STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: DANNY HOWELL,	)	
	)	
Respondent.	)	Case No. 05-4333EC
	)	

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 August 25 and October 10, 2006, by video teleconference at sites in Orlando and Tallahassee, Florida.

APPEARANCES

For Advocate: Linzie F. Bogan, Esquire
Advocate for the Florida
Commission on Ethics
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: C. Randall Freeman, Esquire
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STATEMENT OF THE ISSUE

The issues for determination are whether Respondent violated Subsections 112.313(2), 112.313(4) and 112.313(6), Florida Statutes (2004),[1/] as alleged, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On April 26, 2005, the Florida Commission on Ethics issued an Order Finding Probable Cause to believe that Respondent, Danny Howell (Respondent), while serving as a member of the Ocoee City Commission, violated Subsections 112.313(2), 112.313(4) and 112.313(6), Florida Statutes. The Order Finding Probable Cause alleged that the following acts constitute the foregoing violations: (1) Respondent required former Ocoee City Manager James Gleason to pay a $150.00 fine that Respondent owed due to Respondent's failure to timely file his Campaign Treasurer's Report; (2) Respondent required Mr. Gleason to pay $354.18 for personal charges made by Respondent on his city-issued credit card; (3) Respondent required Mr. Gleason to purchase a computer for Respondent's son; and (4) Respondent required Mr. Gleason to take the steps necessary to restore water service to Respondent's home and waive all fees and costs associated with the termination of Respondent's service.

The case was forwarded to the Division of Administrative Hearings on or about November 23, 2005. Pursuant to notice issued December 7, 2005, the case was set for final hearing commencing on January 20, 2006. Prior to the scheduled hearing date, the Advocate filed a motion for continuance. The motion was granted, and the matter was rescheduled for February 3,

2006. On February 1, 2006, C. Randall Freeman, Esquire, entered an appearance on behalf of Respondent and also filed a motion for continuance. Respondent's motion for continuance was granted, and the final hearing was rescheduled for May 12, 2006. Subsequently, Respondent's counsel requested and was granted two additional continuances before the final hearing was conducted as noted above.

Prior to the hearing, the parties submitted a Joint Pre-Hearing Stipulation in which they stipulated to facts which required no proof.

At the final hearing, the Advocate called three witnesses: James Gleason, Wanda Horton, and Gequitha Cowan. The Advocate's Exhibits 1 through 10 and 12 through 17 were received into evidence. The Advocate's exhibits included the deposition testimony of Respondent and Richard Waldrop. Respondent testified on his own behalf and called four witnesses: Vicki Prettyman, Richard Waldrop, Sandra Howell, and James Gleason. Respondent's Exhibits A through E and G through U were received into evidence.

A Transcript of the proceeding was filed on November 21, 2006. At the conclusion of the hearing, by agreement and request of the parties, proposed recommended orders were to be

filed 30 days after the Transcript was filed. The parties subsequently requested and were granted two extensions of time in which to file their proposed recommended orders. Under the extended time frame, the parties were to file proposed recommended orders no later January 24, 2007. The Advocate's Proposed Recommended Order was timely filed. Respondent filed his Proposed Findings of Fact and Conclusions of Law and Memorandum of Law on January 29, 2007. The post-hearing submittals of both parties have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times relevant to this proceeding, Danny Howell was a duly-elected commissioner for the City of Ocoee, Florida (hereinafter "City" or "City of Ocoee"). As a commissioner for the City of Ocoee, Respondent was subject to the requirements of Chapter 112, Part III, Florida Statutes, the Code of Ethics for Public Officers and Employees.

2. At all times relevant to this proceeding, James Gleason was city manager for the City of Ocoee. Mr. Gleason was appointed city manager by the Ocoee City Commission in January 2001 and served in that position until March 2004.

3. When Mr. Gleason was initially appointed as city manager, Respondent did not vote in favor of Mr. Gleason.

4. During his tenure as city manager, Mr. Gleason was supervised by the Ocoee City Commission, which was comprised of five elected commissioners. As a commissioner, Respondent was one of Mr. Gleason's immediate supervisors.

5. Several years prior to Mr. Gleason's appointment as city manager, he had been a commissioner for the City of Ocoee and a candidate for mayor. As a result of Mr. Gleason's political involvement in the City, Respondent knew Mr. Gleason before he was appointed city manager.

6. When hired, Mr. Gleason's annual base salary was approximately $87,000.00. Mr. Gleason's annual base salary at the time of his termination from the position of Ocoee city manager was $103,000.00.

7. As a City commissioner, Respondent was paid a monthly salary of $400.00 per month to serve on the City Commission. In addition to his $400.00 monthly salary, Respondent received a monthly stipend of $275.00 for local travel.

Fine for Late-Filed Campaign Treasurer's Report

8. At all times relevant to this proceeding, Jean Grafton served as the Ocoee city clerk and as the City's supervisor of elections.

9. By letter dated April 12, 2001, Ms. Grafton advised Respondent that a $150.00 fine had been assessed against him due

to his Campaign Treasurer's Report not being timely filed. The same or a similar letter was also sent to Vickie Prettyman, Respondent's campaign treasurer.

10. Despite Respondent's having been notified of the $150.00 fine in April 2001, a year later the fine had not been paid.

11. After the $150.00 fine remained outstanding for more than a year, Ms. Grafton requested Mr. Gleason's assistance in getting Respondent to pay the fine. Ms. Grafton told Mr. Gleason that if Respondent did not pay the $150.00 fine, she would have to notify the Florida Elections Commission that Respondent had failed to pay the fine.

12. Upon learning that the $150.00 fine had not been paid, Mr. Gleason discussed the matter with Respondent. Respondent advised Mr. Gleason that Ms. Prettyman was to pay the fine. In making this statement, Respondent was reasonably relying on Ms. Prettyman's representation to him that she would pay the $150.00 fine.

13. As Respondent's campaign treasurer in 2001, Ms. Prettyman took responsibility for late-filing Respondent's Campaign Treasurer's Report in April of that year. Thus, Ms. Prettyman assumed she should pay the fine.

14. The $150.00 fine for the late filing of Respondent's Campaign Treasurer's Report was paid on May 17, 2002.

15. There is no dispute that Mr. Gleason delivered $150.00 in cash to the City Clerk's Office and paid the fine that had been assessed against Respondent. However, there was conflicting testimony between Ms. Prettyman and Mr. Gleason as to who provided the funds for the payment of the $150.00 fine and under what circumstances the fine was paid.

16. On May 17, 2002, Ms. Prettyman met with Mr. Gleason at the City's Beach Recreation Center, where Ms. Prettyman worked as interim recreation director for the City. The meeting was about an upcoming work-related project. After the meeting ended, Mr. Gleason reminded Ms. Prettyman that the $150.00 fine was still outstanding.[2/] Ms. Prettyman then told Mr. Gleason she got paid that day[3/] and would pay the fine after she cashed her paycheck during her lunch hour. Although it was lunch time, Ms. Prettyman told Mr. Gleason that she could not leave the recreation center until the other employee assigned to the center returned from lunch so that the center could remain open.[4/]

17. On May 17, 2002, Mr. Gleason volunteered to stay at the Beach Recreation Center, so it could remain open while Ms. Prettyman went to the bank to cash her paycheck.

18. When Ms. Prettyman returned to the recreation center, she told Mr. Gleason that she would go to City Hall to pay the fine later that afternoon. In response, Mr. Gleason offered to take the money to City Hall and make the payment for Ms. Prettyman since he was going there after he left the recreation center.

19. Ms. Prettyman accepted Mr. Gleason's offer to deliver the $150.00 to City Hall and pay the fine for her. Ms. Prettyman then gave Mr. Gleason $150.00 in cash to pay the outstanding fine.

20. Mr. Gleason never gave Ms. Prettyman a receipt for the payment. However, a few days after Ms. Prettyman gave the $150.00 to Mr. Gleason, she checked with Ms. Grafton to determine if the fine had been paid. In response, Ms. Grafton acknowledged that the payment had been received.

21. Mr. Gleason contradicts the foregoing account regarding payment of the $150.00 fine, as described and testified to by Ms. Prettyman. Specifically, Mr. Gleason denied that Ms. Prettyman gave him the $150.00 in cash to pay the fine and testified that he paid the fine out of his personal funds. According to Mr. Gleason, he paid the fine after being directed to do so by Respondent.

22. Mr. Gleason testified that after Ms. Grafton asked him to assist her in getting Respondent to pay the fine, he discussed the matter with Respondent on two or three occasions. Mr. Gleason testified that on one of these occasions, Respondent told him (Gleason) that he made more money than Respondent so he (Gleason) should pay the fine and make it go away.

23. Based on the foregoing comments that Respondent allegedly made, Mr. Gleason testified that he believed Respondent wanted, expected, or was directing him (Gleason) to pay Respondent's $150.00 fine. Furthermore, Mr. Gleason testified that he believed and/or feared that his job as city manager might or could be adversely affected if he did not pay the fine.

24. Contrary to Mr. Gleason's testimony, the credible testimony of Respondent is that he never directed or in any way coerced, threatened, or pressured Mr. Gleason to pay the $150.00 fine.

25. Ms. Prettyman's testimony regarding payment of the $150.00 fine and the circumstances surrounding the payment is found to be more credible than that of Mr. Gleason.

Waiver of Fees Related to Late Payment of Water Bill

26. During the time Mr. Gleason served as city manager, Respondent and his wife were sometimes late in paying for their residential water service.

27. In March 2003, the City of Ocoee determined that Respondent's residential water service would be terminated due to non-payment of the balance owed on the account.

28. On or about March 20, 2003, Cathy Sills, who worked in the City's Utilities Service Department (hereinafter referred to as "Utilities Department"), contacted Mr. Gleason and informed him that Respondent was on the City's water service cut-off list. Mr. Gleason then contacted Respondent and informed him that his water service was going to be turned off that day if his bill was not paid.

29. After being notified that his water service was scheduled to be cut-off, Respondent told Mr. Gleason that either he (Respondent) or his wife would go to the Utilities Department that day to pay the past due balance. Respondent also told Mr. Gleason that he would not be able to pay the late charges and any other related fees.

30. On March 20, 2003, after Mr. Gleason telephoned Respondent about his (Respondent's) delinquent water bill, Respondent went to the Utilities Department and paid his water

bill. Some time after Respondent spoke to Mr. Gleason, but before he arrived at City Hall to pay his water bill, the water service had been turned off.

31. Due to Respondent's existing financial difficulties, Respondent needed more time to pay the late charges or other fees related to the water bill. Nevertheless, Respondent never asked or directed Mr. Gleason to waive the late charges or other fees associated with his delinquent water bill. Furthermore, Respondent never asked or directed Mr. Gleason to make sure that Respondent's water service was not cut off to restore water services after it was cut off.

32. Mr. Gleason testified that after he talked to Respondent about his (Respondent's) delinquent water bill, he called Ms. Sills at the Utilities Department and asked her what the policy was regarding waiver of late charges. Mr. Gleason then told Ms. Sills that if the policy allowed for such a waiver, she should remove Respondent's late charges and the disconnect/service interruption fee from his account.[5/]

33. At all times relevant to this proceeding, the City of Ocoee had an informal "forgiveness" policy in which late charges and other penalties related to delinquent water bills were waived. The purpose of the policy was to provide assistance to individuals, who like Respondent, were having financial

difficulties. Consistent with the City's "forgiveness" policy, Mr. Gleason had routinely directed the Utilities Department employees to waive late fees and other fees related to delinquent water bills of eligible citizens and to work out payment plans for them.

34. Ms. Sills waived Respondent's late charges and the service interruption fee associated with Respondent's water bill after being directed to do so by Mr. Gleason. As a result of this waiver, on March 20, 2003, two late fee charges totaling $50.00 and one service restoration fee of $50.00 were "reversed" or removed from Respondent's account.

35. Ms. Sills confirmed the waiver in an e-mail to Mr. Gleason in which she wrote, "Pursuant to our conversation and you [sic] direction, I have reversed from [Respondent's] account" two late fees at $25.00 each and one service restoration fee of $50.00.

36. Respondent received a call from Ms. Sills advising him that the late fees and other fees related to his water bill had been waived. However, she did not mention why they were waived or at whose direction.

37. At the time Mr. Gleason directed Ms. Sills to waive Respondent's late fees, Mr. Gleason knew that Respondent was currently experiencing financial difficulties and had been

experiencing such difficulties for some time. Based on Respondent's financial circumstances, he was eligible for the waiver of late fees and service interruption fees under the City's "forgiveness" policy.

38. The City's "forgiveness" policy, which was applied in Respondent's case and effectively waived his late charges and service interruption fees, was also routinely used in other financial hardship cases.

39. Respondent had been delinquent in paying his water bill on other occasions because of the financial difficulties he was experiencing. However, the waiver of late fees and service interruption fees given to Respondent in March 2003, at the direction of Mr. Gleason, was the only waiver that Respondent ever received.

40. Not long before March 20, 2003, the City Commission adopted a policy which increased the late charges for delinquent water bills from $5.00 to $25.00. When the Commission was considering the fee increase, Respondent opposed the increase.

41. Notwithstanding Respondent's opposition to the increase in late charges for delinquent water bills, he believes that once a policy is adopted by the Commission, it should be applied equally to everyone. In accordance with this belief, Respondent did not ask or direct Mr. Gleason to violate City

policy with regard to Respondent's water service, water bill, or fees/charges related thereto.

Payment of City-Issued Credit Card on Balance

42. At all times relevant to this proceeding, City commissioners received a monthly stipend of $275.00 to cover travel costs and expenditures in the local area.

43. The City of Ocoee is located in Orange County, Florida. However, the resolution that established the monthly stipend for City commissioners defined the "local area" as Orange, Seminole, Lake, and Osceola counties.[6/]

44. In addition to receiving the monthly stipend of $275.00 for local travel, the City issued credit cards to the City commissioners.

45. Each month, the charges incurred by City commissioners were reviewed by the City's Finance Department to reconcile and ensure the legitimacy of the charges.

46. On May 9, 2002, Gequitha Cowan, executive assistant to the mayor and commissioners of the City of Ocoee, sent an e-mail to Respondent. In the e-mail, Ms. Cowan reminded Respondent that he had not yet paid the City the $354.18 to cover non-reimbursable charges that he charged on the City-issued credit card. Ms. Cowan sent Mr. Gleason a courtesy copy of the e-mail.

47. Of the $354.18 outstanding balance on the credit card, $157.83 was for expenses Respondent incurred that were related to his attending the League of Cities conference held in Atlanta, Georgia. The remaining credit card balance of $196.35 was for local charges, primarily to restaurants made during a seven-month period, September 1, 2001, through April 2002.

48. Respondent admitted that included in the $196.35 credit card balance is a $28.80 charge for which he should not be reimbursed. This charge resulted from Respondent's inadvertently using his City-issued (Visa) credit card, instead of his personal Visa credit card when he purchased medicine at a local store.

49. Except for the $28.80 charge, Respondent believed that the other charges at issue were expenses for which the City should have reimbursed him.

50. After Mr. Gleason received a copy of Ms. Cowan's May 9, 2002, e-mail, he met with Respondent to see if any of the charges identified in the e-mail were expenditures that could be properly reimbursed by the City. With respect to the $157.83 expenditure, Respondent presented no documentation to support reimbursement. As to the remaining balance (except the $28.80 Eckerd's charge), the credit card charges were for expenditures

made at establishments in the local area and were not reimbursable by the City.

51. There is no allegation that the expenditures made by Respondent were not legitimate expenses. However, based on the City's policy, expenditures for official City business in the local area should have been paid out of Respondent's monthly stipend. Such expenditures were not reimbursed by the City, even if the expenses were put on the City-issued credit card. Pursuant to the City's policy, generally, the City reimbursed City commissioners only for expenditures involving official business outside the local area.

52. Respondent sometimes mistakenly made improper charges when using his City-issued credit card because he did not understand the City's policy related thereto.[7/] In fact, as of the date of this proceeding, Respondent acknowledged that he still does not understand the policy. Due to Respondent's frustration with not understanding the City's policy and resulting problems associated therewith, Respondent voluntarily returned his City-issued credit card to the City's Finance Department in 2002.

53. Although Respondent believed, albeit mistakenly, that he should have been reimbursed for the subject charges on the City-issued credit card, he never brought the issue regarding

the disputed charges before the City Commission, the final arbiter of such disputes. Having failed to do so, Respondent does not dispute that he was obligated to pay the City $354.18, as determined by the City's Finance Department.

54. After Respondent received Ms. Cowan's e-mail and talked to Mr. Gleason about the charges, he did not immediately pay the charges. The reason Respondent did not pay the charges in May or early June 2002, was that he was not working. As a result of being unemployed, Respondent was experiencing financial difficulties and did not have the money to pay the $354.18 to the City.[8/]

55. On June 3, 2002, Mr. Gleason paid the City of Ocoee $354.18 from his personal funds to cover Respondent's outstanding City-issued credit card debt. Mr. Gleason paid the outstanding charges using a personal check which had the imprinted name of Mr. Gleason and Mr. Gleason's wife. The memo section of the check indicated that the check was for "miscellaneous expenses" for the same time period as Respondent's outstanding charges.

56. There is no dispute that on June 3, 2002, Mr. Gleason paid the $354.18 to cover Respondent's outstanding credit card charges. However, the circumstances surrounding the credit card

payment, the reason Mr. Gleason made the payment, and whether Respondent repaid Mr. Gleason for the payment are disputed.

57. Although, due to his financial situation, Respondent was unable to timely pay his outstanding $354.18 credit card charges, he never asked or directed Mr. Gleason to pay those charges. Furthermore, Respondent never coerced, threatened, or pressured Mr. Gleason to pay the credit card charges.

58. Respondent was out-of-town on June 3, 2002, the day Mr. Gleason paid his $354.18 credit card bill, but returned to the City of Ocoee a day or a few days later.

59. Respondent first learned that Mr. Gleason had paid the $354.18 outstanding credit card balance in or about early June 2002, after returning from his out-of-town trip. Mr. Gleason approached Respondent at City Hall and told him that he (Gleason) had taken care of the credit card bill. Mr. Gleason then gave Respondent the receipt which showed that Mr. Gleason had paid Respondent's outstanding $354.18 credit card bill.

60. Mr. Gleason told Respondent that he paid the credit card bill because he was trying to help him (Respondent) out with "Martha" and did not want Respondent to look bad.

61. Respondent was surprised to learn that Mr. Gleason had paid the $354.18. In response to Mr. Gleason's statements to Respondent described in paragraph 60, Respondent told

Mr. Gleason that he had no right to pay the outstanding credit card bill and that he did not want him to pay the bill. Respondent also told Mr. Gleason that his paying the bill would "create a bad problem" for both of them.

62. The "Martha" referred to by Mr. Gleason during his conversation with Respondent, discussed in paragraph 60, was Martha Lopez Anderson, a citizen of the City of Ocoee. At the time in question (May or early June 2002) Ms. Anderson, a very active citizen in the community and a familiar face at City Hall, was making public record requests regarding the travel expenses of City commissioners.

63. The travel records requested and being reviewed by Ms. Anderson were located in the Finance Department in City Hall. Consequently, it was common knowledge among many City employees at City Hall that Ms. Anderson was reviewing the City commissioners' travel records.

64. After Mr. Gleason paid Respondent's credit card balance, but prior to October 1, 2002, Richard Waldrop, a friend of Respondent and long-time City employee, became aware that Ms. Anderson was reviewing the City Commissioners' travel records. In fact, Ms. Anderson spoke to Mr. Waldrop about the matter and told him that Mr. Gleason had paid a bill for Respondent and that Respondent had not repaid Mr. Gleason.

65. Mr. Waldrop does not recall the actual date that he learned that Respondent owed Mr. Gleason money for the bill that Mr. Gleason had paid. However, Mr. Waldrop's credible testimony was that he is sure that it was prior to October 1, 2002.

66. After June 3, 2002, but prior to October 2002, Respondent was approached by Mr. Waldrop, who asked him if Mr. Gleason had paid a bill owed by Respondent. In response to his friend's inquiry, Respondent told Mr. Waldrop that Mr. Gleason had paid the bill, but without Respondent's prior knowledge. Respondent also acknowledged that he had not repaid Mr. Gleason, because he did not have the money.

67. Upon learning that Respondent had not repaid Mr. Gleason, Mr. Waldrop was concerned that this was something that Mr. Gleason might want to "hold over" Respondent's head. Mr. Waldrop told Respondent that this situation "didn't look good" and then offered to lend Respondent $420.00 so that he could reimburse Mr. Gleason.

68. Respondent accepted Mr. Waldrop's offer to lend him $420.00 so that he could repay Mr. Gleason.

69. In order to repay the loan to Mr. Waldrop, Respondent and Mr. Waldrop agreed that Respondent, through his (Respondent's) and his wife's cleaning service, would provide house cleaning services to Mr. Waldrop and his wife two hours

every other week until the debt was repaid. These services were provided at no charge for about a year, until the $420.00 debt was repaid.

70. After Respondent received the $420.00 loan from Mr. Waldrop, he reimbursed Mr. Gleason for the outstanding credit card balance that Mr. Gleason had paid on June 3, 2002. Although the amount Respondent owed Mr. Gleason was $354.18, when Respondent repaid Mr. Gleason, he gave Mr. Gleason $355.00 in cash.

71. Due to the passage of time, Respondent does not recall the exact date that he reimbursed Mr. Gleason for paying Respondent's $354.18 outstanding credit card debt. Nonetheless, Respondent testified credibly that he repaid Mr. Gleason weeks, rather than months, after he learned that Mr. Gleason had paid Respondent's credit card bill. Furthermore, Respondent testified credibly that he is certain that he reimbursed Mr. Gleason prior to October 1, 2002.

72. Mr. Gleason denied that Respondent repaid him the $354.18. Also, Mr. Gleason's testimony regarding the circumstances which resulted in his paying Respondent's outstanding credit card debt contradicts Respondent's testimony.

73. According to Mr. Gleason, he met with Respondent in or about May 2002, after receiving Ms. Cowan's e-mail, about his

credit card balance. Mr. Gleason testified that during that discussion, Respondent told Mr. Gleason that he (Gleason) made the "big bucks" and "could afford it [the credit card balance]."

74. In May 2002, when Respondent's outstanding credit card balance was at issue, Mr. Gleason knew that Respondent was having financial difficulties, as well as other problems. Mr. Gleason testified that, in light of those difficulties, when Respondent made the comments noted in paragraph 73, Mr. Gleason believed that Respondent either did not have the money to pay the credit card bill or did not intend to pay it.

75. Mr. Gleason did not interpret the alleged comments (that Mr. Gleason made "big bucks" and could afford to pay the outstanding credit card balance) as an attempt by Respondent to coerce, threaten, or pressure him to pay the $354.18 or to extort the money from him. Rather, Mr. Gleason testified that he implied from those comments that Respondent was asking Mr. Gleason for a loan.

76. Contrary to Mr. Gleason's interpretation of the foregoing comments made by Respondent, Respondent did not ask Mr. Gleason for a loan, imply that Mr. Gleason should lend him money to pay the $354.18 outstanding credit card balance, or direct Mr. Gleason to pay Respondent's outstanding credit card balance.

77. At this proceeding, Mr. Gleason testified that Respondent never repaid him for the $354.18 payment that he made to the City for Respondent. This testimony contradicts an earlier statement Mr. Gleason made at a City Commission meeting.

78. During the October 1, 2002, City Commission meeting, Mr. Gleason stated that the commissioner, for whom he had paid an outstanding credit card balance, had repaid him in full and that he (Gleason) owed the commissioner some change. Mr. Gleason did not name the commissioner to whom he was referring, but he was referring to Respondent.[9/]

79. Mr. Gleason made the statement that the commissioner had paid him in full, in response to comments of Ms. Anderson, in the context of a broader discussion about commissioners' travel expenses. Almost as an aside to the specific "travel expenses" topic being discussed, Ms. Anderson mentioned that inappropriate charges made by "commissioners" were being reimbursed by Mr. Gleason.[10/] During the course of making the foregoing comments, Ms. Anderson never specifically named the commissioners whose expenses were being reimbursed by Mr. Gleason.

80. The statement Mr. Gleason made at the October 1, 2002, City Commission meeting, is consistent with the credible testimony of Respondent on two points. First, Mr. Gleason's

statement that he was paid in full supports Respondent's testimony that he reimbursed Mr. Gleason for paying the $354.18 credit card balance to the City prior to October 1, 2002. Second, Mr. Gleason's statement that he owed the commissioner change is consistent with Respondent's testimony that, when he reimbursed Mr. Gleason, he gave Mr. Gleason $355.00 in cash. This was $.82 cents more than the outstanding credit card bill that Mr. Gleason paid.

81. In this proceeding, Mr. Gleason testified that when the issue of his paying Respondent's $354.18 credit card charges came up at the City Commission meeting, he did not tell the truth when he said that Respondent had paid him.

82. Mr. Gleason testified that on October 1, 2002, but prior to the City Commission meeting that day, Respondent approached Mr. Gleason and advised him that Respondent's $354.18 credit card bill issue might be raised at the meeting. Mr. Gleason also testified that Respondent told him that if the issue were raised at the meeting, Mr. Gleason should say that Respondent had paid/reimbursed him.[11/]

83. Mr. Gleason testified that he lied at the City Commission meeting at the behest of Respondent, because he "wanted to keep [Respondent's] favoritism in terms of [Gleason's] job."

84. As to matters related to the payment of Respondent's outstanding $354.18 credit card debt and the circumstances related thereto, Respondent's testimony is found to be more credible than that of Mr. Gleason.

Purchase of Surplus Computer

85. While serving on the City Commission, Respondent's wife, Mrs. Howell, and their son, frequently visited City Hall. During these visits, it was customary for Respondent's son, who was about ten-years-old, to visit Mr. Gleason, whose office was next door to Respondent's office. When Respondent's son went to Mr. Gleason's office, Mr. Gleason would give him candy and sodas.

86. Mr. Gleason and Respondent's son enjoyed a cordial relationship.

87. The City of Ocoee periodically disposes of surplus equipment, including computers, by use of a closed bid system which was open to employees and elected officials.

88. In or about September 2003, during one of Mrs. Howell's and her son's visits to Mr. Gleason's office, a discussion ensued about computers and the City's upcoming sale of its surplus computers. Mrs. Howell's son stated that he wanted one. That day, Mrs. Howell's son had gone to Mr. Gleason's office first, and she joined him there later.

89. In response to Respondent's and Mrs. Howell's son saying he wanted a computer, Mr. Gleason volunteered to get him one as a gift. Mrs. Howell responded by telling Mr. Gleason, "No. He [referring to her son] can wait."

90. Mrs. Howell rejected Mr. Gleason's offer initially because she felt that the family could not afford one, and she did not feel comfortable allowing her son to accept a gift from Mr. Gleason. However, she did not feel comfortable telling Mr. Gleason, especially in her son's presence, that she could not afford the computer her son wanted.

91. Mrs. Howell was adamant and repeatedly told Mr. Gleason that she did not want him to purchase a computer for her son. Nonetheless, Mr. Gleason insisted that he was going to get the computer for her son anyway.

92. After Mrs. Howell made it clear that she did not want Mr. Gleason to purchase a computer for her son, Mr. Gleason said to her, "Listen, I'm going to get it and you can do whatever you want, if you want to pay me back or whatever."

93. Mrs. Howell's final answer to Mr. Gleason was the same one that she initially shared with Mr. Gleason--she did not want him to purchase a computer for her son.

94. Mrs. Howell never asked or agreed to Mr. Gleason buying a computer for her son, and she never agreed to pay Mr. Gleason for purchasing a computer.

95. Respondent was not present in Mr. Gleason's office with his wife and son when Mr. Gleason and Mrs. Howell were discussing the surplus computer, but Mrs. Howell told Respondent about the conversation later.

96. After learning of his wife's conversation with Mr. Gleason, Respondent told Mr. Gleason that he did not want his son to have a computer. Based on this discussion, Respondent believed the matter was settled.

97. There was a computer in Respondent's home, and Respondent believed that for his ten-year-old son to have his own computer would be a detrimental distraction.

98. Mr. Gleason's offer to buy a surplus computer as a gift for Respondent's son was subject to Mr. Gleason being a successful bidder. In order to purchase one of the City's surplus computers, a potential purchaser had to submit a bid. Consistent with this policy, Mr. Gleason submitted a bid for a surplus computer.

99. On September 19, 2003, Mr. Gleason was notified that his bid of $130.10 was one of the successful bids and that he had won one of the City's surplus computers. A few days later,

Mr. Gleason purchased the surplus computer to give to Respondent's son.

100. On Monday, September 22, 2003, Mr. Gleason sent an e-mail to Respondent indicating that he had successfully bid on one of the surplus computers. In the e-mail, Mr. Gleason stated that he was going to pay for the computer on Tuesday and then "turn the PC [computer] over to [Respondent's son] for his room." Mr. Gleason then wrote, "We can work out the details later!" Both Respondent and his son read this e-mail.

101. The September 22, 2003, e-mail gave the false and/or misleading impression that Respondent had asked Mr. Gleason to purchase the computer for Respondent's son, knew that Mr. Gleason had submitted a bid on the computer, and had agreed to repay Mr. Gleason for the computer. In fact, none of those impressions were accurate. Respondent never asked Mr. Gleason to bid on a computer for Respondent's son or to purchase such computer. Neither did Respondent ever promise to pay Mr. Gleason for a computer.

102. Although the implication in the September 22, 2003, e-mail was false, there is no indication that Respondent replied to the e-mail. Furthermore, Respondent provided no explanation or reason as to why he failed to respond to the misleading e-mail.

103. On or about September 22, 2003, after Mr. Gleason paid for and received the surplus computer, and he took the computer to Respondent's home, unannounced.

104. When Mr. Gleason brought the computer to Respondent's home, Respondent and his wife were placed in an awkward position. Their son was home when Mr. Gleason brought the computer and was very happy and excited about getting a computer. Seeing the expression on her son's face, Mrs. Howell did not have the heart to tell Mr. Gleason to take the computer back. Rather than disappoint their son, Respondent and his wife allowed Mr. Gleason to install the computer.

105. Not long after Mr. Gleason brought the computer to Respondent's home, Respondent called Mr. Gleason several times and told him to come and pick up the computer. Despite Respondent's repeated directives, Mr. Gleason never came to get the computer.

106. At some point, Mr. Gleason left a voice mail message on Respondent's home telephone indicating that the surplus computer he purchased and gave to Respondent's son was a gift.

107. Rather than picking up the computer as Respondent had requested, on October 1, 2003, Mr. Gleason sent Respondent another e-mail message which stated, "The computer is a gift from [sic] to [Respondent's son], tell [Mrs. Howell] to not

worry about any cost-he is a good kid and I hope it helps him with his school work."

108. The October 1, 2003, e-mail implies that Mrs. Howell had agreed to pay for the computer, that Mr. Gleason had now decided that the computer was a gift, and that he no longer expected Mrs. Howell to repay him for purchasing the computer. However, that implication is not only misleading, but unfounded.

109. Nevertheless, Mrs. Howell never agreed to repay Mr. Gleason for the computer. Instead, she, like her husband, had repeatedly refused Mr. Gleason's offer to purchase a computer as a gift for their son.

110. Even though Respondent did not want Mr. Gleason to purchase a computer for his son, there is no indication that Respondent or his wife replied to the October 1, 2003, e-mail.

111. Respondent never directed, requested, threatened, coerced, or pressured Mr. Gleason to purchase a computer for their son. However, when Mr. Gleason brought the computer to Respondent's home, he accepted it.

112. After realizing he had exercised poor judgment in accepting the computer, Respondent did not return the computer to Mr. Gleason. Instead, Respondent kept demanding that Mr. Gleason pick up the computer from Respondent's home. Even when it became apparent that Mr. Gleason was not going to pick

up the computer, Respondent never returned the computer to Mr. Gleason.

113. The computer never worked properly so eventually, Respondent and/or his wife threw it in the trash.

114. Mr. Gleason disputes and contradicts the foregoing account of events related to his purchasing the computer for Respondent's son. Mr. Gleason testified that Respondent initially approached him and expressed an interest in the City's surplus computers. According to Mr. Gleason, Respondent asked if such computers could be purchased on a payment plan.

115. Mr. Gleason testified that after checking with the appropriate office, he advised Respondent that the City did not accept payment plans for the purchase of surplus computers and equipment. Mr. Gleason testified that Respondent then told Mr. Gleason that he (Respondent) wanted Mr. Gleason to get him a computer and that he expected Mr. Gleason to be successful on the bid.

116. Mr. Gleason testified that in October 2003, he decided to give the computer to Respondent's son because his relationship with Respondent by this time had become adversarial, and he decided that it would be in his best interest not to make an issue of purchasing the computer.

117. With regard to the purchase of the computer for Respondent's son and issues related thereto, the testimony of Respondent and Mrs. Howell is found to be more credible than that of Mr. Gleason.

Gleason's Termination as City Manager

118. In February 2004, about four months after Mr. Gleason gave the computer to Respondent's son, Respondent and two other City Commission members voted to terminate Mr. Gleason's employment with the City. As a result of this majority vote, Mr. Gleason was terminated as city manager.

119. Respondent voted to terminate Mr. Gleason because he believed that Mr. Gleason was not doing the job. Respondent also was concerned that Mr. Gleason had taken inappropriate and unsolicited actions (i.e., purchasing the computer in September 2003 and paying the $354.18 credit card debt in June 2002), presumably to help Respondent.

120. All the actions taken by Mr. Gleason were unsolicited and done gratuitously because Mr. Gleason thought that he was losing Respondent's support, and Mr. Gleason was trying to gain or regain Respondent's support. Instead of gaining Respondent's support, Mr. Gleason's inappropriate and unsolicited actions had the opposite effect. Respondent, displeased with Mr. Gleason's

inappropriate and unsolicited actions, was offended by those actions and voted to terminate Mr. Gleason as city manager.

121. The month after he was terminated, Mr. Gleason filed a Complaint with the Commission on Ethics (hereinafter the "Commission on Ethics" or "Commission") making the allegations, which are the subject of this proceeding.

CONCLUSIONS OF LAW

122. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

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

124. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and 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 Subsections 112.313(2), (4) and (6).

125. The Commission on Ethics proceedings, seeking recommended penalties against a public officer, require proof of the alleged violation(s) by clear and convincing evidence. See Latham v. Florida Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Therefore, in order to prevail, the Commission must establish by clear and convincing evidence the elements of Respondent's violations and the underlying facts upon which the alleged charges are based.

126. Clear and convincing evidence has been described by the Supreme Court of Florida as follows:

> [C]lear 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).

Alleged Violations of Section 112.313(6)

127. In this case, it is alleged that Respondent, while a City commissioner, violated Subsection 112.313(2), (4) and (6),

by requiring Mr. Gleason, then city manager, to: (1) pay Respondent's fine caused by the late-filing of Respondent's Campaign Treasurer's Report; (2) waive late fees and other costs associated with Respondent's delinquent water bill; (3) pay non-reimbursable expenses incurred by Respondent on his City-issued credit card; and (4) buy a computer for Respondent's son.

128. Subsection 112.313(6) provides as follows:

> 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. This section shall not be construed to conflict with s. 104.31.

129. The term "corruptly" is defined by Subsection 112.312(9), 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.

130. In order to establish a violation of Subsection 112.313(6), the following elements must 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 or her official position or any property or resources within his or her trust, or

b) performed his or her official duties.

3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.

4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

131. Respondent has stipulated that as a commissioner for the City of Ocoee, he was a "public officer," and, as such, subject to the requirements of Chapter 112, Part III, Florida Statutes. Therefore, the first element required to prove a violation has been established.

132. Next, it must be shown that Respondent used or attempted to use his official position, property, or resources within his trust or performed his official duties to secure a special privilege, benefit, or exemption for himself or others.

133. The evidence failed to establish that Respondent required, directed, coerced, threatened, or pressured Mr. Gleason to pay the $150.00 fine for the late-filed Campaign Treasurer's Report. In the instant case, the evidence proved that Respondent always believed that the fine would be paid by

his campaign treasurer, who had assumed responsibility for the fine and promised to pay it.

134. The underlying factual allegation upon which the violation of Subsection 112.313(6), is based is that Mr. Gleason paid the $150.00 fine. The evidence did not establish this alleged fact. The evidence established that the $150.00 fine was paid voluntarily by Respondent's campaign treasurer out of her personal funds. Therefore, the element related to "wrongful intent" need not be addressed.

135. The evidence failed to establish that Respondent required, directed, coerced, threatened, or pressured the city manager to waive any late fees or other costs associated with Respondent's water bill. To the contrary, the evidence showed that Respondent took no action to have the late fees and related charges waived and was unaware of the circumstances that resulted in the waiver.

136. Assuming arguendo that Respondent requested a waiver of the late fees and/or other costs related to his delinquent water bill, there would still be no violation of Subsection 112.313(6). The reason is that the waiver provided no special benefit to Respondent. The evidence showed that the City routinely granted waivers of late fees and other charges to citizens of the City of Ocoee who were having financial difficulties under the City's "forgiveness" policy. It is

undisputed that Respondent was eligible for the waiver he received under the "forgiveness" policy. Therefore, the one-time waiver granted to Respondent under the City's forgiveness policy was consistent with the City's existing policy and was not a special benefit to him.

137. Having failed to establish that Respondent used or attempted to use his position to secure a special privilege, benefit or exemption, the element related to "wrongful intent" need not be addressed.

138. The evidence failed to establish that Respondent required, directed, coerced, threatened, or pressured Mr. Gleason to pay for expenditures of $354.18 on Respondent's City-issued credit card. Rather, the evidence established that Respondent had no prior knowledge that Mr. Gleason had paid the bill and was surprised to learn that he had done so. The evidence established that after Respondent learned that Mr. Gleason had paid the $354.18 credit card bill, Respondent repaid him.

139. Based on the foregoing conclusion, Respondent did not use or attempt to use his official position to secure a special benefit, payment of the $354.18 credit card bill. Therefore, there is no need to address the element related to "wrongful intent."

140. The evidence failed to establish that Respondent used or attempted to use his official position to secure a special benefit, a computer for his son. There was no evidence that Respondent required, directed, coerced, threatened, or pressured Mr. Gleason to purchase a computer for his son. To the contrary, the evidence established that both Respondent and his wife repeatedly told Mr. Gleason that they did not want him to purchase a computer for their son.

141. The evidence also established that Mr. Gleason ignored and disregarded the clear directive of Respondent and his wife to not purchase a surplus computer for their son and, without their knowledge, purchased one anyway.

142. Assuming that the computer purchased by Mr. Gleason for Respondent's son was a special benefit, there still is no violation of Subsection 112.313(6), where Respondent never used or attempted to use his official position to secure the special benefit. As noted above, the evidence established that Mr. Gleason purchased the computer without Respondent's knowledge and after Respondent clearly told him not to purchase it.

143. In this case, the evidence failed to establish that Respondent used or attempted to use his official position to secure a benefit, a computer for his son. Therefore, the element of "corrupt intent" need not be addressed.

144. For the reasons stated above, the alleged violations of Subsection 112.313(6) were not proven.

Alleged Violations of Subsection 112.313(4)

145. It is charged that by committing the acts alleged in paragraph 124 above, Respondent received unauthorized compensation in violation of Subsection 112.313(4).

146. Subsection 112.313(4) provides as follows:

> UNAUTHORIZED COMPENSATION.--No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

147. In order to establish a violation of Subsection 112.313(4), the following elements must be proved.

> 1. The Respondent must have been a public officer or employee.
>
> 2. The Respondent or the Respondent's spouse or minor child must have accepted
>
> some compensation, payment or thing of value.
>
> 3. When such compensation, payment or thing of value was accepted:
>
> a) the Respondent knew that it was given to influence a vote or other action in which the Respondent was expected to participate in an official capacity; or

> b) the Respondent, with the exercise of reasonable care, should have known that it was given to influence a vote or other action in which the Respondent was expected to participate in an official capacity.

148. As noted in the paragraph above, at all times relevant to this proceeding, Respondent was a "public officer." Therefore, the first element necessary to establish a violation of Subsection 112.313(4) has been met.

149. Next, it must be proven that Respondent, his spouse or his minor child accepted a computer, which is a "thing of value."

150. Once the first two elements are established, it must be shown that when the compensation, payment, or thing of value was accepted, Respondent knew or, with the exercise of reasonable care, should have known that it was given to influence a vote or other action in which Respondent was expected to participate in an official action.

151. With regard to the allegations related to the $150.00 fine for Respondent's late-filed Campaign Treasurer's Report, the required burden of proof was not met to establish a violation of Subsection 112.313(4).

152. Here, it is alleged Respondent accepted $150.00, which constituted the compensation, payment, or thing of value from Mr. Gleason. The factual allegation underlying this charge is that when Respondent received the $150.00 from Mr.Gleason,

Respondent knew or, with the exercise of reasonable care, should have known it was given to influence a vote or other action in which Respondent was expected to participate (i.e., presumably, Respondent's vote to retain Mr. Gleason as city manager).

153. The evidence established that the $150.00 fine was paid by Respondent's campaign manager and not by Mr. Gleason. Thus, any charges emanating from that unproven factual allegation that the fine was paid by Mr. Gleason must fail.

154. Having failed to show that Mr. Gleason paid the fine, the third element required to prove a violation of Subsection 112.313(4) can not be proven and is not addressed.

155. Based on the foregoing, the evidence failed to establish that the allegation related to the $150.00 fine is a violation of Subsection 112.313(4).

156. The evidence established that $100.00 in late fees and service interruption fees were waived for Respondent. The value of the fees waived for Respondent constituted compensation, payment, or a thing of value within the meaning of Subsection 112.313(4). Undoubtedly, the removal of these fees from Respondent's account was accepted by him. However, the evidence failed to show that when Respondent accepted the waiver, he knew or, with the exercise of reasonable care, should have known that the waiver had been issued at the direction of

Mr. Gleason and was given to influence a vote or other action in which he was expected to participate.

157. The evidence established that when the waiver was given to Respondent and accepted by him, he had no knowledge of who authorized the waiver or the reason it was authorized. After all, as the undisputed evidence established, the waiver of late fees given to and accepted by him was routinely given to citizens of the City of Ocoee under the "forgiveness" policy. Therefore, Respondent did not know and, with reasonable care, should not have known that the waiver was given to influence a vote or action in which he was to participate.

158. Based on the foregoing, the evidence failed to establish that the waiver of Respondent's late fees related to his water bill is a violation of Subsection 112.313(4).

159. The evidence failed to prove that Mr. Gleason's $354.18 payment for non-reimbursable charges on Respondent's City-issued credit card was compensation, payment, or a thing of value accepted by Respondent.

160. The evidence established that initially, Respondent did not know that Mr. Gleason had paid the bill, but upon learning that the unsolicited payment had been made, he repaid the funds to Mr. Gleason. Therefore, Respondent never accepted the $354.18 payment Mr. Gleason made on Respondent's behalf.

161. Having failed to prove that Respondent accepted the $354.18 payment made by Mr. Gleason, there is no need to address the third element required to show a violation of Subsection 112.313(4).

162. Based on the foregoing, the evidence failed to establish that Mr. Gleason's $354.18 payment of Respondent's City-issued credit card bill is a violation of Subsection 112.313(4).

163. Finally, it is alleged that Respondent's conduct with respect to a surplus computer purchased by Mr. Gleason for Respondent's minor son is a violation of Subsection 112.313(4).

164. The evidence established that Respondent accepted the computer from Mr. Gleason and that the computer constituted a thing of value.

165. The evidence established that Respondent changed his mind about accepting the computer, but that he did not ever return the computer to Mr. Gleason.

166. Having established that Respondent accepted the computer, it must be established that when Respondent accepted the computer, he knew or, with the exercise of reasonable care, should have known that it was given to influence a vote or other action in which Respondent was expected to participate.

167. The clear and convincing evidence established that Respondent accepted the computer and that when he accepted the

computer, he knew or, with the exercise of reasonable care, should have known that the computer was given to influence a vote or other action in which Respondent was expected to participate.

168. The evidence established that in or about June 2002, when Respondent found out that Mr. Gleason had paid his credit card bill, Respondent believed Mr. Gleason had done so in order to retain Respondent's support or to buy Respondent's vote.

169. In January 2004, the City Commission had to take affirmative action on Mr. Gleason's contract as city manager or the contract was automatically renewed. This and other issues routinely came before the City Commission. Therefore, in late September 2003, when Mr. Gleason insisted on giving Respondent's son a computer, Respondent knew or should have known that the computer was being given to influence Respondent's vote or other action in which Respondent was expected to participate.

170. Based on the foregoing, the clear and convincing evidence established that Respondent violated Subsection 112.313(4).

Alleged Violations of Subsection 112.313(2)

171. Finally, it is alleged that the charges set forth in paragraph 124 constitute violations of Subsection 112.313(2).

172. Subsection 112.313(2) provides as follows:

> SOLICITATION OR ACCEPTANCE OF GIFTS. No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

173. In order to establish a violation of Subsection 112.313(2), the following elements must be proved.

> 1. The Respondent must have been either a public officer, a public employee or a candidate for nomination or election.
>
> 2. The Respondent must have solicited or accepted something of value to him or her, including a gift, loan, reward, promise of future employment, favor, or service.
>
> 3. Such solicitation or acceptance must have been based upon an understanding that the Respondent's vote, official action or judgment would be influenced thereby.

174. Respondent has stipulated that he was a "public officer" and, as such, subject to the requirements of Chapter 112, Part III, Florida Statutes.

175. Next, it must be established that Respondent solicited or accepted something of value to him, such as a gift, loan, reward, favor, or service. If it is established that the public officer solicited or accepted a gift, loan, reward,

favor, or services, it must be proven that the solicitation or acceptance engaged in by the public officer was based on an understanding that the officer's vote, official action, or judgment would be influenced thereby.

176. The evidence failed to establish that Respondent solicited or accepted from Mr. Gleason the $150.00 payment for the fine resulting from the late-filed Campaign Treasurer's Report. Because Respondent did not solicit or accept the $150.00 payment from Mr. Gleason, there is no need to address the last element required to prove a violation of Subsection 112.313(2).

177. Based on the foregoing, the evidence failed to establish that the allegation related to payment of the $150.00 fine is a violation of Subsection 112.313(2).

178. The evidence failed to establish that Respondent solicited or accepted from Mr. Gleason $354.18 payment for Respondent's credit card bill. In this case, the evidence established that Respondent had no prior knowledge that Mr. Gleason had paid the bill, but after learning that Mr. Gleason had done so, Respondent reimbursed him. Where there is no evidence that Respondent accepted the $354.18 payment, there is no need to address the third element required to show a violation of Subsection 112.313(2).

179. Based on the foregoing, the evidence failed to establish that the allegation related to Mr. Gleason's payment of Respondent's credit card bill is a violation of Subsection 112.313(2).

180. The evidence failed to establish that Respondent solicited or accepted from Mr. Gleason the waiver of late fees and other costs associated with Respondent's delinquent water bill. The evidence established that Respondent did not ask Mr. Gleason to waive the late fees and other charges and that he was not aware that Mr. Gleason had authorized the Utilities Department to waive those fees and charges. Under these circumstances, the waiver did not constitute solicitation or acceptance by Respondent. Having failed to establish such solicitation or acceptance, there is no need to address the third element required to prove a violation of Subsection 112.313(2).

181. Based on the foregoing, the evidence failed to prove that the allegation related to the waiver of charges and fees related to Respondent's water bill violated Subsection 112.313(2).

182. With regard to the computer purchased by Mr. Gleason for Respondent's son, the evidence established that Respondent accepted the computer. At the time Respondent accepted the computer, he believed it was something of value. However, there

was no clear and convincing evidence that Respondent's acceptance of the computer was based on an understanding that Respondent's vote or other official action would be influenced by such acceptance. The evidence established that a few months after Respondent accepted the computer, he voted to terminate Mr. Gleason.

183. Based on the foregoing, the evidence failed to establish that Respondent, by accepting the computer purchased by Mr. Gleason, violated Subsection 112.313(2).

Ultimate Conclusions

184. In this case, the burden of proof was not met with respect to eleven of the twelve alleged violations.

185. Significantly, many of the underlying factual allegations which are the basis for the alleged violations of Subsections 112.313 (2), (4), and (6) were not proven by clear and convincing evidence.

186. Respondent did not violate Subsection 112.313(2),as it relates to the alleged payment of Respondent's $150.00 fine and his $354.18 credit card bill, waiver of the fees and charges related to his water bill, and the purchase of a computer.

187. Respondent did not violate Subsection 112.313(4), as it relates to payment of Respondent's $150.00 fine and his $354.18 credit card bill, and waiver of the fees and charges related to his water bill.

188. Respondent violated Subsection 112.313(4),as it relates to the purchase of the computer.

189. Respondent did not did not violate Subsection 112.313(6),as it relates to the alleged payment of Respondent's $150.00 fine and his $354.18 credit card bill, waiver of the fees and charges related to his water bill, and the purchase of the computer.

190. For the foregoing reasons, it is concluded that Respondent did not violate Subsections 112.313(2), (4) and (6).

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 Respondent violated Subsection 112.313(4), Florida Statutes, in one of the four instances alleged; Respondent did not violate Subsection 112.313(4), Florida Statutes, in three of the four instances alleged; Respondent did not violate Subsection 112.313(6), Florida Statutes, in any of the four instances alleged; and Respondent did not violate Subsection 112.313(2), Florida Statutes, in any of the four instances alleged; and imposing a civil penalty of $500.00 for the single violation.

DONE AND ENTERED this 7th day of September, 2007, in Tallahassee, Leon County, Florida.

S

CAROLYN S. HOLIFIELD
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th of September, 2007.

ENDNOTE

[1/] Unless otherwise indicated, all citations are to the 2004 Florida Statutes.

[2/] Ms. Prettyman had not previously paid the fine because of her financial situation during the preceding year.

[3/] There is no dispute that Friday, May 17, 2002, was a payday for City employees.

[4/] There is no dispute that this was a policy that was instituted by and implemented by Mr. Gleason to ensure that the gym facilities at the recreation center were available to citizens during lunchtime.

[5/] The reason Mr. Gleason called Ms. Sills to inquire about the policy regarding waiver of late charges is unclear. This is particularly true in light of Mr. Gleason's testimony that he authorized or granted such waivers in financial "hardship" cases. See Finding of Fact, paragraph 33.

[6/] At hearing, there was conflicting testimony reflecting some confusion among City employees about the number of counties included in the "local area." Two City employees, the finance

director and the executive assistant to the mayor and commissioners, testified that the "local area" consisted of five counties and three counties, respectively.

[7/] Respondent's testimony that he did not understand the policy regarding use of the City-issued credit card is supported by the credible testimony of the City's finance director, Wanda Horton. Ms. Horton testified that when the City first issued the credit cards to the commissioners, she spoke to Respondent about the use of the City-issued credit card after an improper expense was charged on the credit card. At that time, Ms. Horton had concerns that Respondent did not "have a good understanding [of] what was allowed and not allowed on the City-issued credit card."

[8/] There were prior instances when the City had advised Respondent that it could not reimburse him for certain charges made on the City-issued credit card. In all those prior instances, Respondent paid the City for the non-reimbursable or disallowed expenses.

[9/] As part of a lengthy discussion initiated by Ms. Anderson about the Commission's travel policy, the citizen mentioned that inappropriate charges were being put on the City-issued credit cards, that those charges were not being timely reimbursed to the City, and, that in some cases, the charges were "not reimbursed by City Commissioners, but by the City Manager." Although the citizen did not refer to a particular commissioner at the end of the travel policy discussion, Mr. Gleason made the following comment:

> I wanted to clear the matter up to close the books. I was asked, due to the individual being out of town, would I take care of that. I was paid for those funds, three hundred fifty-four dollars and sixty-one cents or what have you. In fact, to be very honest, I probably owe the change, because I was paid three hundred fifty-five dollars or whatever the difference was on that. . . . but for the record that issue was paid, and was paid to me in full, no different than as a loan or somebody had done involving that process, because if I got to have a job where I have to start paying expenses to keep my job, I don't need to be working here.

[10/] She presumably obtained this information during a review of public records.

[11/] During his direct testimony in this proceeding, Mr. Gleason seemed to imply that he had no prior knowledge that commissioners' travel expenses would be discussed at the October 1, 2002, City Commission meeting until Respondent told him. However, during cross-examination, he admitted that not only did he know that this topic would be discussed, but so did the mayor, the City commissioners, and City staff.

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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.