

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

FILED

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In Re: Susanne Ewald

Case No. FEG-02-433
F.O. No.: DOSFEC 03-271 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 August 13, 2003, in Tallahassee, 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 106.071(1), Florida Statutes, failure of a person who makes independent expenditures of \$100 or more to file timely periodic reports of the expenditures;

Section 106.071(1), Florida Statutes, failure of a person to include the proper disclaimer in a political advertisement paid for by an independent expenditure;

Section 106.143(4)(b), Florida Statutes, failure of a person making an independent expenditure for a political advertisement to state on the advertisement that no candidate approved the advertisement; and

Section 106.19(1)(c), Florida Statutes, prohibiting a person or organization from falsely reporting or failing to report information required by this chapter.

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 August 22, 2003, in Tallahassee, Florida.

Chance Irvine

Chance Irvine, 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 M. Lipman, Asst. General Counsel
Sidney M. Nowell, Attorney for Respondent
Susanne Ewald, Respondent
Blair Kanbar, Complainant
Flagler County Supervisor of Elections, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
Case Number: FEC 02-433

Respondent: Susanne Ewald

Complainant: Blair R. Kanbar

On November 22, 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 106.071(1), Florida Statutes, failure of a person who makes independent expenditures of \$100 or more to file timely periodic reports of the expenditures;

Section 106.071(1), Florida Statutes, failure of a person to include the proper disclaimer in a political advertisement paid for by an independent expenditure;

Section 106.143(4)(b), Florida Statutes, failure of a person making an independent expenditure for a political advertisement to state on the advertisement that no candidate approved the advertisement; and

Section 106.19(1)(c), Florida Statutes, prohibiting a person or organization from falsely reporting or failing to report information required by this chapter

Summary of Facts and Conclusions of Law.

1. Complainant was the incumbent candidate for the Flagler County Commission, District 2. He was re-elected on November 5, 2002.
2. Respondent is a resident of Palm Coast in Flagler County.

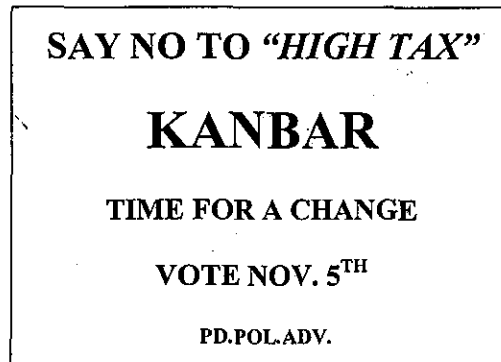
I. Section 106.071(1), Florida Statutes.

3. Commission staff investigated whether Respondent violated this section of the election laws by making independent expenditures in excess of \$100 and failing to file timely periodic reports. Commission staff also investigated whether Respondent violated this section of the election laws by failing to include a proper disclaimer on a political advertisement identifying the advertisement as an independent expenditure.

4. Complainant alleged that Respondent published flyers and signs in an amount over \$100. Complainant submitted pictures of a yard sign and copy of a flyer with his complaint. Complainant also stated Respondent distributed negative political advertisements regarding his candidacy throughout the county and in the newspaper. Complainant stated that Respondent had a lawsuit pending against him for a separate incident which occurred on Election Day. Complainant informed Commission staff that he personally removed 50 negative yard signs and kept them.

Yard sign

5. Complainant stated that on November 2, 2002, yard signs were illegally placed throughout the county. Complainant further claimed that on November 5, 2002, when Respondent was approached and questioned whether she had made the signs, she answered yes. Complainant alleged approximately 100 of the signs were put up around Flagler county. The sign read as follows:



(Attachment 1)

Flyer

6. Complainant also submitted a copy of a single-sided, letter size flyer. Complainant alleged Respondent published the flyer. Complainant alleged that Respondent printed about 5000 flyers and personally distributed them. The flyer stated as follows:

(This space intentionally left blank)

**THE TRUTH ABOUT
"HIGH TAX" KANBAR**

"HIGH TAX" KANBAR Raised your taxes 3 years in a row
"HIGH TAX" KANBAR Pushed for \$.05 a gallon gas tax
"HIGH TAX" KANBAR Tried to sell us a \$85 million dollar bridge
"HIGH TAX" KANBAR Never met a tax increase he didn't love

SAY NO TO "HIGH TAX"
KANBAR

TIME FOR A CHANGE!
VOTE NOV. 5TH

PD. POLADV.

(Attachment 2).

7. Complainant also submitted four sworn affidavits. The affidavits were from himself; his wife, Brenda Kanbar; his daughter, Tricia Kanbar; and his friend, Bernard Coffey. All four affidavits state that on November 5, 2002, at the Hammock Community Center, Respondent admitted to having the signs printed.

8. Commission staff sent a copy of the yard sign to five printing businesses in Flagler County: Creative Signs, Graphic Impression, Sign Shop, Cubco Inc., and Palm Coast Signs. None of the printers verified that their businesses produced the signs.

9. Complainant also submitted an invoice from his own campaign for similar sized signs. The invoice indicates the cost of each sign would be \$4. Complainant alleged the cost of the 50 signs, which he admitted taking, cost at least \$200 to print.

10. On January 15, 2003, Respondent's counsel, Sidney Nowell, submitted a response. He stated that based on his review of the facts with Ms. Ewald, the Respondent categorically denies that Ms. Ewald expended any sums of money in violation of Florida election laws.

11. Commission staff spoke with Mr. Nowell on February 11 and 19, 2003. Mr. Nowell stated Respondent did not print the ads at issue, nor was she involved in production of any political ads. Commission staff asked why Respondent admitted to the production of the yard signs. Mr. Nowell responded that Respondent was confronted on Election Day by the Complainant. Complainant accused Respondent of publishing of the signs. According to the Mr. Nowell, Respondent's responsive remarks to Complainant were sarcastic.

12. During a February 24, 2003 telephone discussion, Complainant reported to Commission staff that he personally observed Respondent handing out the flyers at a Publix shopping center.

13. On March 12, 2003, Respondent submitted a sworn affidavit. Respondent testified she was not personally responsible for the printing or creation of any campaign literature. Respondent further testified that to the best of her knowledge, her husband was not involved in the printing of any campaign literature.

14. On March 13, 2003, Commission staff interviewed Arnold Levine, the Complainant's opponent for the Flagler County Commission. He was asked whether he produced the signs or the flyers at issue. Mr. Levine stated that he was not involved in the production or publication of the ads.

15. Commission staff obtained copy of Arnold Levine's campaign printing invoices. None of the information received by Commission staff indicates that Mr. Levine was involved with the publication of the yard signs or flyers.

16. During an April 30, 2003 telephone call, Mr. Nowell informed Commission staff that Respondent had distributed flyers at a Publix shopping center. Commission staff asked how Respondent received the flyers to hand out at Publix. Respondent's counsel stated that during the campaign, Respondent attended various political gatherings. During those gatherings, Respondent saw various flyers and handouts available. Mr. Nowell stated Respondent was allowed to take and distribute the flyers.

17. On June 16, 2003, Commission staff spoke with Respondent via telephone. Respondent stated that during the 2002 campaign season, she sponsored a gathering in support of Arnold Levine. Between 10-12 people attended. Respondent stated that individuals who attended her gathering brought the yard sign and flyers to the meeting. Respondent admitted that she distributed the flyers at a Publix shopping center.

18. Respondent also relayed to Commission staff that when she arrived at the polling place, Complainant and his wife began harassing her. Respondent related that George Murphy, one of Complainant's campaign workers, was verbally abusive and insulting to her. Respondent added that Complainant approached her asking if she made the signs. Respondent answered Complainant that she did. Respondent told Commission staff that her response was made in a kidding manner.

19. Commission staff also spoke with Respondent's husband by telephone on June 16, 2003. Mr. Ewald stated that on Election Day (November 5, 2002), he took a yard sign to the Hammock polling place and placed it by his car. Mr. Ewald reported he took the sign from a political gathering. Mr. Ewald added that while at the Hammock polling place, Complainant and his wife confronted him about the signs, argued with him, and threatened him.

20. Commission staff was unable to independently corroborate Complainant's assertions that Respondent published, or caused to be published, the yard signs or flyers at issue. Therefore, I recommend the Commission find there is no probable cause that Respondent violated Section 106.071(1), Florida Statutes.

II. Section 106.143(4)(b), Florida Statutes.

21. Commission staff investigated whether Respondent violated this section of the election laws by making independent expenditures for political advertisements, without stating that no candidate approved the advertisement.

22. As previously discussed, there appears to be no independent evidence which corroborates Complainant's assertions that Respondent was the one who published, or caused to be published, the yard signs or flyers. Therefore, I recommend the Commission find there is no probable cause that Respondent violated Sections 106.143(4)(b) or 106.19(1)(c), Florida Statutes.

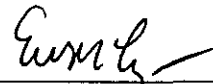
III. Section 106.19(1)(c), Florida Statutes.

23. Commission staff investigated whether Respondent violated this section of the election laws by failing to report information required by this chapter.

24. Respondent testified in her affidavit that she did not produce or publish the advertisements at issue in this case. She also stated this during telephone conversations with Commission staff.

25. As previously discussed, there appears to be no independent evidence which corroborates Complainant's assertions that Respondent was the one who published, or caused to be published, the yard signs or flyers. Therefore, I recommend the Commission find there is no probable cause that Respondent violated Section 106.19(1)(c), Florida Statutes.

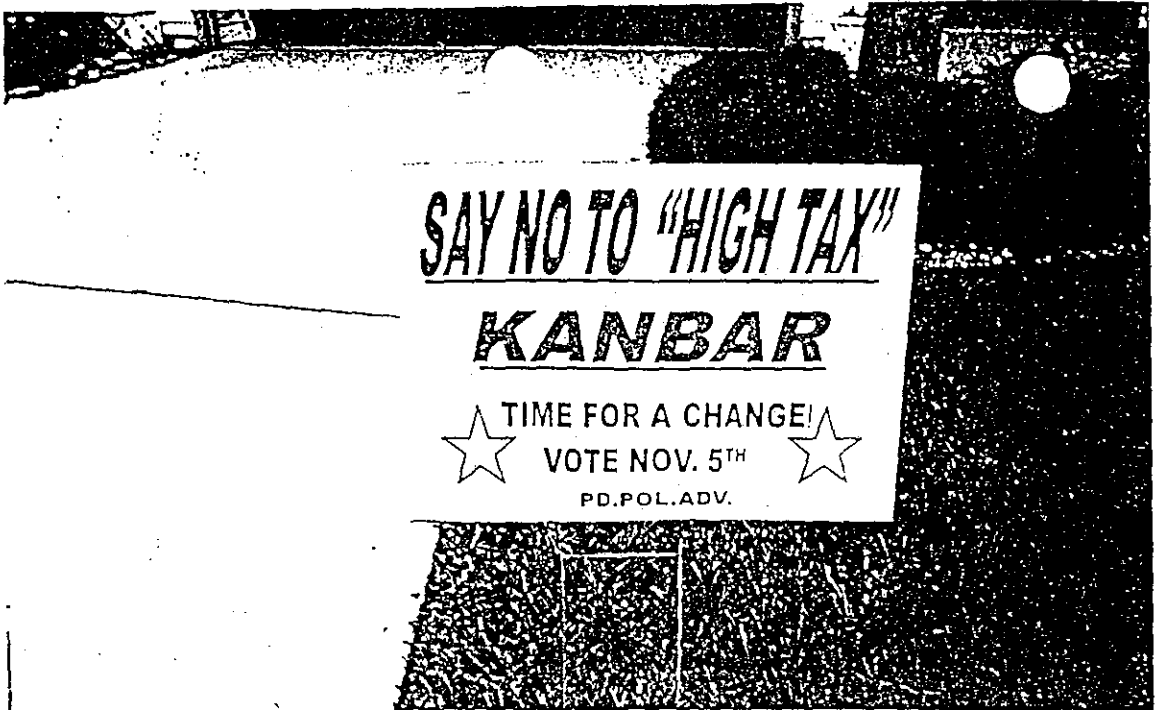
Respectfully submitted on July 8, 2003,



Eric M. Lipman
Assistant General Counsel

Copy furnished to:

Barbara M. Linthicum, Executive Director
Faye Basiri, Investigator Specialist



SAY NO TO "HIGH TAX"

KANBAR

★ TIME FOR A CHANGE! ★
VOTE NOV. 5TH

PD.POL.ADV.

Attachment 1

THE TRUTH ABOUT "HIGH TAX" KANBAR

"HIGH TAX" KANBAR

"HIGH TAX" KANBAR

"HIGH TAX" KANBAR

"HIGH TAX" KANBAR

- Raised your taxes 3 years in a row
- Pushed for \$.05 a gallon gas tax
- Tried to sell us a \$85 million dollar bridge
- Never met a tax increase he didnt love

SAY NO TO "HIGH TAX"
KANBAR

TIME FOR A CHANGE!
VOTE NOV. 5TH



PD.POL.ADV

Attachment 2