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BEFORE THE OHIO ELECTIONS COMMISSION

- - -

Charles Osborne, :

Complainant, :

vs. : Case No. 2002E-006

Kathleen Magel, :

Respondent. :

- - -

PROBABLE CAUSE HEARING

- - -

Ohio Elections Commission
 21 West Broad Street, Suite 600
 Columbus, Ohio 43215
 February 28, 2002

- - -

Deposition Specialists, Inc.
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OHIO ELECTIONS COMMISSION

PROBABLE CAUSE PANEL

- - -

Alphonse Cincione, Chairman

William Booth, Member

Benjamin F. Marsh, Member

Mary W. Sullivan, Member

- - -

Philip C. Richter, Executive Director

Betty Springer, Staff Secretary

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Thursday Morning Session,
February 28, 2002.

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P R O C E E D I N G S

- - -

PANEL CHAIRMAN CINCIONE: This is the
regularly scheduled Probable Cause Panel of the Ohio Elections
Commission. Would the clerk call the roll.

SECRETARY SPRINGER: Mr. Marsh?

COMMISSIONER MARSH: Yes.

SECRETARY SPRINGER: Ms. Sullivan?

COMMISSIONER SULLIVAN: Here.

SECRETARY SPRINGER: Mr. Booth?

COMMISSIONER BOOTH: Here.

SECRETARY SPRINGER: Panel Chairman Cincione?

PANEL CHAIRMAN CINCIONE: Here.

First case we have is the case of Osborne versus
Magel.

Mr. Osborne, I understand you're here. Would you
step forward to the podium. Raise your right hand and the
court reporter will swear this man in.

(Thereupon Mr. Osborne was placed under oath.)

PANEL CHAIRMAN CINCIONE: Would you give us a
brief statement of why you feel that a violation has occurred;
and, B, that Kathleen Magel has in fact violated the code.

1 MR. OSBORNE: Good morning commissioners, most
2 of my -- well, my entire complaint is listed in the submission.
3 I think her terminology of using the word authoring the city's
4 new zoning ordinance is a real stretch.

5 And as I mentioned in my complaint, No. 1, the city
6 does not have a new zoning ordinance as of yet, it's still in
7 process, has been in process for over four and a half years now,
8 I guess.

9 There have been three other individuals who have
10 chaired our Ordinance and Rules and Moral Claims Committee, as I
11 pointed out and submitted for exhibits their campaign literature
12 in spite of the fact that they were chairmen of this committee,
13 as was Mrs. Magel.

14 I'm not making the assumption that based on their
15 campaign literature they didn't feel that they were in a
16 position to claim that they authored or shared in authoring the
17 city's zoning code, which is still, you know, presently being
18 reviewed and is not expected to be submitted to council for, oh,
19 another couple of months.

20 I believe she could have used a wide range of
21 descriptions and been involved in the process. Authoring is a
22 real -- a real stretch.

23 The rest of my complaint pretty well describes
24 several arguments based on definition of author, and I'll just
25 let it go with that, with my written complaint.

1 PANEL CHAIRMAN CINCIONE: Kathleen Magel is
2 not here, but she has given us a response. Have the members of
3 the panel had the opportunity to read the response?

4 (Thereupon the panel collectively responded
5 affirmatively.)

6 PANEL CHAIRMAN CINCIONE: All right.

7 COMMISSIONER MARSH: Have you received it?

8 MR. OSBORNE: No, sir.

9 PANEL CHAIRMAN CINCIONE: Here, take mine.

10 MR. OSBORNE: Thank you, sir. Is this mine to
11 keep?

12 PANEL CHAIRMAN CINCIONE: Sure.

13 EXECUTIVE DIRECTOR RICHTER: Yes.

14 MR. OSBORNE: Also if I may add, I've also
15 presented documentation with the firm D.B. Hart out of
16 Cleveland, Ohio. They were the firm that the city of North
17 Canton contracted with and we budgeted -- or actually it was
18 budgeted, I was not on the council at the time, the City Council
19 budgeted \$50,000, and to date I believe they have paid out
20 \$46,500, to D.B. Hart.

21 And they describe in one of my exhibits there the
22 process that a firm such as theirs goes through. Its a long
23 process of interviewing a lot of individuals in the community,
24 and together with that information as gathered, they formulate
25 a template, I guess I would say, which I'm sure that they've

1 drawn from their existing data that they already have on hand
2 based on their expertise in the industry.

3 And the process from that point on, they submit an
4 entire city wide zoning ordinance. In the process from there
5 goes to the city engineer, the superintendent of Permits and
6 Inspection, which serves as our zoning inspector, reviews it,
7 and tweeks it and may change a set back from 10 feet to maybe 18
8 feet, just minor changes such as that.

9 And so it's they who I attribute as really being the
10 true authors. They've been contracted with by the city. Any
11 changes that are made are recommended by the city engineer, and
12 the superintendent of Permits and Inspection, they take those
13 thoughts that they have, meet with --

14 PANEL CHAIRMAN CINCIONE: Did you have an
15 opportunity to review what she's had to say?

16 MR. OSBORNE: No, I haven't.

17 PANEL CHAIRMAN CINCIONE: I'd appreciate it if
18 you would do that.

19 MR. OSBORBE: Okay.

20 (Thereupon the Complainant reviewed the
21 Respondent's response.)

22 PANEL CHAIRMAN CINCIONE: Now, Mr. Osborne,
23 the rule here on probable cause is that we do give you the
24 opportunity to speak, but the rules do not provide that we have
25 the responsibility to give you the right to speak. And we can

1 make our decisions based upon the information which has been
2 provided to us, not only by you, but the respondent, that's one
3 of the main tenets of our law here is that people get the
4 opportunity to review accusations.

5 What you have here today is a case involving one of
6 our most hallowed rights, and that's called freedom of speech.
7 And freedom of speech has been protected by the United States
8 Supreme Court forever.

9 And freedom of speech was one of the reasons why our
10 founders decided to put it in there, because during the initial
11 stages of our revolution they wanted and they said a lot of
12 things and they wanted that speech protected.

13 So you have a tremendous burden when you say
14 something about somebody lying or misleading. The state of Ohio
15 has a law that says you can't say statements -- false or
16 misleading statements with reckless disregard.

17 Having said that I'd like to know what the Executive
18 Director's recommendation is. He reviews these and tells us the
19 basis for his recommendation, so if you would do that, Mr.
20 Richter, we'd appreciate it.

21 EXECUTIVE DIRECTOR RICHTER: Mr. Chairman,
22 members of the commission, it's my recommendation to find no
23 probable cause and dismiss this matter. After reviewing the
24 complaint submitted, I, in reviewing the particular sentence at
25 issue, as it relates to authoring the new zoning code, my review

1 is that there is nothing specifically either made false or with
2 wreckless disregard of the truth that would lead this Commission
3 to make a finding against those statements.

4 PANEL CHAIRMAN CINCIONE: And what is the
5 pleasure of the Probable Cause panel?

6 COMMISSIONER SULLIVAN: Mr. Chairman?

7 COMMISSIONER MARSH: Yes.

8 PANEL CHAIRMAN CINCIONE: Did you want to
9 speak?

10 COMMISSIONER MARSH: I just want to hear from
11 him again, see what his reaction is.

12 MR. OSBORNE: Okay. Obviously I have to
13 accept whatever ruling is made here. As I mentioned there are a
14 number of ways she could have described her involvement in the
15 process with the city engineer and the superintendent of Permits
16 and Inspection.

17 Ms. Magel is, as to my understanding, her academic
18 background is as a math teacher, a math major, and education
19 major, and I guess if your response is that she could make a
20 statement that she authored or is assisting in authoring the
21 city zoning ordinance, that lends credence to anybody could walk
22 in the door and with a city engineer and discuss wording or make
23 recommendations and be considered an author of the city zoning
24 ordinance.

25 PANEL CHAIRMAN CINCIONE: Wasn't she chairman?

1 MR. OSBORNE: She was a chairman on the
2 Ordinance of Rules and Moral Claims Committee. I have sat with
3 the engineer myself and superintendent of Permits and
4 Inspection, I can make lots of recommendations.

5 PANEL CHAIRMAN CINCIONE: I must tell you that
6 you need to read that First Amendment. I must tell you that our
7 responsibility here is awesome, because we really need to be
8 absolutely clear that we are going to be on the right track when
9 we make rulings with respect to the First Amendment.

10 And our test at the full commission is clear and
11 convincing, here we look for probable cause. One of the things
12 we try to take into account is what you have to say by your
13 writing, and what she has to say by her writing. That's one of
14 the problems, it's a difficult decision.

15 We did sign up to do this and that's what we do and
16 there is a lot of expertise here on that. So with that,
17 anything further?

18 COMMISSIONER MARSH: I can't help but react a
19 little bit to the process of developing the zoning code, having
20 done this many times myself and having somebody involved as you
21 described.

22 And I think she describes a pretty complicated
23 process involving a lot of citizens committees, city engineers
24 that the kind of consultants come in, somebody says with a
25 boiler plate to start with and you work that over and for one of

1 those people to say they authored it, I think you used the words
2 a bit of a stretch, and I think that's probably correct, but it
3 probably does not offend the statute. That's my view.

4 PANEL CHAIRMAN CINCIONE: Any other comments
5 by any other members of the probable cause panel? Hearing none,
6 I'll entertain a motion.

7 COMMISSIONER SULLIVAN: Mr. Chair, I move we
8 find no probable cause and dismiss this matter.

9 PANEL CHAIRMAN CINCIONE: Is there a second?

10 COMMISSIONER MARSH: Second.

11 PANEL CHAIRMAN CINCIONE: Moved and seconded
12 we find no probable cause that a violation has occurred, and
13 this matter be dismissed. All in favor, signify by saying
14 "aye;" opposed, like sign.

15 (Thereupon all members voted affirmatively.)

16 PANEL CHAIRMAN CINCIONE: Passed unanimously.
17 Thank you for coming down.

18 MR. OSBORNE: Thank you for your time.

19 PANEL CHAIRMAN CINCIONE: Having covered the
20 agenda the probable cause panel is adjourned.

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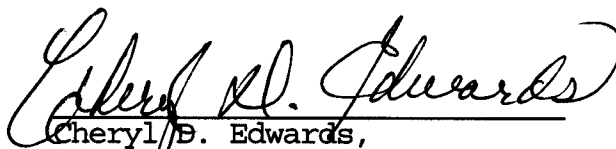
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CERTIFICATE

I, Cheryl D. Edwards, Certified Professional Reporter, and Notary Public in and for the State of Ohio, do certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on February 28, 2002, and carefully compared with my original stenographic notes.

That I am not an attorney for or relative of either party and have no interest whatsoever in the outcome of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 13th day of August, 2003.



Cheryl D. Edwards,
Notary Public in and for
the State of Ohio
My commission expires 11/03/03