not-for-profit arts groups by courier from the office of Brian May and that the two affiliated in-house entities of FIUF, the FIU Art Foundation and the Wolfsonian, contributed \$5,000 and \$15,000, respectively. Ten additional contributors gave \$5,250 in contributions ranging from \$200-\$1,500. These contributors were individuals, attorneys, and foundations. The 19 checks and the contributions from the FIU Art Foundation and the Wolfsonian total \$149,000.¹⁷

37. On April 9, 2001, Commission staff interviewed Eric "Rick" Sisser who stated that he would provide staff with an overview of events as he recalled them in the INT campaign.

¹⁶See Exhibit 42 in the Report of Investigation.

¹⁷ To reference copies of the contribution checks and FIUF's cover letter, refer to Exhibits 47 and 48 in the Report of Investigation.

He said that he would not answer specific, direct questions, however, on the advice of counsel. Mr. Sisser stated that he was approached by Mayor Penelas to assist with fundraising in the cultural sector with major NFPAGs for the TNT campaign. He stated that he agreed to help.

38. Mr. Sisser stated that he has been the chairman of the Miami-Dade Cultural Affairs Council since 1998 and that the council had been constantly seeking to increase available funding for the arts. Mr. Sisser said the Mayor's office planned how the monies generated by the referendum's passage would be spent, and that he went to the NFPAGs to garner support for the plan. He said that he personally went to board meetings of "more than half" of the "Majors" (arts entities with a budget over one million dollars a year) to pitch for financial support. In addition, he spoke "with most" of the executive directors individually.

39. Mr. Sisser stated that he was told at that time "by at least five law firms" that donating by the not-for-profits was legal. He stated that "most of the groups decided to raise \$10,000." Mr. Sisser stated that some NFPAGs gave directly to the campaign, others gave through FIUF. Mr. Sisser stressed that he was "not paid by, not part of, or directed by the campaign." He stated that he was "told by the campaign and FIUF that it was legal to accept directly from the arts groups." Mr. Sisser admitted to authorship of the memo sent to the NFPAGs asking for a specific contribution and requesting that it to be sent to his office.

40. Mr. Sisser denied authorship of the memo requesting that the NFPAGs sign an acknowledgement that they knew their contributions would be funneled by FIUF to Respondent to support the campaign. Mr. Sisser stated that, about a week before the vote, he received a telephone call from the Respondent that a letter of acknowledgement was needed by FIUF from the NFPAGs stating that they knew their contributions were earmarked for Respondent. Mr. Sisser said that he provided a copy of his letterhead to Respondent for its use. He stated that he "didn't write it, sign it, nor was it faxed to my office." He further said that Respondent signed his name to it "without my knowledge or approval." Mr. Sisser told Commission staff that the solicited contributions from the not-for-profit groups were sent to his office by the contributors and were forwarded to Respondent by his assistant.

41. In summary, the sequence of events occurred as follows. Rick Sisser personally solicited NFPAGs for contributions for Respondent. NFPAGs gave in the name of FIUF to Mr. Sisser. FIUF became aware Mr. Sisser had checks from third-party entities in its name for Respondent. FIUF accepted the checks from Mr. Sisser via the office of Brian May and bundled them into one contribution in its name and delivered that contribution to Respondent.

NFPAGs Contributors---> Rick Sisser---> Office of Brian May---> FIUF---> Respondent
(Lobbyist) (Paid Agent of Respondent) (Donor)

42. On June 8, 2000, FIUF provided Commission staff with copies of the 19 checks from the not-for-profit arts groups and others funneled to Respondent. The contribution checks were written between June 14 and July 15, 1999. The contributors are designated in the following chart:

CONTRIBUTOR	AMOUNT	Date of Check
Actor's Playhouse	\$10,000	June 25, 1999
Museum of Science	\$15,000	June 18, 1999
Florida Philharmonic	\$3,750	June 18, 1999
Historical Ass'n of S.F.	\$15,000	June 15, 1999
Concert Ass'n of Florida	\$10,000	June 14, 1999
Miami City Ballet	\$15,000	June 18, 1999
Miami Art Museum	\$15,000	June 18, 1999
Fairchild Tropical Garden	\$15,000	July 15, 1999
New World Symphony	\$25,000	June 17, 1999
Found of Jewish Philanthropies	\$500	June 15, 1999
Morris D Levitt	\$250	June 14, 1999
Murray Dubbin	\$200	June 12, 1999
Barton Goldberg	\$250	June 14, 1999
Robert Traurig	\$500	June 15, 1999
Burnett Roth	\$250	June 14, 1999
Giller Family Found	\$1,000	June 14, 1999
Cal Com Communications, Inc	\$500	June 11, 1999
Wein Family Found	\$1,500	June 14, 1999
Wein Family Found	\$300	June 14, 1999

43 Commission staff interviewed representatives of three of the not-for-profit organizations who had been solicited to donate to TNT. Judith Drucker of the Concert Association of Florida said that her group gave \$10,000 as requested. Ms. Drucker provided Commission staff with a faxed copy of the letter that her group received from Mr. Sisser as well as a copy of the "Thank You" letter from Respondent acknowledging the contribution.¹⁸

44. Russel Etling of the Miami Museum of Science stated that his organization had attended the May 24, 1999 meeting of the Miami-Dade Cultural Affairs Council and received a \$69,891 grant award. Mr. Etling said that Mayor Penelas pitched his Transit Not Tolls

¹⁸ Refer to Exhibit 49 in the Report of Investigation.

referendum and asked for the 18 groups present to support it. Sometime shortly after that meeting, Mr. Etling stated that he was approached by Mr. Sisser to contribute \$15,000 to the Transit Not Tolls campaign through FIUF. He said that he recalls receiving a "position paper" advocating the legality of the donation from Mr. Sisser's office at some point when his organization was considering the legality of it.

45. Mr. Etling said that the museum contributed \$15,000 on June 18, 1999 to FIUF and delivered the check to Mr. Sisser's office as requested. He said that the museum also contributed \$15,000 directly to Respondent on that date as well. Mr. Etling provided Commission staff with a faxed copy of a memo that he received, dated July 23, 1999, from Mr. Sisser requesting that Mr. Etling sign the memo and return it to Mr. Sisser. The memo was an acknowledgement by the museum that its contribution to FIUF would be given to Respondent. The second sentence reads: "It is my understanding that this letter will confirm that your contribution is being used by the 'Transit Not Tolls' political action committee ..." The last paragraph, which was completely underlined and highlighted, stated that the letter would provide FIUF with documentation of the "restricted nature of your contribution" and requested that Mr. Etling sign the letter and "Re-fax the signed copy to me ASAP at (305) 859-8300"¹⁹

46. Chris Dunworth, executive director of the New World Symphony (NWS), also said that he attended the May 24, 1999 meeting of the Miami-Dade Cultural Affairs Council meeting and received a \$90,000 grant award. Mr. Dunworth stated that, sometime after that meeting, he was contacted by either Mr. Sisser or Michael Springs²⁰ and his organization was asked to contribute \$25,000 to TNT through FIUF. He told Mr. Sisser or Mr. Springs that NWS could not legally make any contribution, but their support organization, New World Symphony Supporting Foundation (NWSSF), could. Mr. Dunworth stated that the request for a donation was forwarded to the NWSSF and it made the contribution. He further stated that NWS subsequently received a "thank you letter" from the FIUF, which he returned to FIUF with a note that stated it was NWSSF that actually made the contribution.

47. On April 6, 2001, Commission staff interviewed Brian May. Mr. May, citing an ongoing local criminal investigation, declined to comment and referred staff to his counsel, Steve Chaykin. On April 11, 2001, Commission staff spoke with Mr. Chaykin, who stated that Mr. May would answer Commission inquires after the criminal investigation. Mr. Chaykin volunteered that the contributions from the not-for-profits went directly from Mr. Sisser to FIUF. When he learned from Commission staff that some principals were stating that they believed the contributions went from Mr. Sisser to Mr. May to FIUF to Respondent, Mr. Chaykin stated that he would speak with Mr. May and would telephone Commission staff the next day. No response was received from Mr. Chaykin.²¹

¹⁹ This fax number is listed on the memo letterhead as Mr. Sisser's fax number. To reference a copy of this memo, refer to Exhibit 50 in the Report of Investigation.

²⁰ Mr. Springs is head of the Miami-Dade Cultural Affairs Department, a governmental entity advised by the Miami-Dade Cultural Affairs Council.

²¹ In a *Miami Daily Business Review* news article by Tony Doris, published July 20, 1999, entitled "A Tax Deductible Strategy to Sell a Tax Hike," Mr. Brian May is identified as a strategist for the INT PAC. The article has Mr. May confirming that it was the PAC's idea to solicit funds from tax-exempt institutions like the FIUF. Mr.

48. On April 12, 2001, Commission staff received copies of documents from local law enforcement officials relating to an ongoing investigation into the events and principals involved in the TNT campaign. Included in these documents were synopses of various sworn interviews and depositions. Pertinent synopses and depositions are outlined below:

Date	Name of Individual	Occupation/ Position	Document	Summary of Interview or Deposition
01/03/01	James Reto	CPA/Treasurer of TNT	Synopsis of Interview	May or Katz asked him to be treasurer of TNT. Was campaign treasurer for most of Penelas' campaigns. Does a lot of PAC work, but this is 1 st time he was paid (\$15,000). Said he filed campaign reports, deposited the checks, and made payments. Said he had no knowledge of which checks were coming in to TNT
08/28/00	Brian May	Public Relations/ Longtime supporter & former Chief of Staff for Mayor Penelas	Synopsis of Interview	Denied any involvement in fundraising in general and with the NFPAGs in particular. Said Sisser and Penelas were chief fundraisers. Said that he approached and recruited Respondent to be the TNT treasurer.
02/08/01	Eric "Rick" Sisser	Lobbyist/ Chairman of Miami-Dade cult arts council	Deposition	Personally collected contribution checks from NFPAGs and delivered them at a meeting in Penelas' office on June '99. Said checks were picked up by staff member and that Penelas, May, and Gallagher were present
01/09/01	Alex Penelas	Mayor Miami-Dade/ Spearheaded TNT	Synopsis of Interview	Said that while he was involved in the campaign, he did not have knowledge of 3 rd party contributions being funneled through FIUF to Respondent
04/18/00	Paul Gallagher	FIUF VP for Finances & Ex Dir FIUF	Synopsis of Interview	Said Sisser solicited contributions from NFPAGs and funneled them through FIUF to TNT. Had 2 phone conversations with May during campaign related to FIUF accepting checks to be funneled to Respondent.
05/01/00	Stephen Sauls	FIUF VP of Univ Relations	Synopsis of Interview	Learned that Sisser had checks made out to FIUF for TNT in June 1999. Had 2 phone conversations with May during campaign related to these checks and FIUF's legal review of whether it could accept them. May asked Sauls to move along the review and told Sauls that he was "concerned as to what FIUF could do to make this arrangement work"
08/24/00	Tony Doris	Reporter for <i>Miami Daily Business Review</i>	Synopsis of Interview	Said that he personally spoke with May about May's involvement with the TNT for a newspaper story he was writing. He said that May said that he was a strategist for Respondent and that it was his idea to funnel money through FIUF to Respondent

49. On July 5, 2000, Commission staff interviewed Mr. Reto by telephone. Mr. Reto stated that he had nothing to do with the solicitation of funds and said he could not comment on it. He further stated that he could not comment on what Brian May did for the TNT because he

Doris also noted in the article that Mr. May acknowledged that potential tax deductions were a selling point to contributors, although the main pitch was the benefit to the schools. To reference this article, refer to Exhibit 43c in the Report of Investigation

does not know. On August 29, 2000, Commission staff again interviewed Mr. Reto. He stated that "My standpoint as a treasurer is that I collect and deposit." He said that he "didn't recall" as to how he obtained the \$149,000 check from the FIUF.

50. Among the documents received from local law enforcement officials was a copy of a letter on "Transit Not Tolls" letterhead, dated July 7, 1999. This letter, signed by Mr. Reto, was addressed to Ms. Sandra Gonzalez-Levy, the president of Miami-Dade Community College Foundation (MDCCF). The letter contained one paragraph of text as follows:

This letter is to confirm that the donation by the Miami-Dade Community College Foundation to the Transit Not Tolls Committee will be used only for the purpose of influencing public opinion as it relates to the July 29th special election on transportation

51. Respondent's Campaign Treasurer's Report for the period of July 1-10, 1999 shows a July 9, 1999 contribution to Respondent of \$150,000 from the MDCCF.²² The letter from Mr. Reto confirming the donation is dated two days prior to the date the Respondent shows the \$150,000 contribution being received, which indicates that Mr. Reto had knowledge of this contribution prior to the actual receipt of the contribution. This appears to conflict with Mr. Reto's sworn statement that he had no knowledge of checks that were coming into the TNT. Additionally, the incongruous dates aside, the text shows TNT acknowledging the reception of the contribution.

52. While Mr. Ferre, chairman of TNT, declined offers to furnish any comment for this investigation as stated in Paragraphs 6 and 7, he apparently chose to respond directly to the complaint in the media. In a *Miami Herald* article dated August 29, 2000, Respondent is quoted as stating "Annie Betancourt (Complainant) is doing this for political reasons. She and the Diaz de la Portilla brothers are very close and this is a complete political thing, as far as I am concerned."²³ In an article printed in the August 17, 2000 edition of the *Miami New Times* by reporter Jim DeFede, Mr. Ferre is quoted as saying that he had nothing to do with raising the money for the campaign. The article states the following: "Maurice Ferre, who was the chairman of the Transit Not Tolls committee, says he acted as a spokesman for the campaign, debating the issue on radio and television, but insists he had nothing to do with raising money or deciding how it was spent 'It was all done by Penelas and the people around him,' he says"²⁴

53. During the campaign, the Transit Not Tolls Committee paid three fines, totaling \$1,150, for turning in reports late during this campaign. They were the July 10-25, 1999 report (2 days late, \$1,000 fine, FEC 99-207); the July 26 through September 30, 1999 report (2 days late, \$100 fine); and the January 1 through March 31, 2000 report (1 day, \$50 fine).

54. The Respondent did not comply with Section 106.19(1)(c), Florida Statutes, when

²² Refer to Exhibit 18 in the Report of Investigation.

²³ To reference this article, refer to Exhibit 6 in the Report of Investigation.

²⁴ To reference this article, refer to Exhibit 57 in the Report of Investigation

he failed to report the 19 actual donors of \$149,000 that was falsely reported as being contributed by FIUF. It appears that the non-compliance was willful in an attempt to encourage members of the cultural arts community to donate to TNT.²⁵

55. Various individuals, including FIUF in its response to the Commission, stated that the in-house counsel for FIUF "concluded that contributing approximately \$300,000 to a single issue referendum would not endanger the Foundation's tax exempt status." (emphasis added)²⁶ However, that is not the issue. The issue is whether the Respondent violated Florida's campaign financing laws. FIUF's attorney stated that he "considered, researched and analyzed whether Florida's laws prohibited the Foundation from accepting contributions for the PAC from third parties, but failed to discover or consider s. 106.08(5) and its prohibition of making contributions through or in the name of another."²⁷

56. In addition, FIUF states that "the accounting firm of KPMG concluded that contributing approximately \$300,000 to a single issue referendum would not endanger the Foundation's tax exempt status." (emphasis added)²⁸ KPMG is a member firm of KPMG International, a Swiss association. However, FIUF should have asked the right questions, i.e., not whether the actions would affect the tax status, but whether they violated election law. FIUF also should have asked the right people, those with experience in election law. Not doing so, was, at least, "reckless disregard for whether the act is prohibited."

57. Under these circumstances, I recommend that the Commission find that the Respondent violated Section 106.19(1)(c), Florida Statutes, on 272 separate occasions. Twenty-one of these occasions were when TNT did not report the 21 actual donors of the \$149,000, one was when TNT reported the \$149,000 as coming from FIUF, and 250 were when TNT concealed the identities of the poll workers. As discussed in Paragraphs 16 through 18, the Respondent is an experienced candidate and has signed the Statement of Candidate form stating that he has received, read, and understands Chapter 106, Florida Statutes.

Respectfully submitted,



Phyllis Hampton
General Counsel

²⁵ See definition of willfulness in note 5

²⁶ See FIUF's response, Exhibit 29 in the Report of Investigation

²⁷ *Id.*

²⁸ *Id.*

April 27, 2001
Date

Copy furnished to:

Barbara M. Linthicum, Executive Director
Mark O'Brien, Investigator Specialist