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3600 Maclay Blvd., South, Suite 201
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January 28, 2009

FILED

2009 JAN 30 A 10:50
DIVISION OF
ADMINISTRATIVE
HEARINGS

The Honorable Charlie Crist
Governor
The Capitol
Tallahassee, FL 32399-0001

Re: In re EVELYN HAMMOND - Complaint Nos. 06-086, et al. (Consolidated)


Dear Governor Crist:

The State of Florida Commission on Ethics has completed a full and final investigation of three complaints filed against Ms. Evelyn Hammond, who formerly served as Mayor of the Town of Century. Pursuant to Section 112.324(8), Florida Statutes, we are reporting our findings to you in this case.

Therefore, we are enclosing a copy of our file and the Final Order and Public Report in this matter. We have found that Ms. Hammond violated Section 112.313(6), Florida Statutes, and recommend that she be ordered to pay a civil penalty in the amount of \$3,000 and that she receive a public censure and reprimand.

If we may be of any assistance to you in your deliberations, please do not hesitate to contact us. We would appreciate your informing us of the manner in which you dispose of this matter. For information regarding the collection of this civil penalty, please contact the Office of the Attorney General, Mr. James H. Peterson, III, Assistant Attorney General.

Sincerely,


PHILIP C. CLAYPOOL
Executive Director and General Counsel

PCC/jcc
Enclosures

cc: Messrs Mark Herron and James J. Dean, Attorneys for Respondent
Mr. James H. Peterson, III, Commission's Advocate
Mr. Nollan Wilson, Complainant
Ms. Anne C. Savage, Complainant
Ms. Ann C. Brooks, Complainant

DATE FILED

[JAN 28 2009

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

COMMISSION ON ETHICS

In re **EVELYN HAMMOND,**)
)
 Respondent.)
)
)
 _____)

Complaint Nos. 06-086, 06-113,
and 06-131 (Cons.)
DOAH Case No. 08-2354EC
COE Final Order No. 09-039

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics, meeting in public session on January 23, 2009, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on November 6, 2008.

BACKGROUND

This matter began with the filing of three separate complaints on May 5, May 26, and June 12, 2006, alleging that the Respondent, Evelyn Hammond, as Mayor of the Town of Century, violated the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes). The allegations were found to be legally sufficient to allege possible violations of Sections 112.313(6) and 112.3135(2)(a), Florida Statutes, and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On June 13, 2007, the Commission on Ethics issued an order finding probable cause to believe that the Respondent had violated Section 112.313(6), Florida Statutes, by using her public position to allow

her son to continue receiving utility services from the Town when his account was delinquent and by directing that late fees be removed from his account; and by retaliating against Century Little League by taking away its operation of the concession stand when her son was not re-hired as its head umpire. The remaining allegations were dismissed for lack of probable cause. The matter was then forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge (ALJ) to conduct the formal hearing and prepare a recommended order. A formal evidentiary hearing was held before the ALJ on August 21 and 22, 2008. A transcript was filed with DOAH and both parties timely filed proposed recommended orders. The ALJ's Recommended Order was transmitted to the Commission and to the parties on November 6, 2008, and the parties were notified of their right to file exceptions to the Recommended Order. Both parties timely filed exceptions and responses to the other party's exceptions, and the matter is now before the Commission for final agency action.

STANDARDS FOR REVIEW

Under Section 120.57(1)(l), Florida Statutes, an agency may not reject or modify findings of fact made by the ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Dept. of Business Regulation, 556 So.2d 1204 (Fla. 5th DCA 1990); and Florida Department of Corrections v. Bradley,

510 So.2d 1122 (Fla. 1st DCA 1987). Competent, substantial evidence 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, resolve conflicts therein, or judge the credibility of witnesses, because those are matters within the sole province of the ALJ. Heifetz v. Dept. of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Consequently, if the record of the DOAH proceedings discloses any competent, substantial evidence to support a finding of fact made by the ALJ, the Commission is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, the Commission may adopt the recommended order as its final order. The Commission in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the Commission must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The Commission may not reject or modify the

findings of fact unless it first determines from a review of the entire record, and states with particularity in its order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The Commission may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

Having reviewed the Recommended Order and the complete record of the proceeding, the exceptions filed by Hammond and the Advocate and each party's responses thereto, and having heard the arguments of counsel, the Commission makes the following findings, conclusions, rulings and recommendations

RULINGS ON HAMMOND'S EXCEPTIONS

1. Respondent's Exceptions Nos. 1 through 4 request the Commission to modify various findings of fact made by the ALJ, particularly in Paragraphs 31, 36, 38, and 40. As noted by the Advocate in his Response, the Commission is not free to reject or modify findings of fact unless the findings were not based on competent substantial evidence or the underlying proceedings did not comply with the essential requirements of law. In each case, the Advocate has cited to record evidence that supports the controverted findings, and we adopt the Advocate's record citations *in toto* and thereby reject Respondent's Exceptions Nos. 1 through 4.

2. Respondent excepted to Paragraph 42 in his Exception No. 5, asking the Commission to modify Paragraph 42 because of a lack of competent substantial evidence upon which to base a finding concerning the community's perception. Although the Advocate argued against Exception No. 5 and cited to record evidence in support of Paragraph 42, we conclude that the first sentence of Paragraph 42 was based on inadmissible hearsay and thus not supported by competent evidence. Therefore, we accept Respondent's Exception No. 5 to the extent that we modify Paragraph 42 to read as follows:

42. During the 2006 little league season, the community boycotted the concession stand. As a result, the concession stand was operated at a loss.

3. Exception No. 6 requests that the Commission reject Paragraph 43 due to a lack of competent substantial evidence. The Advocate's Response cites to the evidence of record which supports Paragraph 43, and we adopt and incorporate the Advocate's record citations as our own and reject Exception No. 6.

4. Exceptions Nos. 7 and 8 are directed to Paragraphs 54 and 55, with the Respondent asking the Commission to modify the conclusions of law and reverse the ALJ's conclusion that Respondent violated Section 112.313(6), Florida Statutes. The Advocate in his response refers to the competent substantial evidence that supports the underlying factual findings, and we adopt and incorporate the Advocate's record citations as our own. Moreover, we believe that the ALJ's conclusions of law are legally correct and consistent with our views on the law and our precedent.

Therefore, we reject Respondent's Exceptions Nos. 7 and 8.

FINDINGS OF FACT

The Findings of Fact as set forth in the Recommended Order, except as modified herein, 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 by reference.

2. Accordingly, the Commission on Ethics concludes that the Respondent, as the Mayor of the Town of Century, violated Section 112.313(6), Florida Statutes, by using her position to retaliate against the Century Little League and its president, Dabney Longhorne, for not re-hiring her son to be its head umpire.

RECOMMENDED PENALTY

The ALJ recommended that Respondent receive a public censure and reprimand for her violation of Section 112.313(6), Florida Statutes. The Advocate excepted to this recommendation and urged the Commission to review the entire record and then increase the penalty recommendation by imposing a \$7,000 civil penalty in addition to the public censure and reprimand. Respondent objected to the imposition of a civil penalty in any amount, arguing that by being branded "corrupt," Respondent's name has been sullied and that itself was more devastating than any monetary fine.

After a review of the complete record, the Commission has decided to recommend an increase in the punishment suggested in the Recommended Order for Respondent's misuse of her position as Mayor of the Town of Century to retaliate against Century Little League. An increased punishment is recommended because Respondent's violation of the Code of Ethics is a serious violation that not only affected Century Little League, but also affected the community.¹ In addition, evidence that Respondent withheld her true retaliatory motivations at Town Council meetings when recommending that the Town take over the Century Little League concession stand and her inconsistent statements in that regard² have been taken into account in recommending an increase in the recommended punishment. Further, there were no mitigating factors recognized in the Recommended Order justifying the lack of a recommended monetary civil penalty and the record otherwise supports the ALJ's finding that Respondent's sole motivation for her actions was revenge. See Finding of Fact 43.³ Under the facts, circumstances and evidence in this case, to impose no monetary civil penalty upon Respondent would be tantamount to ignoring that Respondent violated the Code of Ethics. Therefore, in addition to the public censure and reprimand suggested in the Recommended Order, it is further

¹ T. 155, 180 [Langhorne]; (Exh. A-5, p. 15 [minutes from Feb. 20, 2006 Town Council meeting, p. 6 of 12], T. 50, 55-56 [Knowles], 173 [Langhorne], 219 [Eddie], 342 [Respondent].

² T. 325, 329-333, 337-338, 390 [Respondent], 48-49 [Knowles], 217-217 [Eddie]; Exh. A-5, p. 5 [minutes from Feb. 6, 2006 Town Council meeting, p. 5 of 9], Exh. A-5, p.17 [minutes from Feb. 20, 2006 Town Council meeting, pp. 1-12 of 12], Exh. A-5, pp. 26, 30, 36 [minutes from March 6, 2006 Town Council meeting, pp. 5, 9, 15 of 20].

³ See also record citations to Respondent's inconsistent statements in the previous footnote, supra.

recommended that a civil penalty in the amount of \$3,000 be imposed against Respondent for her violation of Section 112.313(6), Florida Statutes.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, 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, 3600 MACLAY BOULEVARD SOUTH, SUITE 201, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; 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: Messrs Mark Herron and James J. Dean, Attorneys for Respondent
Mr. James H. Peterson, III, Commission's Advocate
The Honorable Harry L. Hooper, Administrative Law Judge
Division of Administrative Hearings
Mr. Nollan Wilson, Complainant
Ms. Anne C. Savage, Complainant
Ms. Ann C. Brooks, Complainant