



## REPORT OF INVESTIGATION

K #: 12-139 Paul Hernandez for Hialeah City Council campaign

Date Opened: Sept. 7, 2012

Date Closed: Feb. 5, 2013

Name of investigator: Karl Ross

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**ALLEGATION:** During the course of an unrelated inquiry, it was observed that the 2011 City Council campaign of Paul “Pablito” Hernandez was relying on G&R Strategies LLC – a political consulting firm – to procure a very high percentage of campaign-related services in possible violation of Chapter 106 of state electoral law. The same pattern was similarly observed for candidates running on the “slate” of Mayor Carlos Hernandez, including Mr. Hernandez and other sitting council members.

**APPLICABLE LAW:** As it relates to the reporting of campaign expenditures, F.S. 106.021(3) states as follows: *“No contribution or expenditure, including contributions or expenditures of a candidate or of the candidate’s family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate ....”*

**BACKGROUND:** Mayor Carlos Hernandez was successfully re-elected to the Office of Hialeah Mayor on Nov. 1, 2011, in a three-way contest after obtaining 39.5 percent of

the vote. Former Hialeah Mayor Raul Martinez finished second with 34.5 percent and former State Sen. Rodolfo “Rudy” Garcia was third with 25.7 percent of the vote. Also earning or retaining their seats on the City Council was Lourdes Lozano, Vivian Casals-Munoz, Isis Garcia-Martinez and Paul Hernandez. Mayor Hernandez and his political allies were assisted in their campaigns by consultant Sasha Tirador through her company, G&R Strategies LLC, a for-profit Florida corporation created in 2007.

**INVESTIGATION:** In the course of its investigation, COE consulted Eric Lipman, assistant general counsel to the Florida Elections Commission, who advised that candidates for political office could not, in effect, “give a blank check to a consultant.” He cited the case of the Walton Association of Voters, or “WAV” (Agency Case No. FEC 04-275), which he said set a possible precedent for the instant matter. In that case, funds were advanced to WAV by a third-party consultant for the purchase of media advertising. WAV did not have sufficient funds in its campaign account at the time the funds were advanced on its behalf, leading to a formal complaint.

A possible precedent could also be found in the COE audit of the 2004 Maurice Ferre bid for Miami-Dade County mayor during which it was found Ferre made similar third-party expenditures in possible violation of F.S. 106.021(3) and 106.11(1).

With respect to the campaign of Councilman Hernandez, copies of his Campaign Treasurer’s Reports were obtained from the Hialeah City Clerk’s Office. An analysis of campaign expenditures showed that 88 percent of all expenditures were issued through G&R Strategies – a total of \$41,426 out of \$47,071. The stated purpose of these expenditures varied, but included the following: data, photographs, cellphone, mailers, door hangers, decals, palm cards, consulting, radio and media buys. A review of bank records for G & R Strategies, obtained pursuant to subpoena, revealed that G & R had

issued company checks on behalf of the campaign of Councilman Hernandez and other members of the mayor's "slate" of political allies.

It was also discovered that Councilman Hernandez neglected to detail the expenditures listed on his Termination Report totaling \$5,078.98. This was brought to the attention of the Hialeah City Clerk's Office, and a representative of said office advised that Mr. Hernandez would file an amended Termination Report reflecting said expenditures. The amended Termination Report and other amended CTRs were subsequently received by this office on Feb. 22, 2013, and added to the file. The reports were reviewed and the relevant findings will be discussed in the next section.

**CONCLUSION:** Subsequent research conducted by the Office of the Independent Advocate determined that while technical violations of state electoral law may have occurred, no formal complaint will be filed by this office. It was also determined, moreover, that an exemption exists to F.S. 106.021(3) in subsection (c), which references "*expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services, campaign signs, insurance or other expenditures that include multiple integral components ...*" This subsection further references F.S. 106.07(4)(a)(13), which provides further explanation as to the purpose and criteria for reporting such third-party expenditures.

The research indicates that unlike the Maurice Ferre case involving the 2004 Miami-Dade County mayoral campaign, state law no longer prohibits third-party expenditures for certain campaign-related expenses, so long as these payments are reported. The instant case involving the re-election campaign of Councilman Hernandez also differs from the WAV case cited by the FEC in that expenditures incurred by the Paul Hernandez campaign did not appear to exceed his reported contributions.

In light of the foregoing, it was determined that the above-captioned case involving the political campaign of Councilman Hernandez should be closed at this time – as it relates to possible improper third-party expenditures.

A review of the amended CTRs submitted by the Paul Hernandez campaign raises another issue, however, that should be noted. Councilman Hernandez's G-4 CTR for the period from Oct. 28, 2012, through Nov. 11, 2012, lists total contributions to date as \$52,805 and total expenditures to date as \$51,805.14. His Termination Report, though, lists total contributions and expenditures as \$51,805.14. He thereby reduces his total contributions from the previous report by just under \$1,000 (\$999.86) without accounting for this discrepancy since no further contributions or expenditures are itemized in the Termination Report. It is possible this is a simple accounting error.

All the same, the error would seem to pose a violation under Chapter 106, and COE should determine whether to refer this matter to the FEC or to treat this in some other manner. Councilman Hernandez did contact COE after learning of the inquiry into his campaign finances and offered his further cooperation, if requested. He was advised of this possible error on or about March 1, 2013, and submitted an email in response advising the discrepancy was the result of two \$500 in-kind contributions. Accordingly, the above-captioned case into the Paul Hernandez campaign should be closed.

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