

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: GLENDELL RUSS,)
)
 Respondent.) Case No. 00-2536EC
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Carolyn S. Holifield, held a formal hearing in this case on Tuesday, October 31, 2000, in Tallahassee, Florida.

APPEARANCES

For Advocate: James H. Peterson, III, Esquire
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For Respondent: Larry K. White, Esquire
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STATEMENT OF THE ISSUES

The issue for determination is whether Respondent, while a member of the Quincy City Commission, violated Subsection 112.313(6), Florida Statutes, by corruptly using, or attempting to use his official position as a Quincy City Commissioner in private meetings with Quincy City officials for the purpose of improperly influencing decisions at the Quincy Police Department to secure a special benefit for himself or others; and if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On April 21, 2000, the Florida Commission on Ethics issued an Order Finding Probable Cause to believe that Respondent, Glendell Russ, while a member of the Quincy City Commission, violated Subsection 112.313(6), Florida Statutes, by corruptly using his official position in private meetings with Quincy City officials in an attempt to improperly influence decisions at the Quincy Police Department for his personal benefit or the benefit of others. On or about June 20, 2000, the case was forwarded to the Division of Administrative Hearings for assignment to an Administrative Law Judge to conduct the proceeding.

Prior to the final hearing, the parties submitted a Joint Prehearing Stipulation which set forth a number of stipulated facts which required no proof at hearing.

On the day of the hearing, Respondent filed a Motion to Dismiss and a Motion for Official Recognition of certain findings of fact set forth in the Recommended Order in In re: Carolyn Ford, DOAH Case No. 99-2411EC. At hearing, the undersigned denied the Motion to Dismiss and reserved ruling on the Motion for Official Recognition. Upon consideration of the Motion for Official Recognition, the Advocate's objection, and applicable law, Respondent's Motion for Official Recognition is denied.

At the final hearing, the Advocate called six witnesses: Robert Barkley, Rodney Moore, Marcus Dixon, Anthony Powell, Robert Jackson, and Auburn Ford. The Advocate offered six exhibits that were received into evidence. At the Advocate's request and without objection, official recognition was taken of

the Quincy City Charter and related laws. Respondent testified on his own behalf and called four witnesses: Keith Dowdell, Leonard Griffis, Pamela Braynen, and Anthony Powell. Respondent offered one exhibit that was received into evidence.

A Transcript of the proceeding was filed on November 20, 2000. At the conclusion of the hearing, the time set for filing the proposed recommended orders was set for 10 days after the Transcript was filed. Prior to that date, Respondent filed an unopposed Motion for Extension of Time to submit the proposed recommended orders. The motion was granted, and the time for filing proposed recommended orders was extended to December 21, 2000. Subsequently, Respondent filed two additional unopposed motions requesting further extensions. Both motions were granted, and the time for filing proposed recommended orders was extended to January 2, 2001, and then to January 3, 2001. Both parties timely filed Proposed Recommended Orders under the extended time frame.

FINDINGS OF FACT

1. Glendell Russ (Respondent), was elected to the City Commission for the City of Quincy in Gadsden County, Florida, in 1997 and served in that capacity from April 1997 until February 22, 1999.

2. By virtue of his position as a City Commissioner for the City of Quincy, Respondent was subject to the requirements of Part III, Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees (Code of Ethics).

3. While serving as a City Commissioner for the City of Quincy, Respondent was subject to the provisions of the Quincy City Charter.

4. In 1995, there was a car accident in Gadsden County, Florida, that resulted in the death of two people, one of whom was Respondent's cousin. Officer Jim Corder, a police officer with the Quincy Police Department, was involved in the accident.

5. Respondent had several concerns related to the aftermath of the 1995 fatal car accident. First, Respondent believed that Corder was intoxicated at the time of the accident but was escorted from the accident scene by Officer Glenn Beach, another officer with the Quincy Police Department, prior to a blood alcohol test being administered. Second, Respondent was disturbed because he thought that Officer Robert Barkley of the Quincy Police Department, who arrived at the accident scene after the on-the-scene investigation was completed, seemed nonchalant about the accident, despite the fact that there were two fatalities. Finally, Respondent was convinced that the Quincy Police Department wanted to cover up the facts surrounding the accident.

6. Respondent was dissatisfied with the manner in which the police department handled the investigation of the 1995 fatal car accident. As a result thereof, he was a continuously outspoken critic of the Quincy Police Department, including Robert Barkley.

7. Respondent's decision to run for City Commissioner was motivated, in part, by his concern with the way the Quincy Police

Department had handled the investigation of the 1995 fatal car accident involving the death of his cousin.

8. During Respondent's tenure on the Quincy City Commission, he was persistent in his efforts to have an independent investigation of the 1995 car accident. Eventually, after Respondent was elected as a City Commissioner, the Quincy City Commission authorized that an independent investigation be conducted. However, the investigation was never completed because police officers failed to cooperate with the investigators.

9. At all times relevant to this proceeding, Robert Barkley was employed as a police officer with the Quincy Police Department. While so employed, Barkley also was grant coordinator and had oversight responsibility for a truancy program operated by the Quincy Police Department.

10. Anthony Powell worked as a coordinator of the truancy program for approximately three years and, during that entire time, was supervised by Barkley.

11. During an approximate three-month period of time in early 1998, Barkley, as Powell's supervisor, disciplined Powell at least three times. These disciplinary actions resulted in Barkley's suspending Powell and issuing several written reprimands to him. According to Barkley, he took the disciplinary action because of Powell's failure to follow proper procedures.

12. Two of the three disciplinary actions taken by Barkley against Powell involved Respondent and occurred while Respondent was a City Commissioner.

13. In 1998, but prior to May 19, 1998, Barkley disciplined Powell for allowing Respondent on the premises of the truancy center and using profane language in the presence of students. Barkley was concerned that Respondent's conduct was disruptive to the students and also believed that Respondent should not have been on the premises because of certain things in his background.

14. Prior to Barkley's disciplining Powell for allowing Respondent on the premises of the truancy center, Barkley had written a note to Powell directing him to not allow Respondent in the truancy center. Respondent learned of Barkley's directive and, thereafter, went to the center and confronted Barkley and accused him of taking that action because he disliked Respondent.

15. Again, in early 1998, Barkley disciplined Powell for transporting a student from the truancy center to a house owned by a friend of Respondent and having the youth retrieve a dead cat from under the house. Respondent was with Powell when this incident occurred. After Barkley learned about this incident, he suspended Powell for several days and issued a written reprimand, which was placed in Powell's personnel file.

16. Powell never denied that the "cat incident" occurred but believed that Barkley's written report or reprimand describing the incident was not completely accurate and contained lies. Powell expressed his disagreement with Barkley and the then-police chief about the report. However, there is no

indication that the report or written reprimand was changed to address Powell's concerns.

17. On May 19, 1998, the then-Quincy City Manager Ken Cowens appointed Robert Barkley as interim police chief of the Quincy Police Department. Barkley served as interim police chief from May 19, 1998, until about May 29, 1998, when City Manager Cowens named Barkley as permanent police chief of the Quincy Police Department.

18. Pursuant to the Quincy City Charter, the City Commission appoints the City Manager and the City Manager has sole authority to hire and fire department heads. Among the department heads that the City Manager is authorized to hire and to terminate is the Quincy Police Department's chief of police.

19. At or near the time Barkley was appointed interim police chief, the Commission had been presented with and/or had approved a resolution to remove Ken Cowens as city manager. At or near this time, it was also widely rumored that Anthony Powell would be the next City Manager of Quincy.

20. Respondent and Powell were good friends and Respondent supported Powell's appointment as City Manager.

21. Barkley had heard the rumor that Powell would be the next Quincy City Manager and believed that if Respondent could have his way, Powell would, indeed, become the next City Manager.

22. On or about May 19 or 20, 1998, after Barkley was named interim police chief, he called Respondent and requested that Respondent meet with him. On May 20, 1998, after Respondent called the City Manager and got permission to speak with Barkley,

he went to the police department to meet with Barkley. The meeting was also attended by Powell, who like Respondent, had been contacted by and asked to meet with Barkley. Later, Auburn Ford, joined the meeting.

23. Auburn Ford is the son of Quincy City Commissioner Carolyn Ford and had been Respondent's campaign manager for Respondent's successful bid to become a Quincy City Commissioner in 1997.

24. Barkley called the May 1998 meeting, attended by Respondent, Powell, and Ford, in an effort to "bury the hatchet." This "bury the hatchet" meeting called by Barkley was an effort to gain support for him to become permanent police chief.

25. When Barkley called the May 20, 1998, meeting, he was aware that Powell was widely rumored to become the next Quincy City Manager; that Powell and Respondent were friends; and that Respondent had spoken openly about Powell's becoming the next City Manager. Moreover, Barkley knew that the City Manager had the authority to hire and fire the Quincy police chief.

26. In light of the three disciplinary actions Barkley had taken against Powell in 1998, it would have been reasonable to assume that Powell's appointment as City Manager would likely jeopardize Barkley's chances of being named permanent police chief.

27. There was friction between Respondent and Barkley that may have resulted from various factors or circumstances. For some time, Respondent had openly criticized the Quincy Police Department, including Barkley, for what Respondent perceived as a

cover-up of the events surrounding the investigation of the 1995 fatal car accident. Also, in early 1998, Respondent had confronted Barkley after Barkley directed Powell not to allow Respondent on the truancy center premises. Finally, Respondent believed that, in the past, Barkley had lied and made false accusations against him.

28. During the May 1998 "bury the hatchet" meeting, Barkley urged Respondent to let "bygones be bygones." However, Respondent rejected that suggestion and stated that as far as he was concerned, it was "war" between the two of them.

29. Also, during the May 20, 1998, meeting, Barkley volunteered to remove disciplinary information from Powell's personnel file. Powell did not respond to Barkley's offer because he believed that such action was legally impermissible.

30. Respondent never requested, directed, or suggested that Barkley fire or take any other disciplinary action against Officer Corder or any other police officer.

31. The May 1998 meeting ended with no agreement among Respondent, Powell, and Barkley to put their past disputes behind them.

32. Powell was appointed interim City Manager of Quincy in June 1998. Shortly thereafter, the City Commission appointed Powell as City Manager for a one-year term.

33. The City Manager is empowered to appoint the chief of police for the City of Quincy, who is subject to the direction and supervision of the Quincy City Manager.

34. About a week after Powell's appointment as City Manager, he removed Barkley as chief of police. Powell's decision to remove Barkley was within the authority granted to him by the Quincy City Charter.

35. At all times relevant to this proceeding, Section 2.04(b) of the Quincy City Charter prohibited the City Commission or Commissioners from dictating the appointment or removal of city administrative officers or employees whom the City Manager or any of his subordinates is empowered to appoint. That section also provides that the City Commission may express their views and discuss with the City Manager anything pertaining to the appointment and removal of its officers and employees in City Commission meetings.

36. At all times relevant to this proceeding, Section 2.04(c) of the Quincy City Charter required that the Commission or its members deal with city officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. That section also prohibits the City Commission or its members from giving orders to such officers or employees either publicly or privately.

37. During Powell's tenure as City Manager, he had an "unwritten policy" that allowed City Commissioners to meet with and talk to city department heads in the presence of the City Manager. This procedure was based on Powell's interpretation of the Quincy City Charter.

38. Auburn Ford, a long-time friend of Powell and Respondent, had aspirations of serving with the Quincy Police

Department as chief of police. Prior to Powell's being appointed City Manager, both Powell and Respondent were aware of Ford's desire to become the police chief.

39. Although Respondent personally supported Ford in his desire to become police chief, he never attempted to influence City Manager Powell to appoint Ford to that position. Notwithstanding his "100 percent" support of Ford, Respondent realized that the City Manager had the sole authority and discretion to make that decision. Accordingly, Respondent neither directed nor attempted to influence the City Manager to hire Ford as police chief.

40. Despite City Manager Powell's friendship with Ford, in June 1998, after Powell removed Barkley as chief of police, he appointed Rodney Moore, not Ford, as the chief of police for the Quincy Police Department.

41. On June 24, 1998, soon after Moore was appointed police chief, he promoted Glenn Beach of the Quincy Police Department from the rank of captain to major. Later that day, someone from the police department called and advised Respondent of Beach's promotion. Respondent then immediately called Powell to inquire about the promotion and was told that Powell knew nothing about Beach being promoted.

42. Later, on June 24, 1998, at about 5:30 p.m., Chief Moore and City Manager Powell met in the Powell's office to discuss Beach's promotion. Powell explained that he had no problem with the promotion of Beach. However, he told Moore that

the promotion had to be rescinded because proper procedures had not been followed.

43. The position to which Beach was being promoted was a new position that was not currently included in the City of Quincy's organizational structure. Powell's interpretation of applicable policy was that before a person could be hired to a new position within the City of Quincy, the position would have to be approved and included in the City's budget. In this instance, the position had not been approved by the City Commission or included in its budget.

44. Based on his interpretation of the City's applicable policy, Powell directed Moore to rescind Beach's appointment until the Commission approved the position and included it in the budget. Powell's decision to direct Chief Moore to rescind Beach's promotion and, thereby, reject the promotion was within his authority. Chief Moore agreed with City Manager Powell and rescinded Beach's promotion. A memorandum rescinding the promotion was prepared by Chief Moore the next day.

45. Beach was promoted two years later, after the City Commission approved the position and included it in the City's budget.

46. On June 24, 1998, Respondent came to City Manager Powell's office while City Manager Powell and Chief Moore were meeting, but after Powell and Moore had already discussed and resolved the matter related to Beach's promotion. Nonetheless, Respondent was angry that consideration was being given to promoting Captain Beach. Respondent told City Manager Powell

that the promotion of Captain Beach seemed inappropriate in light of the City Commission's recent decision to have an independent investigation conducted of the 1995 car accident. Respondent believed that Captain Beach was part of the focus of the independent investigation because allegedly he had escorted Officer Corder, the police officer involved in the 1995 accident, from the accident scene before a blood alcohol test could be performed. Respondent argued that Beach should not be considered for a promotion until the independent investigation was completed.

47. With the Commission's recent appointment of Powell as City Manager, Respondent had expected positive changes in the City of Quincy. However, Respondent did not view the proposed promotion of Beach as a step in that direction. Respondent told City Manager Powell that if things were going to continue as they had in the past, the former city manager and the former police chief should be brought back. Respondent also told Powell that "things might not work out" for Powell, thereby implying that Powell's contract might not be approved when it came up to the City Commissioner for a final vote.

48. Powell, who had been friends with Respondent for about 15 years, knew that Respondent was very angry at the time he made the comments and did not perceive Respondent's comments as a threat to his job.

49. Even though Chief Moore was in the City Manager's office when Respondent made the comments described in paragraphs

46 and 47, the comments were directed to City Manager Powell, and not to Chief Moore.

50. Russ never directed or attempted to influence City Manager Powell or Chief Moore to rescind the promotion of Beach.

51. At or near the time Moore was appointed chief of police, Ford applied for a position with the Quincy Police Department as a reserve officer. A reserve officer must be a certified law enforcement agent, and service as a reserve officer with a law enforcement agent counts toward maintaining law enforcement standards.

52. Reserve officers with the Quincy Police Department work on an as-needed basis, typically eight hours a month. They work either on a voluntary basis or at an hourly rate of about \$11.00 an hour.

53. The reserve officer position applied for by Auburn Ford was for eight hours per month and was essentially for Ford to maintain his credentials and not for pay.

54. Chief Moore had some reservations about hiring Ford because Ford's mother, Carolyn Ford, was a member of the City Commission and because of concerns related to Ford's employment history. City Manager Powell met with Chief Moore regarding Ford's possible employment with the police department. After reviewing the matter, Powell advised Chief Moore that if Ford met all the prescribed state standards, there was no reason why he could not be hired.

55. Respondent was an advocate for Auburn Ford's getting a job with the Quincy Police Department and was persistent in

making inquiries about Ford's application for a reserve officer position.

56. Ford never asked Respondent to call City Manager Powell or Chief Moore about hiring him as a reserve officer. However, Respondent recalled that Ford told him that he had called the police department almost daily to inquire about his application and had been told by Moore or someone in that office that the application had not been processed.

57. Apparently, some time after Ford submitted his application, Respondent contacted City Manager Powell and Chief Moore regarding the status of Ford's application.

58. During the summer of 1998, after Ford submitted his application to the Quincy Police Department, Respondent "mentioned" the application of Ford to Powell a couple of times a day for about a month. Powell considered and interpreted Respondent's numerous inquiries about Ford's pending application to be a concern about the application review process and not demands that Ford be hired by the Quincy Police Department.

59. Several weeks after Ford's application had been submitted to the Quincy Police Department, Respondent also made inquiries or comments to Chief Moore about Ford's application. Except in one instance, these inquiries or comments were made outside the presence of the City Manager. Respondent made two such inquiries of Moore when both men were at the local recreation center. In another instance, immediately after a City Commission meeting, Respondent asked Chief Moore about the delay in processing Ford's application. Finally, on July 20, 1998,

during two separate telephone conversations, Respondent asked and/or made comments to Chief Moore about Ford's application.

60. During the summer of 1998, Respondent went to the recreation center on a regular basis. Sometimes when Respondent was at the center and saw Chief Moore and Marcus Dixon, a friend of Moore's, in the weight room, he would stop and talk to them. Once Respondent asked Chief Moore about the status of Ford's application. In a second conversation, Respondent asked why the application review process was taking so long. Respondent further commented that he believed someone had "dropped the ball" on the processing of Ford's application and that if he found out that had happened, "heads were going to roll."

61. In the conversations between Respondent and Chief Moore at the recreation center, Respondent's inquiries and comments focused on the processing of Ford's application. The credible testimony of Dixon, who heard both conversations, was that Respondent's questions and comments about Ford's application focused on the length of time it was taking the police department to process the application and Respondent's belief that it was unfair to "stall" or purposely delay the processing of Ford's application.

62. During the conversations Respondent had with Chief Moore at the recreation center, Respondent never directed or tried to influence Chief Moore to hire Ford. Neither did Respondent threaten to have Chief Moore fired if Ford were not hired or promise anything to Chief Moore if Ford were hired.

63. In the summer of 1998, after a City Commission meeting, Respondent approached Chief Moore and asked why Ford's application had not been processed. At that time, Chief Moore was going to the scene of a disturbance and did not have time to discuss the matter with Respondent. As a result, this encounter lasted about "a split second."

64. During this very brief conversation between Respondent and Chief Moore after the Commission meeting, Respondent never directed Chief Moore to hire Ford nor did he threaten to fire Chief Moore if he did not hire Ford.

65. On July 20, 1998, at about 1:40 p.m., about one month after Ford applied for the position of reserve officer, Respondent made two telephone calls to Chief Moore. In the first telephone conversation, Respondent asked Chief Moore what the "hold up" was on Ford's application. Respondent also told Moore that "he had problems" because Ford's application had not been processed in a timely manner. Finally, Respondent told Chief Moore that the application should be processed as any other application and urged Moore to "just get it done." During this conversation, Respondent also told Chief Moore that he was very upset because he had just been fired from his job for no apparent reason.

66. Respondent's comments regarding Ford's application and described in paragraph 65 were made in the context and tone of a "casual conversation." The telephone conversation was short, and most of Respondent's comments focused on his being upset about getting fired from his job earlier that day. Chief Moore

did not interpret Respondent's inquiries or comments concerning Ford's application as a demand that he hire Ford. Moreover, Chief Moore did not perceive that Respondent was threatening his job if he did not hire Ford.

67. Respondent telephoned Chief Moore a second time on July 20, 1998, at about 4:40 p.m., from Commissioner Carolyn Ford's office, where he had been working as a volunteer to set up a computer lab. Respondent began asking Chief Moore about the police department's application process and Ford's application. As Chief Moore began explaining the process and the need for a background check, Respondent told Chief Moore to hold on and talk to Commissioner Ford about her son's application.

68. By the first week in August 1998, Respondent believed that Ford's application had been pending for about two months with no action by the Quincy Police Department. At Respondent's request, a meeting was held that week with City Manager Powell, Chief Moore, and Respondent. The meeting was held in the City Manager's Office and comported with Powell's "unwritten policy" that commissioners could meet with department heads if the City Manager were present.

69. In the August 1998 meeting, Respondent made several complaints to City Manager Powell about the police department. Respondent expressed concern that black police officers within the department were not being promoted. He also questioned why Ford's application was not being processed in a more timely manner. Finally, Respondent complained about how long it took the police department to give him an incident report. The

incident to which Respondent was referring involved someone "bleaching" the convertible top of his car on July 16, 1998, while it was parked in front of the Quincy City Hall. Respondent indicated that despite his making numerous requests for the incident report, the police department did not give him the report until August 3, 1998, more than two weeks after the incident occurred.

70. At the August 1998 meeting described in paragraphs 68 and 69, Chief Moore, who had been police chief for not more than two months, felt intimidated by the manner and tone that Respondent communicated his concerns about the police department. Even though Respondent made the comments in the presence of both Chief Moore and City Manager Powell, Moore believed that Respondent's comments were directed to him since he was responsible for all the hiring, firing, and promotion decisions of the police department.

71. Ford was Respondent's long-time friend and campaign manager as well as a constituent of Respondent, as he lived in the district that Respondent represented on the City Commission.

72. Respondent acknowledged that he advocated for Ford as he would have for any of his constituents. In this case, Respondent was concerned about the time it took the police department to process the application and inform the applicant of its decision, irrespective of whether that decision was to hire or not hire the person.

73. Respondent's inquiries and advocacy regarding Ford's application related to the application process. Although not

necessarily true, Respondent believed that Ford's application was being unfairly delayed and thought that the application could and should be processed in a more timely manner.

74. In this case, Respondent simply believed that the application review process took too long and that it was unfair not to let Ford know whether he was going to be hired.

75. Respondent did not direct or attempt to influence Chief Moore or City Manager Powell to hire Auburn Ford. Moreover, Respondent never threatened the job of Chief Moore or City Manager Powell by conditioning their continued employment on hiring Auburn Ford.

76. Mere inquiry by a City Commissioner to a city department head regarding the status of someone's application for a job within that department, or even a recommendation by a City Commissioner for the hiring of an applicant is not, per se, improper. In fact, it was not unusual for City Commissioners to be listed as references on individuals' employment applications for positions with the City of Quincy.

77. Ford was eventually hired based upon Chief Moore's recommendation to City Manager Powell.

CONCLUSIONS OF LAW

78. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

79. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission on Ethics to conduct investigations and to make public reports on

complaints concerning violations of Part III, Chapter 112, Florida Statutes (Code of Ethics for Public Officers and Employees).

80. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceedings. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative that Respondent violated Subsection 112.313(6), Florida Statutes. Therefore, the burden of establishing by clear and convincing evidence the elements of Respondent's violation is on the Commission. Lantham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1996), citing Department of Banking and Finance v. Osborne Stern, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

81. As noted by the Supreme Court of Florida:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In Re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

82. It is alleged that Respondent violated Subsection 112.313(6), Florida Statutes, by improperly using or attempting to use his position as a City Commissioner to influence the firing of Officer Jim Corder, the hiring of Auburn Ford, the reversal of Captain Beach's promotion, and the removal of reprimands from Anthony Powell's personnel file.

83. Subsection 112.313(6), Florida Statutes, provides in pertinent part the following:

MISUSE OF PUBLIC POSITION. - No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

84. The term "corruptly" is defined by Subsection 112.312(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

85. In order to establish a violation of Subsection 112.313(6), Florida Statutes, the following elements be proved:

1. The Respondent must have been a public officer or employee.
2. The Respondent must have:
 - a) used or attempted to use his official position or any property or resources within his trust, or
 - b) performed his official duties.

3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for himself or others.
4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting himself or another person from some act or omission which was inconsistent with the proper performance of his public duties.

86. The first element (that Respondent is a "public officer") required to show a violation of Subsection 112.313(6), Florida Statutes, has been met by stipulation of parties.

87. To establish a violation of Subsection 112.313(6), Florida Statutes, it must next be established that Respondent used or attempted to use his official position to secure a special privilege or benefit for himself or others. These elements have not been proven.

88. The evidence adduced at hearing failed to clearly and convincingly establish that Respondent committed the acts that form the underlying basis for the allegations. Specifically, the evidence failed to establish that Respondent used or attempted to use his position as a Commissioner to influence the hiring of Auburn Ford, Jr., the firing of Officer Corder, the reversal of Captain Beach's promotion, and the removal of reprimands from Anthony Powell's personnel file.

89. In sum, the evidence at the final hearing failed to clearly and convincingly show that Respondent used or attempted to use his position to secure a special privilege for himself or others.

90. Based on the foregoing conclusions, the second and third elements necessary to prove a violation of Subsection

112.313(6), Florida Statutes, have not been established. Therefore, it is unnecessary to address the fourth element noted in paragraph 85 above.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order and public report be entered finding that Respondent, Glendell Russ, did not violate Subsection 112.313(6), Florida Statutes.

DONE AND ENTERED this 15th day of February, 2001, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
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Filed with the Clerk of the
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this 15th day of February, 2001.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.