

1-7-03

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DIVISION OF
ADMINISTRATIVE
HEARINGS

State of Florida
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April 29, 2003

AT

02-2924 EC

HLH-Closed

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

Re: Complaint No. 00-115, In re SAMUEL G. S. BENNETT

Dear Governor Bush:

The State of Florida Commission on Ethics has completed a full and final investigation of a complaint filed against Mr. Samuel G. S. Bennett, who serves as Chairman of the Pierson Town Council. Pursuant to Section 112.324(8), Florida Statutes, we are reporting our findings 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. Bennett 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 \$4,000.00, 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, Mr. James H. Peterson, III, Assistant Attorney General.

Sincerely,

Bonnie J. Williams
Executive Director

BJW/jcc

Enclosures

cc: Mr. C. Allen Watts and Mr. Ty Harris, Attorneys for Respondent
Mr. James H. Peterson, III, Commission's Advocate
Mr. David G. Leonhard, Complainant

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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re **SAMUEL G. S. BENNETT,**)
)
 Respondent.)
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 _____)

Complaint No. 00-115
DOAH Case No. 02-2924EC

Final Order No. 03-183

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics, meeting in public session on April 24, 2003, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on January 7, 2003.

BACKGROUND

This matter began with the filing of a complaint on August 3, 2000 by David G. Leonhard alleging that the Respondent, Samuel G. S. Bennett, as Chairman of the Pierson Town Council, violated Section 112.313(6), of the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes). The allegations were found to be legally sufficient to allege a possible violation of this provision and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On June 11, 2002, the Commission on Ethics issued an order finding probable cause to believe that the Respondent had violated Section 112.313(6), Florida Statutes, by misusing his position in an attempt to change the zoning of his real property for his personal benefit. The 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 October 11, 2002. A transcript was filed with the ALJ and both parties timely filed proposed recommended orders. The ALJ's Recommended Order was transmitted to the Commission and to the parties on January 7, 2003, and the parties were notified of their right to file exceptions to the Recommended Order. Thereafter, the Respondent filed exceptions to the ALJ's Recommended Order and the Advocate filed a Response to the Respondent's exceptions. The matter is now before the Commission for final agency action.

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 Respondent's exceptions and the Advocate'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 Respondent filed exceptions to all or portions of Findings of Fact Nos. 6, 16, 17, 18, 20, 26, 31 and 32, arguing that they were not supported by competent substantial evidence. The Advocate, in his response, provided record citations for each challenged Finding of Fact. Because we must adhere to the standard of review stated in Section 120.57(1)(l), Florida Statutes, and because our independent review of the record assures us that there is competent substantial evidence to support Findings of Fact Nos. 6, 16, 17, 18, 20, 26, 31 and 32, the Respondent's exceptions to these findings are denied.

With regard to the Conclusions of Law challenged by the Respondent, he filed exceptions to Conclusion of Law Nos. 50, 51, 52 and 54. The Commission's latitude in rejecting an ALJ's conclusions of law is also constrained by Section 120.57(1)(l), Florida Statutes, to only those matters over which it has substantive jurisdiction or the interpretation of administrative rules over which it has substantive jurisdiction. None of the four exceptions filed by the Respondent approach this statutory standard. The issue in Respondent's exception to Conclusion of Law No. 50 involves a question of whether the ALJ found that Respondent made "actual" changes or "suggested" changes by the pencil marks on the zoning map. As noted by the Advocate, when read in conjunction with the Findings of Facts, the ALJ recognized that the penciled-in changes were suggestions. For this reason, the Respondent's exception to Conclusion of Law No. 50 is denied.

In his exception to Conclusion of Law No. 51, the Respondent excepts to the ALJ's characterization that a zoning change, once incorporated into the digitized map, could "slip through." However, there is no legal basis to reject this conclusion and thus, Respondent's exception to Conclusion of Law No. 51 is denied.

The exception to Conclusion of Law No. 52 centers on the Respondent's motivation in avoiding the \$150 per-parcel fee and from having to submit to the process in order to get his property rezoned. There is no legal basis to reject this conclusion as it appears to be drawn from the evidence adduced at hearing. Thus, the Respondent's exception to Conclusion of Law No. 52 is denied.

In challenging Conclusion of Law No. 54, the Respondent excepts to the ALJ's observation that he "dissembled" regarding his participation in making the pencil marks on his

properties as depicted on the map. There is nothing inherently inappropriate about an ALJ commenting on the credibility of a witness and, moreover, to the extent that the Conclusion of Law No. 54 contains findings of fact supported by competent substantial evidence, this exception is denied.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

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

2. Accordingly, the Commission on Ethics concludes that the Respondent, as Chairman of the Pierson Town Council, violated Section 112.313(6), Florida Statutes, by misusing his position to obtain a personal benefit by attempting to change zoning classifications on property that he owned.

RECOMMENDED PENALTY

The ALJ's recommendation of \$4,000 as a civil penalty for Respondent's violation of Section 112.313(6), Florida Statutes, is accepted. Likewise, his recommendation that the Commission recommend that a public censure and reprimand be issued to the Respondent also is accepted.

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 the

Respondent, SAMUEL G. S. BENNETT, in the total amount of \$4,000, and that he receive a public censure and reprimand.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 24, 2003.

April 29, 2003
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. Ty Harris, Attorney for Respondent
Mr. Allen Watts, Attorney for Respondent
Mr. James H. Peterson, III, Commission Advocate
Mr. David G. Leonhard, Complainant
The Honorable Harry L. Hooper, Administrative Law Judge
Division of Administrative Hearings