



matter was then forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge (ALJ) to conduct the formal hearing and prepare a recommended order. A formal evidentiary hearing was held before the ALJ on August 6, 2002. No transcript was filed with the ALJ but both parties filed proposed recommended orders. The ALJ's Recommended Order was transmitted to the Commission and to the parties on September 11, 2002, and the parties were notified of their right to file exceptions to the Recommended Order. Thereafter, the Commission's Advocate filed exceptions to the ALJ's Recommended Order as well as a transcript of the DOAH hearing, and the Respondent filed a Response to the Advocate's exceptions.

#### STANDARDS FOR REVIEW

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law and interpretations of administrative rules contained in the recommended order. However, the agency may not reject or modify findings of fact made by the ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Dept. of Business Regulation, 556 So. 2d 1204 (Fla. 5th DCA 1990); and Florida Department of Corrections v. Bradley, 510 So. 2d 1122 (Fla. 1st DCA 1987). Competent, substantial evidence has been defined by the Florida Supreme Court as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The agency may not reweigh the evidence, resolve conflicts therein, or judge the credibility of witnesses, because those are matters within the sole province of the ALJ. Heifetz v. Dept. of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Consequently, if the record of

the DOAH proceedings discloses any competent, substantial evidence to support a finding of fact made by the ALJ, the Commission is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, an agency 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.

Having reviewed the Recommended Order and the entire record of the proceeding, the Advocate's exceptions and the Respondent's response thereto, and having listened to the arguments of the parties, the Commission makes the following findings, conclusions, rulings and recommendations.

#### RULINGS ON EXCEPTIONS

The Commission's Advocate filed exceptions to Conclusions of Law Nos. 29 - 36, arguing that the Administrative Law Judge misapplied Section 112.3148(8), Florida Statutes, in determining whether the Respondent failed to disclose a reportable gift when he used a co-worker's seasonal passes for admission to Disney World theme parks. She requests that the Commission remand the matter to DOAH with directions on the proper statutory and rule methodologies for gift valuation so the Administrative Law Judge can then rule on whether the correct application of those methodologies impacts the Respondent's credibility. The Respondent filed a Response to the Advocate's Exceptions urging rejection of the Advocate's Exceptions and entry of a Final Order as

recommended by the Administrative Law Judge.

The Legislature set forth a comprehensive statutory scheme for valuing gifts in Section 112.3148(7). Under that subsection, each gift is valued according to the general rule of “cost to the donor” provided in (7)(a), “except as otherwise provided in this subsection . . . .” Therefore, unless a more specific valuation method is applicable, as a matter of law the value of a gift is always the “cost to the donor.”

Beginning in Conclusion of Law No. 30 of the Recommended Order, however, the ALJ analyzes the value of the passes accepted by the Respondent using a market value approach and ultimately concludes in Conclusion of Law No. 33 that because of a lack of proof of market value (“expert testimony” that would prove the “discount attributable to the element of risk,” in the words of the ALJ), “it cannot be found that the passes were worth over \$100.00.”

In our view, that method of valuation is not provided in the statute, and it was error to apply such a method of determining the value of the passes received by the Respondent. Here, the “cost to the donor” as found by the ALJ was approximately \$75, plus tax, for each of the four passes (Finding of Fact No. 4), for a total of \$300. Therefore, unless a more specific valuation method is provided in Section 112.3148(7), the value of the passes given to the Respondent was \$300.

As the ALJ noted, Section 112.3148(7)(h) provides that entrance fees, admission fees, and tickets are valued on the “face value of the ticket or fee, or on a daily or per event basis, whichever is greater.” The ALJ found in Conclusion of Law No. 29 that the “face value of each of the four passes was approximately \$75.00, plus tax,” which would have totaled \$300. That finding has not been challenged by either the Respondent or the Advocate. Alternatively, as the ALJ also noted, the daily cost of admission, based on the amount paid by Respondent’s wife, was \$152.12. This finding

also has not been challenged by either the Respondent or the Advocate. As the greater of these two values is the \$300 face value found by the ALJ, Section 112.3148(7)(h) provides that as the value of the four passes given to the Respondent. Even if, as the ALJ found, the passes were not the type of gift to be valued under (7)(h), the general rule of “cost to the donor” would provide the appropriate method for valuing the gift—again, \$300.

Although we disagree with the method applied by the ALJ in valuing the gift received by the Respondent, we do not disturb his ultimate conclusion that the Respondent did not violate Section 112.3148(8), Florida Statutes, by not reporting the passes. That subsection requires each reporting individual to “file a statement with the Commission on Ethics on the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value . . . .” By adopting this language as the basis for reporting gifts, the Legislature has made the reporting requirement turn on the reporting individual’s belief as to the value of what he or she received. This is a question of fact, provable by direct evidence or by circumstantial evidence. “Proof of knowledge or intent by circumstantial evidence is widely allowed, even in criminal cases.” Goin v. Commission on Ethics, 658 So.2d 1131 (Fla. 1<sup>st</sup> DCA 1995).

While we believe that the record contains sufficient evidence from which to conclude that the Respondent did know that the value of the passes he received exceeded \$100 in value, the record also contains competent, substantial evidence supporting the ALJ’s finding that the Respondent did not believe that the passes were worth more than \$100. Therefore, as we were directed by the District Court in Goin, we may not substitute our judgment in this question of fact for that of the ALJ.

Therefore, we approve of the arguments contained in the Advocate's exceptions to Conclusions of Law Nos. 29, 30, 31, 32, 33, 34, and 35; we deny her exception to Conclusion of Law No. 36; and we decline her request to remand this matter to the Division of Administrative Hearings for additional proceedings.

**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, except as modified herein, are approved, adopted, and incorporated by reference.

2. Based upon our review of the complete record, there is competent substantial evidence to support the ALJ's findings of fact and his ultimate conclusion that the Respondent did not violate Section 112.3148(8), Florida Statutes.

Accordingly, the Commission on Ethics concludes that the Respondent, as a Chief Assistant General Counsel for the Florida Department of Revenue, did not violate Section 112.3148(8), Florida Statutes. Therefore, the alleged violation is hereby dismissed.

ORDERED by the State of Florida Commission on Ethics meeting in public session on Thursday, December 5, 2002.

December 10, 2002  
Date Rendered

Patrick K. Neal  
Patrick K. Neal  
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, 2822 REMINGTON GREEN CIRCLE, SUITE 101, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; 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. D. Andrew Byrne, Attorney for Respondent  
Ms. Virilindia Doss, Commission Advocate  
Mr. Peter S. Fleitman, Complainant  
The Honorable Harry Hooper, Administrative Law Judge  
Division of Administrative Hearings