

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,
PETITIONER,

v.

AGENCY CASE NO.: FEC 05-257

DENNIS E. MULDER,
RESPONDENT.

ORDER OF PROBABLE CAUSE

THIS CAUSE came on to be heard before the Florida Elections Commission at its meeting held on May 18 & 19, 2006, in Tallahassee, Florida.

Based on the complaint, Report of Investigation, Staff Recommendations submitted by staff, written statements submitted by the Respondent, and any oral statements made at the probable cause hearing, the Commission finds that there is **probable cause** to charge the Respondent with the following violations:

Count 1:

On or about October 7, 2005, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of his 2005 F3 CTR that was incorrect, false, or incomplete, when he incorrectly reported four contributions, two loans from himself, and three expenditures, and failed to report a \$300 contribution.

Count 2:

On or about September 20, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$8.75 to Volusia County Elections to be paid from the campaign depository account.

Count 3:

On or about September 20, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the

primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$562.85 to Diane Obremski to be paid from the campaign depository account.

Count 4:

On or about September 22, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$632.80 to Lighthouse Mailings to be paid from the campaign depository account.

Count 5:

On or about September 22, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$3,666.41 to Lighthouse Mailings to be paid from the campaign depository account.

Count 6:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$83.34 to Market Concepts to be paid from the campaign depository account.

Count 7:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Marc Klein to be paid from the campaign depository account.

Count 8:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Motor Cars of CF to be paid from the campaign depository account.

Count 9:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Bill Klein to be paid from the campaign depository account.

Count 10:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$75 to Stone Island Home Owner's Association to be paid from the campaign depository account.

Count 11:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$190 to Max Klein to be paid from the campaign depository account.

Count 12:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Chelsea Wallace to be paid from the campaign depository account.

Count 13:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Keith Wallace to be paid from the campaign depository account.

Count 14:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the

primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Jayne Vance to be paid from the campaign depository account.

Count 15:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Tyler Vance to be paid from the campaign depository account.

Count 16:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Charles Vance to be paid from the campaign depository account.

Count 17:

On or about October 2, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$1,000 to Derek Brett to be paid from the campaign depository account.

Count 18:

On or about October 2, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$300 to *Best of Volusia* to be paid from the campaign depository account.

Count 19:

On or about October 4, 2005, Respondent violated Section 106.143(1)(a), Florida Statutes, by failing to mark prominently the political advertisement with the correct disclaimer, when he published the advertisement "This Will Be The Most important Election in City History" that failed to contain the following disclaimer: "Political advertisement paid for and approved by

Dennis Mulder for Mayor of Deltona.”

Count 20:

On or about July 18, July 22, August 31, and September 30, 2005, Respondent violated Section 106.19(1)(a), Florida Statutes, by accepting a contribution in excess of the legal limit, when he accepted four contributions totaling \$522 from Diane Obremski.

Count 21:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$22 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Count 22:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$100 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Count 23:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$800 from himself and failed to report it on his 2005 F3 CTR.

Count 24:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he used his personal credit card and accepted an in-kind contribution in the amount of \$1,648.42 from himself and failed to report it on his 2005 F3 CTR.

Count 25:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted a cash contribution in the amount of \$300 from Diane Obremski and failed to report it on his 2005 F3 CTR.

The Commission also finds that there is **no probable cause** to charge the Respondent with violating:

Section 106.08(5)(b), Florida Statutes, prohibiting a candidate from soliciting contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good; and

Section 106.19(1)(d), Florida Statutes, prohibiting a person or organization from making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on May 26, 2006, in Tallahassee, Florida.



Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399-1050

NOTICE OF RIGHT TO A HEARING

As the Respondent, you are entitled to a hearing before the Florida Elections Commission or the Division of Administrative Hearings on the violations of the Florida Statutes on which the Commission has found probable cause. The hearing is held according to Chapter 120, *Florida Statutes*, and Chapter 28-106, *Florida Administrative Code*, and Commission Rule 2B-1.004, *Florida Administrative Code*.

To request a hearing, you must send a written petition that complies with the rules to the Commission Clerk, Patsy Rushing. The address of the Commission Clerk is 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050. The telephone number is (850) 922-4539. **The Clerk must receive your petition within 30 days of the date that you received this order.** The Clerk will provide you a copy of Chapters 2B-1.004 or 28-106, *Florida Administrative Code*, upon request.

In the petition, you may request either a hearing not involving disputed issues of material fact (informal hearing) or a hearing involving disputed issues of material fact (formal hearing). If

you request a hearing involving disputed issues of material fact, you can request that the hearing be held before the Commission or before the Division of Administrative Hearings. If you dispute an issue of material fact, the Commission reserves the right to refer the case to the Division of Administrative Hearings. If you file a petition for a hearing, please identify yourself as the Respondent and the Commission as the Petitioner. No mediation is available.

The facts that the Commission relied on to find probable cause are set forth in the Staff Recommendations, which is attached to this order. If you do not dispute an issue of material fact in the Staff Recommendations, you must include in your petition requesting a hearing all the information listed in Rule 28-106.301(2), *Florida Administrative Code*. At the hearing, you will have the right to make written or oral arguments to the Commission concerning the legal issues related to the violation and the potential fine. Live witness testimony is unnecessary at such a hearing.

If you do dispute an issue of material fact in the Staff Recommendations, you must include in your petition requesting a hearing all the information listed in Rule 28-106.201(2), *Florida Administrative Code*, including a statement of all issues of material fact in the Staff Recommendations that you dispute. At the hearing, you will have the right to present evidence relevant to the violation(s) listed in this order, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against you.

Unless the Clerk receives your written petition within 30 days of the date you receive this order, you will have waived your right to a hearing.

This case will then be scheduled for a Commission meeting, and the Commission will consider this document and the Staff Recommendations and issue a final order that may include a substantial fine.

Copies furnished to:

Charles A. Finkel, General Counsel
Dennis Mulder, Respondent (certified mail)
Jeffrey P. Ensminger, Complainant
Deltona City Clerk, Filing Officer

FLORIDA ELECTIONS COMMISSION
STAFF RECOMMENDATION
CASE NUMBER: FEC 05-257

RESPONDENT: Dennis E. Mulder

COMPLAINANT: Jeffrey P. Ensminger

On October 11, 2005, 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 **probable cause**¹ to charge the Respondent with:

One count of violating Section 106.07(5), Florida Statutes, prohibiting a candidate from certifying to the correctness of a campaign treasurer's report that is incorrect, false, or incomplete;

Seventeen counts of violating Section 106.11(4), Florida Statutes, prohibiting a candidate from incurring an expense for the purchase of goods or services without sufficient funds on deposit in the primary depository account;

One count of violating Section 106.143(1)(a), Florida Statutes, failure of a candidate making an expenditure for a political advertisement to mark prominently the political advertisement with the required disclaimer;

One count of violating Section 106.19(1)(a), Florida Statutes, prohibiting a person or organization from accepting a contribution in excess of the legal limits; and

Five counts of violating Section 106.19(1)(b), Florida Statutes, failure of a person or organization to report a contribution required to be reported by Chapter 106, Florida Statutes.

The staff further recommends the Commission find there is **no probable cause** to charge Respondent with violating:

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).

Section 106.08(5)(b), Florida Statutes, prohibiting a candidate from soliciting contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good; and

Section 106.19(1)(d), Florida Statutes, prohibiting a person or organization from making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes.

SUMMARY OF FACTS AND CONCLUSIONS OF LAW.

1. Respondent, Dennis E. Mulder was a first-time, successful candidate for Mayor for the City of Deltona, in the general election held on November 8, 2005. His campaign manager was Diane Obremski.

2. Although he did not appoint himself treasurer or deputy treasurer, Respondent acted as his own treasurer during the campaign. Respondent is a registered agent or officer of the following active corporations registered with the State of Florida: Deltona Tennis Association, Inc., Mulder Investment Child Care Centers, Inc., Dennis Mulder Investments, Inc., d/b/a Motor Cars of Central Florida, and DTA Academy, Inc.

3. Complainant is a computer consultant and a concerned citizen of the City of Deltona. He is an active registered voter in Volusia County, having voted most recently in the 2005 general election. Complainant was also a supporter of Respondent's opponent, Doug Horn, having made two \$150 contributions through his corporation.

I. Section 106.07(5), Florida Statutes. (Count 1)

4. Investigator Donna Ann Malphurs examined whether the Respondent violated this section of the election laws by certifying to the correctness of a campaign treasurer's report (CTR) that is incorrect, false, or incomplete.

5. Complainant alleged that Respondent's 2005 F3 CTR contained numerous violations of Chapter 106, Florida Statutes.

6. Table 1 compares the information on Respondent's reports with the bank records from his campaign account.

TABLE 1: COMPARISON OF RESPONDENT'S CTRs WITH BANK RECORDS			
Date Filed	Reporting Period	Information on CTR	Information from bank
<ul style="list-style-type: none"> • 10/07/05 	<ul style="list-style-type: none"> • 09/17/05 to 10/06/05 • 2005 4th Day Prior (F3) - Original Report 	<ul style="list-style-type: none"> • \$6,948.42 Loan from Respondent • \$3,765.00 Loan from Respondent • \$400.00 contribution from Tyler Vance • \$75.00 contribution from Stone Island Home Owner's Association • \$400.00 contribution from Marc Klein reported as a check • \$190.00 contribution from Max Klein reported as a check • \$800.00 expenditure to Deltona Skate Rink • \$1,648.42 expenditure to Designer Graphics • \$4,299.21 expenditure to Lighthouse Mailing 	<ul style="list-style-type: none"> • \$4,500.00 Loan from Respondent • \$3,465.00 Loan from Respondent • \$400.00 check from Jayne, Inc., authorized by Jayne Vance • \$75.00 check from Frederick C. Phillips • \$400.00 money order from Marc Klein • \$190.00 money order from Max Klein • No bank record found • No bank record found • \$3,666.41 and \$632.80 expenditures to Lighthouse Mailing

7. Table 2 summarizes the errors that Respondent made on his reports.

TABLE 2: MISSING AND INCORRECT INFORMATION ON RESPONDENT'S CTRs			
Date Filed	Reporting Period	Missing Information	Incorrect Information
10/07/05	09/17/05 to 10/06/05 2005 4 th Day Prior (F3) – Original Report	<ul style="list-style-type: none"> Failed to report \$300 contribution from Diane Obremski 	<ul style="list-style-type: none"> Reported a \$6,948.42 loan from Respondent instead of \$4,500. Reported a \$3,765 Loan from Respondent instead of \$3,465. \$400 contribution from Tyler Vance instead of Jayne, Inc. \$75.00 contribution from Stone Island Home Owner's Association instead of Fred Phillips \$400.00 check contribution from Marc Klein instead of cash \$190.00 check contribution from Max Klein instead of cash Reported an \$800.00 expenditure to Deltona Skate Rink; was an in-kind contribution by Respondent paid with personal checking account Reported an \$1,648.42 expenditure to Designer Graphics; was an in-kind contribution by Respondent paid by personal credit card Reported a \$4,299.21 expenditure to Lighthouse Mailing instead of two expenditures, one in the amount of \$3,666.41 and the other in the amount of \$632.80

8. Under these circumstances, I recommend that the Commission find probable cause that Respondent violated Section 106.07(5), Florida Statutes, on one occasion.

II. Section 106.08(5)(b), Florida Statutes.

9. Investigator Malphurs examined whether the Respondent violated this section of the election laws by soliciting contributions from a civic organization established primarily for the public good.

10. On July 18, 2005, Respondent received an excessive cash contribution from the Stone Island Home Owner's Association (SIHOA) and reported it on his 2005 F1 CTR. On October 1, 2005, Respondent refunded the excessive cash contribution. On October 30, 2005,

Respondent accepted a contribution check from Frederick C. Phillips in place of the excessive cash contribution from the SIHOA. Respondent reported this replacement contribution as a contribution from the SIHOA, instead of Mr. Phillips.

11. In a telephone interview during the course of the investigation for FEC 05-253, Mr. Phillips confirmed the he gave this contribution as an individual and not from the SIHOA. In a subsequent affidavit submitted in FEC 05-253, Mr. Phillips stated that he gave his donation to a campaign worker and indicated the contribution was from SIHOA. Nevertheless, there was no evidence that Respondent solicited the contribution.

12. Under these circumstances, I recommend that the Commission find no probable cause that Respondent violated this section.

III. Section 106.11(4), Florida Statutes. (Counts 2-18)

13. Investigator Malphurs examined whether the Respondent violated this section of the election laws by authorizing an expense without sufficient funds on deposit in the primary depository account.

14. Table 3 reflects the expenditures Respondent authorized without sufficient funds on deposit in the campaign account. The date in the table is the date that Respondent authorized payment to each vendor.

TABLE 3: FUNDS IN CAMPAIGN ACCOUNT WHEN RESPONDENT AUTHORIZED EXPENSE				
Transaction Date	Check #	Description of Transaction	Amount	Funds Available to Campaign
09/14/05	Amount of funds Available to Campaign.			(\$5,257.68) ²
09/20/05	Temp Check	Volusia County Elections	(\$8.75)	(\$5,248.93)
09/20/05	Temp Check	Diane Obremski	(\$562.85)	(\$5,811.78)
09/22/05	Deposit		\$4,500.00	(\$1,311.78)
09/22/05	Temp Check	Lighthouse Mailings	(\$632.80)	(\$1,944.58)
09/22/05	Temp Check	Lighthouse Mailings	(\$3,666.41)	(\$5,610.99)
09/30/05	Deposit		\$3,765.00	(\$1,845.99)
09/30/05	Temp Check	Market Concepts	(\$83.34)	(\$1,929.33)
09/30/05	Temp Check	Marc Klein	(\$400.00)	(\$2,329.33)
09/30/05	Temp Check	Motor Cars of CF	(\$400.00)	(\$2,729.33)
09/30/05	Temp Check	Bill Klein	(\$400.00)	(\$3,129.33)

² Beginning balance brought forward from the ending balance in Case FEC 05-253.

09/30/05	Temp Check	Stone Island Home Owner's Association	(\$75.00)	(\$3,204.33)
09/30/05	Temp Check	Max Klein	(\$190.00)	(\$3,394.33)
09/30/05	Temp Check	Chelsea Wallace	(\$400.00)	(\$3,794.33)
09/30/05	Temp Check	Keith Wallace	(\$400.00)	(\$4,194.33)
09/30/05	Temp Check	Jayne Vance	(\$400.00)	(\$4,594.33)
09/30/05	Temp Check	Tyler Vance	(\$400.00)	(\$4,994.33)
09/30/05	Temp Check	Charles Vance	(\$400.00)	(\$5,394.33)
10/02/05	Temp Check	Derek Brett	(\$1,000.00)	(\$6,394.33)
10/02/05	Temp Check	<i>Best of Volusia</i>	(\$300.00)	(\$6,694.33)
10/04/05	Deposit		\$1,000.00	(\$5,694.33)
10/06/05	Deposit		\$3,465.00	(\$2,229.33)
10/07/05	Deposit		\$850.00	(\$1,379.33)

15. Under these circumstances, I recommend that the Commission find probable cause that Respondent violated Section 106.11(4), Florida Statutes on 17 occasions.

IV. Section 106.143(1)(a), Florida Statutes. (Count 19)

16. Investigator examined whether Respondent violated this section of the elections laws by making an expenditure for a political advertisement and not marking prominently the political advertisement with the required disclaimer.

17. On August 31, 2005, Diane Obremski, Respondent's campaign manager, authorized the purchase of a political advertisement from the *Best of Volusia*. Ms. Obremski approved the proof for the advertisement, signed a one-time contract authorizing the *Best of Volusia* to run this advertisement in a coupon mailer on October 4, 2005, and paid a deposit of \$100. The advertisement did not include the proper disclaimer. A copy of the advertisement is attached to the Report of Investigation as Exhibit 12.

18. A proper disclaimer is:

Political advertisement paid for and approved by Dennis Mulder
for Mayor of Deltona.

19. Under these circumstances, I recommend that the Commission find probable cause that Respondent violated Section 106.143(1)(a), Florida Statutes, on one occasion.

V. Section 106.19(1)(a), Florida Statutes. (Count 20)

20. Investigator Malphurs examined whether Respondent violated this section of the elections laws by accepting excessive contributions.

21. Table 4 reflects the excessive contributions allegedly accepted by Respondent before the primary election held on October 11, 2005.

TABLE 4: CONTRIBUTIONS REPORTED BY RESPONDENT			
Date Accepted	Contributor	Amount Reported	Total
07/01/05	Chelsea Wallace	\$500.00	\$500.00
10/02/05		\$400.00	
07/18/05	Diane Obremski	\$100.00	\$522.00
07/22/05		\$22.00	
08/31/05		\$100.00	
09/30/05		\$300.00	

22. Complainant alleged that Respondent accepted \$900 in contributions from Chelsea Wallace. However, the facts do not support a violation.

23. Respondent received an excessive cash contribution for \$500 from Ms. Wallace and reported it on his 2005 F1 CTR. On October 1, 2005, Respondent wrote a check to Ms. Wallace from his campaign account refunding \$400. Ms. Wallace then wrote a \$400 check to Respondent, which he reported receiving on October 2, 2005. The bank records for the campaign account reflect a \$400 check from Ms. Wallace was deposited in Respondent's campaign account on October 6, 2005.

24. In a telephone interview, Respondent stated, "I mistakenly refunded her an excessive contribution," because he thought Ms. Wallace's original contribution was cash. This contribution was investigated in FEC 05-253, and it was determined that Ms. Wallace's contribution was by cash, not a check.

25. Respondent accepted contributions totaling \$522 from Diane Obremski, his campaign manager, before the October 11, 2005 primary. In his 2005 F1 report, Respondent misreported the contribution from Ms. Obremski on July 18, 2005 for \$100 as a check contribution for \$400. Respondent accepted a \$300 contribution from Ms. Obremski on September 30, 2005, which he did not report.

26. On July 22, 2005, Ms. Obremski paid \$22 for an occupation license for Respondent's campaign. On August 31, 2005, Ms. Obremski gave the *Best of Volusia* a \$100 deposit to publish the political advertisement discussed above.

27. In an affidavit, Ms. Obremski stated that she was reimbursed for the \$100 deposit to the *Best of Volusia* by a campaign check from Respondent on September 19, 2005. Bank records indicate Respondent issued a check to his campaign manager for \$562.85 on September 20, 2005 for a "food supply and fun day." However, there is no evidence that this

reimbursement covered the occupational license fee and or the advertising deposit paid by Ms. Obremski.

28. On December 30, 2005, the investigator attempted to verify the reimbursement to Respondent's campaign manager, but she refused to speak with her and hung-up the telephone. A follow-up letter was mailed to Ms. Obremski requesting that she provide a copy of her receipts and a listing of the expenditures covered by the reimbursement of \$562.85 from Respondent. As of April 7, 2006, a response has not been received from Respondent's campaign manager.

29. Under these circumstances, I recommend that the Commission find probable cause that Respondent violated Section 106.19(1)(a), Florida Statutes, on one occasion.

VI. Section 106.19(1)(b), Florida Statutes. (Counts 21-25)

30. Investigator Malphurs examined whether Respondent violated this section of the elections laws by failing to report a contribution required to be reported by Chapter 106, Florida Statutes.

31. Table 5 lists Respondent's five unreported contributions.

TABLE 5: UNREPORTED CONTRIBUTIONS ACCEPTED BY RESPONDENT				
Date Accepted	CONTRIBUTOR	Contribution Type	AMOUNT	SOURCE
07/22/05	Diane Obremski	In-kind	\$22.00	Occupational License
08/31/05	Diane Obremski	In-kind	\$100.00	Advertising deposit to <i>Best of Volusia</i>
09/18/05	Deltona Skate Rink	In-kind	\$800.00	Joint personal checking account
09/19/05	Designer Graphics	In-kind	\$1,648.42	Personal credit card
09/30/05	Diane Obremski	Check	\$300.00	Check to Respondent's campaign
TOTAL			\$2,870.42	

32. Under these circumstances, I recommend that the Commission find probable cause that Respondent violated Section 106.19(1)(b), Florida Statutes, on five occasions.

VII. Section 106.19(1)(d), Florida Statutes.

33. Investigator Malphurs examined whether Respondent violated this section of the election laws by making or authorizing any expenditure prohibited by Chapter 106, Florida Statutes.

34. Table 3 reflects the campaign expenses incurred by Respondent without sufficient funds on deposit in the campaign depository.

35. Although the above facts show that Respondent recklessly disregarded the requirements of Section 106.11(4), Florida Statutes, it does not appear that Respondent's actions were so egregious as to warrant recommending additional civil penalties for these acts.

36. Under these circumstances, I recommend that the Commission find no probable cause that Respondent violated this section.

VIII. Conclusion.

37. Respondent's actions in this case were willful.³

38. Respondent stated that he did not willfully violate the laws. However, he admitted that he made some mistakes in the handling of his campaign. Respondent stated that throughout his campaign he chose to use his personal credit cards to pay some expenses and he treated the expenditures as loans because he needed to report them. Respondent further stated that he has learned a lot through experience in how to properly manage his campaign.

39. In an affidavit, Jennifer Romaker, the filing officer stated that she provided Respondent with a copy of *Chapter 106, Florida Statutes*, a copy of the *2004 Candidate Handbook* and a copy of the *Calendar of Reporting Dates*. She said that she reviewed with Respondent the necessary steps to become a candidate and also spoke directly with Respondent on or about July 7 or 8, 2005, regarding missing occupations for itemized contributions over \$100 in his quarterly report.

40. In an affidavit, Respondent stated he received a copy of *Chapters 104 and 106, Florida Statutes*, and a copy of the *2004 Candidate Handbook*. Although Respondent indicated that he has not read *Chapters 104 and 106, Florida Statutes*, he did indicate that he has browsed through the *Handbook for Candidates*. Respondent signed his Statement of Candidate form on April 11, 2005, indicating that he read and understood Chapter 106, Florida Statutes.

41. Respondent should note that Section 106.265(1), Florida Statutes, provides that the Commission is authorized upon finding a violation of Chapter 104 and 106, Florida Statutes, to impose civil penalties in the form of fines not to exceed \$1000 per count.

42. Respondent should note that in addition to the penalty provided for in Section 106.265(1), Florida Statutes, Section 106.19(2), Florida Statutes, provides for a civil penalty

³ §106.37, Fla. Stat., provides that a person willfully violates Ch. 106, Fla. Stat.:

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

equal to three times the amount involved in the illegal act if a Respondent is found to have violated Section 106.19(1)(a), 106.19(1)(b), or 106.19(1)(d), Florida Statutes.

43. During the investigation of the allegations contained in the sworn complaint, the investigator found that Respondent signed his campaign checks, but failed to appoint himself as treasurer or deputy treasurer. However, because these violations were not alleged in the complaint, she did not further investigate this information.

IX. Summary of Charges.

44. Under these circumstances, I recommend that the Commission find probable cause that Respondent committed 25 counts of violating Chapter 106, Florida Statutes.

Count 1:

On or about October 7, 2005, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of his 2005 F3 CTR that was incorrect, false, or incomplete, when he incorrectly reported four contributions, two loans from himself, and three expenditures, and failed to report a \$300 contribution.

Count 2:

On or about September 20, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$8.75 to Volusia County Elections to be paid from the campaign depository account.

Count 3:

On or about September 20, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$562.85 to Diane Obremski to be paid from the campaign depository account.

Count 4:

On or about September 22, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$632.80 to Lighthouse Mailings to be paid from the campaign depository account.

Count 5:

On or about September 22, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$3,666.41 to Lighthouse Mailings to be paid from the campaign depository account.

Count 6:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$83.34 to Market Concepts to be paid from the campaign depository account.

Count 7:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Marc Klein to be paid from the campaign depository account.

Count 8:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Motor Cars of CF to be paid from the campaign depository account.

Count 9:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Bill Klein to be paid from the campaign depository account.

Count 10:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$75 to Stone Island Home Owner's Association to be paid from the campaign depository account.

Count 11:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$190 to Max Klein to be paid from the campaign depository account.

Count 12:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Chelsea Wallace to be paid from the campaign depository account.

Count 13:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Keith Wallace to be paid from the campaign depository account.

Count 14:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Jayne Vance to be paid from the campaign depository account.

Count 15:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Tyler Vance to be paid from the campaign depository account.

Count 16:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Charles Vance to be paid from the campaign depository account.

Count 17:

On or about October 2, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$1,000 to Derek Brett to be paid from the campaign depository account.

Count 18:

On or about October 2, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$300 to *Best of Volusia* to be paid from the campaign depository account.

Count 19:

On or about October 4, 2005, Respondent violated Section 143(1)(a), Florida Statutes, by failing to mark prominently the political advertisement with the correct disclaimer, when he published the advertisement "This Will Be The Most important Election in City History" that failed to contain the following disclaimer: "Political advertisement paid for and approved by Dennis Mulder for Mayor of Deltona." (Exhibit 12 attached to Report of Investigation).

Count 20:

On or about July 18, July 22, August 31, and September 30, 2005, Respondent violated Section 106.19(1)(a), Florida Statutes, by accepting a contribution in excess of the legal limit, when he accepted four contributions totaling \$522 from Diane Obremski.

Count 21:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$22 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Count 22:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$100 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Count 23:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$800 from himself and failed to report it on his 2005 F3 CTR.

Count 24:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he used his personal credit card and accepted an in-kind contribution in the amount of \$1,648.42 from himself and failed to report it on his 2005 F3 CTR.

Count 25:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted a cash contribution in the amount of \$300 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Respectfully submitted on April 24, 2006,

A handwritten signature in black ink, appearing to read "Charles A. Finkel", written over a horizontal line.

Charles A. Finkel
General Counsel

Copy furnished to:

Barbara M. Linthicum, Executive Director
Donna Ann Malphurs, Investigator Specialist