

BEFORE THE
MISSOURI ETHICS COMMISSION

Filed
OCT 25 2016
Missouri Ethics
Commission

MISSOURI ETHICS COMMISSION,)
)
Petitioner,)
) Case No. 16-0039-I, 16-0040-I
v.)
)
JOSEPH BRAZIL,)
)
Respondent.)

**JOINT STIPULATION OF FACTS, WAIVER OF HEARING
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 Respondent, Brazil, acknowledges that he has 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 Respondent further acknowledges that he is 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 allegations against Respondent be proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondent; the right to present evidence on Respondent's behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of these rights provided to Respondent by operation of law, the undersigned Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of

Hearing before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, and agrees to abide by the terms of this document.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondent 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 PROPOSED FINDINGS OF FACT

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

2. Respondent Brazil has been a member of the St. Charles County Council, District 2, since 2000. He is the chair of the St. Charles County Republican Central Committee and previously has been a member of the Florissant City Council, from 1990 to 1996. In 2006, he registered with the Missouri Ethics Commission a candidate committee to support his candidacy for the Missouri State Senate, which he terminated in July 2008. In January 2011, he registered with the Missouri Ethics Commission another candidate committee, Citizens for Joe Brazil, which is still active.

3. Pursuant to Sections 105.957 and 105.961, RSMo, the Commission's staff investigated a complaint filed with the Commission and reported the investigation findings to the Commission.

4. Based on the investigation report, the Commission determined that there were reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo.

5. On Tuesday, April 5, 2016, voters in Wentzville, Missouri, elected two Wentzville School Board members, from a pool of five candidates.
6. Less than a week before the election Respondent Brazil sent almost one thousand four hundred mailers opposing one of those candidates.
7. The mailer did not contain Respondent Brazil's name or address.
8. The mailer's return address, 408 E. Main Street, Wentzville, Missouri, contained no name.
9. A non-profit corporation that had nothing to do with the mailer owns the property at 408 E. Main Street in Wentzville, Missouri.
10. In April 2016, the property was an empty building with no mail receptacle.
11. Respondent Brazil is not a member or officer of the corporation that owns the property.
12. The non-profit corporation did not authorize Respondent Brazil or anyone else to use the address for the mailer.
13. To the left of the return address, the mailer stated, "Paid for by friends for good government of Wentzville."
14. "Friends of Good Government of Wentzville" is not a name registered with the Missouri Ethics Commission, St. Charles County Election Authority, or Missouri Secretary of State.
15. Gravis Marketing, a company in Jacksonville, Florida, received Respondent Brazil's order for 1,379 mailers on March 14, 2016.
16. Gravis Marketing asked Respondent Brazil for pictures, content, a return address, what creative input he wanted to have, and a date he wanted the mailer to hit.

17. Respondent Brazil provided pictures, content, and an address list.

18. Respondent Brazil mailed a check for \$1,300 from his personal checking account for overnight delivery to Gravis Marketing.

19. On March 15, Gravis Marketing asked for a disclaimer and an address, "Are you able to get a P.O. Box? I don't know if that can be traced to an individual?"

20. "[F]riends for good government of Wentzville," said Brazil, "I can get you an address tomorrow."

21. The next day, Brazil emailed Gravis Marketing, "408 E main street Wentzville Mo 63385. Call me with questions."

22. In February 2016, before sending the mailer, Respondent Brazil registered as a candidate for St. Charles County Council in the August 2016 primary election.

23. While registering, Respondent Brazil acknowledged the authority of the Missouri Ethics Commission in enforcing Missouri's campaign finance laws.

24. Respondent Brazil also received a copy of the Missouri Ethics Commission's "Guide to Ethics Laws--A Plain English Summary."

25. The guide explains the proper "paid for by" disclosure statement required for mailers.

26. It also says that a person must file a campaign finance disclosure report, regardless of whether they are a committee, if they make expenditures totaling five hundred dollars or more in opposition to a candidate.

27. Respondent Brazil never filed a non-committee disclosure report with the St. Charles County Election Authority showing the \$1,300 expenditure for the mailer.

JOINT PROPOSED CONCLUSIONS OF LAW

COUNT I

"Paid for by" disclosure

28. "Any person publishing, circulating, or distributing any printed matter relative to any candidate for public office ... shall on the face of the printed matter identify in a clear and conspicuous manner the person who paid for the printed matter with the words 'Paid for by' followed by the proper identification of the sponsor pursuant to this section." § 130.031.8, RSMo.

29. Printed matter includes "any pamphlet, circular, handbill, sample ballot, advertisement, including advertisements in any newspaper or other periodical, sign, including signs for display on motor vehicles, or other imprinted or lettered material." § 130.031.8, RSMo.

30. "In regard to any printed matter paid for by a candidate from the candidate's personal funds, it shall be sufficient identification to print the first and last name by which the candidate is known." § 130.031.8(1), RSMo.

31. "In regard to any printed matter paid for by an individual or individuals, it shall be sufficient identification to print the name of the individual ... and the respective mailing address." § 130.031.8(4), RSMo.

32. "It shall be a violation of this chapter for any person required to be identified as paying for printed matter pursuant to subsection 8 of this section ... to purposely provide false, misleading, or incomplete information." § 130.031.11, RSMo.

33. There is probable cause to believe that Respondent Brazil violated Sections 130.031.8 and 130.031.11, RSMo, by publishing, circulating, and distributing a mailer relating to a candidate in the April 2016 Wentzville School Board Election without a true and accurate "paid

for by” disclosure statement, and by purposely providing false, misleading, and incomplete information regarding the sponsor of that mailer, and that Respondent Brazil did so knowingly.

COUNT II

Making an expenditure in a fictitious name and knowingly concealing an expenditure by not filing a required non-committee expenditure report

34. “Any person who is not a defined committee who makes an expenditure or expenditures aggregating five hundred dollars or more in support of, or opposition to, one or more candidates ... shall file a report signed by the person making the expenditures.” § 130.047, RSMo.

35. The report must be filed with “the appropriate officer having jurisdiction over the election of the candidate or ballot measure in question as set forth in section 130.026 no later than fourteen days after the date of making an expenditure which by itself or when added to all other such expenditures during the same campaign equals five hundred dollars or more.” § 130.047, RSMo.

36. The report must include “the name and address of the person making the expenditure, the date and amount of the expenditure or expenditures, the name and address of the payee, and a description of the nature and purpose of each expenditure.” §130.047, RSMo.

37. The “appropriate officer” for expenditures opposing candidates in the Wentzville School Board election is the St. Charles County Election Authority. §§ 130.011(1); 130.026.2(4), RSMo.

38. “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.” §130.031.3, RSMo.

39. “Any person who ... knowingly conceals a contribution or expenditure by filing a false or incomplete report or by not filing a required report, in addition to or in the alternative to

any other penalty imposed by this chapter, shall be held liable to the state in civil penalties in an amount equal to any such contribution or expenditure.” § 130.072, RSMo.

40. There is probable cause to believe that Respondent Brazil violated Sections 130.047, 130.072, and 130.031.3, RSMo, by not filing a non-committee expenditure report with the St. Charles County Election Authority, knowingly concealing an expenditure by not filing that report, and by making an expenditure in a fictitious name, and that Respondent Brazil 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 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. Respondent shall 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 Respondent Brazil in the amount of \$2,300, pursuant to Section 105.961.4(6), RSMo. However, if Respondent pays \$1,650 of that fee within forty-five (45) days after the date of the Order, the remainder of the fee will be stayed, subject to the provisions below. The fee will be paid by check or money order made payable to the Missouri Ethics Commission.

c. If Respondent Brazil commits any further violation of the campaign finance laws under Chapter 130, RSMo, as amended, within the two-year period from the date of this order, then Respondent will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that Respondent has committed such a violation.

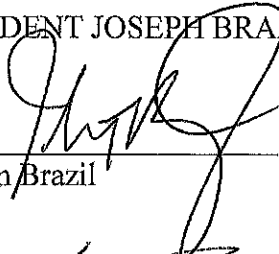
3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the Complaint filed by the Petitioner in the above action.

4. Respondent, together with his heirs, successors, and assigns, does hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorneys 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 Respondent or Respondent's attorney may now have or which they may hereafter have, which are based upon or arise out of the above cases.

5. This joint stipulation does not settle, release, waive, or otherwise relieve Respondent from any late filing fees due to the appropriate filing authority, including Petitioner Missouri Ethics Commission. Respondent understands that late filing fees accrue automatically under Section 105.963, RSMo.

RESPONDENT JOSEPH BRAZIL

By:


Joseph Brazil

10/14/16
Date

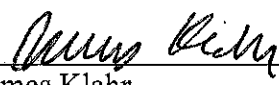
By:


Sean Barry
Attorney for Respondent

10/14/16
Date

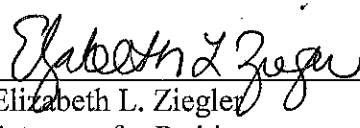
PETITIONER MISSOURI ETHICS
COMMISSION

By:


James Klahr
Executive Director

10/25/16
Date

By:


Elizabeth L. Ziegler
Attorney for Petitioner

10/25/16
Date

4. If Respondent Brazil commits any further violation of the campaign finance laws under Chapter 130, RSMo, as amended, within the two-year period from the date of this order, then Respondent will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that Respondent has committed such a violation.

SO ORDERED this 25th day of October, 2016

By:

Nancy Hagan

Nancy Hagan, Chair
Missouri Ethics Commission