

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: CHUCK CHOCKALINGUM,) Case No. 06-1667EC
)
 Respondent.)
)
 _____)

RECOMMENDED ORDER

The Division of Administrative Hearings, by its duly-designated Administrative Law Judge Don W. Davis, held a formal hearing, pursuant to notice, in the above-styled case on Tuesday, July 25, 2006, in Tallahassee, Florida.

APPEARANCES

For Advocate: James H. Peterson, III, Esquire
Florida Bar No. 0473057
Senior Assistant Attorney General
Attorney General's Office
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: No Appearance

STATEMENT OF THE ISSUES

The issues for determination are:

I. Whether Respondent, as Public Works Director for the Town of Dundee, violated Section 112.313(6), Florida Statutes, by using Town employees to work on Respondent's home at the Town's expense, and if so, what is an appropriate recommended penalty.

II. Whether Respondent, as Public Works Director for the Town of Dundee, violated Section 112.313(6), Florida Statutes, by

using or allowing others to use Town vehicles, equipment, and/or materials for Respondent's personal benefit, and if so, what is an appropriate recommended penalty.

PRELIMINARY STATEMENT

On December 7, 2005, the Florida Commission on Ethics issued an order finding probable cause to believe that Respondent, Chuck Chockalingum,^{1/} as Public Works Director for the Town of Dundee, violated Section 112.313(6), Florida Statutes, through use of Town employees to work on Respondent's home at the Town's expense, and through use or allowing others to use Town vehicles, equipment, and/or materials for Respondent's personal benefit. The case was forwarded to the Division of Administrative Hearings on May 10, 2006.

Prior to the final hearing, the Advocate submitted a Unilateral Prehearing Statement. Respondent did not submit a prehearing statement and did not appear or participate in the final hearing. At the final hearing, the Advocate submitted the deposition testimony, together with the exhibits attached to the depositions, of five witnesses, all of whom reside more than 100 miles from Tallahassee: Josh Lauver, John Phillips, Pam Lawson, Jim Gallagher, and Michael Bennett. In addition to the exhibits attached to the depositions, the Advocate introduced nine pre-marked exhibits into evidence. The Advocate also introduced three other exhibits at the final hearing.

A transcript of the Final Hearing was filed with the Division of Administrative Hearings on August 6, 2006.

The Advocate's Proposed Recommended Order was submitted in accordance with the due date established at the final hearing. Notice was provided to Respondent that he had the opportunity to file a proposed recommended order. Respondent did not file a proposed recommended order. All references to Florida Statutes are to the 2005 edition, unless otherwise noted.

FINDINGS OF FACT

1. Respondent was hired as public works director for the Town of Dundee (Town) in March 2004 and served in that capacity from April 7, 2004, until his termination on October 11, 2004.

2. Respondent, as an employee of the Town of Dundee, was subject to the Town of Dundee's Personnel Rules & Regulations manual. The manual was available throughout city hall.

3. Upon his employment as public works director for the Town, Respondent signed acknowledgments of the Town's computer policy, drug-free workplace policy, and conflict-of-interest policy. He also signed a statement acknowledging that he had received and read the Town's sexual harassment policy. The Town's sexual harassment policy is contained within the Town's Personnel Rules & Regulations manual. The Town's drug-free workplace policy is found in the Town's Personnel Rules &

Regulations manual. Respondent's acknowledgments evidences his access to and familiarity with the Town's Personnel Rules & Regulation manual.

4. The Town's Personnel Rules & Regulations manual^{2/} specifically, on page 17, paragraph 2, provides:

Town vehicles, equipment, supplies, tools and uniforms shall not be used for private or unauthorized purposes.

5. Page 19 of the Personnel Rules and Regulations manual provides:

Department/Division Heads shall maintain daily time records and shall furnish the Town Manager with payroll records for all employees under their supervision, duly certified for payment on the working day after the close of the payroll period, unless otherwise authorized. Department/Division Heads shall review and sign their payrolls, and shall report any irregularities to the Town Manager immediately.

6. Page 22 of the manual sets forth the overtime pay policy of the Town:

OVERTIME PAY General Policy:
Department/Division Heads make every effort to maintain service level standards while keeping overtime use to a minimum.

7. On page 22 of the manual, overtime work approval is required by the following language:

All overtime work must be approved by the Department/Division Head or the Town Manager, or their designee.

8. Page 24 of the manual requires:

In general, normal working hours for Town employees shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, except Public Works employees whose normal working hours are Monday through Friday, 7:00 a.m. to 4:00 p.m. The normal work week shall be forty (40) hours, eight (8) hours per day.

9. Under the heading of "Discipline," the Town's Personnel Rules & Regulations manual provides:

It shall be the duty of all employees to maintain high standards of conduct, cooperation, efficiency, and economy in their work for the Town. Department/Division Heads and supervisors shall organize and direct the work of their units in a manner calculated to achieve these objectives.

10. Causes for Disciplinary Action as provided by the Town's Personnel Rules & Regulations manual include the following offenses:

- i. Theft, destruction or loss of Town monies, equipment or property.
- ii. False representation to a superior as to the quality and/or quantity of work performed.
- iii. Soliciting donations, gifts, bribes, or other valuable things for any personal purpose during work hours, including the sale of any items or solicitation of any goods, services or products.
- iv. Unauthorized use of Town property or services of other employees for non-Town related purposes.

11. Disciplinary action is also provided by the Town's Personnel Rules & Regulations manual, where:

The employee has induced or has attempted to induce, an officer or employee of the Town to commit an unlawful act or to act in violation of any lawful departmental or official regulation or order.

12. Discipline may also be imposed for record falsification, where an employee:

[F]alsified any Town records, or assisted in concealing the fact that another employee has falsified Town records. This shall include the record keeping of hours worked.

13. Shortly after becoming public works director for the Town, Respondent purchased a house located at 225 Hickory Hammock Road between Dundee and Lake Wales.

14. In late June 2004, Respondent began using Town employee Josh Lauver and Town equipment to work on Respondent's house on Hickory Hammock Road. At the time, Lauver was 16 years old. He was employed by the Town's Public Works Department from June 1st until August 27th, 2004, during his summer break from high school.

15. For approximately the first month and a-half, Harold Jones was Lauver's immediate supervisor. Then Harold Jones was demoted and John Phillips became Lauver's supervisor. Respondent, who was over all employees at the Public Works

Department, supervised Lauver's supervisors. Lauver would sometimes take direct orders from Respondent.

16. Lauver's general duties as an employee for the Town included cleaning the buildings around Town, mowing, weedeating, using the Town's tractor, and using the Town's backhoe, as directed.

17. On or about June 23, Respondent directed Lauver to drive the Town's tractor, with the Town's attached bush-hog, to Respondent's house on Hickory Hammock Road and bush-hog the entire area around the house, consisting of approximately five acres.

18. Lauver drove the Town's tractor and bush-hog to Respondent's house as directed by Respondent while Respondent followed in his Jeep. Once there, Lauver used the Town's tractor and bush-hog to mow all of Respondent's property. The bush-hogging took about three or four hours and was accomplished after 5:00 p.m., while Lauver was still on the Town's clock.

19. Lauver was paid by the Town for this after-hours work and Respondent knew it, as demonstrated by the fact that he either told Lauver not to clock out or initialed hand-written time entries indicating his approval. Official records verified by Lauver show that Lauver received four and a-half hours on his

time card for the hours he worked at Respondent's house on June 23, 2004, and was paid by the Town for that work.

20. In addition, the entry on Lauver's time card for June 23, 2004, shows a hand-written entry initialed by Respondent approving 12.5 hours for that date.

21. On June 26, 2004, at Respondent's direction, Lauver followed Respondent in the Town's dump truck while Respondent drove the Town's backhoe to Respondent's house. Although Lauver told Respondent that he did not have the proper license to drive the dump truck, Respondent told him to drive it anyway. The drive took approximately an hour and a half. Once there, Lauver used the backhoe to dismantle garages attached to Respondent's house and then used it to load the debris in the Town's dump truck. Lauver did most of the work while Respondent watched. After the dump truck was loaded, Lauver drove it to the Town dump that was for Town employees' use only, and used his Town issued key to get in and dump the load. Afterwards, he and Respondent returned the equipment, arriving after midnight.

22. As with the bush-hogging, Lauver was paid by the Town for dismantling the garages for Respondent's personal benefit. On another day, Respondent directed Lauver to use the Town's backhoe to remove a large stump from Respondent's back yard. This time Lauver drove the backhoe while Respondent followed in

his Town vehicle. Once again, Lauver did the work for Respondent's personal benefit and was paid by the Town.

23. Other tasks that Lauver did for Respondent's personal benefit at Respondent's direction while being paid by the Town include pressure-washing Respondent's house, painting and plastering the ceiling in Respondent's house, mowing, and fixing a water leak in an underground pipe.

24. Lauver's mowing for Respondent occurred on two occasions other than the initial bush-hogging. On one occasion Lauver used the Town's Hussler Z mower, and on the other he used the Town's Grasshopper mower. On each occasion he used one of the Town's trailers to transport the mowers. The mowing took approximately three hours each time.

25. When Lauver helped fix a water pipe at Respondent's house he used the Town's "Ditch Witch" at Respondent's direction. Lauver towed the Ditch Witch to Respondent's house behind one of the Town's vehicles. Once there, Lauver used it to dig a ditch while Respondent and John Phillips replaced the leaky pipe with new pipe and pipefittings owned by the Town that they obtained from the Town's water department area.

26. When Lauver asked Respondent about why he was getting paid by the Town for work at Respondent's house, Respondent told him it had all been "cleared."

27. Lauver, in testimony at the final hearing, identified those time cards documenting time during which he was working on Respondent's personal tasks instead of for the Town. All of the time card entries identified by Lauver as times when he was actually working at Respondent's house, except for Saturday, June 26, 2004, have hand-written entries that were initialed by Respondent.

28. Times identified by Lauver on his time cards as times when he was actually working for Respondent's personal benefit in the summer of 2004, while being paid by the Town include:

Wednesday, June 23rd (3.5 hours);

Saturday, June 26th (9.5 hours);

Thursday, July 15th (3 hours);

Friday, July 16th (3 hours);

Saturday, July 17th (6 hours);

Monday, July 19th (5.5 hours);

Thursday, July 22nd (5.5 hours);

Saturday, July 24th (10.5 hours);

Friday, July 30th (4 hours); and,

August 3rd (4.5 hours).

29. Around the end of June or beginning of July 2004, Town Accountant Pam Lawson became suspicious about the amounts of overtime on Lauver's time cards. She was concerned because Lauver was under the age of 18, missing lunches, and had a lot of overtime on days when most employees were not working.

30. Around the same time that she noticed excessive overtime amounts on Lauver's time cards, Lawson learned from the secretary for the public works department, Jennette Raine, that Lauver might be working at Respondent's home and that other Town employees were helping remodel Respondent's home after hours. Lawson also heard Respondent and Lauver talking about all of the work they had done at Respondent's house. Additionally, both Respondent and Lauver had conversations with Lawson about the painting and remodeling they had done at Respondent's house, but they did not reveal that Lauver was on the Town's clock at the time.

31. Lawson identified 12 dates that she considered "suspicious" on Lauver's time cards, and calculated a figure of \$843.33 as being the approximate amount that the Town probably paid Lauver for work he did at Respondent's house. Seven of the dates identified by Lawson as suspicious correspond to dates identified by Lauver as times when he worked at Respondent's home while being paid for the work by the Town.

32. The hours on Lauver's Town time card identified by Lauver as time spent working for Respondent's personal benefit total approximately 52 hours. Extra hours on Lauver's time card were generally paid by the Town at the overtime rate, which, using the same methodology employed by Lawson in calculating Lauver's overtime pay, was one and a half times more than his regular pay rate, or \$11.85 for each overtime hour. The product of 52 hours times \$11.85/hour is \$616.20 and represents a fair approximation of the amount that Lauver was paid by the Town for those hours Lauver worked at Respondent's house for Respondent's personal benefit.

33. Lawson also heard rumors that John Phillips was working at Respondent's house. She understood that Respondent had demoted Harold Jones from street supervisor and promoted Phillips to that position because Harold had refused to do work that Respondent had asked him to do, such as take equipment to Respondent's home. Phillips was promoted on July 20, 2004.

34. Phillips admitted that he worked at Respondent's house using Town equipment. Specifically, Phillips advised that one time he mowed Respondent's yard using one of the Town's mowers at Respondent's request. He also verified that while Respondent was the public works director for Dundee, Respondent used or had others use the Town's tractor with attached bush-hog, the Town's

backhoe, the Town's dump truck, and the Town's Ditch Witch. Phillips also saw Lauver using the Town tractor and bush hog to mow the grass around Respondent's house, saw Lauver using the Town's backhoe to remove sheds attached to the back of Respondent's house, and saw Lauver use the Town's Ditch Witch to dig a ditch for a new water line for Respondent's house.

35. Respondent told Phillips he had the Town manager's permission to use Town equipment at his house.

36. The Town manager, however, had not given Respondent his permission. Jim Gallagher, who was the town manager while Respondent was public works director, testified that he never gave Respondent permission to use the Town's tractor, the Town's bush-hog, the Town's backhoe, the Town's dump truck, the Town's mowers, the Town's Ditch Witch, the Town's pipe, or the Town's pipe fittings.

37. Gallagher further testified that he would have never given Respondent permission to use Town employees to work on Respondent's house while on Town time because, "that would obviously be a conflict, improper." When asked why, Gallagher explained, "Well, it's an ethical problem. It's like stealing."

38. When Gallagher, as Town manager, began investigating rumors that Respondent had used Town equipment and Town employees for his personal benefit, Respondent told Phillips to

say that all of the equipment that Respondent used at his house belonged to a local builder known as "Blue."

39. Phillips also identified some time card entries on his Town time card authorized by Respondent which resulted in Phillips being paid by the Town for time periods when he was actually working at Respondent's home for Respondent's personal benefit. Phillips explained that Respondent was responsible for "padding" the time cards. Entries made by Respondent on Phillips' time cards that did not have punched-in times, included:

Wednesday, June 23rd (5.5 hours of overtime);
Friday, July 16th (3.5 hours of overtime);
Saturday, July 31st (7 hours of overtime); and
Friday, August 6th (4.75 hours of overtime).

40. The above-listed overtime hours identified by Phillips on his Town time card as being time "padded" by Respondent for work done for Respondent's personal benefit total 9 overtime hours prior to July 20, 2004, and 11.75 overtime hours thereafter. The dates are significant because Phillips received a pay raise on July 20, 2004, raising his rate of pay from \$9.94 an hour to \$11.00 when he was promoted to supervisor.

41. Phillips' hourly overtime pay rate, derived by multiplying his regular pay rate by one and a-half times, was

\$14.87 an hour prior to July 20, 2004, and \$16.50 an hour thereafter. The product of 9 hours times \$14.87/hour is \$133.83, and the product of 11.75 hours times \$16.50/hour is \$193.87. The sum of \$133.83 and \$193.87 is \$327.70, representing a fair approximation of amounts Phillips was able to identify from review of his time cards that he was paid by the Town for hours he was actually working at Respondent's house for Respondent's personal benefit.

42. When he found out that Respondent was padding Mr. Phillips' time cards, Phillips told Respondent it was not right. Respondent responded by telling Mr. Phillips, "Don't worry about it."^{3/}

43. As noted above, in addition to Town employee labor that Respondent received which the Town paid, Respondent also received free use of the Town's equipment. Evidence of the daily rental value of the Town's equipment utilized by Respondent for his personal benefit was provided by Michael Bennett, who has been employed in inside sales by Rental Service Corporation ("RSC"), and has provided quotes for RSC equipment rentals for the past ten years in the nearby City of Winter Haven, Florida. Bennett explained that equipment rental prices applicable in 2004 were approximately 3 percent less than today's prices. Bennett further explained that his company does

not rent equipment for less than a one-day minimum, and that the one-day minimum rental requirement is pretty standard in the industry. The one-day rental prices (expressed in both today's prices and discounted 3 percent for 2004 rates) for the type of Town's equipment utilized by Respondent, or its equivalent, quoted by Bennett are as follows:

Type of Daily Rate <u>Equipment</u> <u>(Discounted 3%)</u>	2006 Daily <u>Rental Rate</u>	2004
John Deere 310 Backhoe Mower Attachment For Tractor-6 ft.	\$ 268.00 82.00	\$259.96 79.54
Tractor, No Loader 31-70 HP	194.00	188.18
Dump Truck-14-16 ft.	255.00	247.35
Trencher-W/B 12-13 HP-Hydrostatic	161.00	156.17
Utility Trailer- Open Bed-6 x 12	37.00	35.89
Mower	80.00	77.60

44. Evidence indicates that the Town's John Deere tractor and the attached Town's bush-hog mower were used one time at Respondent's property for Respondent's personal benefit.

Therefore, the total daily rental value for Respondent's use of that equipment in 2004 was approximately \$188.18 + \$79.54 = \$267.72.

45. Lauver testified that the Town's backhoe was used at Respondent's property on two separate occasions, so the total 2004 equipment rental value for Respondent's use of that equipment was $\$259.96 \times 2 = \519.92 .

46. The Town's dump truck was used for Respondent's benefit only once, so the 2004 rental value of that equipment was $\$247.35$.

47. The Town's Ditch Witch was also used once, so the 2004 equipment rental value for that was $\$156.17$.

48. Lauver used the Town's mowers twice to mow Respondent's lawn, and Phillips used them once. Therefore the 2004 equipment rental value to Respondent for use of the mowers was $\$79.54 \times 3 = \238.62 .

49. The Town's trailers were used for Respondent's benefit on the three occasions for transport of the Town's mowers to Respondent's property. Thus, the 2004 rental value for use of the trailers was $\$35.89 \times 3 = \107.67 .

50. Using the above figures based upon the clear and convincing evidence, the approximate total value that Respondent received as a result of the use of Town's equipment for his personal benefit, based upon 2004 rental prices,^{4/} was $\$267.72 + \$519.92 + \$247.35 + \$156.17 + \$238.62 + \$107.67 = \$1,537.45$.

51. The value of Lauver's time paid by the Town (\$616.20), plus Phillips' time (\$327.70), plus the equipment rental value (\$1,537.45), equals \$2,481.35 of value, which is supported by competent substantial evidence and represents a fair approximate of the special benefit in monetary terms that Respondent received by his actions of directing his employees to use their time and Town equipment, while they were being paid by the Town, for Respondent's personal benefit.

52. Respondent's actions were contrary to Town policies that he knew about, or should have known about, by virtue of his review and access to the Town's Personnel Rules & Regulations manual. Respondent knew his actions were wrong but he did it time and time again for his personal benefit in a manner that was inconsistent with Town policy, and the Code of Ethics. Respondent's misrepresentation that he had permission to use the Town's equipment when he did not, as well as his hand-written changes to Town time cards, is evidence of his intent to act in a manner inconsistent with his public duties for his own personal benefit.

CONCLUSIONS OF LAW

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

54. Section 112.322, Florida Statutes, and Florida Administrative Code Rule 34-5.0015, authorize the Commission on Ethics 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).

55. 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); 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 Section 112.313(6), Florida Statutes. The Commission on Ethics proceedings that seek recommended penalties against a public officer or employee 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, the burden of establishing by clear and convincing evidence the elements of Respondent's violations is on the Commission.

56. As noted by the Supreme Court of Florida:

[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). The Supreme Court of Florida also explained, however, that, although the "clear and convincing" standard requires more than a "preponderance of the evidence," it does not require proof "beyond and to the exclusion of a reasonable doubt." Id.

57. Section 112.313(6), Florida Statutes, provides:

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.

58. The term "corruptly" is defined by Section 112.312(9), Florida Statutes, 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.

59. In order for it to be concluded that the Respondent violated Section 112.313(6), Florida Statutes, the Advocate must establish the following elements:

1. Respondent must have been a public officer or employee.

2. 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 himself or herself or another person from some act or omission, which was inconsistent with the proper performance of his or her public duties.

60. The first element required to show a violation of Section 112.313(6), Florida Statutes, was met by the proof that Respondent served as Public Works Director for the Town of Dundee in from April 7, 2004 until October 11, 2004. As such, Respondent was an employee of an "agency" as that term is defined in the Code of Ethics,^{5/} and subject to the requirements of Part III, Chapter 112, Florida Statutes, Code of Ethics, for public officers and employees, for his acts and omissions during

his tenure as Public Works Director for the Town of Dundee. See §§ 112.311(6),^{6/} and 112.313(6), Fla. Stat.

61. It must also be shown that Respondent used or attempted to use his public position or property or resources within his trust.^{7/} The evidence on this point is clear. Respondent not only attempted to use his position or property or resources within his trust, but actually used his authority as public works director over both Lauver and Phillips to direct them to perform tasks while on the Town's clock and to use Town equipment for Respondent's personal benefit. The evidence also convincingly established that Respondent used the authority of his position as public works director over his employees' time cards^{8/} to make entries or give approvals to times on Lauver's and Phillips' Town time cards when they were actually working on Respondent's personal tasks for Respondent's special benefit. In sum, the evidence clearly established that Respondent misused his public position, as well as public property and resources within his trust, to obtain a personal benefit.

62. The evidence also clearly demonstrated that Respondent used his position and property and resources within his trust to secure a special privilege, benefit or exemption for himself. Respondent received numerous hours of work from Town's employees and the use of Town equipment and property to accomplish tasks for Respondent's personal benefit, including bush-hogging,

mowing, demolition, hauling, trenching, water-line repair, pressure washing, plastering and painting. All of these tasks were accomplished at the Town's expense, with little or no cost to Respondent, resulting in a special benefit to Respondent.

63. Finally, it must be shown that Respondent acted with "corrupt intent." See §§ 112.313(6) and 112.312(9), Fla. Stat. Given the Town's policies, Respondent's access to those policies, and warnings he received, Respondent clearly knew what he was doing was wrong. Nevertheless, he acted on numerous occasions to use Town employees and equipment in a manner inconsistent with Town policy, common sense, and the Code of Ethics for his personal benefit. Respondent's wrongful intent was further demonstrated by his misrepresentation that he had permission to use the Town's equipment, as well as his deliberate use of the authority of his position in a manner inconsistent with his public duties to change and approve Town employee cards so that Town employees would be paid by the Town for actually performing tasks for Respondent's personal benefit. Given the evidence presented in this case, there can be no doubt that Respondent acted with the requisite corrupt intent.

64. In conclusion, the clear and convincing evidence presented at the final hearing established each of the requisite elements to prove that: (1) Respondent, as public works director for the Town of Dundee, violated Section 112.313(6),

Florida Statutes, by using Town employees to work on Respondent's home at the Town's expense; and (2) Respondent, as public works director for the Town of Dundee, violated Section 112.313(6), Florida Statutes, by using or allowing others to use Town vehicles, equipment, and/or materials for Respondent's personal benefit.

PENALTY

65. As Respondent is no longer serving in a public capacity, the penalties that can be imposed for Respondent's violation include: public censure, reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits he received as a result of his violations. § 112.317, Fla. Stat. Given the nature and volition of Respondent's acts for his personal benefit, his knowledge that his actions were wrong, and his deliberate misrepresentations, it is appropriate to enter a final order with a public censure, reprimand and the maximum civil penalty of \$10,000 for each of his two violations, for a total statutory civil penalty of \$20,000. See § 112.317(1)(b)6., Fla. Stat.

66. In addition to the statutory penalty, it is appropriate for Respondent to pay restitution in the amount of value he received from his misuse of his position, and resources within his trust, including Town employees and equipment.

See § 112.317(1)(b) 7., Fla. Stat. See also In re: Kenton, 13 F.A.L.R. 1295, 1319-1322 (Ethics 1991) (appropriateness of restitution). As Respondent received at least \$2,481.35 of value in terms of his use of Town employee time paid by the Town and the fair rental value of the Town equipment he used for his personal benefit, it is appropriate that, in addition to a \$10,000 statutory civil penalty for each offense, Respondent pay restitution in the amount of \$2,481.35.

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, Veerappan "Chuck" Chuckalingam, a/k/a Chuck Chuckalingum,^{9/} committed two violations of Section 112.313(6), Florida Statutes, and imposing a civil penalty of \$10,000 for each violation, plus restitution in the amount of \$2,481.35, together with a public censure and reprimand.

DONE AND ENTERED this 10th day of October, 2006, in
Tallahassee, Leon County, Florida.

Don W. Davis

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of October, 2006.

ENDNOTES

^{1/} At the final hearing, the Advocate asked that Respondent's true name be reflected in the Recommended Order and evidence was introduced showing that Respondent's actual name is Veerappan Chockalingam [note the spelling of the last name ends in gam as opposed to gum] and that his nickname is "Chuck." Transcript, p. 5; Exh. A-8, p. 4 [1st page of Application for Employment]; Exh. A-4, p. 12 [Gallagher]. Given that, an accurate recitation of Respondent's name would be: Veerappan "Chuck" Chockalingam.

^{2/} All references to the Town of Dundee's Personnel Rules & Regulations manual throughout this Recommended Order are to the manual in effect during Respondent's tenure as the Town's Public Works Director.

^{3/} Phillips knew that doing personal things for Respondent on Town time was wrong. As Phillips advised in his deposition, "That's against anybody's policy." Exh. A-2, p. 45 [Phillips]. A separate Ethics action was brought against Phillips for his role in working for Respondent during Town time and allowing use of Town equipment for Respondent's (as opposed to Phillips' own) personal benefit. Phillips settled his case by admitting to his violations of the Code of Ethics and entering into a stipulation wherein he agreed to public censure and reprimand and to pay a civil penalty in the sum of \$2,500. Exhs. A-11 & A-12.

^{4/} Usage is made of the figures set forth in previous Findings of Fact, supra. These are conservative figures, as the rental rates do not reflect the Environmental recovery fee, LDW Assurance or sales tax reflected on the RSC quote. See Exh. A-2, attachment 1.

^{5/} Section 112.312(2), Florida Statutes, provides: "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

^{6/} Section 112.311(6), Florida Statutes, provides in part: Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

^{7/} All that is required is an attempt to use one's public position or any property or resources within one's trust to secure a special privilege, benefit, or exemption. See § 112.313(6), Fla. Stat.

^{8/} See § 112.313(6), Fla. Stat. (prohibits attempt to use . . . "official position to secure a special privilege, benefit, or exemption for himself, herself, or others"); cf. Tenney v. State Commission on Ethics, 395 So. 2d 1244, 1246 (Fla. 2nd DCA 1981)(unnecessary for legislature to "specifically list every 'special privilege, benefit, or exemption' it wished to prevent a public officer from securing").

^{9/} Note that the name used in this Recommendation is different that that used in the style of the case and is used herein as consistent with the evidence presented in this case. See footnote 1, supra.

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.