KENTUCKY REGISTRY OF ELECTION FINANCE
CASE NO. 2009-066

Edward Springston **Complainant**

v.

Kathryn R. King,
James O. King, Jr. and
King Southern Bank **Respondents**

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ORDER
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The above-styled matter came before the Registry of Election Finance ("Registry") at its regularly scheduled meeting on March 25, 2010, for approval of the Conciliation Agreement by and between the Registry and James O. King, Jr. ("Mr. King") as directed by the Registry and entered into by the Executive Director and General Counsel.

IT IS HEREBY ORDERED that, after having been sufficiently advised and the motion having been made, the Conciliation Agreement is approved in its entirety.

This 25th day of March, 2010.

Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, Kentucky 40601
502-573-2226

CRAIG C. DILGER, CHAIRMAN

Distribution:
Edward Springston, Complainant
Hon. Sheryl G. Snyder, Attorney for Respondent, James O. King, Jr.
Hon. Joseph H. Terry, Attorney for Respondent, James O. King, Jr.

PAID
CK. NO. $15,000.00
DATE 12-28-09

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2009-066

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EDWARD SPRINGSTON **COMPLAINANT**

v.

KATHRYN R. KING,
JAMES O. KING, JR. and
KING SOUTHERN BANK **RESPONDENTS**

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by Edward Springston ("Complainant") on February 20, 2009. Respondents were notified of the complaint pursuant to KRS 121.140 and 32 KAR 2:030. On February 20, 2009, Respondents Kathryn R. King ("Ms. King"), James O. King, Jr. ("Mr. King") and King Southern Bank ("King Bank"), by counsel, filed a collective response denying all alleged violations. An investigation was conducted pursuant to KRS 121.140(1). Thereafter, at its September 25, 2009 regular meeting, the Kentucky Registry of Election Finance ("Registry") found probable cause to believe that Mr. King violated certain provisions of Kentucky campaign finance laws under KRS Chapter 121 with respect to Ms. King's candidacy for District Judge in District 30, Division 13 in the 2008 general election, but that the violations were not committed knowingly. The Registry therefore directed that the alleged violations not be referred for prosecution as a criminal matter pursuant to KRS 121.040(5) and directed that the alleged violations be referred to the Executive Director and General Counsel to begin conciliation as a civil matter including a civil penalty.

NOW, THEREFORE, the Registry and Mr. King, having duly entered into conciliation pursuant to KRS 121.140(2), do hereby agree as follows:

1. The Registry has jurisdiction over Mr. King and the subject matter of this administrative action.

2. Mr. King received a reasonable opportunity to demonstrate that no action should be taken in this matter and waives the right to further hearings.

3. Mr. King enters voluntarily, with full knowledge and understanding, into this Conciliation Agreement with the Registry.

4. The Registry has determined that the pertinent facts in this matter are as follows:

a. Ms. King was a candidate for District Judge in District 30, Division 13 in the 2008 primary and general elections.

b. Ms. King established a campaign fund, Katie King for Judge.

c. The campaign fund's initial treasurer, Matt Conway, resigned on October 14, 2008.

d. The 60-Day Post Election Finance Statement for the primary election, signed by Ms. King and filed with the Registry on July 22, 2008, states that Ms. King personally loaned $50,700 to her campaign for the primary election.

e. The 60-Day Post Election Finance Statement for the general election, filed on behalf of Ms. King by Chris Fralick, CPA, Treasurer, on January 6, 2009, states that Ms. King personally loaned $194,500 to her campaign in the general election.

f. Complainant alleged that Mr. King violated KRS 121.150(6) and KRS 121.150(12) when he made certain monetary gifts to his daughter, Ms. King, with the awareness that she would likely contribute or loan the

gifted funds to her campaign, in violation of KRS 121.150(6) and KRS 121.180(3)(a).

g. With respect to the allegations against him, Mr. King claimed that any gift he gave to Ms. King would not contravene any provision of KRS Chapter 121 and that it would be unconstitutional to limit the amount of gifts from immediate family members to candidates.

h. Mr. King also defended his actions as a "mistake of law" under KRS 501.070, due to an electronic mail message that he received from a Registry staff person on July 21, 2008. By Affidavit dated July 8, 2009, Mr. King stated that he believed the electronic mail message authorized him to make unlimited monetary gifts to his daughter, who in turn could contribute or loan the money to her campaign.

i. During the investigation, Mr. King attested to having made the following monetary gifts to his daughter, Ms. King, during the 2008 primary and general election cycles:

- May 16, 2008 $ 10,000
- October 15, 2008 $ 35,000
- October 24, 2008 $ 50,000
- November 5, 2008 $ 50,000

j. It is undisputed that Ms. King used these monetary gifts to make substantial "loans" to the Katie King for Judge campaign fund.

k. Neither Mr. King nor Ms. King sought an advisory opinion pursuant to KRS 121.135 and 32 KAR 2:060 relative to Ms. King's use of monetary gifts from her father as funding for her campaign.

l. KRS 121.015(6)(a) defines "contribution" in part as " . . . any payment, distribution, loan, deposit, or *gift of money* or other thing of value to a candidate." Emphasis added. A candidate may contribute, loan, or otherwise expend an unlimited amount of personal funds on behalf of her own campaign. *Anderson v. Spear*, 356 F.3d 651, 667 (6th Cir. 2004). However, KRS 121.150(6) prohibits a candidate, or anyone acting on behalf of the candidate, from accepting a contribution of more than one thousand dollars ($1,000) from *any other person* per election. (Emphasis added). KRS 121.150(6) also prohibits any person from contributing more than one thousand dollars ($1,000) to any one (1) candidate per election.

m. KRS 121.015(6) contains no exceptions for gifts from a candidate's immediate family members. Kentucky law also does not define any circumstance where a gift of money to a candidate may be construed as a candidate's "personal funds". Ms. King and Mr. King contended that KRS 121.150(6) and KRS 121.015(6) are unconstitutional to the extent that they do not treat a gift of money to a candidate from a member of a candidate's immediate family as the personal funds of the candidate and instead treat such gifts as a "contribution" as that term is defined in paragraph 4(l) above.

n. Federal election finance regulations provide guidance, stating, in relevant part, that only those " . . . (g)ifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle" constitute personal funds of a candidate. 11 CFR § 100.33. Mr. King attested that the $10,000 gift to Ms. King on May 16, 2008 was made consistent with his normal gifting practice and estate plan.

o. Mr. King further attested that the $135,000 in aggregated monetary gifts that he made to Ms. King after July 21, 2008 were made upon his good faith subjective belief that, in making the gifts, he could rely on an opinion from a Registry staff person regarding a candidate's "private finances" as expressed in a July 21, 2008 electronic mail message.

p. Upon recommendation, the Registry found probable cause to believe that Mr. King violated KRS 121.150(6) and KRS 121.150(12) by making three (3) extraordinary monetary gifts aggregating to $135,000 to Ms. King, which he clearly intended for Ms. King to use to fund her campaign for District Judge during the 2008 general election cycle.

q. For purposes of settlement, Mr. King agrees that the Registry has found that probable cause exists to believe that Mr. King violated KRS 121.150(6) and KRS 121.150(12) by (1) gifting $35,000 to Ms. King on October 15, 2008; (2) gifting $50,000 to Ms. King on October 24, 2008; and (3) gifting $50,000 to Ms. King on November 5, 2008, with the awareness that Ms. King would use these funds for her campaign; and that the Registry has found that these alleged violations were not committed

knowingly, as Mr. King may have believed that gifts to his daughter were a private matter, yet he voluntarily disclosed the extraordinary gifts by Affidavit while this action was pending. By entering into this Conciliation Agreement, Mr. King does not admit any alleged violation of KRS Chapter 121; and the Registry agrees that this Conciliation Agreement shall not constitute an admission of any violation of any law by Mr. King.

5. Pursuant to KRS 121.140(2), Mr. King agrees to pay a civil penalty in the amount of $15,000.00 made payable to the Kentucky State Treasurer for the referenced violations.

6. The Registry reserves the right to review compliance with this Conciliation Agreement. If the Registry believes that Mr. King has not complied with the terms and/or conditions of this Conciliation Agreement, the Registry may institute a civil action in Franklin Circuit Court or the Circuit Court for the county of Mr. King's residence to enforce this Conciliation Agreement pursuant to KRS 121.140(3).

7. Upon execution of this Conciliation Agreement by all parties herein, payment of the civil penalty assessed by Mr. King, and approval of the Conciliation Agreement by the Board of the Registry, this Conciliation Agreement shall become effective and this complaint will be dismissed with prejudice.

8. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

9. It is agreed and understood that the specific terms of this Conciliation Agreement are deemed confidential until executed by the parties hereto. Upon execution of this Conciliation

Agreement by all parties hereto and approval by the Registry Board, this Conciliation Agreement shall become a matter of public record and the statutory requirement of confidentiality shall no longer apply to this Conciliation Agreement in accordance with 32 KAR 2:050, Section 2.

FOR THE KENTUCKY REGISTRY OF ELECTION FINANCE:

Sarah M. Jackson, Executive Director — Date: 3/25/10

Emily Dennis, General Counsel — Date: 3/25/2010

FOR RESPONDENT JAMES O. KING, JR.:

James O. King, Jr. — Date: 12/20/9