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State of Florida
COMMISSION ON ETHICS
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January 29, 2002

FILED
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The Honorable Jeb Bush
Governor
The Capitol
Tallahassee, FL 32399-0001

Re: Complaint No. 99-101, In re TIMOTHY HOLMES

Dear Governor Bush:

The State of Florida Commission on Ethics has completed a full and final investigation of the complaint filed against Mr. Timothy Holmes, formerly a member of the Opa-Locka City Commission. Pursuant to Section 112.324(7), Florida Statutes, we are reporting our findings and recommending appropriate disciplinary action to you in this case.

Therefore, we are enclosing a copy of our file and the Final Order and Public Report in this matter. As we have found that Mr. Holmes violated Section 112.313(6), Florida Statutes, in the manner described in the order, we recommend that he pay a civil penalty in the amount of \$1,000, that he be ordered to pay restitution of \$1,353, and that he receive a public censure and reprimand.

If we may be of any assistance to you in your deliberations, please do not hesitate to contact us. We would appreciate your informing us of the manner in which you dispose of this matter. For information regarding the collection of this civil penalty, please contact the Office of the Attorney General, Ms. Virilindia Doss, Assistant Attorney General.

Sincerely,

Handwritten signature of Bonnie J. Williams in cursive.
Bonnie J. Williams
Executive Director

BJW/jcc

Enclosures

cc: Mr. James H. Greason, Attorney for Respondent
Ms. Virilindia Doss, Commission's Advocate
Mr. Joseph M. Centorino, Complainant

AT

01-1820EC
JBC
closed

FILED

DATE FILED

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS
ADMINISTRATIVE
HEARINGS

JAN 29 2002

COMMISSION ON ETHICS

In re TIMOTHY HOLMES,)
)
Respondent.)
_____)

Complaint No. 99-101
DOAH Case No. 01-1820EC
Final Order No. COE 02-002

FINAL ORDER AND PUBLIC REPORT

On November 9, 2001, an Administrative Law Judge ("ALJ") for the Division of Administrative Hearings submitted his Recommended Order to the Commission on Ethics and the parties to the proceeding, Respondent Timothy Holmes and the Commission's Advocate. A copy of the Recommended Order is incorporated herein by reference.

The Respondent timely filed Exceptions to the Recommended Order, and the Advocate filed a Response to Respondent's Exceptions. There was no transcript of the hearing before the ALJ. The matter is now before the Commission for final agency action.

STANDARD OF REVIEW

The Administrative Procedures Act--Chapter 120, Florida Statutes--requires agencies to accept the ALJ's findings of fact and conclusions of law, except under certain limited circumstances.

Section 120.57(1)(l), Florida Statutes (2001), provides the standard of review for findings of fact in the Recommended Order. It provides, in relevant part:

Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon

competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

The Commission cannot reweigh the evidence considered by the ALJ. The Commission cannot reject findings of fact made by the ALJ unless there is no competent substantial evidence in the record to support the findings. Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985); and Bay County School Board v. Bryan, 679 So.2d 1246 (Fla. 1st DCA 1996), construing a provision substantially similar to Section 120.57(1)(l), Florida Statutes.

The Commission also has limited authority to reject or modify the ALJ's conclusions of law.

Section 120.57(1)(l), Florida Statutes (2001), provides that:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

The label assigned to a statement is not dispositive as to whether that statement is a conclusion of law or a finding of fact. Sapp v. Florida State Board of Nursing, 384 So.2d 254 (Fla.2d DCA 1980); Leapley v. Board of Regents, 423 So.2d 431 (Fla 1st DCA 1982); Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985); Kinney v. Department of State, 501 So.2d 129 (Fla. 5th DCA 1987). The obligation of the agency to honor the ALJ's

findings of fact may not be avoided by categorizing a contrary finding a “conclusion of law.” Goin v. Commission on Ethics, 658 So.2d 1131 (Fla. 1st DCA 1995).

RULINGS ON EXCEPTIONS

Holmes excepts to the ALJ's Finding of Fact in Paragraph 9 that there was no credible evidence that the City had adopted a resolution ten years prior to the Respondent's term authorizing the City to pay Commissioners' personal, long-distance telephone charges. Holmes urges the Commission to reject this Finding of Fact and substitute its finding that such a policy existed and that Holmes' conduct is thereby exonerated by the existence of this purported policy. The problem with Holmes' exception is that it does not set forth any grounds for the Commission's action. As noted by the Advocate in her Response, Section 120.57(1)(l), Florida Statutes, contains only two grounds for rejecting or modifying findings of fact and neither ground is raised by the Respondent in his Exceptions. Moreover, inasmuch as it is the burden of the party challenging a recommended order to provide a transcript of the hearing and the Respondent did not furnish us with a transcript, it is impossible to conduct a review the complete record and determine whether the challenged finding is supported by competent substantial evidence. Therefore, Respondent's exception is denied.

FINDINGS OF FACT

The Findings of Fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Conclusions of Law set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

2. Accordingly, the Commission on Ethics finds that the Respondent, as an Opa-Locka City Commissioner, violated Section 112.313(6), Florida Statutes.

RECOMMENDED PENALTY

The ALJ's penalty recommendation is appropriate and we accept it. In consideration of the foregoing and pursuant to Sections 112.317 and 112.324, Florida Statutes, the Commission recommends that the Governor impose a civil penalty upon Respondent Timothy Holmes in the amount of \$1,000, that he be ordered to pay restitution of \$1,353, and that he receive a public censure and reprimand.

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 24, 2002, in Tallahassee, Florida.

January 29, 2002
Date

Ronald S. Spencer, Jr.
Ronald S. Spencer, Jr.
Chair

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709 (physical address at 2822 Remington Green Circle, Suite 101); AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. James H. Greason, Attorney for Respondent
Ms. Virilindia Doss, Commission's Advocate
Mr. Joseph M. Centorino, Complainant
Division of Administrative Hearings ✓