

FILED

2009 JAN 30 A 10:50

DIVISION OF ADMINISTRATIVE HEARINGS

BEFORE THE STATE OF FLORIDA COMMISSION ON ETHICS

DATE FILED

JAN 28 2009

COMMISSION ON ETHICS

In re JIM VANDERGRIFT, )
Respondent. )

Complaint No. 06-040
DOAH Case No 08-1438EC
COE Final Order No. 09-038

FINAL ORDER AND PUBLIC REPORT

On November 17, 2008, an Administrative Law Judge (ALJ) from the Division of Administrative Hearings (DOAH) submitted to the parties and the Commission his Recommended Order, a copy of which is attached hereto. Neither the Respondent nor the Commission's Advocate filed exceptions to the Recommended Order. The matter thereafter came before the Commission on Ethics for final agency action.

Background

This matter began with the filing of an ethics complaint by Janice Baum and Paul Woodman (Complainants), on March 9, 2006, against Jim Vandergriff (Respondent), alleging that the Respondent, as Mayor of the City of New Smyrna Beach, violated Section 112.3143(3)(a), Florida Statutes, by voting on a matter that inured to his special private gain when he voted to postpone City Ordinance 43-05,

which would have amended the local Land Development Regulations to establish a Historic Architecture Overlay District. By order dated March 23, 2006, the Commission on Ethics' Executive Director determined that the allegations of the complaint were legally sufficient to indicate possible violations of the statute and ordered Commission staff to investigate the complaint, resulting in a Report Of Investigation dated January 25, 2007. Thereafter, by order dated April 25, 2007, the Commission found probable cause to believe the Respondent may have violated Section 112.3143(3)(a), Florida Statutes. Subsequently, the matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order (RO). A formal evidentiary hearing was held before the ALJ on July 29, 2008 (including the presentation of witnesses and the admission of exhibits); a transcript of the hearing was provided; and both the Respondent and the Advocate for the Commission on Ethics filed proposed recommended orders with the ALJ. On November 17, 2008, the ALJ entered his RO recommending that the Commission issue a final order and public report finding that the Respondent did not violate Section 112.3143(3)(a), Florida Statutes, and recommending that the ethics complaint filed against the Respondent by the Complainants be dismissed. Neither the Advocate nor the Respondent filed exceptions to the RO, but both were notified of the date, time, and place of our final consideration of this matter.

#### Standards of Review

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law and interpretations of administrative rules contained in a recommended order. However, the agency may not reject or modify findings of fact made by an ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence (CSE) or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Department of Business Regulation, 556 So.2d 1204 (Fla. 5<sup>th</sup> DCA 1990), and Florida Department of Corrections v. Bradley, 510 So.2d 1122 (Fla. 1<sup>st</sup> DCA 1987). CSE has been defined by the Florida Supreme Court as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957).

The agency may not reweigh the evidence, may not resolve conflicts in the evidence, and may not judge the credibility of witnesses, because such evidential matters are within the sole province of the ALJ. Heifetz v. Department of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1<sup>st</sup> DCA 1985). Consequently, if the record of the DOAH proceedings discloses any CSE to support a finding of fact made by the ALJ, the Commission on Ethics is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretations of administrative rules over which it has substantive jurisdiction.

When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion or interpretation and must make a finding that its substituted conclusion or interpretation is as or more reasonable than that which was rejected or modified.

Having reviewed the RO and the entire record of the proceeding, the Commission on Ethics makes the following findings, conclusions, and rulings:

### **Findings of Fact**

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

### **Conclusions of Law**

1. The Conclusions of Law as set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.
2. Accordingly, this complaint is hereby DISMISSED.

### **Disposition**

Accordingly, the Commission on Ethics accepts the recommendation of the Administrative Law Judge that it enter a final order and public report finding that the

Respondent, Jim Vandergriff, did not violate Section 112.3143(3)(a), Florida Statutes, as alleged in the ethics complaint, and hereby dismisses the complaint.

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 23, 2009.

January 28, 2009  
Date Rendered

Cheryl Forchilli  
CHERYL FORCHILLI  
Chair

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709 (PHYSICAL ADDRESS AT 3600 MACLAY BLVD., SOUTH, SUITE 201, TALLAHASSEE, FLORIDA); AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. Mark Herron, Attorney for Respondent  
Ms. Jennifer M. Erlinger, Commission Advocate  
Ms. Janice Baum, Complainant  
Mr. Paul Woodman, Complainant  
The Honorable P. Michael Ruff  
Division of Administrative Hearings