

2006 WL 1309956 (Fla.Div.Admin.Hrgs.)

Division of Administrative Hearings

State of Florida

FLORIDA ELECTIONS COMMISSION, Petitioner

v.

JUDY K. BEARDSLEE, Respondent

Case No. 06-0138

May 8, 2006

RECOMMENDED ORDER

*1 A final hearing in this case was held on April 11, 2006, in Orlando, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:

Eric M. Lipman, Esquire
Florida Elections Commission
Collins Building, Suite 224
107 West Gaines Street
Tallahassee, Florida 32399-1050

For Respondent:

Frederic B. O'Neal, Esquire
Post Office Box 842
Windermere, Florida 34786

STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent, Judy K. Beardslee, violated state election laws by certifying the correctness of a campaign treasurer's report that was incorrect, false, or incomplete, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 2, 2005, Petitioner, Florida Elections Commission ("Commission"), entered an Order of Probable Cause charging Respondent with willfully violating Subsection 106.07(5), Florida Statutes (2004)¹ when she certified the correctness of a campaign treasurer's report that failed to include an in-kind contribution to her campaign made by her husband for the purchase of yard signs.

Respondent requested a hearing² to contest the allegations of the Commission's Order of Probable Cause. Respondent's defense to the Commission's charges was that her husband's purchase of the yard signs was an "independent expenditure" which the law does not require a candidate to report. The matter was referred to DOAH to conduct an evidentiary hearing.

At the hearing, Petitioner presented the testimony of Margie Wade, an investigator for the Commission; Faye Craig, former city clerk for the City of Edgewood; Linda Boggs, Ms. Beardslee's campaign treasurer; and Respondent, Judy K. Beardslee. Petitioner's Exhibits 1 through 15 were admitted into evidence. Respondent presented the testimony of Respondent's husband, Ronald Beardslee. Respondent presented no exhibits.

A court reporter recorded the hearing, but a transcript was not filed with DOAH. The parties submitted Proposed Recommended Orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent is a member of the City Council of Edgewood, Florida. She ran successfully for this political office in 2004 and 2006. The alleged offense took place during the 2004 election campaign.
2. The City of Edgewood has approximately 1,200 registered voters, and Respondent's 2004 campaign was very modest by any measure. She received only three direct campaign contributions, totaling \$415, and \$50 of this sum was from her personal funds.
3. Respondent appointed her mother, Linda Boggs, as her deputy treasurer. Three treasurer's reports were filed for Respondent's 2004 campaign. Ms. Boggs relied on Respondent for the information about contributions and expenditures that appears in the three reports. The reports disclosed \$415 in campaign contributions and \$415 in campaign expenditures.
- *2 4. The treasurer's reports were signed by Ms. Boggs and by Respondent. Respondent's signatures were placed under the following statement that appears on the official campaign treasurer's report form: "I certify that I have examined this report and it is true, correct and complete."
5. It is undisputed that on March 2, 2004, Respondent's husband, Ronald Beardslee, paid \$148.56 for the production of 25 yard signs that included the words "Elect Judy Beardslee." Mr. Beardslee paid for the yard signs using a check from a joint personal bank account he owned with Respondent. The yard signs were distributed and displayed before the vote for city council members held on March 9, 2004.
6. Mr. Beardslee's purchase of the yard signs was not reported in Respondent's campaign treasurer's report that covered the period from February 14, 2004, to March 3, 2004, and the purchase was not shown in any subsequent report.
7. In January 2005, the Commission received a confidential complaint, alleging that Respondent's campaign treasurer's reports did not disclose all contributions made to her 2004 campaign. Following the Commission's investigation of the complaint, it issued the December 2, 2005, Order of Probable Cause that is the subject of this case.
8. In its Order of Probable Cause, the Commission charged Respondent with violating Subsection 106.07(5), Florida Statutes, "by certifying the correctness of her [campaign treasurer's report] covering the period from February 14, 2004 to March 3, 2004, when Respondent failed to report an in-kind contribution from her husband, Ron Beardslee, of \$148.56 for yard signs."

9. Respondent testified at the hearing that at the time she certified the accuracy of the treasurer's reports, she did not know her husband had purchased the yard signs. She claims she did not know her husband purchased the signs until more than a year after the election.

10. Respondent's husband testified that he did not consult with, coordinate with, or otherwise inform Respondent that he had purchased the yard signs until long after the 2004 election.

11. Respondent first saw the yard signs "a couple of days before election day." Respondent also saw her husband with the yard signs before the election, and she saw the city clerk talking to her husband about the signs on election day. Nevertheless, these events did not cause her to think her husband had paid for the signs. Respondent said she thought the signs had been procured by a homeowners association that supported her candidacy.

12. Respondent made no inquiries to determine who had paid for the yard signs.

13. The Commission argued that Respondent's testimony at the hearing was inconsistent with her testimony in a deposition taken two weeks earlier during which she said that she found out her husband had paid for the signs on "either election day or the night before." Respondent said she was confused by the deposition question and did not mean to say she knew before the election that her husband had paid for the signs. The transcript of the deposition supports Respondent. The question put to Respondent at her deposition about when she found out who paid for the signs followed questions about when she first noticed the signs. When Respondent answered "either election day or the night before," she apparently thought she had been asked again when she found out about the signs. That is indicated by her answer to the follow-up question about how she found out, which was, "I saw them." Seeing the signs is how Respondent could first notice them, not how she could find out her husband paid for them. See Petitioner's Exhibit 15, pp. 54-58.

*3 14. In addition to ordering and paying for the yard signs, Mr. Beardslee distributed the yard signs. When advised to do so by the city clerk, Mr. Beardslee prepared and attached a disclaimer label to the yard signs. He also did some door-to-door campaigning for Respondent. Mr. Beardslee's door-to-door campaigning was primarily for the benefit of another candidate, but Mr. Beardslee used the opportunity to urge people to vote for Respondent. On one or two occasions, Mr. Beardslee hand-delivered Respondent's campaign treasurer's report to the city clerk.

15. When the yard signs were made, they did not identify who paid for them. On the day of the election, the city clerk, Faye Craig, told Mr. Beardslee that the yard signs did not comply with the election laws because they had no disclaimer statement.

16. Mr. Beardslee immediately went home and made labels that contained a disclaimer statement and then attached the labels to the yard signs. It was established that the labels included the words "Paid Political Advertisement" (possibly in another form, such as "Pd. Political Ad"), but Mr. Beardslee testified he was not sure whether the label indicated that the advertisement was paid "for Judy Beardslee" or "by Judy Beardslee."

17. On cross-examination, Mr. Beardslee stated that the disclaimer on the yard signs might have said "by Judy Beardslee."

18. As set forth in the Conclusions of Law that follow, the election laws require a political advertisement to disclose who paid for the advertisement. The elections laws do not require an advertisement to disclose who the advertisement is for, since that would usually be obvious. Because Ms. Craig was very familiar with the election laws, a reasonable inference can be made that she advised Mr. Beardslee to add a disclaimer to the yard signs to indicate who paid for them.

19. It is not credible that after being told to by the city clerk to put a disclaimer statement on the yard signs, and then making the labels himself, Mr. Beardslee would not remember what the labels said in this regard.

20. The photograph of one of the yard signs in the record (Petitioner's Exhibit 4) is not large enough to show the wording of the label clearly. However, by use of a magnifying glass, it appears to the undersigned that the second line of the disclaimer reads "by Judy Beardslee." It is reasonably clear that the first word of the second line is a two-letter word and the second letter of the word is "y."³

21. Considering the record evidence and the demeanor of Mr. Beardslee during his testimony, it is found that the disclaimer label indicated that the yard signs were paid for "by Judy Beardslee."

22. The labels did not include Mr. Beardslee's name and address or indicate that the signs were paid for by him, independently of Respondent.

23. After the election, the yard signs were put in Respondent's garage where they remained for months.⁴

24. When Respondent submitted her qualifying papers for her candidacy for the City Council, she was provided copies of the 2004 Candidate and Campaign Treasurer Handbook (Handbook) and the Florida Election Law Book. Chapter 9 of the Handbook explains the meaning of "contribution" and "independent expenditure" and the reporting requirements associated with each.

*4 25. Respondent admitted that she did not read the Handbook because she was exhausted from campaigning and other responsibilities.

26. Respondent understood that the Handbook was important, because "[she] had to sign for it."

27. Respondent never asked the city clerk about any of her duties under the election laws.

28. Even at the time of her deposition for this case in March 2006, when asked whether she had received a copy of Chapter 106, Florida Statutes, Respondent said she did not know what Chapter 106 was because "[she] was not a lawyer."

29. Mr. Beardslee did not file a report with the Commission to disclose that he had made an independent expenditure during the 2004 Edgewood City Council election campaign.

30. In a letter to a Commission investigator dated May 23, 2005, counsel for Respondent stated that "even including the yard sign expenditure, the total campaign expenses were under \$500.00," and suggested that the omission of the yard signs from the treasurer's report was due to inadvertence, rather than because it did not have to be reported.

CONCLUSIONS OF LAW

31. DOAH has jurisdiction over the parties to and the subject matter of this case pursuant to [Sections 106.25, 120.569, and 120.57, Florida Statutes \(2005\)](#).

32. The Commission is vested with jurisdiction to investigate and determine violations of state election laws pursuant to Subsection 106.25(1), Florida Statutes.

33. Subsection 106.25(2), Florida Statutes, provides that the Commission may investigate violations of Chapter 106, Florida Statutes, "only after having received either a sworn complaint or information reported to it under this subsection by the Division of Elections." That prerequisite was satisfied in this case.

34. The Commission charged Respondent with violating Subsection 106.07(5), Florida Statutes, which states:

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.

35. To constitute a violation of Subsection 106.07(5), Florida Statutes, the certification of an inaccurate treasurer's report must be done willfully. [Section 106.37, Florida Statutes](#), defines “willfully” as follows:

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.

*5 36. The determination of “willfulness” is a question of fact. [McGann v. Florida Elections Commission](#), 803 So. 2d 763, 764 (Fla. 2001).

37. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in a proceeding. [Department of Transportation v. J.W.C. Company Inc.](#), 396 So. 2d 778 (Fla. 1st DCA 1981). Because the Commission is asserting that Respondent willfully violated an election law, the Commission has the burden to prove that assertion.

38. Petitioner must establish the elements of the alleged violation by clear and convincing evidence. [Diaz de la Portilla v. Florida Elections Commission](#), 857 So. 2d 913, 917 (Fla. 3rd DCA 2003). Clear and convincing evidence has been described as follows:

[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.

[Slomowitz v. Walker](#), 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

39. Subsection 106.021(3), Florida Statutes, creates an exception for independent expenditures from the requirement that all contributions and expenditures must be made through a candidate's campaign treasurer and reported by the treasurer.

40. Independent expenditures are defined in Subsection 106.011(5)(a), Florida Statutes, in relevant part as follows:

“Independent expenditure” means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not

controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee.

41. [Section 106.071, Florida Statutes](#), requires each person who makes an independent expenditure of \$100 or more to file a report of such expenditures “in the same manner, at the same time, and with the same officer as a political committee supporting or opposing such candidate or issue.” This particular statute also requires that any political advertisement paid for by an independent expenditure shall prominently state the name and address of the person or committee paying for the advertisement and that the expenditure was made independently of any candidate.

42. Respondent's husband did not file an independent expenditure report for his purchase of the yard signs. The disclaimer label he made for the yard signs did not include his name and address or state that the signs were paid for independently of the candidate. Although Mr. Beardslee's failure to comply with the statutes regarding independent expenditures is not dispositive of whether the purchase of the yard signs was an independent expenditure, his failure to comply with these requirements is consistent with the proposition that he did not consider the purchase to be an independent expenditure.

*6 43. Although Mr. Beardslee had no official title and received no pay for his assistance to Respondent's campaign, his regular and multiple acts of assistance to her 2004 campaign made him an agent of the candidate. He acknowledged his agency to Respondent when he made the disclaimer labels for the yard signs that indicated the signs were paid for “by Judy Beardslee.” Mr. Beardslee's role in Respondent's campaign and the disclaimer statement on the yard signs require the conclusion that his purchase of the signs was not an independent expenditure.

44. Furthermore, it would stretch the meaning of the word “independent” in this context beyond reason to view an expenditure for the direct benefit of a candidate, made by the candidate's spouse, who worked on Respondent's campaign, using money from a checking account jointly owned by the candidate, as an independent expenditure.

45. Petitioner met its burden to demonstrate with clear and convincing evidence that the purchase of the yard signs was a contribution to Respondent's campaign and that the failure to report the contribution caused her campaign treasurer's report for the period February 14 to March 3, 2004, to be incorrect and incomplete.

46. However, the record does not show that Respondent was aware of and understood the laws regarding campaign contributions or, until recently, was aware of her husband's purchase of the yard signs. She had no apparent motive or self-interest in omitting the contribution from her treasurer's report. Nothing in the record suggests that this omission was studied, purposeful, or otherwise calculated to avoid the requirements of the law. Therefore, whether Respondent willfully violated the reporting requirement turns on whether Respondent's certification of the inaccurate treasurer's report was done with reckless disregard for the accuracy of the report.

47. Respondent's 2004 campaign was her first, but rather than justifying ignorance of the election law, a candidate's first campaign would cause a reasonable person to make a genuine effort to inform him or herself about the election laws. Respondent admits that she did not make much of an effort to inform herself.

48. Respondent signed a “Statement of Candidate” that she had received a copy of Chapter 106, Florida Statutes, and that she read and understood the law. When she signed this statement, she had not read Chapter 106 and could not have understood the law. It appears she has yet to read the law.

49. Respondent stated that she “naively” assumed the city clerk would tell her anything she needed to know or do to comply with the election laws.

50. Reporting campaign contributions is arguably the most basic requirement of the election laws. It is the duty of the candidate to read the treasurer's report before signing it and to be alert for any errors which, based on the candidate's own knowledge, appear on the face of the report. Diaz de la Portilla supra, 921.

*7 51. Respondent did not show even minimal interest in ascertaining whether the yard signs might constitute a contribution to her campaign that would have to be reported. A very small effort on Respondent's part would have been sufficient for her to discover that the yard signs had to be reported on her campaign treasurer's report.

52. If, under the facts of this case, Respondent's actions do not constitute reckless disregard for whether she was complying with the reporting requirements of the law, then candidates are free to complacently ignore the election laws and expect to be absolved by a claim of ignorance should any non-compliance be discovered later.

53. Subsection 106.265(1), Florida Statutes, authorizes the Commission to impose a civil penalty up to \$1,000 for certifying an inaccurate treasurer's report. This statute also directs the Commission to consider mitigating and aggravating circumstances in determining the appropriate civil penalty to impose, including:

(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.

54. Under the circumstances of this case, and considering the mitigating and aggravating factors listed above, the Commission's proposed penalty of \$1,000 is fair and reasonable.

RECOMMENDATION

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

RECOMMENDED that the Commission enter a final order finding that Respondent, Judy K. Beardslee, willfully violated Subsection 106.07(5), Florida Statutes, and imposing a penalty of \$1,000.

DONE AND ENTERED this 8th day of May, 2006, in Tallahassee, Leon County, Florida.

BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Filed with the Clerk of the Division of Administrative Hearings this 8th day of May, 2006.

ENDNOTES

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

*8 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.

Footnotes

- 1 Unless otherwise indicated, all references to the Florida Statutes are to Florida Statutes (2004).
- 2 Although Ms. Beardslee petitioned for a hearing, it is the Commission that must prosecute its claim against Ms. Beardslee, and the Commission has the burden of proof. Therefore, it is appropriate for the Commission to appear as Petitioner.
- 3 The label is oriented 90 degrees counterclockwise relative to the large lettering on the sign.
- 4 The photograph of the yard sign that is Petitioner's Exhibit 4 was taken by Mr. Beardslee and provided to Respondent's attorney after Petitioner had begun its investigation of the confidential complaint against Respondent. However, at some point in time after taking the photograph, the signs were discarded.

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