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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

IN RE: OLIVER ADDISON PARKER

CASE No.: FEC 04-083

F.O. No.: DOSFEC 04-107 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 18 & 19, 2004, 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 104.011(1), Florida Statutes, prohibiting a person from falsely swearing or affirming an oath or procuring another to falsely swear or affirm an oath in connection with or arising out of voting or elections.

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 27, 2004, 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:

Charles A. Finkel, General Counsel
Oliver Addison Parker, Respondent
Susan Mary Beatty, Complainant
Broward County Supervisor of Elections, Filing Officer

Attachment: Statement of Findings

FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
CASE NUMBER: FEC 04-083

RESPONDENT: Oliver Addison Parker

COMPLAINANT: Susan Mary Beatty

On March 8, 2004, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 104, 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**¹ to charge the Respondent with violating:

Section 104.011(1), Florida Statutes, prohibiting a person from falsely swearing or affirming an oath or procuring another to falsely swear or affirm an oath in connection with or arising out of voting or elections.

SUMMARY OF FACTS AND CONCLUSIONS OF LAW.

1. Respondent was elected Mayor of the City of Lauderdale-by-the-Sea on March 9, 2004, with 70.4% of the vote in the three-candidate contest. Respondent was originally elected mayor in 1998 and was reelected in 2000 and 2002. On January 26, 2004, he resigned as mayor to run unsuccessfully for Florida House, District #91. Respondent was a candidate for several other local and national offices before being elected Mayor in 2000. Respondent is an attorney by profession, having been admitted to The Florida Bar on October 17, 1977, and is a member in good standing.

2. Complainant was one of two unsuccessful candidates opposing Respondent for Mayor of the City of Lauderdale-by-the-Sea in the March 9, 2004 election. She finished third with 13.8% of the vote. Complainant challenged Respondent for the same office in 2000 and 2002. Local news articles have described Complainant as "a civic activist since 1997" and a "poll worker" and as the editor of a "community newsletter" entitled *Behind the Pilings*. Complainant is a self-employed legal assistant by profession.

¹ The term **probable cause** means a reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person in the belief that the person has committed the offense charged. Schmitt v. State, 590 So.2d 404, 409 (Fla. 1991). Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. Department of Highway Safety and Motor Vehicles v. Favino, 667 So.2d 305, 309 (Fla. 1st DCA 1995).

I. Section 104.011(1), Florida Statutes.

3. The Commission staff investigated whether the Respondent violated this section of the election laws by falsely swearing or affirming an oath in connection with or arising out of voting or elections.

4. As mentioned above, Respondent resigned from the office of Mayor of Lauderdale-by-the-Sea to run for the Florida House of Representative, District #91, seat. The special election for the seat was held on January 6, 2004. Respondent lost the election and then ran for the position from which he had resigned, Mayor of Lauderdale-by-the-Sea. He was elected Mayor on March 9, 2004.

5. Complainant contends that when Respondent filed as a candidate for the Florida House, District #91, seat, he listed his residence as 4900 North Ocean Boulevard, #421, Lauderdale-by-the-Sea, which is in Precinct 33Q. Complainant further contends that when Respondent voted in the election for the Florida House seat and in the election for Mayor, he voted in Precinct 30Q, using a residential address of 283 Codrington Drive, Lauderdale-by-the-Sea.

6. Pursuant to Section 101.045(1), Florida Statutes, "No person shall be permitted to vote in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered."

7. Division of Elections (DOE) records listed Respondent's contact address as 4900 North Ocean Boulevard, #421, as a candidate for the Florida House District #91 seat. According to Phyllis Hampton, the Chief of the Bureau of Election Records, DOE does not require that the contact address provided by the candidate is the candidate's legal residence. She further stated that legislative candidates are never required to live in their districts until the day that they assume office.

8. Respondent originally registered as a voter with the Broward County Supervisor of Elections office (BCSOE) on December 10, 1971, and has been continually registered with the BCSOE since that date. Supervisor of Elections Brenda Snipes, in a sworn affidavit, stated that her records indicate that Respondent changed his address from 4339 West Tradewinds Avenue, Lauderdale-by-the-Sea, to 283 Codrington Drive, Lauderdale-by-the-Sea on February 27, 2001, and that it is still Respondent's address of record as of July of 2004. When Respondent changed his voter registration address to 283 Codrington Drive, he designated his mailing address as 4900 North Ocean Boulevard, #421, Lauderdale-by-the-Sea.

9. Respondent's stated that he owns two properties, a home and a condominium, both located within the city limits of Lauderdale-by-the Sea. He explained that 283 Codrington Drive is the address of his home and that 4900 N. Ocean Blvd., #421, is the address of his condominium. He stated that he has lived "for years" at the Codrington Drive address.

10. Respondent further stated that about two years ago he moved into his condominium while he was building a new house on the Codrington property. Respondent stated that he had his old house torn down and built a new one on the land. He stated that the construction is complete, and he moved back into the new home in March of 2004. Respondent

explained that when he ran for the Florida House District #91 seat, he used his 4900 N. Ocean Blvd. address as his "domicile" and he received his mail there, even though it was temporary and he planned on moving back into Codrington Drive home when it was completed. He stated that that the Precincts Q30 and Q33 share the same polling location and vote identical ballots.

11. Respondent's homeownership records, from the Broward County Property Appraiser's on-line web page, appear to support his statement that he tore down the existing house and built a new house on his Codrington Drive property during calendar year 2003.

12. Brenda Snipes confirmed that when Respondent voted in the election for the Florida House seat and in the election for Mayor, he voted in Precinct 30Q the precinct for 283 Codrington Drive. Ms. Snipes also confirmed that the ballots for voters in Precincts 30Q or in Precinct 33Q were identical. Thus, a voter claiming an official voter residence of 283 Codrington Drive would have had the identical ballot as a voter claiming an official residence of 4900 North Ocean Boulevard, #421. Ms. Snipes further stated that both addresses were in Florida House District #91.

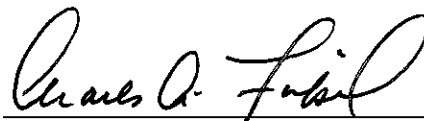
13. Investigator O'Brien obtained from the BCSOE, a certified copy of each of the two voter roles signed by Respondent in the election for the Florida House seat and in the election for Mayor. The BCSOE was the filing officer for both elections. Both voting rolls contain the following oath:

My signature certifies that I am duly registered and qualified to
vote in this election.

II. Summary of Charges.

14. Under these circumstances, I recommend that the Commission find no probable cause that Respondent violated Chapter 104, Florida Statutes.

Respectfully submitted on August 2, 2004,



Charles A. Finkel
General Counsel

Copy furnished to:

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