

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES P. APPLEMAN,)
)
 Petitioner,)
)
 vs.) Case Nos. 01-3541
) 01-3542
 FLORIDA ELECTIONS COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal administrative hearing in this case on January 8 and 9, 2002, in Panama City, Florida, and on January 23, 2002, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Mark Herron, Esquire
Messer, Caparello and Self, P.A.
Post Office Box 1876
Tallahassee, Florida 32302-1876

For Respondent: David F. Chester, Esquire
Florida Elections Commission
107 West Gaines Street
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STATEMENT OF THE ISSUES

Whether or not Petitioner, James P. Appleman, "willfully" violated Subsections 106.021(3), 106.07(5), and Section

106.1405, Florida Statutes, as alleged by Respondent, Florida Elections Commission, in its Order of Probable Cause; and whether or not Petitioner, James P. Appleman, "knowingly and willfully" violated Subsections 106.19(1)(c) and (d), Florida Statutes, as alleged by Respondent, Florida Elections Commission, in its Order of Probable Cause.

PRELIMINARY STATEMENT

On September 8, 2000, the Florida Elections Commission ("FEC") received two essentially identical sworn complaints alleging that Petitioner, James P. Appleman, had violated Chapter 106, Florida Statutes, in his campaign for State Attorney for the Fourteenth Judicial Circuit, which resulted in his reelection in November 2000. Because there were two complaints, two cases were advanced. After an investigation by FEC staff, on August 7, 2001, the FEC entered an Order of Probable Cause in each case alleging that there was probable cause to believe that Petitioner had violated specific sections and subsections of Chapter 106, Florida Statutes, as alleged in the Orders of Probable Cause.

On August 31, 2001, Petitioner, through counsel, responded to the allegations contained in the Orders of Probable Cause and requested a formal administrative hearing in both cases.

The cases were forwarded to the Division of Administrative Hearings on September 6, 2001. On September 7, 2001, Initial Orders were forwarded to the parties. On September 19, 2001, the cases were set for final hearing on November 14 and 15, 2001, in Panama City, Florida.

On October 1, 2001, in response to Petitioner's motions, the cases were continued and rescheduled for January 6 and 7, 2002. On November 29, 2001, the cases were consolidated for final hearing.

A two-day hearing was conducted in Panama City, Florida, on January 6 and 7, 2002. At the hearing Petitioner presented his own testimony and that of six additional witnesses: Anita Goodman, Gerald Stanton, Leah Appleman, Bob Haddock, Terrance Guy White, and Jimmy Cauley. Petitioner offered nine exhibits, numbered Appleman Exhibits 1-7, 9 and 10, which were received into evidence. Respondent presented three witnesses: John Newberry, Jr.; Margie Wade; and Barbara Linthicum, Esquire; and offered 15 exhibits, numbered R1-R15, which were received into evidence. In addition, the parties offered eight Joint Composite Exhibits, numbered Joint Composite Exhibits 1-8, which were received into evidence.

The final hearing was continued to January 23, 2002, to allow the testimony of Petitioner's additional witness, Connie

Evans; Respondent's Exhibit R16 was admitted into evidence at that time.

The parties requested and received 45 days from the filing of the transcript of testimony taken on January 23, 2002, to file proposed recommended orders. The Transcript of the testimony taken on January 8 and 9, 2002, was filed with the Division of Administrative Hearings on January 22, 2002. The Transcript of the testimony taken on January 23, 2002, was filed with the Division of Administrative Hearings on February 7, 2002. Both parties timely filed Proposed Recommended Orders.

FINDINGS OF FACT

Based on the testimony and demeanor of the witnesses, documentary evidence, record of proceedings, and the facts agreed to by the parties in the Joint Pre-hearing Stipulation, the following Findings of Fact are made:

1. In 2000, Petitioner was reelected to the office of State Attorney, Fourteenth Judicial Circuit. Prior to his reelection in 2000, Petitioner had been elected to the same office in 1980, 1984, 1988, 1992, and 1996.

2. Petitioner, on February 1, 1999, signed a Statement of Candidate indicating that he had received, read, and understood Chapter 106, Florida Statutes.

3. During the 2000 campaign, Petitioner made the following purchases using his personal funds in the form of cash, check or charge upon his personal credit card:

- a. Purchase 1: 7/12/99 Down payment/purchase of vehicle-\$525.00
- b. Purchase 2: 7/12/99 Purchase of vehicle/tax and title-\$602.85
- c. Purchase 3: 1/07/00 Bay Pointe Properties-\$100.35
- d. Purchase 4: 1/13/00 Delchamps Liquors-\$58.50
- e. Purchase 5: 1/22/00 Delchamps Liquors-\$135.10
- f. Purchase 6: 1/22/00 Cafe' Thirty A-\$144.11
- g. Purchase 7: 1/30/00 Pineapple Willy's-\$17.45
- h. Purchase 8: 5/05/00 Skirt/Jones of New York-\$104.00-blouse/Jones of New York-\$63.00
- i. Purchase 9: 5/09/00 Tie/Dillard's-\$30.00-tie/Dillard's-\$40.00-misc. Big & Tall/Dillard's-\$8.75
- j. Purchase 10: 5/23/00 Blazer/Polo Store-\$199.99-short sleeve shirt/Polo Store-\$39.99-short sleeve shirt/Polo Store-\$39.99-short sleeve shirt/Polo Store-\$39.99-shorts/Polo Store-\$29.99
- k. Purchase 11: 5/05/00 Casual bottoms/Brooks Brothers-\$34.90-casual bottoms/Brooks Brothers-\$34.90 casual bottoms/Brooks Brothers-\$34.90
- l. Purchase 12: 5/05/00 Shorts/Geoffrey Beene-\$24.99-shorts/Geoffrey Beene-\$24.99
- m. Purchase 13: 5/05/00 Sport coat/Dillard's-\$195.00
- n. Purchase 14: Telephone expense-\$23.49

- o. Purchase 15: 8/11/00 Tie down/Wal-Mart-\$19.96-security chain/Wal-Mart-\$19.26
- p. Purchase 16: 8/11/00 Trailer hitch ball-\$16.99
- q. Purchase 17: 8/12/00 Event admission-\$60.00
- r. Purchase 18: 8/23/00 Liquor purchase/Delchamps-\$37.41
- s. Purchase 19: 8/30/00 Gas purchase/Shop a Snack-\$20.00
- t. Purchase 20: 8/30/00 Event admission-\$40.00
- u. Purchase 21: 8/30/00 Event admission/DEC-\$15.00
- v. Purchase 22: 8/26/00 Sign charge-\$20.64
- w. Purchase 23: 8/30/00 Auto insurance charge-\$100.00
- x. Purchase 24: 9/02/00 Gas purchase/Happy Stores-\$34.00
- y. Purchase 25: 9/02/00 Campaign staff/meal/food-\$140.00
- z. Purchase 26: 9/04/00 Ice purchase/Winn Dixie-\$6.36
- aa. Purchase 27: 9/05/00 Gas purchase/Swifty Store-\$25.00
- bb. Purchase 28: 9/06/00 Meal purchase/ St. Andrews Seafood House-\$27.52
- cc. Purchase 29: 9/08/00 Posthole digger-\$42.90
- dd. Purchase 30: 9/08/00 Lunch for sign crew-\$20.14

None of these purchases were individually listed on Petitioner's Campaign Treasurer's Reports.

4. Petitioner was reimbursed for each of the above-referenced expenditures by a check written on the campaign account, which was listed as an expenditure on Petitioner's Campaign Treasurer's Reports filed with the Division of Elections as follows:

<u>Date</u>	<u>Name and Address of Person Receiving Reimbursement</u>	<u>Purpose</u>	<u>Amount</u>
07-17-99	Appleman, Jim PO Box 28116 Panama City, FL 32411	Reimb. Cmpgn. Vehicle Expenses	\$1,127.85
02-11-00	Appleman, Jim PO Box 28116 Panama City, FL 32411	Reimb. Cmpgn. Expenses	\$830.81
06-10-00	Appleman, Jim PO Box 28116 Panama City, FL 32411	Reimb. Cmpgn. Expenses	\$1,000.00
08-07-00	Appleman, Jim PO Box 28116 Panama City, FL 32411	Reimburse vehicle & Phone exp.	\$400.00
08-30-00	Appleman, Jim PO Box 28116 Panama City, FL 32411	Reimbursement/ Campaign Expense	\$670.51
09-08-00	Appleman, Jim PO Box 28116 Panama City, FL 32411	Reimbursement Camp. Expense	\$295.92

5. On July 18, 2000, a campaign check for \$140.99 was written to Winn Dixie. This check was reported on Petitioner's Campaign Treasurer's Report with the purpose listed as being "Campaign Social Supplies." The Winn Dixie purchase included the following items:

- a. A cat pan liner.
- b. 4 cans of cat food.
- c. A box of dryer sheets.
- d. A package of kitty litter.
- f. A jug of laundry detergent.

The total cost of these items was \$33.88.

6. Petitioner signed all of his Campaign Treasurer's Reports, certifying as to their accuracy.

7. The July 18, 2000, purchases at Winn Dixie were made by Mrs. Appleman, Petitioner's wife, and were a result of an inadvertent error. Immediately realizing that she had purchased personal items with campaign funds, she brought the matter to Petitioner's attention. Petitioner took possession of the Winn Dixie cash register receipt for the purchases; on the receipt he circled the inappropriate purchases with a pen, noted the total amount of inappropriate purchases on the receipt adding his initials, submitted the cash register receipt to his campaign treasurer, and several days later wrote a check reimbursing the campaign for the inappropriate purchases.

8. During the campaign, Petitioner made 30 purchases listed in paragraph 3, supra, with personal funds, i.e., cash, personal check, or personal credit card, for which he provided receipts, and sought and received reimbursement from campaign funds by campaign check.

9. These 30 purchases were not individually reported as expenditures on Campaign Treasurer's Reports during the reporting periods during which the purchases were made, but were reported as reimbursements as reflected in paragraph 4, supra.

10. No evidence was presented that suggested that Purchases 3-7, Purchase 14, Purchases 17-22, or Purchases 24-30

listed in paragraph 3, supra, were not for campaign-related purposes.

11. During the April 1 through June 30, 2000, campaign reporting period, Petitioner purchased 16 items of clothing (listed in paragraph 3, supra, as Purchases 8-13) for which he received reimbursement from campaign funds by campaign check. Petitioner and his wife testified that these items of clothing were used exclusively for campaign functions and purposes. Admittedly, each of the items of clothing could be used for non-campaign functions and purposes. However, the Campaign Treasurer's Reports reflect that in excess of \$1,100 of "campaign shirts" were purchased during the campaign, supporting Petitioner's contention that he, his wife and campaign workers were all attired, while campaigning, in a color-coordinated "uniform of the day": red shirts, and tan/khaki trousers or walking shorts. This is further supported by photographs admitted into evidence. I find credible and accept the testimony of Petitioner and his wife that the items of clothing in the questioned purchases were used exclusively for campaign functions and purposes and not to "defray normal living expenses."

12. During the August 12 through August 31, 2000, campaign reporting period, Petitioner purchased the following items for which he received reimbursement from campaign funds by campaign

check: trailer hitch ball, trailer security chain, and sign tie-downs (listed in paragraph 3, supra, as Purchases 15 and 16). These three items were clearly used for campaign purposes and not to "defray normal living expenses."

13. On August 30, 2001, Petitioner received a campaign check from the campaign treasurer reimbursing him for several campaign expenses he had paid. Among these campaign expenses, Petitioner sought reimbursement for \$100 for "auto insurance" (listed in paragraph 3, supra, as Purchase 23). From the onset of his campaign, Petitioner had consistently either paid his automobile liability insurer, United Services Automobile Association, directly with a campaign check or sought reimbursement for payments he personally made for liability insurance on his personal vehicle or the "campaign Jeep" for automobile liability insurance cost attributable to the use of the motor vehicles in the campaign. Automobile liability insurance expense is a legitimate campaign expense and can reasonably be considered an actual transportation expense exempt from the statutory prohibition against payments made to "defray normal living expenses."

14. On July 12, 1999, Petitioner purchased a 1997 Jeep to be used as a campaign vehicle (the down payment, tax and tag are listed in paragraph 3, supra, as Purchases 1 and 2); thereafter, loan payments to Tyndall Federal Credit Union and automobile

liability insurance payments to United Services Automobile Association for the campaign vehicle were paid by the campaign treasury.

15. On December 7, 1999, the 1997 Jeep was sold/traded to a third party for a 1999 Honda which was not used as a campaign vehicle. The Tyndall Federal Credit Union lien was transferred to the 1999 Honda.

16. After December 7, 1999, the 1999 Honda was driven by Petitioner's adult stepdaughter. At the time of the transfer of the vehicles, Petitioner and his wife agreed that she would reimburse the campaign \$800 which was determined to be the value lost by the campaign when the 1997 Jeep was traded.

17. Petitioner later determined that he should reimburse the campaign an additional \$525, the amount of the down payment paid when the 1997 Jeep was purchased in July 1999.

18. On June 2, 2000, Petitioner's wife tendered a personal check drawn on her personal account to the campaign account for \$800, which was reported under an entry date of June 5, 2000, on the Campaign Treasurer's Report for the period ending June 30, 2000, as a "REF" made by Petitioner. On March 14, 2001, Petitioner tendered a personal check to the campaign account for \$617. This included \$525 for the 1999 Jeep down payment reimbursement and an automobile liability insurance refund.

19. Prior to the June 5, 2000, "REF" entry on the Campaign Treasurer's Report, there had been no report reflecting the sale of the campaign vehicle.

20. The sale of the 1999 Jeep should have been reported on the Campaign Treasurer's Report for the period ending December 31, 1999; it was not. Petitioner certified that he had examined the subject Campaign Treasurer's Report and that it was "true, correct and complete" when, in fact, it was not as it did not reflect the sale of the campaign vehicle or the failure of Petitioner to pay the campaign treasury either \$800 or \$1,325, the amount Petitioner ultimately determined the campaign treasury should have been reimbursed as reflected by his late reimbursements.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Subsection 106.25(5) and Sections 120.569 and 120.57, Florida Statutes.

22. The FEC in its Order of Probable Cause asserts that "Respondent violated Section 106.021(3), Florida Statutes, prohibiting a candidate from making an expenditure except through the campaign treasurer, on 30 separate occasions"; ". . . violated Section 106.07(5), Florida Statutes, prohibiting a candidate from certifying the correctness of a

campaign treasurer's report that is incorrect, false, or incomplete, on seven separate occasions"; " . . . violated Section 106.1405, Florida Statutes, prohibiting a candidate from using funds from his campaign account to defray normal living expenses, on 30 separate occasions"; " . . . 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 30 separate occasions"; and " . . . violated Section 106.19(1)(d), Florida Statutes, prohibiting a person or organization from making or authorizing any expenditure prohibited by this chapter, on 60 separate occasions."

23. Subsection 106.021(3), Florida Statutes, reads as follows:

106.021 Campaign treasurers; deputies;
primary and secondary depositories.-

* * *

(3) Except for independent expenditures, no contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee. However, expenditures may be made directly by any political committee or political party regulated by chapter 103 for obtaining time,

space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

24. Subsection 106.07(5), Florida Statutes, reads as follows:

106.07 Reports; certification and filing.-

* * *

(5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report; and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

25. Section 106.1405, Florida Statutes, reads as follows:

106.1405 Use of campaign funds.-

A candidate or the spouse of a candidate may not use funds on deposit in a campaign account of such candidate to defray normal living expenses for the candidate or the candidate's family, other than expenses actually incurred for transportation, meals, and lodging by the candidate or a family member during travel in the course of the campaign.

26. Subsections 106.19(1)(c) and (d) and 106.19(2),
Florida Statutes, read as follows:

106.19 Violations by candidates, persons
connected with campaigns, and political
committees.-

(1) Any candidate; campaign manager,
campaign treasurer, or deputy treasurer of
any candidate; committee chair, vice chair,
campaign treasurer, deputy treasurer, or
other officer of any political committee;
agent or person acting on behalf of any
candidate or political committee; or other
person who knowingly and willfully:

* * *

(c) Falsely reports or deliberately fails
to include any information required by this
chapter; or

(d) Makes or authorizes any expenditure
in violation of s. 106.11(3) or any other
expenditure prohibited by this chapter;

* * *

is guilty of a misdemeanor of the first
degree, punishable as provided in s. 775.082
or s. 775.083.

(2) Any candidate, campaign treasurer, or
deputy treasurer; any chair, vice chair, or
other officer of any political committee;
any agent or person acting on behalf of any
candidate or political committee; or any
other person who violates paragraph (1)(a),
paragraph (1)(b), or paragraph (1)(d) shall
be subject to a civil penalty equal to three
times the amount involved in the illegal
act. Such penalty may be in addition to the
penalties provided by subsection (1) and
shall be paid into the General Revenue Fund
of this state.

27. Section 106.265(1), Florida Statutes, reads as follows:

106.265 Civil penalties.-

(1) The commission is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed \$1,000 per count. In determining the amount of such civil penalties, the commission shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political committee, committee of continuous existence, or political party; and

(d) Whether the person, political committee, committee of continuous existence, or political party has shown good faith in attempting to comply with the provisions of this chapter or chapter 104.

28. Section 106.25(3), Florida Statutes, reads, in pertinent part, as follows: "[A] violation shall mean the willful performance of an act prohibited by this chapter . . . or the willful failure to perform an act required by this chapter . . ."

29. Section 106.37, Florida Statutes, reads as follows:

106.37 Willful violations.-

A person willfully violates a provision of this chapter if the person commits an act

while knowing that, or showing reckless disregard for whether, the act is prohibited under this chapter, or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this chapter. A person knows that an act is prohibited or required if the person is aware of the provision of this chapter which prohibits or requires 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 of this chapter.

30. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceeding. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932, 934 (Fla. 1996); Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

31. While Section 106.265(1), Florida Statutes, authorizes a \$1,000 civil penalty per "count," the Order of Probable Cause, which is the charging document in this case, does not contain "counts." Instead, it contains several paragraphs which allege that there is probable cause to believe that Petitioner violated Subsection 106.021(3), Florida Statutes, on 30 separate occasions; violated Subsection 106.07(5), Florida Statutes, on

seven separate occasions; violated Section 106.1405, Florida Statutes, on 30 separate occasions; violated Subsection 106.19(1)(c), Florida Statutes, on 30 separate occasions; violated Subsection 106.19(1)(d), Florida Statutes, on 60 separate occasions. In addition, the Order of Probable Cause incorporates by reference the Statement of Findings which specifically delineates each alleged violation, giving an individual accused of Chapter 106, Florida Statutes, violations adequate notice as to what he or she is charged with and what must be defended against.

32. In its Order of Probable Cause, the FEC has alleged 157 separate violations, some of which allow enhanced penalties of more than \$1,000 per violation; therefore, Petitioner faces a significant civil penalty if the FEC proves its entire case. In addition to the civil penalty, the ruinous effect of a determination that a candidate has violated the Florida elections law has on an individual's reputation for personal integrity makes the penalty in this case punitive and penal in nature.

33. Section 120.57(1)(j), Florida Statutes, reads as follows:

120.57 Additional procedures for particular cases.-

(1) ADDITIONAL PROCEDURES APPLICABLE TO
HEARINGS INVOLVING DISPUTED ISSUES OF
MATERIAL FACT. -

* * *

(j) Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

In addition, existing case law establishes that the FEC has the burden of proving by clear and convincing evidence that Petitioner willfully violated Section 106.021(3), Florida Statutes. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

34. As noted by the Florida Supreme Court:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

35. Subsection 106.07(4)(a)7, Florida Statutes, reads as follows:

106.07 Reports; certification and filing.-

* * *

(4)(a) Each report required by this section shall contain:

* * *

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually.

36. Petitioner made 30 purchases during his reelection campaign with personal funds for which he was reimbursed from his campaign treasury. The reimbursements were made by six checks that were drawn on the campaign account. The reimbursements were reported in accordance with Subsection 106.07(4)(a)7, Florida Statutes.

37. There is an apparent conflict between Section 106.021(3), Florida Statutes, "no . . . expenditure . . . shall be . . . made . . . except through the duly appointed campaign treasurer," and Subsection 106.07(4)(a)7, Florida Statutes, "[E]ach report required by this section shall contain: [T]he full name . . . of each person to whom an expenditure for . . .

reimbursement for authorized expenses has been made and which is not otherwise reported."

38. It is understandable that Petitioner, given this apparent conflict and the permissive language of Subsection 106.07(4)(a)7, Florida Statutes, in his consideration of Chapter 106, Florida Statutes, deemed it appropriate to make campaign-related expenditures using cash, personal check or credit card and then seek reimbursement from the campaign treasury.

39. It is well settled that a statute should be construed in its entirety and as a harmonious whole. Further, where two laws are in conflict, courts should adopt an interpretation that harmonizes the laws, for the Legislature is presumed to have intended that both laws are to operate coextensively and have the fullest possible effect. Palm Beach County Canvassing Board v. Harris, 772 So. 2d 1273 (Fla. 2000); T.R. v. State, 677 So. 2d 270 (Fla. 1996); Sun Insurance Office, Ltd. v. Clay, 133 So. 2d 735 (Fla. 1961).

40. Viewed coextensively, Subsections 106.021(3) and 106.07(4)(a)7, Florida Statutes, allow a candidate to pay for campaign-related purchases with personal funds and to be reimbursed from the campaign treasury as long as the reimbursement is appropriately reported in the Campaign

Treasurer's Report. This was done in the instant case; there was no violation.

41. No clear and convincing evidence has been presented that the purchase at various times of clothing during the reporting period ending June 30, 2000, and the purchase of a trailer hitch ball, tie-downs, a safety chain, and automobile liability insurance during the reporting period ending August 31, 2000, were to "defer a normal living expenses," to the contrary, the evidence supports the contention that all had legitimate, campaign-related purposes.

42. Evidence is clear that Petitioner's wife purchased cat food, detergent, and other items which had no legitimate, campaign-related purpose, while purchasing significant other campaign-related items at a Winn Dixie on July 18, 2000. Within days of learning of inappropriate purchases, Petitioner wrote a personal check to the campaign treasury fully repaying it for the non-campaign purchases. While Section 106.1405, Florida Statutes, prohibits a candidate's spouse from using campaign funds in this way, Petitioner's wife has not been charged in this matter, nor should she be. Her oversight does not meet the definition of "willful" as defined in Section 106.37, Florida Statutes, nor does Petitioner's reaction to learning that inappropriate items had been purchased with a campaign check; he immediately remedied his wife's inadvertent error by presenting

a personal check to the campaign account. Petitioner's actions were appropriate under the circumstances; he did not willfully violate Section 106.1405, Florida Statutes, when his wife made the purchases.

43. The FEC has failed to present clear and convincing evidence that Petitioner's failure to report the sale of the campaign vehicle (1997 Jeep) during the reporting period ending December 31, 1999, resulted in "personal benefit . . . to defray the normal living expenses of car ownership and the tax thereon, this transaction also forms the basis for two violations of Section 106.1405," as alleged. However, Petitioner's failure to report the sale of the campaign vehicle which would have been reflected by a reimbursement to the campaign of \$800 or \$1,325 in the Campaign Treasurer's Report for the period ending December 31, 1999, does violate Subsection 106.07(5), Florida Statutes.

44. Petitioner had full knowledge of the sale of the 1997 Jeep; he knew that the sale occurred on December 7, 1999. At the time he certified that the Campaign Treasurer's Report for the period ending December 31, 1999, was "true, correct and complete," he knew, having certified that he examined the report, or could have inquired of his wife and discovered, that his wife had not paid the campaign treasury \$800 initially determined to be the financial effect of the sale of the 1997

Jeep. Petitioner effectively "falsely reported or deliberately failed to include information required by this chapter" in violation of Subsection 106.19(1)(c), Florida Statutes.

45. Having determined that none of the 30 purchases made without campaign checks which were reimbursed by checks drawn on the campaign account, violated Subsection 106.021(3), Florida Statutes, and that none of the 30 purchases suggested to have violated Section 106.1405, Florida Statutes, were used to "defray normal living expenses," Petitioner neither made or authorized "any expenditure in violation of s. 106.11(3) or any other expenditure prohibited by this chapter." Therefore, Petitioner did not violate Subsection 106.19(1)(d), Florida Statutes. Similarly, Petitioner did not violate Subsection 106.19(c), Florida Statutes, with the exception of the one occasion when he failed to include information related to the sale of the 1997 Jeep on the Campaign Treasurer's Report for the period ending December 31, 1999.

RECOMMENDATION

Based upon the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Florida Elections Commission enter a final order finding that Petitioner, James P. Appleman, violated Subsection 106.07(5), Florida Statutes, on one occasion and Subsection 106.19(1)(c), Florida Statutes, on one occasion and

assess a civil penalty of \$1,000 for the violation of Subsection 106.07(5), Florida Statutes, and a civil penalty of \$2,400 for violation of Subsection 106.19(1)(c), Florida Statutes; and dismissing the remaining alleged violations of Chapter 106, Florida Statutes, against him as asserted in the Order of Probable Cause.

DONE AND ENTERED this 15th day of April, 2002, in Tallahassee, Leon County, Florida.

JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of April, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.