

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: EVELYN HAMMOND, ) Case No. 08-2354EC  
 )  
Respondent. )  
 )  
\_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for final hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on August 21 and 22, 2008, in Pensacola, Florida.

APPEARANCES

For the Advocate:

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For Respondent:

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STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

The Florida Commission on Ethics (Commission) received three sworn complaints from three citizens of Century, Florida, on May 5, 2006; May 26, 2006; and June 12, 2006. The complaints alleged that the mayor of Century, Respondent Evelyn Hammond (Mayor Hammond), violated the anti-nepotism law by hiring three relatives as employees of the town, gave her relatives unwarranted raises, and permitted her son, Edward Hammond, to receive utilities without paying for them. It was further alleged that when her son, Eddie Hammond, was fired as chief little league umpire for the Century Little League, Mayor Hammond retaliated by removing the operation of the concession stand at the little league park from the little league organization and placed it under city operation.

A preliminary investigation was conducted by the Commission. This was followed by a recommendation by the Advocate that suggested there was probable cause that:

1. Mayor Hammond violated Subsection 112.313(6), Florida Statutes (2005), by allowing her son to continue to receive utility services from the town when his account was delinquent or by directing that the late fees assessed against her son for delinquent utility payments be dropped; and
2. That Mayor Hammond violated Subsection 112.313(6), Florida Statutes (2005), by using her position to retaliate

against Century Little League for the special benefit of her son.

The Commission, on June 13, 2007, entered an Order Finding Probable Cause to believe Mayor Hammond committed the offenses set forth above. Mayor Hammond demanded a public hearing. The matter was forwarded to the Division of Administrative Hearings and filed on May 13, 2008. It was duly set for hearing on August 21 and 22, 2008, and was heard as scheduled in Pensacola, Florida.

At the hearing, the Advocate presented the testimony of seven witnesses and offered eight exhibits into evidence. Respondent presented the testimony of two witnesses and offered 24 exhibits into evidence.

A Transcript was filed on September 18, 2008. Pursuant to an Agreed Motion to Extend Time to File Proposed Recommended Orders, the parties were ordered to file their proposed recommended orders no later than 30 days subsequent to the filing of the transcript. After the hearing, the Advocate and Respondent filed their Proposed Recommended Orders on October 20, 2008.

References to statutes are to Florida Statutes (2005) unless otherwise noted.

## FINDINGS OF FACT

### The Parties

1. Mayor Hammond served as mayor of Century, Florida, from 2004 to 2008. All allegations are derived from this period. Mayor Hammond did not have a vote on the Town Council, but was the chief executive officer of the town. Before becoming mayor, Mayor Hammond was a member of the Town Council. During the time she was a member of the Town Council, Bennie Barnes was mayor. He served from 2000 until 2004.

2. Pursuant to Section 112.320, Florida Statutes, the Commission serves as the guardian of the standards of conduct for the officers and employees of the state, and officers and employees of counties, cities, or other political subdivisions of the state.

### Eddie Hammond's Utility Accounts

3. As chief executive of Century, Mayor Hammond had supervisory authority over all town employees, including the Town Clerk, and general supervisory authority of all departments and agencies of the town. The town operates its own utilities, including water, sewage, natural gas, and garbage collection. Accordingly, Mayor Hammond exercised authority over these activities.

4. Mayor Hammond had experience in determining the amount of utility bills, preparing bills, collecting them, and causing

services to be terminated. She did this for the Town of Century for ten years and for Gulf Power Company for 18 years.

5. During all times pertinent, Dorothy Sims was the Town Clerk. Ms. Sims was Mayor Hammond's first cousin. The supervisor of utility operations was Mayor Hammond's son, Eddie Hammond. He had worked for the Town of Century for 26 years and had been Superintendent of the Gas Department for about 20 years. His immediate supervisor was Town Clerk Sims.

6. Utility bills in Century are payable by the tenth of the month, and a five dollar late charge is added on the fifteenth, if the bill has not been paid. If a bill is not paid by the twentieth day of the month, service is discontinued. Eddie Hammond is often the person who shuts off the gas, should a citizen fail to remit by the twentieth day.

7. Because Century is a small town and town officials know most of its citizens and are aware of the needs of businesses, from time to time service is not discontinued even though payment is not made by the twentieth of the month. For instance, if a person is ill or has some other problem meriting an excuse, and is incapable of paying, Town Clerk Sims might forgive disconnection, at least for a time.

8. In fact, numerous citizens on the utility "cut-off" list had their accounts marked with an "H" or the word "Hold."

This meant that despite nonpayment, their utilities would not be disconnected.

9. Beneficiaries of this policy included Saved Ministries, Winn-Dixie, and Leola Robinson, for example. In fact, Ms. Robinson was permitted a "hold" even though she owed \$2,111.78. The "hold" was based on delays in a "land review" involving the placement of a mobile home. Another "hold" resulted because of the time it took to settle an estate. Another "hold" was placed because the citizen was ill.

10. On the delinquent list of October 21, 2005, 23 people were given a "hold" notation instead of experiencing a cut-off of services.

11. Eddie Hammond and Robert Tims did not pay their utility bills for years, yet their accounts were marked with a "hold." Eddie Hammond amassed a bill of \$1,802.49 by October 2005 and Robert Tims grew his to \$4,859.46 by October 2005, yet neither had their utility services terminated. Nevertheless, Eddie Hammond did not hesitate to pull the plug on citizens in a less fortunate posture.

12. Eddie Hammond and Robert Tims were long-time employees of Century. During the period 1969 to 2001, Ray Lawson was Town Clerk, and during his incumbency he permitted some town employees to pay their utilities through payroll deductions. Eddie Hammond and Robert Tims were beneficiaries of this plan.

13. Rather than have their utility bills deducted from their pay in an amount that reflected their actual bills, Town Clerk Lawson deducted a set amount each week. In the case of Eddie Hammond, \$20.00 was deducted each week. Eddie Hammond was never presented with a utility bill during this period. Robert Tims had \$35.00 deducted each week.

14. The sum deducted was often insufficient to cover the cost of Eddie Hammond's utility bill and by the time Town Clerk Lawson departed the position, Eddie Hammond owed several hundred dollars.

15. The mayor of Century from 2000-2004 was Bennie Barnes. In 2001, Town Clerk Lawson was replaced by Town Clerk Sims. Although it was easy to determine how much money Eddie Hammond and Robert Tims owed on their utility bills, Ms. Sims was unable to determine how much money had been withheld from their pay.

16. When Town Clerk Sims became the incumbent, she found the financial records of the town to be a "big mess," and they remained that way for several years. The "mess" was created when Town Clerk Lawson left because he had bad feelings toward Mayor Barnes and the City Council and manifested these feelings by locking his computer and scrambling the town's financial records.

17. Town Clerk Sims could not determine how much, if any, payroll had been applied to the utility bills of the two, and

Hammond and Tims did not know either. They were the only two employees of Century in this position. Eddie Hammond was aware that some of the money deducted was paid as child support. The last payment made to his utility bill was July 9, 2001. By October 4, 2001, deductions from his paycheck had been discontinued. Mr. Tims' deduction continued.

18. By 2004, following Mayor Hammond's inauguration as mayor, Town Clerk Sims continued to have over-all responsibility as supervisor of utility services and continued carrying Tims and Eddie Hammond in the "hold" category.

19. The office procedure with regard to utility payments was that each month a printed list of delinquents was prepared by Assistant Clerk Kristina Wood. She gave the list directly to Town Clerk Sims who determined if a delinquent was to be awarded a "hold." Mayor Hammond did not get involved in the decision to terminate or not terminate anyone's utility services.

20. Mayor Hammond paid some of Eddie Hammond's bills, other than his utility bills, because Mayor Hammond and Eddie Hammond did not want his former wives to get involved in his financial affairs. Mayor Hammond never saw Eddie Hammond's utility bill and assumed that, because he worked for the city, he paid it at his job. She was aware that he had money taken from his paycheck because she had seen some of his pay stubs.



21. Eventually Mayor Hammond learned that Tims and Eddie Hammond were on the cut-off list and made inquiry to Town Clerk Sims. Mayor Hammond was informed about the payroll deductions by Town Clerk Sims, who told her that the money to pay the charges was present, but that she could not determine how much money was available. As events unfolded, records were discovered indicating the amounts withheld from Tims and Eddie Hammond, but this occurred after Mayor Hammond paid Eddie Hammond's bill.

22. In early 2006, some citizens took notice of the unseemly situation where Eddie Hammond, the person who routinely cut off peoples' natural gas for failure to timely pay their utility bills, was himself avoiding his utility payment. His failure to pay was about to provide grist for the local journalist's mill. Mayor Hammond soon learned that the local media were about to publicize the situation.

23. That moment was when Mayor Hammond concluded that paying her son's utility bill was ". . . the right thing to do." Accordingly, she wrote a personal check for the amount of the bill, including late charges. This amount was \$1,984.30. On March 21, 2006, she took the check to the clerk's office and met with Assistant Clerk Wood. Eddie Hammond was present.

24. Assistant Clerk Wood had a discussion with Mayor Hammond regarding the late charges. She had removed the late

charges when Tims paid off his utility bill some time before March 2006 and she informed Mayor Hammond of this. Mayor Hammond told Assistant Clerk Wood to take the late charges off Eddie Hammond's bill since they were removed from Tims' bill. She believed her son should get the same consideration. Assistant Clerk Wood did as directed by pulling up Eddie Hammond's account on the computer and deducting \$245.00.

25. Mayor Hammond further asserted that the town continued to owe Eddie Hammond money from the deductions taken from his pay. She wrote a new check for \$1,739.30 and gave it to Assistant Clerk Wood, and thereafter the account displayed a zero balance.

26. The greater weight of the evidence demonstrates that Mayor Hammond believed that the town owed Eddie Hammond some amount of money, and at the time the transaction took place it is clear that Century's accounts were in disarray to the extent it was difficult to determine what, if anything, the town owed Eddie Hammond. Her determination that her son should not pay late fees because a similarly situated employee did not pay late fees was not unreasonable.

27. In any event, the "policy" of allowing Eddie Hammond to avoid paying his utility bills was in place prior to Mayor Hammond's election and continued without her intervention until the Spring of 2006. She did not intervene in the case of Robert

Tims or others who were not keeping up with their utility bills either. Even though she had 28 years of utility billing experience, she was remarkably incurious with regard to the situation in the Town of Century. This is not, however, the same as wrong-doing.

#### The Little League Concession Stand

28. Century Little League is controlled by a board of directors. The president, from 2001 until the beginning of the 2006 baseball season, was Dabney Longhorne. In that capacity, Mr. Longhorne supervised the registration of participants, the scheduling of games, and oversaw the operation of the ballpark where the games were played.

29. Since 2001, Showalter Park, a facility owned and maintained by the Town of Century, has been the main ballpark at which little league games were played. The facility has a concession stand. Century Little League operated the concession stand from 2001 through the beginning of the 2006 season.

30. Mr. Longhorne met with Mayor Hammond in January 2004 and again in January 2005 to discuss generally the relationship between the town and the little league operation. To the extent the concession stand was discussed during these meetings, the tenor was that it was expected that the little league operation would run it and use the profits generated from it.

31. Mr. Longhorne's wife ran the concession stand, and once Mr. Longhorne mentioned to Mayor Hammond that she was getting weary of running it. He never said the little league was contemplating turning the stand over to the Town of Century or otherwise abandoning the operation of the stand.

32. The profit generated by the concession stand was important to the financial well-being of Century Little League. The money was used to pay umpires, among other expenses.

33. For a number of years prior to the 2006 season, Eddie Hammond moonlighted as chief umpire of the Century Little League. He was paid \$35.00 to \$45.00 for each game and was paid from \$2.00 to \$4.50 as a booking fee for each umpire he arranged for the little league games. One of the umpires Eddie Hammond employed was his father, Ray Hammond.

34. In January 2006 while planning for the up-coming season, Mr. Langhorne and Eddie Hammond had a discussion. During that discussion Eddie Hammond suggested he could make more money umpiring elsewhere. He advised he could make more money umpiring in Brewton, Alabama, for example.

35. At the Century Little League Board meeting on Saturday, January 21, 2006, Eddie Hammond's comments were relayed to the board. The board thereafter voted to hire someone else as chief umpire. When Eddie Hammond learned of this he became angry.

36. These events were discussed in the Hammond household. On Tuesday, January 24, 2006, Eddie Hammond called Mr. Langhorne on his cellphone and expressed his anger and, moreover, suggested that retaliation was in the offing. Later that day, Ray Hammond, Eddie Hammond's father, called Mr. Langhorne and left a message asking that his call be returned.

37. Mr. Langhorne did not immediately call Ray Hammond because he determined, correctly, that he might be upset and that in the interval of a couple of days, calm might prevail. When he did call Ray Hammond on Thursday of the same week, Mr. Hammond informed him that the action was a "slap in the face" and that, "Century Little League will be getting a letter from the town stating what will be expected of them."

38. On February 6, 2006, Mayor Hammond, during the Century Town Council meeting, recommended that the town take over the concession stand at Showalter Park. She stated that she had already found someone to operate it and that the profits from it would help pay for the light bill at the park. She also made this recommendation because she was angry at Dabney Langhorne. She did not, however, reveal this to the Century Town Council.

39. Century Little League had received no prior notice of this recommendation and no one from the little league was present at the council meeting. No one spoke against the recommendation. The recommendation was put into the form of a

motion by Councilperson McMurray, and everyone on the council voted in favor.

40. Mayor Hammond stated at the hearing that the reason for her action was that she believed Century Little League did not want to operate the stand.

41. Subsequently, Mayor Hammond wrote a letter to Mr. Langhorne dated February 8, 2006. It informed Mr. Langhorne that the Town of Century was taking over the operation of the concession stand. The letter stated that, "We feel this will defray some of the cost of running the parks." The letter also discussed maintenance matters and addressed the cost of lighting for night practices. It also fulfilled Ray Hammond's pledge that Langhorne would be "getting a letter."

42. Clearly the community considered Mayor Hammond's actions to be motivated by revenge. During the 2006 little league season, they boycotted the concession stand. As a result, the concession stand was operated at a loss.

43. In light of all the facts and circumstances revealed by the evidence in this case, including the inconsistent statements made by Mayor Hammond with regard to her reasons for taking the concession stand from the Century Little League, it is concluded that her actions were motivated solely by a desire to avenge the failure of Century Little League to re-employ her son.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat. (2007).

45. 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).

46. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue. See Fla. Dep't of Transp. v. J. W. C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health & 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.

47. The Advocate must prove the allegations by clear and convincing evidence. See Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Clear and convincing evidence was defined by the Florida Supreme Court in Slomowitz v. Walker, 429 So. 2d 797, 800, as follows:

We therefore hold that clear 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.

48. Subsection 112.313(6), Florida Statutes, provides as follows:

(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.

49. An analysis of Subsection 112.313(6) Florida Statutes, and Subsection 112.312(9), Florida Statutes, which defines "corruptly," demonstrates that in order to conclude that Mayor Hammond violated Subsection 112.313(6), Florida Statutes, the following elements must be proven by clear and convincing evidence:

a. that Mayor Hammond was a public officer or employee of an agency; and that

b. she used or attempted to use her official position or any property or resource which was within her trust, or performed her official duties, such that

c. her actions were done with an intent to secure a special privilege, benefit, or exemption for herself or others; and



d. that Mayor Hammond's actions were done "corruptly," that is,

(1) done with a wrongful intent, and also

(2) done for the purpose of benefiting from some act or omission which was inconsistent with the proper performance of public duties. In re: Eli Tourgeman, Case No. 93-5183EC (DOAH April 29, 1994.)

#### Eddie Hammond's Utility Account

50. With regard to the issue of Eddie Hammond's utility account, it is clear that Mayor Hammond was a public officer during the time that her son Eddie Hammond was allowed to receive utilities without paying for them. However, she did not use her position to benefit her son. The privilege he enjoyed originated prior to Mayor Hammond's term; it was continued during Mayor Hammond's term through inaction or confusion in the Town Clerk's office; and when Mayor Hammond made inquiry, she was told that Eddie Hammond probably had funds on account sufficient to pay all or part of the bill.

51. Mayor Hammond paid the bill to avoid embarrassment. She did not pay the late charges or require that Eddie Hammond pay them. However, it was Eddie Hammond's bill, not hers, and she was under no obligation to pay it, and was under no obligation to pay the late charges. To the extent she forgave Eddie Hammond's late charges, she was doing so in consonance

with the prior judgment, made by the Town Clerk (or persons in her office), to forgive late charges in cases where payroll deductions were taken from employees.

52. She did not use her position to obtain anything. She did not take any action with an intent to secure a special privilege, benefit, or exemption for herself or her son, and consequently did not act corruptly.

#### The Little League Concession Stand

53. Mayor Hammond was a public officer when action was taken by the Town Council that resulted in the concession stand operation being removed from the purview of Century Little League.

54. She used her official position with the intent to secure a special benefit for herself or her son, Eddie Hammond. The benefit secured was the punishment of Dabney Langhorne and the Century Little League for failing to employ Eddie Hammond as chief umpire.

55. Her actions in this regard were done with a wrongful intent. Her actions were also inconsistent with the proper performance of her public duties. These acts were done corruptly as that term is defined in Subsection 112.312(9), Florida Statutes.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Ethics dismiss the allegation that Evelyn Hammond used her position to allow her son, Edward Hammond, to receive utilities without paying for them; and that the Florida Commission on Ethics enter a final order and public report finding that Respondent, Evelyn Hammond, violated Subsection 112.313(6), Florida Statutes, by using her position to retaliate against the Century Little League and its president, Dabney Longhorne, and issuing a public censure and reprimand.

DONE AND ENTERED this 6th day of November, 2008, in  
Tallahassee, Leon County, Florida.



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HARRY L. HOOPER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of November, 2008.

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.