

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: JASON PADGETT,) Case No. 06-4172EC
)
Respondent.)
)
_____)

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on April 17, 2007, in Keystone Heights, Florida.

APPEARANCES

For the Florida Commission on Ethics:

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: No appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent violated the Code of Ethics for Public Officers and Employees.

PRELIMINARY STATEMENT

On October 19, 2005, the Florida Commission on Ethics (Commission) found probable cause to believe that Jason Padgett (Mr. Padgett), a council member of the Town of Hampton, Florida,

violated Subsections 112.313(2) and (6), Florida Statutes (2003),¹ by improperly soliciting William Tillotson, Jr. (Mr. Tillotson), to withdraw a previously filed ethics complaint. In return, it was alleged, Mr. Padgett promised to continue to support the town's police department. Mr. Tillotson was one of the policemen employed in the town's small police department.

Mr. Padgett demanded a hearing, and on October 27, 2006, the case was forwarded to the Division of Administrative Hearings. The case was set for hearing on January 8 and 9, 2007, in Keystone Heights, Florida. Immediately prior to the hearing, Mr. Padgett notified the Advocate of his unavailability, and the case was continued. It was eventually set for an April 17, 2007, hearing date. Mr. Padgett was duly-notified of the date, time, and place of the hearing, but he did not appear.

At the final hearing, the Advocate called Mr. Tillotson as a witness and offered six exhibits into evidence. All were admitted.

A Transcript was filed on April 30, 2007. The Advocate timely filed a Proposed Recommended Order on May 10, 2007.

FINDINGS OF FACT

1. During all times relevant, Mr. Padgett served as a member of the Hampton Town Council, Hampton, Florida.

Mr. Padgett resigned from the town council on a date subsequent to May 4, 2004. His last known address was 9885 South Temple Avenue, Hampton, Florida.

2. The Commission was created by Section 112.320, Florida Statutes, and is vested with the power to implement the Code of Ethics for Public Officers and Employees (Ethics Code).

3. As a former member of the Hampton Town Council, Mr. Padgett is subject to the dictates of Chapter 112, Part III, Florida Statutes, as that part pertains to acts and omissions occurring during his tenure as a town council member for Hampton, Florida.

4. On September 9, 2002, Mr. Tillotson, filed a complaint against Mr. Padgett with the Commission. The Commission assigned this complaint case number 02-132. This case involved an effort by Mr. Padgett to convince Mr. Tillotson to withdraw two traffic tickets he issued to two citizens of Hampton in 2002.

5. On August 27, 2003, the Commission issued a Report of Investigation (ROI) regarding case number 02-132, which was forwarded to Mr. Padgett. Based on the ROI, Commission Advocate Virilindia Doss (Advocate Doss) issued a recommendation that the Commission find probable cause to believe that Mr. Padgett's actions were a violation of Subsection 112.313(6), Florida

Statutes. This information was provided to Mr. Padgett in a letter dated September 16, 2003.

6. On September 19, 2003, Advocate Doss mailed to Mr. Padgett a Joint Stipulation of Fact, Law, and Recommended Order with regard to case number 02-132. This stipulation invited Mr. Padgett to admit to the two violations and to agree to forfeit one-third of his public salary as a member of the Hampton Town Council for a period of 12 months.

7. On September 21, 2003, Mr. Padgett approached Mr. Tillotson and discussed the pending ethics complaint with him. Mr. Padgett stated that he would consider it a favor if Mr. Tillotson would withdraw the ethics complaint and stated that in return he would continue to support the Hampton Police Department. He further stated that if he had to pay the proposed fine that he would always remember, each time he paid a bill, that Mr. Tillotson caused him to lose a third of his salary from the Town of Hampton.

8. The forgoing actions of Mr. Padgett were intended to use his position as town councilperson to intimidate Mr. Tillotson into withdrawing the ethics complaint. In a small town with a small police department, a councilperson is in a position to affect the economic well-being of officers employed by the police department.

9. Mr. Tillotson refused to withdraw the complaint. On September 23, 2003, Mr. Padgett signed the stipulation proposed by Advocate Doss, thereby admitting to violations of the Ethics Code. He further agreed to forfeit one-third of his public salary as a member of the Hampton Town Council for a period of 12 months.

10. Thereafter, Mr. Tillotson filed this complaint. It was assigned case number 04-097.

CONCLUSIONS OF LAW

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

12. 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). In this proceeding it is the Commission, through its Advocate, that is asserting the affirmative, and the Commission must prove by clear and convincing evidence the violations alleged.

13. Subsections 112.313(1), (2), and (6), Florida Statutes, provide as follows:

§ 112.313. Standards of conduct for public officers, employees of agencies, and local government attorneys

(1) DEFINITION. --As used in this section, unless the context otherwise requires, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) 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.

* * *

(6) 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.

13. The Advocate has established by clear and convincing evidence that Mr. Padgett, at all time material to this matter, was a public officer and thus subject to the Ethics Code; that in order to avoid forfeiting something of value, one-third of his annual salary as a Town Council member, he solicited Mr. Tillotson to withdraw his ethics complaint; and that Mr. Padgett proposed that continued support of the Hampton

Police Department was contingent on Mr. Tillotson's withdrawing his ethics complaint. Thus the allegation of a violation of Subsection 112.313(2), Florida Statutes, is proven.

14. The Advocate has established by clear and convincing evidence that Mr. Padgett additionally, while a public officer, used or attempted to use his position as a member of the Hampton Town Council in an effort to cause Mr. Tillotson to withdraw an ethics complaint so that he could avoid forfeiting something of value, one-third of his annual salary as a Town Council member, by asserting the support of the Hampton Police Department, which employed Mr. Tillotson, was contingent on the requested withdrawal. Thus the allegation of a violation of Subsection 112.313(6), Florida Statutes, is proven.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order and public report be entered finding that Respondent, Jason Padgett, violated Subsections 112.313(2) and (6), Florida Statutes; imposing a civil penalty of \$10,000; and issuing a public censure and reprimand.

DONE AND ENTERED this 21st day of May, 2007, in
Tallahassee, Leon County, Florida.

S

HARRY L. HOOPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of May, 2007.

ENDNOTE

1/ Citations to statutes are to Florida Statutes (2003), unless
otherwise noted.

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.