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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

In Re: Robert Gibson

Case No.: FEC 02-205

F.O. No.: DOSFEC 03-050 W

ORDER OF NO PROBABLE CAUSE

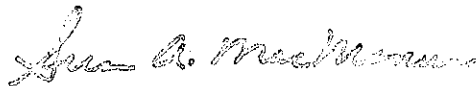
THIS CAUSE came on to be heard by the Florida Elections Commission at its regularly scheduled meeting held on February 20, 2003, in Miami, Florida.

After considering the Statement of Findings and the recommendations of counsel, the Commission finds that there is no probable cause to believe that the Respondent violated:

Section 104.091, Florida Statutes, prohibiting a person from aiding, abetting, or advising another person to violate a provision of the Florida Election Code.

Therefore, it is **ORDERED** that this case is **DISMISSED**.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on February 28, 2003, in Tallahassee, Florida.



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

NOTICE OF RIGHT TO APPEAL

Pursuant to Section 120.68, Florida Statutes, the Respondent may appeal the Commission's final order to the appropriate district court of appeals by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeals. The notice must be filed within 30 days of the date this final order was filed with the Clerk of the Commission and must be accompanied by the appropriate filing fee.

Copies furnished to:

Eric Lipman, Assistant General Counsel

Robert Gibson, Respondent

Robert Kaplan, Complainant

Dept. of State, Division of Elections, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 02-205

Respondent: Robert L. Gibson

Complainant: Robert Kaplan

On August 2, 2002, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, Florida Statutes. 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 there is **no probable cause** to charge the Respondent with violating:

Section 104.091, Florida Statutes, prohibiting a person from aiding, abetting, or advising another person to violate a provision of the Florida Election Code.¹

Summary of Facts and Conclusions of Law.

1. Respondent, Robert "Robin" Gibson, is an active member of the Florida Bar Association. Respondent is the attorney for Educational Excellence for Florida (EEF), a registered political committee.

2. Complainant, Robert Kaplan, is the owner of Zonetel, Inc., a Los Angeles, California based fund-raising company. EEF hired Complainant to provide fund-raising services to EEF.

3. According to Respondent, EEF terminated the contract with Complainant because they felt Complainant was not having success as a fund-raiser for the political committee. The issues surrounding the termination of Complainant have been disposed through arbitration.

I. Section 104.091, Florida Statutes.

4. Commission staff investigated whether Respondent violated this section of the elections laws by aiding, abetting, or advising another person to violate two sections of Florida's Election Laws: Sections 106.021(3) and 106.07(5), Florida Statutes.

5. In his sworn complaint, Complainant alleged EEF developed a "scheme" that would allow entities who are prohibited from making contributions to political campaigns to financially assist EEF, without making an actual donation to EEF.

¹ Section 106.25(3), Fla. Stat., provides:

For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104.

6. According to Complainant, one of EEF's contracted signature/petition gathering firms, Progressive Campaigns (Progressive), was connected with the Initiative and Referendum Institute of Washington D.C. (IRI), a nation-wide non-partisan clearinghouse for research on initiatives and referenda. When EEF learned there may be entities wishing to donate to EEF, but could not because the groups were required to donate to "not-for-profit" groups only, EEF made an agreement with Progressive. For every dollar that was given to IRI by entities that could not give to EEF directly, 60 cents would be deducted from EEF's Progressive bill.

7. On August 21, 2002, Commission staff received a written response from Respondent who is also EEF's attorney. Mr. Gibson stated there were people who were "under the impression" that a contribution to EEF would be tax-deductible. There were still other individuals who wanted to contribute to EEF from foundations or trust funds but were required to contribute only to not-for-profit, tax-deductible, 501(c)(3) organizations. Angelo Paparella, owner of Progressive Campaigns, volunteered to supply free petitions to EEF in return for EEF directing entities that wished to contribute to EEF, but could not because they could only contribute to 501(c)(3) organizations, to give to a cause supported by Angelo Paparella. This would still benefit EEF through a reduced bill from Progressive Campaigns and would allow the contributor to receive a tax deduction for the money contributed.

8. Mr. Gibson further explained in his response there was only one contribution made to IRI from an EEF supporter. Nat Reed of Hobe Sound made a \$1000 contribution to IRI that resulted in a \$600 benefit to EEF.

9. On October 7, 2002, Commission staff received a completed questionnaire affidavit from Julia Bennett, Nat Reed's trust administrator. In this affidavit, Ms. Bennett stated Nat Reed authorized a contribution to EEF and Ms. Bennett made a \$1000 donation to EEF on December 21, 2001. Ms. Bennett received a letter from EEF dated January 9, 2002, informing her EEF had redirected their contribution to IRI because EEF did not have "501 (c)(3)" status for tax purposes. Ms. Bennett and Mr. Reed allowed the transfer of the contribution to take place.

10. EEF's treasurer supplied Commission staff with a copy of all the invoices from Progressive to EEF. A review of these invoices revealed only one invoice that had a credit applied to the total amount due. This invoice is dated January 29, 2002 and is labeled "INVOICE #12." The date of the invoice is approximately two weeks after EEF forwarded Nat Reed's contribution to IRI. This invoice shows that a \$600 credit has been applied to the payable balance in accordance with the agreement between EEF, Progressive Campaigns and IRI.

11. On October 3, 2002, Respondent returned a completed a questionnaire affidavit. Mr. Gibson testified there was no enforceable "agreement" or "contract" entered into between EEF and Angelo Paparella of Progressive Campaigns. Mr. Gibson claimed Mr. Paparella "simply volunteered to contribute free petitions to EEF if we [EEF] were instrumental in directing contributions to the 501(c)(3) organization that he believed in and supported."

12. On July 19, 2002, Commission staff received a copy of EEF's campaign treasurer's reports (CTRs) from the Division of Elections. Commission staff reviewed the CTRs

to try to determine if there was any record of the activity discussed in paragraph seven above. A review of these reports by Commission staff did not reveal any record of this transaction.

13. In his questionnaire affidavit, Respondent also testified that a group called The Simon Foundation sent Respondent a \$20,000 check and allowed EEF to decide what the campaign should do with it. EEF's attorney reported that since The Simon Foundation would jeopardize its tax status if it made a contribution to a political organization, the check was returned to The Simon Foundation.

14. During a telephone interview with Respondent on November 4, 2002, EEF's attorney stated EEF did not forward the contribution from The Simon Foundation to IRI, as EEF did in the case of the contribution from Nat Reed's foundation because EEF did not have permission from The Simon Foundation to do so.

15. Commission staff could find no other evidence of any other contributions from EEF supporters to EEF that were either re-directed to IRI or made directly to IRI.

16. Joan Ruffier testified in her questionnaire affidavit that Respondent advised EEF the plan did not violate Florida's election code.² After receiving Respondent's legal advice, EEF never contacted the Division of Elections for further guidance on this issue.

17. In correspondence received by the Commission on August 21, 2002, Respondent discussed his "investigation" into the propriety of this plan. Respondent wrote that he discussed this plan with tax lawyers. These lawyers advised him that the only entity put at risk by this plan would be the donor itself. This risk to the donor would be the possibility of losing their charitable tax deduction.

18. Respondent added in his October 3, 2002 affidavit, he determined having Angelo Paparella provide petitions to EEF for free in return for a contribution to IRI by EEF supporters did not constitute a violation of Chapter 106, Florida Statutes, "by reading the language of the statute for prohibited activities."

19. Respondent also opined he considered what EEF did was not a violation of Florida's election laws because:

EEF received Mr. Paparella's free petitions as a small part of the 18,000 free petitions volunteered to EEF by all sorts of people. None of these free petitions were reported to the Division of Elections as campaign contributions. My research showed that any citizen has the constitutional right "to petition the Government for a redress of

²The definition of a contribution includes the "distribution of anything of value." Fla. Stat. 106.011(3). While Respondent's attorney advised that the plan for potential contributors to give money to IRI (which resulted in EEF's bill from Progressive being reduced by 60% of the value of the contribution) did not violate Florida's Election Code, the law prohibits any contributions to a political committee except through the committee's treasurer. The law does not permit a person or entity to give money to a third party who then redirects the contribution, or any part thereof, to a given committee.

grievances," as guaranteed by the First Amendment to the U.S. Constitution and a similar provision in the Declaration of Rights in the Florida constitution. I found no provision in Chapter 106 that prohibited an individual from volunteering petitions to an initiative campaign. It is my legal opinion that an attempt by a statute to legislate based on the motive for the submission of petitions would be unconstitutional as a limitation on the right to petition government.

20. Respondent reported that he did not contact anybody concerning the propriety of the plan between EEF and Mr. Paparella as it related to the Florida election code. Respondent reported that this was due to his experience as an attorney and because he consulted both the federal and the Florida Constitution and concluded that there was no class of person who was prohibited from providing free petitions to an initiative campaign.

21. On November 4, 2002, Commission staff conducted a telephone interview with Respondent and provided Respondent a summary of the information collected during the course of the investigation. Commission staff offered Respondent the opportunity to provide any other information he felt would be pertinent. Respondent stated he had no further evidence or information to include in this report. Respondent stated he tried to be careful when deciding what was legal or not legal for EEF to do and that if anything occurred that is deemed to have violated Florida's election laws, he was responsible.

II. Conclusion.

22. Respondent is an attorney who is licensed to practice law in the State of Florida. Respondent reports that he has practiced civil and constitutional law for 40 years. Respondent has also served as campaign treasurer for U.S. Senator Bob Graham. Respondent also served as general counsel to Governor Bob Graham during the first six months of Governor Graham's administration in 1979.

23. Respondent is legal counsel to EEF. As legal counsel to EEF, he rendered legal advice regarding raising funds for the purpose of obtaining sufficient number of signatures to place a constitutional initiative on the November 2000 ballot. Respondent discussed the issues involved with other attorneys, conducted legal research and opined on the issue to his client.

24. It does not appear Respondent's actions in this case were willful.³ Section 104.091, Florida Statutes, requires that Respondent aided, abetted or advised another person to violate the law. Respondent, researched the issue presented, and while his ultimate advice does


³ Section 106.37, Fla. Stat., 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 the act would constitute a violation....

not appear to comport with the requirements of Florida law, Respondent did not advise his client to violate Section 106.021(3), or 106.07(5), Florida Statutes. Additionally, Respondent rendered the advise to his client after making a reasonable effort to determine whether the act would constitute a violation of the law.

25. Complainant seeks to have the Commission hold Respondent responsible for giving what appears to be, incorrect legal advice to EEF.⁴ That is outside this Commission's substantive jurisdiction. Based upon the foregoing, I recommend the Commission find no probable cause to charge the Respondent with violating Section 104.091, Florida Statutes.

Respectfully submitted on January 21, 2003,



Eric M. Lipman
Assistant General Counsel

Copy furnished to:
Phyllis Hampton, General Counsel
Aidan Brainard, Investigator Specialist

⁴ This case is the fourth complaint filed by Complainant with this Commission in what appears to be retaliation against EEF for firing Complainant for cause pursuant to the terms of a contract between the two parties. The four cases filed with the Elections Commission are among the more than 30 complaints filed with various federal and state agencies against numerous individuals associated with EEF. It is noteworthy that Complainant's systematic efforts to retaliate against individuals involved with EEF have met with practically no success.

The substantive contract issue between the parties was recently resolved in arbitration where Complainant, as the sole employee of Zonetel, Inc, was awarded less than \$6,000 on his claim of \$470,000. In making his award, the arbitrator specifically found, "Kaplan clearly demonstrated he was not qualified for this particular employment," and "Here it is clear, and the arbitrator so finds, that the heavyhandedness and aggressiveness which alienated coworkers[,] prospective solicitors, and potential donors, constituted cause for termination of the parties' contract, and that the contract was in fact terminated for cause."