

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: BETTY BURNEY,)
)
 Respondent.) Case No. 01-4246EC
)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal hearing in this case on January 29, 2002, in Jacksonville, Florida.

APPEARANCES

For Advocate: Virilindia Doss, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: No appearance

STATEMENT OF THE ISSUES

Whether the Respondent violated Subsection 112.3145(2)(b), Florida Statutes (1996 Supp.), by failing to file a CE Form 1, Statement of Financial Interests, within 30 days of her appointment to the Northeast Florida Regional Planning Council and/or Subsection 112.3145(2)(b), Florida Statutes (1997), by failing to timely file her 1997 CE Form 1, Statement of Financial Interests.

PRELIMINARY STATEMENT

After consideration of a Report of Investigation of a Complaint, and upon the recommendation of its Advocate, on June 13, 2001, the Florida Commission on Ethics (Commission) entered an Order Finding Probable Cause to believe that the Respondent, Betty Burney, violated Section 112.3145, Florida Statutes. On October 29, 2001, this case was forwarded to the Division of Administrative Hearings for assignment to an Administrative Law Judge. On October 30, 2001, the case was assigned to the undersigned Administrative Law Judge. On November 26, 2001, the case was set for hearing on January 29 and 30, 2002, in Jacksonville, Florida.

The final hearing was held January 29, 2002, in Jacksonville, Florida. The Advocate presented two witnesses: Brian Teeple, Executive Director, Northeast Florida Regional Planning Council, and Frankie Knight, Candidate and Records Director, Supervisor of Elections Office, Duval County, Florida, and offered six exhibits which were received into evidence and numbered Exhibits 1-6. The Respondent, Betty Burney, failed to appear at the final hearing. A Transcript was ordered and filed with the Division of Administrative Hearings on February 7, 2002. The Advocate submitted a Proposed recommended Order which was thoughtfully considered by the undersigned.

FINDINGS OF FACT

Based on the evidence presented, the following findings of fact are made:

1. The Respondent, Betty Burney, was appointed to the Northeast Florida Regional Planning Council on October 16, 1996, for a term expiring October 1, 1998.

2. The Northeast Florida Regional Planning Council is a broad-based agency that is authorized by Section 186.504, Florida Statutes. The Northeast Florida Regional Planning Council has two primary statutory responsibilities:

(1) reviewing local government comprehensive plans under Section 163.3174, Florida Statutes; and (2) coordinating the developments of regional impact process under Section 380.06, Florida Statutes. Both of these activities are land planning responsibilities.

3. The Respondent, as a member of the Northeast Florida Regional Planning Council, held a public position and, as such, was subject to the requirements of Subsection 112.3145(1)(a), Florida Statutes.

4. As a member of the Northeast Florida Regional Planning Council, the Respondent was required to file a CE Form 1, Statement of Financial Interests, within 30 days of her appointment.

5. The Respondent was specifically advised of the requirement to file a CE Form 1, Statement of Financial Interests, within 30 days in her appointment letter. In addition, the Executive Director of the Northeast Florida Regional Planning Council reviewed this requirement with the Respondent in an orientation session. The disclosure required to be filed within 30 days would have been for calendar year 1995.

6. The Respondent did not file a CE Form 1, Statement of Financial Interests, within 30 days of her appointment.

7. The Respondent filed a CE Form 1, Statement of Financial Interests, dated April 21, 1997, for the calendar year 1996.

8. As a member of the Northeast Florida Regional Planning Council, the Respondent was required to file a CE Form 1, Statement of Financial Interests, for the year 1997.

9. The 1997 CE Form 1, Statement of Financial Interests, was due to be filed by July 1, 1998, with a grace period extending to September 1, 1998.

10. The Respondent's name was on the list of persons required to file financial disclosures provided to the Duval County Supervisor of Elections by the Ethics Commission in 1998, filings required for calendar year 1997.

11. A CE Form 1, Statement of Financial Interests, was mailed to the Respondent by the Duval County Supervisor of Elections for 1997. When the Respondent failed to file her financial disclosure by July 1, 1998, the Duval County Supervisor of Elections sent her a certified letter notifying her of her delinquency.

12. The Respondent did not claim the certified letter, and never filed a CE Form 1, Statement of Financial Interests, for the year 1997.

CONCLUSIONS OF LAW

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

14. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees).

15. 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. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1981). The standard of proof in a proceeding in

which the Commission seeks penalties under Subsection 112.3145, Florida Statutes, is "clear and convincing" evidence. Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Therefore, the Advocate, on behalf of the Commission, has the burden of establishing by clear and convincing evidence the elements of the Respondent's alleged violations.

16. The Respondent was appointed to the Northeast Florida Regional Planning Council on October 16, 1996. Therefore, the applicable law is Subsection 112.3145(2)(b), Florida Statutes, (1996 Supp.), which provides:

Each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment or, in the case of a specified state employee, from the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or within 30 days from the date of appointment, whichever comes first.

17. Subsection 112.3145(1)(a)2, Florida Statutes (1996 Supp.), defines "local officer" as:

Any appointed member of a board; commission; authority, including any expressway authority or transportation authority established by general law; community college district board of trustees; or council of any political

subdivision of the state, excluding any member of an advisory body. A governmental body with land-planning, zoning, or natural resources responsibilities shall not be considered an advisory body.

18. As a member of a governmental body with land-planning responsibilities, the Respondent was a "local officer" as the term is defined in the statute. The testimony established that she failed to make the initial disclosure required by law, and there is no question that she violated Subsection 112.3145(2), as alleged.

19. The Respondent is alleged to have failed to make disclosure in 1998, for calendar year 1997. While there were some changes to Section 112.3145 in 1997, the applicable portions, quoted above, remained the same.

20. The Respondent remained a member of the Northeast Florida Regional Planning Council in 1997 and, as a member and "local officer," was required to make financial disclosure for that year. Financial disclosure for calendar year 1997 was due July 1, 1998, with a grace period extending to September 1, 1998. The Respondent did not file the required financial disclosure for calendar year 1997.

PENALTY

21. Section 112.317, Florida Statutes, sets out the penalties available on finding of a violation of the Code of Ethics, with the maximum dollar amount being \$10,000 per

allegation. In this case the Respondent exhibited complete indifference to the filing requirements. Despite being advised, both in her appointment letter and by the Executive Director of the Northeast Florida Regional Planning Council, of the necessity of filing within 30 days, she not only missed the deadline but never filed at all. In April 1997, she did file a CE Form 1, Statement of Financial Interests (for calendar year 1996), the copy of which revealed on its face a large-print warning that failure to make disclosure exposes the officer to fines of up to \$10,000. Nevertheless, the next year, she failed to make required annual disclosure.

RECOMMENDATION

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

RECOMMENDED that a final order and public report be entered finding that the Respondent, Betty Burney, violated Subsection 112.3145(2)(b), Florida Statutes, in the two instances alleged, and imposing a civil penalty of \$2,000 for her failure to file a CE Form 1, Statement of Financial Interests within 30 days of her appointment to the Northeast Florida Regional Planning Council and \$2,000 for her failure to file her 1997 CE Form 1, Statement of Financial Interests for a total fine of \$4,000.

DONE AND ENTERED this 20th day of February, 2002, in
Tallahassee, Leon County, Florida.

JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of February, 2002.

COPIES FURNISHED:

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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.