

VTS 10/13/95

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

Division of Elections,
Petitioner,

v.

Case No.: FEC 93-066
F.O. No.: DOSFEC 95-154

Douglas M. Guetzloe,
Respondent.

FINAL ORDER

THIS CAUSE came on to be heard at a formal hearing held before the Florida Elections Commission (Commission) on August 4, and October 6, 1995.

APPEARANCES

Petitioner: David R. Westcott
Assistant General Counsel
Florida Department of State
Division of Elections
Room 2002, The Capitol
Tallahassee, Florida 32399-0250

Respondent: Frederic B. O'Neal, Esquire
322 East Central Boulevard
Post Office Box 2288
Orlando, Florida 32802

STATEMENT OF THE ISSUES

1. Whether Respondent willfully violated Section 106.11(3), Florida Statutes, when as treasurer of the Central Florida Young Republicans (CFYR) political committee, he signed a \$25 check drawn on the campaign depository

without sufficient funds on deposit in the campaign depository to pay the full amount of the check.

2. Whether Respondent willfully violated Section 106.03(5), Florida Statutes, when as chairman of the CFYR political committee, he failed to notify the Orange County Supervisor of Elections' office that the committee had disbanded.

3. Whether Respondent willfully violated Section 106.07(5), Florida Statutes, when as chairman of the CFYR political committee he certified to the correctness of a campaign treasurer's report while knowing that all contributions and expenditures were not listed.

4. Whether Respondent willfully violated Section 106.19(1)(b), Florida Statutes, when as chairman and treasurer of the CFYR political committee he failed to report contributions which were made to the political committee.

5. Whether Respondent willfully violated Section 106.19(1)(c), Florida Statutes, when as chairman and treasurer of the CFYR political committee he failed to report expenditures made by the political committee.

PRELIMINARY STATEMENT

On September 29, 1993, the Division of Elections received a sworn complaint from Betty Carter, Supervisor of Elections for Orange County, Florida, alleging that Respondent violated Chapter 106, Florida Statutes. The Division conducted an investigation to determine whether the facts alleged in the complaint

constituted probable cause to believe that Respondent willfully violated the following section:

Section 106.11(3), Florida Statutes, prohibiting a treasurer from signing a check drawn on the campaign depository without sufficient funds on deposit in the campaign depository to pay the full amount of the check, to honor all outstanding checks, and to pay all previously authorized but unpaid expenses.

On May 19, 1994, Dorothy W. Joyce, then Director of the Division of Elections, signed a Statement of Findings concluding that there was probable cause to believe that a willful violation of Section 106.11(3), Florida Statutes, occurred. On June 28, 1994, the Florida Elections Commission entered an Order of Probable Cause to believe that Section 106.11(3), Florida Statutes, was violated. On July 6, 1994, Respondent filed a request for formal hearing. This matter was noticed for a formal hearing on December 14, 1994, in Orlando, Florida.

On November 29, 1994, Respondent filed a Motion for Continuance. The motion was heard by Commission Chairman Carlos Alvarez on December 2, 1994. The motion was granted and Respondent was placed on notice by the Division that it would investigate the following charges based on bank records which First Union Bank had recently supplied under subpoena:

Section 106.03(5), Florida Statutes, failure of the chairman of a political committee to notify its filing officer that the committee has disbanded or will no longer receive contributions or make expenditures in excess of \$500 per year;

Section 106.07(5), Florida Statutes, prohibiting a political committee chairman from willfully certifying to the correctness of a campaign

treasurer's report while knowing that such report is incorrect, false, or incomplete;

Section 106.19(1)(b), Florida Statutes, failure of a person to report any contribution required to be reported by this chapter; and

Section 106.19(1)(c), Florida Statutes, prohibiting any person from falsely reporting or deliberately failing to include any information required by this chapter.

On January 23, 1995, David A. Rancourt, Director of the Division of Elections, signed an addendum to the Statement of Findings concluding that there was probable cause to believe that a willful violation of Sections 106.03(5), 106.07(5), 106.11(3), 106.19(1)(b), and 106.19(1)(c), Florida Statutes, occurred.

On February 10, 1995, the Florida Elections Commission entered an Amended Order of Probable Cause to believe that Sections 106.03(5), 106.07(5), 106.11(3), 106.19(1)(b), and 106.19(1)(c), Florida Statutes, were violated. On February 27, 1995, Respondent requested a formal hearing. This matter was noticed for formal hearing on April 7, 1995, in Tampa, Florida.

At the April 7, 1995 hearing, Petitioner presented the testimony of David B. Flagg, its investigator, Margaret Dunn, Maurice O'Connor and Betty Carter. Petitioner offered eight exhibits which were admitted in to evidence. At the end of Petitioner's case, Respondent moved for a dismissal of the charges which the Commission denied. The Commission on its own motion, then ordered that the case be continued until its next meeting on June 1, 1995, in Tallahassee, Florida

On May 30, 1995, Respondent filed an Emergency Motion for Continuance. The motion was heard by designated Commissioner Larry Hardaway on May 31, 1995. The motion was granted and the case was continued until the Commission's August 4, 1995 meeting in Tampa, Florida.

At the August 4, 1995 hearing, Respondent testified and presented the testimony of David Abrami. Respondent offered nine exhibits, eight of which were admitted in to evidence. At the conclusion of the hearing, the Commission gave the parties fifteen days to file proposed final orders and written closing arguments.

FINDINGS OF FACT

1. The Florida Elections Commission is charged with enforcing Chapter 106, Florida Statutes, the campaign financing law.

2. Respondent, Douglas M. Guetzloe, is thoroughly experienced in politics. He is President of Advantage Consultants, Inc., an Orlando based political consulting firm which has represented numerous candidates and political committees. Respondent has run for the Florida Senate twice (1986, 1990), and filed papers to run a third time (1992), but later withdrew. Respondent is also chairman of the Ax the Tax political committee which was first formed in 1982.

3. On June 30, 1993, Respondent went to the Orange County Supervisor of Elections (SOE) office and requested a voters list for his Central Florida Young Republicans Club. Margaret Dunn, a SOE employee, testified that she denied his

request because Section 98.095(2), Florida Statutes, restricts access to voter's lists to certain government officials, agencies, candidates and political committees.

4. Respondent immediately filled out the necessary forms to register his club as a political committee and wrote the SOE a \$25 check for the voter's list. Ms. Dunn reviewed the forms and called First Union Bank which was listed on the form as the location of the campaign depository for the political committee. The bank advised her that there were insufficient funds on deposit to cover the \$25 check and that the name of the account was Douglas M. Guetzloe d/b/a Young Republican Club.

5. Ms. Dunn immediately contacted the Division of Elections and was told that the name of the political committee and the name on the account must match and that she had no obligation to accept a worthless check. Ms. Dunn called Respondent to notify him of these problems. Respondent replied that he was waiting to hear from her before depositing money into the account.

6. Respondent finally corrected the name on the campaign depository and re-filed the political committee papers on July 27, 1993, forming the Central Florida Young Republicans (CFYR) political committee. Respondent appointed himself both campaign treasurer and committee chairman and wrote another \$25 check for the voter's list.

7. This check was placed in the SOE cash register and later collected by Maurice O'Connor, the finance officer for the SOE's office. Mr. O'Connor

deposited Respondent's check, along with numerous others, on September 30, 1993. The check was returned to the SOE by the bank for insufficient funds.

8. Respondent's contention that the SOE purposely held the check until his account was closed is rejected. The SOE's office only receives a couple of checks a day during odd numbered years. As a result, Mr. O'Connor waited until he had a full deposit slip before he took the checks to the bank. Several other checks deposited that day were older than Respondent's. All credible evidence shows that the SOE's office followed its normal accounting practices in this matter.

9. There is conflicting evidence on whether there were sufficient funds on deposit in the CFYR account to cover the \$25 check when it was written. Although the bank statement shows a balance of only \$20.60 on July 27, 1993, Ms. Dunn testified that she called the bank and was told that the check would clear if presented that day.

10. The CFYR committee's account was closed for insufficient funds on September 28, 1993, and the committee was disbanded. However, Respondent, as the committee chairman and campaign treasurer, never informed the SOE's office of this fact and never filed a termination report.

11. The SOE's office, by a letter dated July 30, 1993, put Respondent on notice of his responsibilities as chairman and treasurer of a political committee. The letter reminded Respondent of his duties under Sections 106.03 and 106.07, Florida Statutes.

12. Even before he was placed on notice by the SOE, Respondent showed that he was aware of the law and its requirements. As chairman of the Ax the Tax political committee, Respondent wrote a memorandum to SOE Betty Carter on June 3, 1992. In that memorandum he stated that he had voluntarily dissolved the political committee "as of the January 10, 1992 report". Respondent had marked the referenced report as a "termination report" and therefore showed his knowledge and understanding of the law. Respondent offered no credible explanation for his failure to file a termination report or otherwise notice the SOE that the CFYR committee had dissolved.

13. Respondent did file one campaign treasurer's report for the CFYR committee which he signed in his capacity as both committee chairman and campaign treasurer. This report, filed October 13, 1993, covered the period from July 27 through September 30, 1993 and showed one contribution for \$50 and one expenditure for \$25. Neither entry was dated.

14. When compared to the CFYR committee's bank records for the same time period, however, there are eighteen different transactions which were not reported on the campaign treasurer's report, including four deposits totaling \$775.

15. Respondent stated that he was using the account for both the CFYR political committee and the CFYR club as he was told he could do by Division of Elections attorney Michael Cochran. However, in an affidavit submitted by Mr. Cochran, an elections attorney for eight years, he stated that he was aware of the

requirement in Section 106.11(1), Florida Statutes, that campaign depositories be used only for campaign funds. Therefore, he would have never advised Respondent that this practice was acceptable. In weighing the two statements, the Commission finds Mr. Cochran's statement to be more credible.

16. Respondent stated that there was no difference between the club and committee, because they both performed the same functions. Therefore, funds deposited into or spent from the campaign depository were contributions and expenditures which must be reported on the CFYR political committee's campaign treasurer's report.

17. Respondent blamed his bookkeeping troubles on the bank for not informing him of service charges on the account. However, the evidence showed that Respondent had a long banking history with First Union, including both business and personal accounts. Respondent was charged service charges on every account he has had with First Union for at least the last five years. First Union branch manager Scott Fricke stated in his affidavit that he has terminated his branch's business relationship with Mr. Guetzloe because "his accounts required too much administrative handling."

18. Respondent next blamed his troubles on the U.S. Postal Service. Respondent stated that the Post Office closed his P.O. Box 1951 Winter Park, Florida 32790 address for non-payment in 1992, and, therefore, he did not receive his bank statements. However, when he filed his CFYR political committee

papers on July 27, 1993, and when he filed his campaign treasurer's report on October 13, 1993, he listed the committee's address both times as P.O. Box 1951, Winter Park, Florida 32790.

19. Respondent also claimed that SOE Betty Carter has filed seven complaints against him and is simply out to get him. However, the evidence shows that before this case Ms. Carter had not filed any complaints against Mr. Guetzloe. The letter which he introduced as Resp. Exh. 8, referring to case FEC 92-009, states very clearly that "a complaint was filed against you by the Division of Elections." Respondent made similar unsubstantiated claims against Division of Elections personnel. The Commission finds no evidence of any improper activity by either office.

20. Respondent registered CFYR as a political committee to obtain a voters list from the SOE. He complied only with the laws necessary to obtain this voters list. Once Respondent acquired the voters list he made no further effort to comply with the law relating to political committees.

CONCLUSIONS OF LAW

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

2. Respondent is charged with violating five separate sections of Chapter 106, Florida Statutes. The first is Section 106.03(5), Florida Statutes, which

Respondent willfully violated when he failed to notify the filing officer that his political committee had disbanded when the campaign depository was closed for insufficient funds. The statute reads in pertinent part:

Any committee which disbands shall so notify the agency or officer with whom such committee is required to file the statement of organization.

2. To show a violation of this section, the Division must prove the following elements: Respondent was the chairman of the political committee, the committee disbanded, Respondent failed to notify the filing officer that the committee had disbanded, and willfulness.

3. The first element to be proved is that Respondent was the chairman of the Central Florida Young Republicans political committee. Respondent filed the organizational papers for the committee naming himself both chairman and treasurer of the committee. There was never any other officer appointed to this committee.

4. The second element to be proved is that the committee disbanded. The committee's campaign depository was closed for insufficient funds on September 28, 1993, and Respondent admitted that the organization broke up shortly thereafter.

5. The third element to be proved is that Respondent failed to notify the filing officer that the committee had disbanded. Respondent admitted that he

never notified the Orange County Supervisor of Elections office that the committee had disbanded and their files show no notification.

6. The last element to be proved is willfulness. Willful conduct is an element of every violation of Chapter 106, Florida Statutes. In Division of Elections v. Tanner, FEC 93-003, the Commission adopted a definition of willfulness which follows a long line of U.S. Supreme Court cases. Interpreting willfulness in civil and administrative forums, the Court has found conduct to be willful when the defendant "knew or showed reckless disregard for the matter of whether its conduct was prohibited." Trans World Airlines v. Thurston, 469 U.S. 111, 126, 105 S.Ct. 613, 624 (1985). The Court also approved a finding of willfulness when a defendant "wholly disregards the law without making any reasonable effort to determine whether the plan he is following would constitute a violation of the law." Id. Finally, the Court approvingly cited United States v. Illinois Central Railroad, 303 U.S. 239, 243, 58 S.Ct. 533, 535 (1938), stating, "the Court applied the ... definition of willful in a civil case [in which] the defendant's failure to unload a cattle car was willful because it showed a disregard for the governing statute and an indifference to its requirements." The Commission further found that no malice, bad purpose or motive need be shown to sustain a finding of willfulness.

7. Respondent has had extensive political experience including experience as chairman of the "Ax the Tax" political committee. In a June 3, 1992

memorandum to Supervisor of Elections Betty Carter, Respondent, in seeking to reactivate the committee, stated, "Since we voluntarily dissolved our committee as of the January 10, 1992 report, we have decided to reactivate the committee." A review of that January 10, 1992 report shows that it was marked as a termination report, intended to dissolve the committee. Respondent neither filed a termination report for the CFYR committee, nor did he in any way notify the Orange County SOE's office that the committee was dissolved. The 1992 memo shows that Respondent had knowledge of the law and its requirements. His failure to comply while having such knowledge is willful.

8. Respondent did not willfully violate Section 106.11(3), Florida Statutes, when the \$25 check he wrote to the Orange County Supervisor of Elections Office on July 27, 1993, was returned for insufficient funds on September 30, 1993. This section reads in pertinent part:

No . . . political committee or any officer or agent thereof . . .
[shall] sign a check drawn on the primary campaign account
for any purpose, unless there are sufficient funds on deposit . . .
to pay the full amount of the authorized expense.

9. To show a violation of this section, the Division must prove the following elements: Respondent was an officer or agent of a political committee, he signed a check drawn on the primary campaign account, there were insufficient funds on deposit to pay the full amount of the check, and willfulness.

10. The first element to be proved is that Respondent was an officer or agent of a political committee. Respondent was both the Chairman and Treasurer of the CFYR committee.

11. The second element to be proved is that Respondent signed a check drawn on the primary campaign account. On July 27, 1993, Respondent signed a check for \$25 made payable to the Supervisor of Elections. The check was drawn on the primary campaign account.

12. The third element to be proved is that there were insufficient funds on deposit to pay the full amount of the check when it was written. According to certified copies of the committee's bank records, there was only \$20.60 in the bank account on July 27, 1993. However, Margaret Dunn testified that when she called the bank, she was told that there were sufficient funds on deposit to cover the amount of the check. Because of this conflicting testimony, the Division has failed to prove this element of the offense. Therefore, it is unnecessary to address the willfulness issue.

13. Respondent violated Sections 106.07(5), and 106.19(1)(b), Florida Statutes, when he willfully certified to the correctness of a campaign treasurer's report while knowing that such report failed to include numerous other contributions and expenditures. These sections read in pertinent part:

106.07(5) - . . . the political committee chairman and campaign treasurer of the committee . . . shall certify to the correctness of each report [and by] so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign

treasurer, candidate, or political committee chairman who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete [is in violation]

106.19(1)(c) - Any . . . campaign treasurer . . . committee chairman . . . who knowingly and willfully: (c) falsely reports or deliberately fails to include any information required by this chapter; . . . is guilty . . .

14. To show a violation of these sections, the Division must prove the following elements: Respondent was a campaign treasurer or committee chairman, he certified to the correctness of a campaign treasurer's report, the report was incorrect, false or incomplete and failed to include information required by Chapter 106, Florida Statutes, and willfulness.

15. The first two elements to be proved are that Respondent was either a campaign treasurer or committee chairman and that he certified to the correctness of a campaign treasurer's report. The facts show that Respondent was both treasurer and chairman of the CFYR committee and certified to the correctness of the campaign treasurer's report filed on October 13, 1993 in both capacities.

16. The third element to be proved is that the report was false, incorrect or incomplete and failed to include information required by Chapter 106, Florida Statutes. From July 27 through September 30, 1993, Respondent's bank records show eighteen different transactions in the CFYR committee account which were not reported on the campaign treasurer's report.

17. The last element to be proved is willfulness. On cross-examination, Respondent's freely admitted that he only formed the political committee in order to obtain a voters list for the City of Winter Park. Once he had the list he made no effort to comply with the law governing political committees. Respondent was familiar with the law because he had previously served as chairman of the Ax the Tax committee. In addition, on July 30, 1993, the Orange County Supervisor of Elections office sent him a letter reminding him of his duties under Sections 106.03 and 106.07, Florida Statutes. Respondent's actions showed a disregard for the law and an indifference to its requirements and are therefore willful under Chapter 106, Florida Statutes.

18. Respondent willfully violated Section 106.19(1)(b), Florida Statutes, when he failed to report contributions required to be reported by this chapter. This section provides in pertinent part:

(1) Any . . . campaign treasurer . . . committee chairman . . . who knowingly and willfully: . . . (b) fails to report any contribution required to be reported by this chapter; . . . is guilty . . .

19. To show a violation of this section, the Division must prove the following elements: Respondent was a campaign treasurer or committee chairman, he failed to report a contribution required to be reported by Chapter 106, Florida Statutes, and willfulness.

20. The first element to be proved is that Respondent was either a campaign treasurer or committee chairman. The facts show that Respondent was both chairman and treasurer of the CFYR committee.

21. The second element to be proved is that Respondent failed to report a contribution required to be reported by Chapter 106, Florida Statutes. From July 27 through October 13, 1993, bank records from the CFYR committee show four deposits in to the campaign depository totaling \$775 which went unreported on Respondent's campaign treasurer's report. Respondent argued that these deposits were not contributions to the political committee, simply deposits made for the CFYR club account. This argument is unconvincing in light of Respondent's admission on cross-examination that the club and the political committee were the same entity, performing the same functions with the same funds. Once Respondent chose to file as a political committee, he had a duty to report the money received and spent by that committee. Funds deposited into the campaign depository of the CFYR political committee were contributions which were required to be reported on campaign treasurer's reports.

22. The last element to be proved is willfulness. On cross-examination, Respondent freely admitted that he only formed the political committee in order to obtain a voters list for the City of Winter Park. Once he had the list he made no effort to comply with the law governing political committees. Respondent was familiar with the law because he had previously served as chairman of the Ax the

Tax committee. In addition, on July 30, 1993, the Orange County Supervisor of Elections office sent him a letter reminding him of his duties under Sections 106.03 and 106.07, Florida Statutes. Respondent's actions showed a disregard for the law and an indifference to its requirements, and are therefore willful under Chapter 106, Florida Statutes.

ORDER


Based on the foregoing facts and conclusions of law, the Florida Elections Commission finds that the Respondent willfully violated Sections 106.03(5), 106.07(5), 106.19(1)(b) and 106.19(1)(c), Florida Statutes. Therefore, it is

ORDERED that the Respondent shall remit a civil penalty in the amount of \$3,000. The civil penalty shall be paid to the Florida Elections Commission, Room 2002, The Capitol, Tallahassee, Florida 32399-0250, within 30 days of the date this Final Order is received by the Respondent.

DONE AND ORDERED by the Florida Elections Commission on October 6, 1995, in Tallahassee, Florida.

Entered on October 13, _____, 1995.

Filed on October 13, 1995
Commission Clerk VTS



Carlos Alvarez, Chairman
Florida Elections Commission
Room 2002, The Capitol
Tallahassee, Florida 32399-0250

NOTICE OF RIGHT TO APPEAL

Pursuant to Section 120.59, Florida Statutes, the Respondent may appeal the Commission's Final Order to the district court of appeal by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of a district court of appeal accompanied by the appropriate filing fees, within 30 days of the date this Final Order was filed.

Copies furnished to:

David R. Westcott, Assistant General Counsel
Frederic B. O'Neal, Attorney for Respondent
Douglas M. Guetzloe, Respondent (certified mail)
Betty Carter, Complainant/Filing Officer