

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: THOMAS K. DOUGHTY,) Case No. 06-4829EC
))
 Respondent.))
_____))

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) held a formal hearing in this cause on May 23-24, 2007, in Tallahassee, Florida. The following appearances were entered:

APPEARANCES

For Advocate: Linzie F. Bogan, Esquire
 Senior Assistant Attorney General
 The Capitol, Plaza Level One
 Tallahassee, Florida 32399-1050

For Respondent: Hayden Dempsey, Esquire
 John Londot, Esquire
 101 East College Avenue
 Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues for determination are whether Respondent Thomas Doughty, a former employee of the University of North Florida, violated Section 112.313(8), Florida Statutes, by using information not available to members of the general public and gained advantage by reason of his official position for his personal benefit or the benefit of his company ISOCORP, and, if so, what is the appropriate penalty?

Whether Respondent Thomas Doughty, formerly an employee of the University of North Florida, violated Section 112.3185(3), Florida Statutes, by holding an employment or contractual relationship with a business entity in connection with a contract that he participated personally and substantially in while working as a public employee, and, if so, what is the appropriate penalty?

PRELIMINARY STATEMENT

On December 7, 2005, the Florida Commission on Ethics issued an order finding probable cause to believe that Respondent, Thomas K. Doughty, as a former employee of the University of North Florida, violated Section 112.313(8), Florida Statutes, by using information not available to members of the general public and gained by reason of his official position for his personal benefit or the benefit of his company ISOCORP. The Florida Commission on Ethics also found probable cause to believe that Respondent violated Section 112.3185(3), Florida Statutes, by holding an employment or contractual relationship with a business entity in connection with a contract where he participated personally and substantially in the course of his work as a public employee.

On November 30, 2006, the case was forwarded to the Division of Administrative Hearings. On December 14, 2006, an Order was entered setting the case for final hearing on

February 21 and 22, 2007, in Tallahassee, Florida. On February 5, 2007, the parties filed a stipulated motion for continuance. On February 6, 2007, an order was issued granting a continuance and rescheduling the final hearing for April 3 and 4, 2007, in Tallahassee, Florida. On March 22, 2007, the parties filed a second stipulated motion for continuance. On March 29, 2007, an order was issued granting a continuance and rescheduling the final hearing form May 23 and 24, 2007, in Tallahassee, Florida.

At the final hearing, the Advocate called four witnesses, including Respondent Thomas K. Doughty. Admitted into evidence were Advocate's Exhibits A1, A4, A5, A7, A11, A23, A29 (1 page), A30, A36, A39, A41, A44, A45, A46, A47, A49, A50 and A51.

Respondent testified on his own behalf and presented deposition testimony of one other witness. Respondent offered exhibits R1 and R2 into evidence. Exhibit R1 was admitted into evidence. Ruling upon the admissibility of Exhibit R2 was reserved at the final hearing and that exhibit is now rejected.

The parties were granted leave to file proposed recommended orders more than ten days following the filing of the transcript of the final hearing. The transcript was filed on June 14, 2007.

The proposed recommended order of each party has been reviewed and utilized in the preparation of this Recommended Order.

References to Florida Statutes are to the 2006 Edition unless otherwise noted.

FINDINGS OF FACT

1. In January 2001, Respondent Thomas Doughty was hired by the University of North Florida (UNF) to serve as the Deputy Director of Information Systems for the Florida Partnership for School Readiness.^{1/} Respondent served in this position from January 10, 2001 until March 20, 2002.

2. Respondent's employment with UNF was funded through a grant provided to UNF by the Florida Department of Education.

3. In 1999, the Florida Partnership for School Readiness (The Partnership) was established for purposes of administering School Readiness programs in the State of Florida. Chapter 99-357 Laws of Florida (1999). At its inception the Florida Partnership for School Readiness was assigned to the Executive Office of the Governor for administrative purposes.

§ 44.01(4)(a), Fla. Stat. (1999). However, in 2001 the Florida Partnership for School Readiness was re-located to the Agency for Workforce Innovation (AWI) for administrative purposes. § 44.01(4)(a), Fla. Stat. (2001).

4. During Respondent's employment with The Partnership, his primary job responsibility was to move forward a program being developed by and for The Partnership called the Simplified Point of Entry/Uniform Wait List program. This included helping to create the legislative budget request for the project, justifying the project before the State's technology review work group, getting funds approved for the procurement document and hiring the vendor to actually create the simplified point of entry system. Respondent, on behalf of The Partnership, was responsible for overseeing the development and implementation of the Simplified Point of Entry/Uniform Wait List Program.

5. Respondent's job duties as Deputy Director of Information Systems also included leading the development and implementation of the information system(s) used by The Partnership including, but not limited to, the web-based simplified point of entry unified waiting list, coordination of existing systems to ensure a seamless delivery of service, contacts database, coordinating all data processing activities, and overseeing the contracts for data management services. Additionally, Respondent was responsible for reviewing the technical work of project teams in systems planning studies, information needs assessments and systems analysis and reviewing approaches and methods to assess effectiveness in meeting management objectives. Respondent also advised and assisted The

Partnership's Executive Director in matters regarding data management, information systems and computer network administration issues. Finally, Respondent was responsible for helping The Partnership to position itself so that the agency could secure funding through the legislative process for the development of the school readiness system.

6. Katherine Kamiya served as the Executive Director of The Partnership from July 2001 through February 2004.

7. The Simplified Point of Entry/Unified Wait List Program was a web-based system that was designed to allow individuals seeking school readiness services to register for all related services using a single application process.

8. From the time he was hired in January 2001 until November of 2001, when Carrie Cole started working with Respondent at The Partnership, Respondent was the only person working in the Partnership's Information and Technology Department. Carrie Cole only worked with Respondent until May 15, 2002, when she left for maternity leave.

9. On June 14, 2001, approximately five months after commencing work at The Partnership, Respondent and his business partner Walter Ales formed a computer consulting company named ISOCORP. According to the Articles of Incorporation ISOCORP was established to "carry on, conduct, maintain and otherwise operate a business for technology consulting, sales, service and

other related activities." Respondent is a 49 percent shareholder, vice-president and director of ISOCORP.

10. After incorporating in June 2001, ISOCORP, Respondent's company, submitted an application with the Florida Department of Management Services to become an authorized vendor with the State of Florida. According to Respondent, ISOCORP, over the course of several months, submitted information to the Florida Department of Management Services in an effort to secure a State Term Contract. On November 6, 2001, Respondent's company ISOCORP was issued a State Term Contract and pursuant to the said contract was authorized to provide to agencies of the State of Florida "IT consulting services as well as hardware and software sales."

11. Soon after receiving the State Term Contract, but prior to December 2001 when Respondent informed AWI Executive Director Katherine Kamiya that he wanted to terminate his employment, Respondent allegedly met with then Director of the Commission on Ethics, Bonnie Williams. The purpose of the meeting, according to Respondent, was to discuss the conflict of interest provision in ISOCORP'S State Term Contract. Later, when providing a sworn statement to Ronald Moalli, an investigator with the Commission on Ethics, Respondent recalled the following with regard to his purported meeting with Bonnie Williams:

Mr. Doughty: So I was elated, this is fantastic, finally we got our State term contract, we are going to be a real company that can do business with the State. So I run up there, she puts the document in front of me and I start initialing it, initialing it, initialing it. I get a copy of it later on. I don't know if they sent it to me a week later and I started looking through it and went, oh crap, I wonder as a UNF employee I am considered a State employee. I don't know and I don't want to do any thing wrong and that is when I came here.

Mr. Moalli: Okay.

Mr. Doughty: I came here and I told Ms. Williams and I think she has no recollection of this.

Mr. Moalli: She doesn't, she speaks to a lot of people.

Mr. Doughty: But it was at the Remington Green office. I was sitting in her office. I think she had two chairs, nice comfortable chairs and I told her the situation. I work for UNF, I am grant funded by DOE, I am at the Partnership, we are housed in EOG [Office of the Governor], we are transitioning over to AWI and she said, well, I agree, I don't know where you belong either, but you should go ahead and file and I am reiterating, but go ahead and file for a rule opinion but in the meantime don't do any business and I think you will be all right.

Due to the non-corroboration of Respondent's testimony regarding Bonnie Williams' alleged affirmation of his position, that portion of his testimony is not deemed creditable.

12. In December 2001, Respondent informed Katherine Kamiya, then Executive Director of The Partnership, about his

desire to terminate his employment with the State so that he could cultivate his company ISOCORP.

13. Respondent advised Kamiya that if The Partnership desired to retain his services, The Partnership would have to contract with Respondent's company, ISOCORP. In December 2001 following this discussion with Kamiya, Respondent, on behalf of his company ISOCORP, submitted to Kamiya the following:

- 1) An MIS activities list;
- 2) A potential statement of work;
- 3) A rate sheet with an approximate cost for ISOCORP to participate/implement all the tasks on the statement of work, with the exception of the "School Readiness Childcare System";
- 4) A sample purchase order for work that was secured by the Governor's office from another vendor;
- 5) An ISOCORP company brochure; and,
- 6) A copy of the ISOCORP State Term Contract.

14. Respondent, when submitting the information to Kamiya, advised that the "information [was] intended as a starting point." Respondent submitted the above information to Kamiya while Respondent continued to serve as the Director of Information Systems for The Partnership and during the time when The Partnership was attempting to select a vendor for the Simplified Point of Entry/Unified Wait list program after The

Partnership received "non-responsive" and "excessively" costly bids for the work from two companies, Vector and Covansys.

15. The Statement of Work submitted by Respondent to Kamiya in December 2001 defines the proposed "scope of services" to be provided by ISOCORP to The Partnership and the cost for ISOCORP to participate in or implement the enumerated tasks.

The tasks and corresponding hours are as follows:

Task 1 - Simplified Point of Entry - Consulting services for overseeing, mentoring and contributing to the development and implementation of the SPE (240 hours)

Task 2 - TAPP Data Entry System/Reporting - Consulting services for design and development of a system for the collection of Teenage Parent Program participant data via the web. (250 hours)

Task 3 - Electronic Coalition Plan Submission System - Consulting services for the design and development of an electronic coalition plan submission system utilizing Adobe Acrobat forms (250 hours)

Task 4 - School District Expenditure Reporting System - Consulting services for the design and development of a system for the collection of school district expenditure data based on the FA-399 form (250 hours)

Task 5 - School Readiness Website - Consulting services (creative design, web programming) for the design, development and implementation of a new School Readiness website. (220 hours)

Task 6 - School Readiness System -
Consulting services for overseeing and
contributing to the documentation, design,
development and implementation of the
"School Readiness Childcare System."

16. In February 2002, the company Vector was selected as the vendor for the Simplified Point of Entry/Unified Wait List program. On February 27, 2002, Respondent tendered his resignation to the University of North Florida and The Partnership. Respondent advised in his letter of resignation that he "learned a great deal" while working at The Partnership. March 20, 2002, was the effective date for Respondent's resignation.

17. On Monday, March 4, 2002, Respondent sent an e-mail to Jeff Ling at MGT of America, Inc., providing therein "information to help put together a proposal for the "School Readiness Data System." Included with the information submitted by Respondent to Ling was the Statement of Work for the simplified Point of Entry and an explanatory note advising that "the SPE [simplified point of entry] will serve as the front door to School Readiness Services."

18. On March 13, 2002, exactly seven days before the effective date of Respondent's resignation, ISOCORP, Respondent's company, submitted to The Partnership a proposal for Respondent, through ISOCORP, to serve as technical lead on the Simplified Point of Entry/Unified Wait List project and

coordinate and assist with The Partnership's transition from the Executive Office of the Governor to the Agency for Workforce Innovation (first proposal). While working at The Partnership through his employment with the University of North Florida, Respondent's job duties included serving as technical lead on the Simplified Point of Entry/Unified Wait List project and coordinating and assisting with The Partnership's transition from the Executive Office of the Governor to the Agency for Workforce Innovation.

19. On March 13, 2002 ISOCORP submitted a proposal (second proposal) to The Partnership "to assist with the design of the requirements and procurement of a new, centralized school readiness system that would be used to administer all school readiness programs." The second proposal also provides that "ISOCORP is proposing to assist with the creation of the new requirement document for this centralized system and write the advanced planning document to assist the Partnership with this process." The proposed cost for ISOCORP to perform the proposed services was \$187,500. The second proposal included the following subtitled sections: Overview; Current Situation, Understanding of Primary Objectives, Work Tasks, Deliverables, Time Lines, Professional Staff, and Proposed Cost. The second proposal notes further that,

The Partnership is moving forward with the development of a "scaled down" version of the original [Simplified Point of Entry] that can be used as a "front door" to the new school readiness system simplifying the process for parents/guardians. The Partnership is now in the process of formulating the "backend" or data warehouse component of the system.

20. Additionally, the second proposal notes that one of the primary objectives for the work to be performed by ISOCORP was to "Draft an advanced planning document and all supporting documentation for a future procurement" related to the school readiness system. In explaining the second proposal, Respondent testified as follows,

There is a -- there is a company right now that has a system called, I think it is called EFS. This system was used and still is used, but initially it was used to manage the financial and the case management. Basically to implement the program for, it is not Pre-K, but it is one of the programs that was under the umbrella of School Readiness that came from DCF. So basically it was a program that they tracked, it is what they used to operate that program and they had all, you know, again, contracting, case management, financial information, billing, everything was in that system. Well, when all these programs came into the Partnership, that system, at least it was that at the time, couldn't support all of these other programs because they are so different and they all pretty much had their own systems. The Partnership because they only spent 1.2 I guess on the simplified point of entry had some extra money that they wanted to spend on a study to determine what a dream system would be in order to create a system that could administer all of

those programs, including the case management and the financial components and everything, it is a big undertaking. And so that contract was to go statewide and hold stakeholder meetings. We had stakeholder meetings in Tampa, Jacksonville, four or five locations throughout the state. We invited all the stakeholders, the central agency, the School Readiness, any other interested parties could come, give us their input and, of course, we recorded it. We basically had -- and ultimately compiled all of that information along with the interviews that we held with the Governor's Office and the Legislature and all the other stakeholders here, you know, at the different State agencies that were involved. So what that was essentially a study that would come back with different deliverables that ultimately would be this is pretty much what these stakeholders are saying would be encompassed in the dream system. . .

21. Although both of the March 13, 2002, proposals from ISOCORP were signed by Walter Ales, Respondent's business partner at ISOCORP, Respondent and Ales jointly prepared the proposals.

22. On April 4, 2002, David Slusher, then Deputy Director of Finance and Administration for The Partnership, submitted to AWI two requests for purchase orders. The first request, in the amount of \$25,000.00, sought to have a purchase order issued to ISOCORP for the purpose of "continuing [to] have Tom Doughty work as technical lead on the SPE project [that was then] underway with Vector." The second request, in the amount of \$187,500.00, sought to have a purchase order issued to ISOCORP

so that the company could assist The Partnership in the design of the requirements and procurement of a new, centralized school readiness system that would be used to administer all school readiness programs in Florida. Slusher submitted non-competitive bid/sole source justifications for both purchase order requests. The requests for purchase orders were submitted by Slusher approximately two weeks after the effective date of Respondent's resignation, but staff of The Partnership knew several weeks prior to Respondent's resignation that Respondent, through ISOCORP, would continue providing services to The Partnership.

23. The non-competitive bid/sole source justification for the \$25,000.00 purchase order request provides as follows.

We desire to contract with ISOCORP for the services of Mr. Thomas Doughty to act as technical lead on the SPE/UWL project and to coordinate and assist with the IT support transition from EOG to AWI. Mr. Thomas Doughty has unique experience in the area of the Simplified Point of Entry/Unified Waiting List (SPE/UWL) development and implementation as he was the Deputy Director of Management Information systems for the Partnership from January, 2001 until March 20, 2002. Mr. Doughty's experience in the development of the RFP for the SPE/UWL system and his particular knowledge of the requirements of the Partnership's technology and data systems needs is crucial to enable the completion of this project within the currently established deadline.

This project has been developed over several years and the current status of the project

requires the ongoing involvement, guidance, and insights of Mr. Doughty at this critical time to ensure the project completes on time and that the delivered system meets the needs of [the] Partnership and the programs it administers.

24. The non-competitive bid/sole source justification for the \$187,500.00 purchase order request provides as follows.

We desire to contract with ISOCORP to assist the Partnership in the design of the requirements and procurement of a new, centralized school readiness system that would be used to administer all school readiness programs in Florida. ISOCORP is a State Terms Contractor for these services and has a staff member with unique knowledge and experience in the technological and data systems needs of the Partnership and all of the stakeholders in the school readiness programs throughout the state. Mr. Thomas Doughty was the Deputy Director for Management Information Systems for the Partnership from January, 2001 through March 20, 2002. During that time he played a key role in the efforts to bring the Simplified Point of Entry/Unified Waiting List project to a point where it will be implemented by the end of the current fiscal year. During his tenure at the Partnership Mr. Doughty was a primary participant in the numerous discussions and meetings that led to the envisioning of this new school readiness system.

Mr. Doughty is reflected as a Co-Project Manager in the ISOCORP proposal related to this procurement action and his ability to incorporate his [sic] first-hand understanding of the complexities inherent in the diversity of existing technology and data systems and the necessity for having a single, comprehensive system to serve the current, and future, needs of the overall school readiness program cannot be

overstated. Given this project has to be completed by June 30, 2002 due to the nature of the funds that are financing this project, there is no other State Terms Contractor that could take on a project of this scope and be able to realistically meet the specified delivery timeline.

25. Upon inquiry about the Simplified Point of Entry Project by the investigator for the Commission on Ethics, Respondent stated the following in response to his personal counsel's questions.

MR. DOUGHTY: Well, this project used to live over at Department of Education. This is the simplified point of entry.

MR. DEMPSEY: Right.

MR. DOUGHTY: It used to live at the Department of Education and they never got it off the ground. And so, you know, year after year they kept trying to do something and then, you know, finally it came to the Partnership and they had it for a year or so and they needed to get it off the ground.

MR. DEMPSEY: But she wanted you to stay because you had a specialized knowledge about this whole process.

MR. DOUGHTY: Right, right.

MR. DEMPSEY: So I don't think it was a position that you could just switch people in and out because there was not anybody else with that sort of knowledge; is that right?

MR. DOUGHTY: That is correct.

(A46, pgs. 41, 42)

26. Kamiya, former Executive Director of The Partnership, confirmed that she wanted Respondent to continue to provide services to The Partnership because of Respondent's unique and specialized knowledge about the Simplified Point of Entry/Uniform Wait List project and the developing school readiness system.

27. On April 5, 2002, AWI issued to ISOCORP a purchase order in the amount of \$25,000.00 so that Respondent, through his company ISOCORP, could serve as technical lead on the Simplified Point of Entry/Uniform Wait List project and assist The Partnership in transitioning from the Executive office of the Governor to the Agency for Workforce Innovation.

28. On April 8, 2002, AWI issued to ISOCORP a purchase order in the amount of \$187,500.00 so that ISOCORP could assist in the design of the requirements of and procurement of a school readiness system.

29. The \$25,000.00 and \$187,500.00 purchase orders were ISOCORP'S first contracts as a corporation.

30. Prior to working at The Partnership, Respondent had never worked in a position related to the Simplified Point of Entry/Uniform Wait List project.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of these proceedings. §§ 120.56(9) and 120.57(1), Fla. Stat.

32. 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).

33. 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 Thomas K. Doughty violated Sections 112.313(8) and 112.3185(3), Florida Statutes. 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, the burden of establishing by clear and

convincing evidence the elements of Respondent's violations is on the Commission.

34. 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.

35. Section 112.313(8), Florida Statutes, provides as follows:

DISCLOSURE OR USE OF CERTAIN INFORMATION.
No public officer, employee of an agency, or local government attorney shall disclose or use information not available to members of the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

36. In order to establish a violation of Section 112.313(8), Florida Statutes, the following elements must be proven.

1. The Respondent must have been a public officer or employee.
2. The Respondent must have disclosed or used information which was:
 - a) not available to members of the general public and
 - b) gained by reason of the Respondent's official position.
3. Such information must have been disclosed or used with an intent to secure personal gain or benefit for the Respondent or another person or business entity.

37. The Advocate has established by clear and convincing proof that Respondent, Thomas Doughty, at all times material to this matter, was a public employee as contemplated by Section 112.313(8), Florida Statutes. The first element has been established.

38. The Advocate must next prove by clear and convincing evidence that Respondent disclosed or used information which was not available to members of the general public and gained by reason of Respondent's official position.

39. The Legislature elected not to define "information" as that term is used in Section 112.313(8), Florida Statutes. It is well established that "[w]ith regard to conclusions of law, Florida Courts defer to an agency's interpretation of statutes

and rules the agency is charged with implementing and enforcing, unless they are clearly erroneous or contrary to law." Hobbs v. Fla. Dept. of Transp., 831 So. 2d 745, 747 (Fla. 5th DCA 2002).

40. The Commission on Ethics, in advisory opinion 04-15 noted that "[t]he American Heritage Dictionary, Second College Edition, defines the term "information" as being "knowledge derived from study, experience, or instruction." The relevant "information" in the present case is the unique knowledge and experience that Respondent garnered while working as Information Systems Director at The Partnership. On two occasions, once when justifying the \$25,000.00 dollar purchase order, and again when justifying the \$187,500.00 purchase order, The Partnership clearly and unequivocally stated that it was necessary to hire ISOCORP, Respondent's company, through a non-competitive bid process because of Respondent's specialized knowledge and expertise as to matters related to the Simplified Point of Entry/Unified Wait List program. Respondent's specialized knowledge and expertise as to matters related to the Simplified Point of Entry/Unified Wait List project, including the school readiness system and all aspects thereof, were acquired by Respondent through his position as Director of Information Systems at The Partnership. The unique personal knowledge and experiences that Respondent garnered while working at The Partnership concerned matters unique to Respondent and these

matters were therefore not available to members of the general public. Respondent's unique knowledge and experience resulted in his company ISOCORP being awarded contracts valued in excess of \$212,000.00. The clear and convincing evidence establishes that Respondent, as to the Simplified Point of Entry/Uniform Wait List project, possessed information not available to the general public that he gained by reason of his employment at The Partnership.

41. Next, the Advocate must prove by clear and convincing evidence that Respondent disclosed or used the information with intent to secure personal gain or benefit for the Respondent or another person or business entity. The evidence presented at the final hearing clearly and convincingly demonstrates that Respondent, within five months of commencing work at The Partnership, filed Articles of Incorporation for ISOCORP. Shortly thereafter Respondent initiated paperwork with the Department of Management Services to secure a State Term Contract for ISOCORP. Upon receipt of the State Term Contract in November 2001, Respondent said he met with the Executive Director for the Commission on Ethics as a result of Respondent's concern about the conflict of interest provision contained in the State Term Contract. Within approximately a month of that alleged meeting with the Executive Director of the Commission on Ethics, Respondent, while still serving as the

Director of Information Systems for The Partnership, engaged in discussions with Katherine Kamiya about the ability of ISOCORP to provide a myriad of computer services to The Partnership. Respondent's concern about the conflict of interest provision in the State Term Contract evinces his intent to do business through ISOCORP with the very agencies, including The Partnership, that he worked closely with while serving as the Director of Information Systems for The Partnership. The Advocate has established by clear and convincing evidence that Respondent intended to use the information that he acquired while working at The Partnership for the personal gain of himself or his company ISOCORP.

42. The Advocate has also established by clear and convincing evidence that Respondent violated Section 112.313(8), Florida Statutes, by using information not available to members of the general public and gained by reason of his official position for his personal benefit or the benefit of his company ISOCORP.

43. Section 112.3185(3), Florida Statutes, provides as follows:

No agency employee shall, after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract in which the agency employee participated personally and substantially through decision, approval,

disapproval, recommendation, rendering of advice, or investigation while an officer or employee.

44. In order to establish a violation of Section 112.3185(3), Florida Statutes, the following elements must be proved:

1. The Respondent must have been an employee of the executive or judicial branch of state government.
2. After retirement or termination from public service, the Respondent must have held an employment or contractual relationship with a business entity.
3. Such employment or contractual relationship must have been in connection with a contract in which the Respondent participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice or investigation while a officer or employee of the executive or judicial branch of state government.

45. Advocate has established by clear and convincing proof that Thomas Doughty, at all times material to this matter, was an employee of an agency of state government as contemplated by Section 112.3185(3), Florida Statutes.^{2/} The first element has been established.

46. Next, the Advocate must prove by clear and convincing evidence that Respondent, after termination from public service, held an employment or contractual relationship with a business entity. Section 112.312(5), Florida Statutes, defines a

"business entity" to mean "any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state." Respondent's company ISOCORP is a business entity and Respondent, as an employee and director of ISOCORP, had a contractual relationship with the company. The Advocate has established by clear and convincing proof the second element necessary to establish a violation of Section 112.3185(3), Florida Statutes.

47. The final element requires that Advocate prove by clear and convincing evidence that Respondent's employment or contractual relationship with ISOCORP must have been in connection with a contract in which Respondent participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice or investigation while an employee of the executive branch of state government. The Commission on Ethics, in interpreting this statute, has limited the scope of this statutory provision to activities related to the procurement process. Commission on Ethics Advisory Opinion 83-8.

48. For purposes of implementing the prohibitions contained in Section 112.3185(3), Florida Statutes, the

Commission on Ethics, in Advisory Opinions 00-6 and 01-6, noted the following:

To participate 'personally' means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. 'Substantially,' means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. (citing 5 C.F.R. Section 737.5(d)).

49. Respondent's primary job responsibility while working as the Director of Information Systems for The Partnership was to move forward the Simplified Point of Entry/Unified Wait list project. While still wearing the hat of Director of Information Systems for The Partnership, Respondent, as an employee and Director of ISOCORP, submitted in December 2001 a proposal to Katherine Kamiya to have ISOCORP perform a myriad of computer consulting projects for The Partnership including matters related to the Simplified Point of Entry and School Readiness projects. Respondent, in his capacity of Director of Information Systems for The Partnership, recommended and advised

The Partnership to hire his company ISOCORP. Respondent was obviously attempting to serve two masters during a time when he was being paid to serve only one: The Partnership. Respondent, in his capacity as Director of Information Systems for The Partnership, participated personally in the procurement process related to The Partnership's decision to hire his company ISOCORP for services provided pursuant to the two purchase orders at issue.

50. A state employee participates "substantially," through "decision, approval, disapproval, recommendation, rendering of advice or investigation" of a contract,^{3/} when that employee's involvement in the procurement or development of the contract is of significance to the matter or forms a basis for a reasonable appearance of such significance. On at least three occasions Respondent, while serving as Director of Information Systems for The Partnership, submitted proposals to The Partnership wherein he recommended to The Partnership by submitting the ISOCORP proposals that The Partnership should contract with ISOCORP. The affirmative acts of recommending ISOCORP occurred in December 2001 when Respondent submitted ISOCORP's initial proposal to Kamiya and it occurred twice more on March 13, 2002, when ISOCORP submitted to The Partnership proposals related to the \$25,000.00 and \$187,500 proposals, respectively. It cannot be said under these facts that Respondent's role in this matter

was either unimportant or peripheral to The Partnership's decision to contract with ISOCORP. Respondent's actions of recommending ISOCORP for the two purchase orders at issue were significant factors in The Partnership's decision to hire ISOCORP because the only way that The Partnership could secure Respondent's services was by contracting with ISOCORP. Respondent made this point clear to decision makers at The Partnership. The Advocate has established by clear and convincing proof the third and final element necessary to establish a violation of Section 112.3185(3), Florida Statutes. Respondent violated Section 112.3185(3), Florida Statutes.

RECOMMENDED PENALTY

The Legislature, in the first sentence of the Code of Ethics for Public Officers and Employees states that "[i]t is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law." Respondent in the instant case engaged in the very conduct that the Code of Ethics was enacted to protect against. Within five months of commencing his employment at The Partnership, Respondent was laying the foundation to place ISOCORP in a position to provide computer consulting services to the agencies that Respondent serviced and frequently interacted

with in his capacity as Director of Information Systems for The Partnership.

By his own admission Respondent acknowledged concern when he saw that the State Term contract that he signed on behalf of ISOCORP contained a conflict of interest provision. Respondent testified that he sought the advice of the Executive Director of the Commission on Ethics who told him to request an advisory opinion from the Commission and refrain from doing business with the State until the issues surrounding Respondent's employment status were clarified. Respondent disregarded this advice.

Section 112.317, Florida Statutes, authorizes the Commission on Ethics, in cases involving former public employees, to order a public censure and reprimand, a civil penalty not to exceed \$10,000.00 for each violation and restitution of any pecuniary benefits received because of the violation(s) committed.

Based on the findings of facts and conclusions of Law, it is recommended that a civil penalty of \$10,000.00 be imposed against Respondent due to his violation of Section 112.313(8), Florida Statutes; that a civil penalty of \$10,000.00 be imposed against Respondent due to his violation of Section 112.3185(3), Florida Statutes; and, that Respondent be publicly censured and reprimanded.

It is further recommended that Respondent make restitution in the amount of \$212,500 to The Partnership, AWI or the appropriate State agency.

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



DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 7th of August, 2007.

ENDNOTES

^{1/} When he was initially hired Respondent's job title was Deputy Director of Information Services. During the course of Respondent's employment his job titled was changed but not his duties and responsibilities. (A46, pg. 3) Throughout this Order Respondent, when necessary, will be referred to as the Deputy Director of Information Services.

^{2/} Respondent argues that as a former employee of the University of North Florida he is not included within the definition of "agency employee" as those terms are contemplated by Section 112.3185(3), Florida Statutes. This argument is not persuasive.

^{3/} Both purchase orders at issue were executed approximately two weeks after the effective date of Respondent's resignation. However, Section 112.3185(3), Florida Statutes, applies to

contracts that come into existence either before or after the employee leaves public employment. See Commission on Ethics Advisory Opinion 00-6.

COPIES FURNISHED:

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

Hayden R. Dempsey, Esquire
John Londot, Esquire
Greenberg, Traurig, P.A.
101 East College Avenue
Tallahassee, Florida 32302

Kaye Starling, Agency Clerk
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

Phillip C. Claypool, General Counsel
Florida Commission on Ethics
Post Office Box Drawer 15709
Tallahassee, Florida 32317-5709

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.