BEFORE THE
MISSOURI ETHICS COMMISSION

Filed
NOV 22 2010
Missouri Ethics Commission

MISSOURI ETHICS COMMISSION Petitioner, v. MARLYN FLAUTER, Candidate and CHRISTINE KLECKNER, Treasurer and CITIZENS TO ELECT MARLYN FLAUTER, Committee Respondents.	)))))))))))))))))	No. 09A065

CONSENT ORDER

The parties having filed a Joint Stipulation of Facts, Waiver of Hearings before the Missouri Ethics Commission, and Consent Order with Proposed Findings of Fact and Conclusions of Law ("Joint Stipulation") with the Missouri Ethics Commission in this matter. The Missouri Ethics Commission hereby accepts as true the facts stipulated and finds that the Respondents Marlyn Flauter and Citizens to Elect Marlyn Flauter violated §130.021.2, RSMo, §130.021.4.(1), RSMo, §130.031.3, RSMo and §130.041.1, RSMo as stated in the Joint Stipulation.

The Commission directs that all terms and orders of the Joint Stipulation be adopted herein and implemented.

a. Respondents agree that they will comply with all relevant sections of Chapter 130, RSMo.

b. It is the order of the Missouri Ethics Commission that a fee is imposed against the Respondents Marlyn Flauter and Citizens to Elect Marlyn Flauter in the amount of $3,000.00 pursuant to §105.961.4(6) RSMo. However, if either Respondent pays $300.00 of that fee within 45 days of the entry of the consent order, the remainder of the fee will be stayed for two years, subject to the provisions below. The fee will be paid by check or money order made payable to the Missouri Ethics Commission and sent to the Missouri Ethics Commission.

If Respondents Marlyn Flauter and Citizens to Elect Marlyn Flauther have not committed any further violations of the campaign finance disclosure laws pursuant to Chapter 130, RSMo, during the two year stay then Respondents will not be required to pay the remainder of this fee.

If, however, either Respondent is found to have violated the campaign finance laws pursuant to Chapter 130, RSMo, during this two year stay, Respondents will be required to pay the remainder of the fee as originally imposed by the Commission. The fee will be due immediately upon final adjudication finding probable cause of such a violation.

SO ORDERED this 22nd day of November, 2010.

By: _____
Jim Wright

BEFORE THE
MISSOURI ETHICS COMMISSION

MISSOURI ETHICS COMMISSION Petitioner, v. MARLYN FLAUTER, Candidate and CHRISTINE KLECKNER, Treasurer and CITIZENS TO ELECT MARLYN FLAUTER, Committee Respondents.	))))))))))))))))))	No. 09A065

JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS BEFORE THE MISSOURI ETHICS COMMISSION, AND CONSENT ORDER WITH JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned parties jointly stipulate to the facts and consent to the action set forth below.

The undersigned Respondents, Marlyn Flatuter and Citizens to Elect Marlyn Flauter, acknowledge that they have received and reviewed a copy of the Complaint filed by the Petitioner in this case, and the parties submit to the jurisdiction of the Missouri Ethics Commission.

The undersigned Respondents further acknowledge that they are aware of the various rights and privileges afforded by law, including but not limited to: the right to appear and be

represented by counsel; the right to have all charges against Respondents proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondents; the right to present evidence on Respondents' own behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of these rights provided to the Respondents by operation of law, the undersigned Respondents knowingly and voluntarily waive each and every one of these rights and freely enter into this Joint Stipulation of Facts, Waiver of Hearings before the Missouri Ethics Commission, and Consent order with Joint Proposed Findings of Fact and Conclusions of Law, and agree to abide by the terms of this document.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondents jointly stipulate to the following and request that the Missouri Ethics Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law, as follows:

JOINT FINDINGS OF FACT

1. The Missouri Ethics Commission ("the Commission") is an agency of the State of Missouri established pursuant to §105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 130, RSMo.

2 Respondent Marlyn Flauter was an unsuccessful candidate for Board of Directors of the Monarch Fire Protection District in St. Louis County, in the April 4, 2009 Municipal Election.

3. Respondent, Citizens to Elect Marlyn Flauter was a Candidate Committee in support of Respondent Flauter registered with Petitioner and was in existence at all relevant times.

4. Christine Kleckner was the treasurer of Respondent Committee, Citizens to Elect Marlyn Flauter.

5. On February 23, 2009, Respondents filed a Statement of Committee Organization with Petitioner.

6. The Statement of Committee Organization listed two official fund depositories, both established as Small Business Checking Accounts at National City Bank In Town and Country, Missouri.

7. One official fund depository was in the name of Citizens to Elect Marlyn Flauter. Respondent Flauter and Kleckner were listed as the authorized signators on this account. This account was opened on December 2, 2008.

8. The second official fund depository was in the name of Citizens for a Better Fire District. This account was opened on December 2, 2008.

9. There is no committee registered in the name of Citizens for a Better Fire District with Petitioner or the St. Louis County Board of Elections.

10. On the Amended 40 Day Before Election Report, Respondents reported receiving the following two contributions from Friends of the Fire District, a continuing committee registered with Petitioner as follows:

Date	**Contributor**	**Amount**
1/16/2009	Friends of the Fire District	$10,000.00
2/20/2009	Friends of the Fire District	$10,000.00

11. Both contributions were made payable to Citizens for a Better Fire District and deposited into the fund depository for Citizens for a Better Fire District. These were the only contributions deposited in this fund depository.

12. The following two expenditures were paid from the fund depository for Citizens for a Better Fire District on the amended 40 Day After Election Report.

Date	Expenditure	Amount
2/10//2009	Aloha Printing	$5,000.00
2/23/2009	Emmis Communications	$3,050.00

13. Check number 992 was made payable to Aloha Printing and stated in the note section, "Printing down payment."

14. Invoices from Aloha Printing were in the name of Respondent Committee, Citizens to Elect Marlyn Flauter.

15. Respondents reported the expenditure from Citizens for a Better Fire District to Aloha Printing on February 9, 2009 in the amount of $5,000.00 on the Amended 40 Day Before Election Report for Respondent Committee, Citizens for Marlyn Flauter. Respondents failed to report the purpose of the expenditure.

16. The invoice for "Broadcast Contract" from "Emmis St. Louis" was in the name of Citizens for a Better Fire District.

17. Respondents reported the expenditure to Emmis Communications on the 8 Day Before Primary Report for Respondent Committee, Citizens to Elect Marlyn Flauter. Respondents reported the purpose of the expenditure as "Radio Commercial."

18. The following funds were withdrawn from the Citizens for a Better Fire District depository and deposited into the Citizens to Elect Marlyn Flauter depository as follows:

Date	Contributor	Amount
2/27/2009	counter check	$8,000.00
3/3/2009	counter check	$3,900.00

4/6/2009	debit memo	$52.00

19. Respondents made and reported two expenditures totaling $8,050.00 to Aloha Printing and Emmis St. Louis on behalf of Respondents Flauter and Committee from the depository of Citizens for a Better Fire District, when those expenditures were made from contributions made to Citizens for a Better Fire District. The invoice for Emmis St. Louis was in the name of Citizens for a Better Fire District.

20. Respondents failed to report the purpose of the expenditure to Aloha Printing on the amended 40 Day After Election Report.

21. Pursuant to §130.026, RSMo, the Missouri Ethics Commission and the Local Election Authority are the appropriate officers designated to receive campaign finance reports under Chapter 130 for candidate committees.

22. Pursuant to §105.959, RSMo, the Commission's staff has audited the files of the Commission and reported its findings to the Commission.

JOINT CONCLUSIONS OF LAW

COUNT I – Official Fund Depository

1. According to §130.021.2, RSMo:

> Every candidate for offices listed in subsection 1 of section 130.016 who has not filed a statement of exemption pursuant to that subsection and every candidate for offices listed in subsection 6 of section 130.016 who is not excluded from filing a statement of organization and disclosure reports pursuant to subsection 6 of section 130.016 shall form a candidate committee and appoint a treasurer. Thereafter, all contributions on hand and all further contributions received by such candidate and any of the candidate's own funds to be used in support of the person's candidacy shall be deposited in a candidate committee depository account established pursuant to the provisions of subsection 4 of this section, and all expenditures shall be made through the candidate, treasurer or deputy treasurer of the person's candidate committee.

2. According to §130.021.4. (1), RSMo:

> Every committee shall have a single official fund depository within this state which shall be a federally or state-chartered bank, a federally or state-chartered savings and loan association, or a federally or state-chartered credit union in which the committee shall open and thereafter maintain at least one official depository account in its own name… All contributions which the committee receives in money, checks and other negotiable instruments shall be deposited in a committee's official depository account. Contributions shall not be accepted and expenditures shall not be made by a committee except by or through an official depository account and the committee treasurer, deputy treasurer or candidate. …

3. Respondents maintained two official fund depositories by reporting two depositories on the statement of committee organization, one which was not in the name of Respondent Committee, and paying and reporting expenditures from the *Citizens for* a Better Fire District depository on behalf of Respondent Flauter and Committee.

4. There is probable cause that Respondents violated §130.021.2, RSMo and §130.021.4. (1), RSMo by having two official fund depositories and by making $8,050.00 in expenditures from an official fund depository in the name of Citizens for a Better Fire District, which was not in the name of Respondent committee, and that Respondents did so knowingly.

<u>COUNT II – Concealment of Contributions and Expenditures</u>

5. According to §130.031.3, RSMo:

> No contribution shall be made or accepted and no expenditure shall be made or incurred, directly or indirectly, in a fictitious name, in the name of another person, or by or through another person in such a manner as to conceal the identity of the actual source of the contribution or the actual recipient and purpose of the expenditure…

6. §130.011(22) defines a "Person" as:

> an individual, group of individuals, corporation, partnership, committee, proprietorship, joint venture, any department, agency, board, institution or other entity of the state or any of its political subdivisions, union, labor organization, trade or professional or business association, association, political party or any executive committee thereof, or any other club or organization however

> constituted or any officer or employee of such entity acting in the person's official capacity;

7. Respondents accepted contributions in a fictitious name or in the name of another person and reported those contributions in a manner to conceal the identity of the actual source of the contributions from Friends of the Fire District to Citizens for a Better Fire District.

8. Respondents made expenditures in a fictitious name or in the name of another person, Citizens for a Better Fire District, in a manner to conceal the identity of the actual purpose of the expenditure from Citizens for a Better Fire District which was to benefit Respondents.

9. There is probable cause that Respondents violated §130.031.3, RSMo by receiving and reporting $20,000.00 in contributions in the name of Citizens for a Better Fire District, and making and reporting $8,050.00 in expenditures from Citizens for a Better Fire District, and the remaining funds of $11,952.00 in a manner to conceal the identity of the actual source of the contribution and the actual purpose of the expenditures, and that Respondents did so knowingly.

COUNT III – Campaign Finance Disclosure Reports

10. According to §130.041.1,RSMo a committee's campaign finance disclosure report must include:

> Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:
>
> ...

(3) Receipts for the period, including:

(a) Total amount of all monetary contributions received which can be identified in the committee's records by name and address of each contributor. In addition, the candidate committee shall make a reasonable effort to obtain and report the employer, or occupation if self-employed or notation of retirement, of each person from whom the committee received one or more contributions which in the aggregate total in excess of one hundred dollars and shall make a reasonable effort to obtain and report a description of any contractual relationship over five hundred dollars between the contributor and the state if the candidate is seeking election to a state office or between the contributor and any political subdivision of the state if the candidate is seeking election to another political subdivision of the state;

...

(4) Expenditures for the period, including:

(d) The full name and mailing address of each person to whom an expenditure of money or any other thing of value in the amount of more than one hundred dollars has been made, contracted for or incurred, together with the date, amount and purpose of each expenditure...

11. Respondents failed to disclose the aggregate of contributions received from persons in excess of $100.00 as follows:

Date	Contributor	Amount	Reported
1/16/2009	Friends of the Fire District	$10,000.00	40 Day B4
2/20/2009	Friends of the Fire District	$10,000.00	40 Day B4
2/25/2009	Rockwood Labor Club	$200.00	8 Day B4
2/26/2009	Monarch Fire for Public Awareness	$4,950.00	8 Day B4
3/2/2009	Monarch Fire for Public Awareness	$4,950.00	8 Day B4
3/4/2009	Monarch Fire for Public Awareness	$4,950.00	8 Day B4
3/5/2009	Monarch Fire for Public Awareness	$4,950.00	8 Day B4
3/12/2009	Starck Grading and Seeding LLC	$150.00	8 Day B4
3/16/2009	Monarch Fire for Public Awareness	$4,950.00	8 Day B4
3/17/2009	Monarch Fire for Public Awareness	$4,950.00	8 Day B4
3/19/2009	James Wulsch/Sandra Wulsch	$1,500.00	8 Day B4
3/23/2009	Professional FF of Eastern MO Local 2665 PAC	$325.00	8 Day B4
	TOTAL	$51,875.00	

12. Respondents failed to disclose the purpose of the following expenditures on campaign finance disclosure reports:

Date	Expenditure	Amount	Reported
2/9/2009	Aloha Printing	$5,000.00	40 Day B4
4/1/2009	KTVI Fox TV	$3,030.25	30 Days After
4/1/2009	I Content Studios	$320.55	30 Days After
4/5/2009	MADCO	$1,834.25	30 Days After
	TOTAL	$10,185.05	

13. There is probable cause that Respondents violated §130.041.1,RSMo by failing to accurately report in a timely fashion the aggregate of contributions totaling $51,875.00 received from contributors over $100.00, and by failing to accurately report in a timely fashion the purpose of $10,185.05 in expenditures, and that Respondents did so knowingly.

II.

Based on the foregoing, the parties hereto mutually agree and stipulate that the following shall constitute the order entered by the Missouri Ethics Commission in this matter. This order will be effective immediately upon the issuance of the Consent Order of the Missouri Ethics Commission without further action by any party:

1. The parties to this Joint Stipulation understand that the Petitioner will maintain this Joint Stipulation as an open and public record of the Missouri Ethics Commission.

2. The Commission shall issue its Consent Order in the form attached hereto as Exhibit A.

a. Respondents agree that they will comply with all relevant sections of Chapter 130, RSMo.

b. It is the order of the Missouri Ethics Commission that a fee is imposed against the Respondents Marlyn Flauter and Citizens to Elect Marlyn Flauther in the

amount of $3,000.00 pursuant to §105.961.4(6) RSMo. However, if either Respondent pays $300.00 of that fee within 45 days of the entry of the consent order, the remainder of the fee will be stayed for two years, subject to the provisions below. The fee will be paid by check or money order made payable to the Missouri Ethics Commission and sent to the Missouri Ethics Commission.

If Respondents Marlyn and Citizens to Elect Marlyn Flauther have not committed any further violations of the campaign finance disclosure laws pursuant to Chapter 130, RSMo, during the two year stay then Respondents will not be required to pay the remainder of this fee.

If, however, either Respondent is found to have violated the campaign finance laws pursuant to Chapter 130, RSMo, during this two year stay, Respondents will be required to pay the remainder of the fee as originally imposed by the Commission. The fee will be due immediately upon final adjudication finding probable cause of such a violation.

3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the Complaint filed by the Petitioner in the above action.

4. Respondents, together with their heirs, successors and assigns, do hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorney of or from any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, a claim for attorney's fees whatsoever which Respondents and their attorney now have or which they may hereafter have, which is based upon or arises out of the above case.

RESPONDENT

By: Marlyn Flauter 11/11/10
Marlyn Flauter Date
Respondent

By: Marlyn Flauter 11/4/10
Marlyn Flauter for
Citizens to Elect Marlyn Flauter Date

By: Rick Barry 11/16/10
Rick Barry Date
Attorney for Respondent

Missouri Bar No. 25592

Law Offices of Rick Barry, P.C..
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Telephone: (314)918-8900

PETITONER

By: Julie A. Allen 11/17/10
Julie A. Allen Date
Executive Director

By: Elizabeth L. Ziegler 11/17/10
Elizabeth L. Ziegler Date
General Counsel

Missouri Bar No. 35493

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