

PRELIMINARY STATEMENT

On June 13, 2007, the Florida Commission on Ethics (Commission) issued an Order Finding Probable Cause to believe that Respondent Coretta Udell-Ford (Respondent), as a member of the White Springs Town^{1/} Council, violated Section 112.313(6), Florida Statutes (2006). The Commission forwarded the case to the Division of Administrative Hearings on June 9, 2008.

The parties filed a Joint Response to Initial Order on June 19, 2008. A Notice of Hearing dated June 30, 2008, scheduled the hearing for August 8, 2008.

On July 17, 2008, Respondent filed an unopposed Motion for Continuance of Final Hearing. The undersigned issued an Order Granting Continuance and Re-scheduling Hearing on July 21, 2008. The order scheduled the hearing for September 10 and 11, 2008.

On September 5, 2008, Respondent filed a Motion for Continuance of Final Hearing. The Commission did not oppose the motion. On September 8, 2008, the undersigned issued an Order Granting Continuance and Re-scheduling Hearing for October 30, and 31, 2008.

At the final hearing, the Advocate called six witnesses: Chris Rexford (former White Springs Police Officer), Joseph Subic (former White Springs Chief of Police), Travis Wade (Commission Investigator), Carey Herp (video specialist with the

Florida Department of Law Enforcement), Todd Kennon (White Springs Town Attorney), and Respondent. The Advocate offered Exhibit Nos. P1, P2a, P2b, P3, P4, P5, and P7 that were accepted as evidence.

At the final hearing, Respondent presented the testimony of two witnesses: Tracy Roberts (citizen of White Springs) and Robert Townsend (White Springs Town Manager). Respondent offered Exhibit Nos. R1 and R2 that were accepted as evidence.

The court reporter filed the Transcript on November 14, 2008. The parties filed their Proposed Recommended Orders on December 15, 2008.

FINDINGS OF FACT

1. Respondent served as a member of the White Springs Town Council from 1998 to 2000. She served in that capacity again for a period of approximately one year and eight months beginning in June, 2006. At all times relevant here, Respondent was familiar with Florida's Code of Ethics, Chapter 112, Florida Statutes, applicable to public officers and employees.

2. As a Town Council member, Respondent was aware of the provisions of the White Springs Town Charter. Specifically, she was aware that complaints against the town's police officers had to be in writing.

3. Under provisions of the White Springs Town Charter in effect in 2006, the police chief was in charge of the day-to-day operations of the police department. The 2006 White Springs Town Charter provided that "[n]either the council nor any council member shall interfere with the conduct of any department head, officer or an employee in the discharge of his or her duties."

4. On the evening of November 29, 2006, between 7:00 p.m. and 8:00 p.m., White Springs Police Officer Christopher Rexford initiated a traffic stop against Respondent because her automobile's tag light was out. The vehicle also matched the description of a vehicle that reportedly was transporting drugs in the White Springs vicinity.

5. During the traffic stop, Respondent told Officer Rexford, "In case you're wondering, I'm Councilwoman Ford." Respondent then told Officer Rexford, "That might not mean nothing to you now, but it will mean something in the morning because I know I wasn't speeding."

6. When Officer Rexford explained that he had stopped her because her tag light was out, Respondent suggested to Officer Rexford that he had stopped her because she was "[d]riving while black," and further informed him that that she had received 13 calls about him. Officer Rexford perceived Respondent's

comments as a threat to his job for pulling her over on a traffic stop.

7. Officer Rexford was polite during the traffic stop. He issued a written warning to Respondent for a defective tag light.

8. The video and audio recordings made during the stop verify the statements made by Respondent, show that Respondent's tag light was out, and demonstrate that the traffic stop was legitimate. Failure to have a tag light is a violation of Section 316.221(2), Florida Statutes (2006).

9. After the stop, Respondent proceeded in her vehicle to the White Springs police station to speak to Chief Subic. Respondent arrived at the police station approximately ten minutes after the stop.

10. Chief Subic met Respondent at the back door of the police station. Once inside the station, Respondent told Chief Subic that she thought that Officer Rexford stopped her because she was black. She also said that she thought Officer Rexford was targeting her vehicle because he thought it might be her husband driving. Respondent apparently believed Officer Rexford was looking for persons that might be driving while intoxicated.

11. Respondent then redirected the conversation to a racial issue. She began telling Chief Subic about the number of

oral complaints that she allegedly had received about Officer Rexford from the minority community in White Springs. At the time, Respondent was not aware of any written complaints that had been filed against Officer Rexford.

12. During the conversation, Respondent told Chief Subic that she wanted him to fire Officer Rexford. Respondent stated that if Chief Subic did not fire Officer Rexford, she would have Chief Subic fired.

13. Chief Subic tried to calm Respondent. He went out with Respondent to check the tag light on her vehicle. Chief Subic had Respondent start the vehicle and turn on the lights. Chief Subic then verified with Respondent that the tag light was out and that Officer Rexford's traffic stop was legitimate. Respondent then returned to her vehicle and drove away abruptly, stirring up gravel.

14. When Respondent got home that evening she called another Town Council member, Ralph Hardwick, and asked that a special Town Council meeting be scheduled. At the final hearing, Respondent suggested that her reason for calling the meeting was to discuss "concerns" with the police department. The agenda for the meeting, however, suggests that it was called to discuss "Citizen Complaints Made to Council Members Regarding Police Department."

15. It takes two Council members to call a Town Council meeting. Respondent used her position and authority, together with Ralph Hardwick, to call the Town Council meeting.

16. Once the meeting was scheduled, Respondent encouraged citizens in person and in telephone calls to attend the meeting. Respondent took this initiative even though she had no proof that anyone had filed written complaints against Officer Rexford or any other member of the White Springs Police Department.

17. The special Town Council meeting was scheduled for December 6, 2006. Prior to the meeting, someone printed a flyer and distributed it all over the Town of White Springs. Respondent saw the flyer posted in town prior to receiving a copy in her in-box. The flyer encouraged citizens to come to the meeting and bring complaints against the Police Department.

18. During the Town Council meeting, a number of citizens brought up verbal complaints about police traffic stops. The Town Attorney, Todd Kenyon, Esquire, then spoke at the meeting. Mr. Kenyon cautioned Council members that, although they could not stop citizens from talking, the rights of law enforcement officers and correctional officers set forth at Section 112.532, Florida Statutes (2006), required that complaints against police be in writing. Mr. Kenyon also advised the Council members that Section 112.532, Florida Statutes (2006), contained

confidentiality provisions and prescribed how law enforcement officers are supposed to be notified regarding complaints.

19. None of the complaints discussed during the special Town Council meeting called by Respondent and Council member Hardwick were in writing. In addition, there is no competent evidence that the verbal complaints reflected in the minutes of the meeting have a legitimate basis.

20. Respondent testified that she called the special Town Council meeting because she was concerned about written complaints being filed but never acted upon. The minutes of the meeting do not reflect such a concern.

21. There is no competent evidence to show that anyone ever filed written complaints against Officer Rexford prior to the time that Respondent decided to call the special meeting. Respondent admitted at the final hearing that she had no proof that there had been any written complaints filed against Officer Rexford prior to the time she decided to call the meeting.

22. The only recorded proof of any written complaint filed against Officer Rexford related to incidents that occurred after the December 6, 2006, Town Council meeting. The complainant, Tracy Roberts, filed a written complaint against Office Rexford on March 23, 2007. Ms. Robert's written complaint against

Officer Rexford was investigated and found to be unsubstantiated.

23. Respondent submitted no persuasive evidence to support her contention that the November 29, 2006, traffic stop was racially motivated. On the other hand, statistics of traffic stops performed by Officer Rexford indicate that Officer Rexford did not target African-Americans when making traffic stops for the White Springs Police Department.

24. Respondent did not have the power to unilaterally fire either Chief Subic or Officer Rexford. However, it is clear that individual Town Council members, because of their positions, have influence over Town employees.

25. In this case, Respondent improperly invoked her position in confronting Officer Rexford during the traffic stop. The un-rebutted testimony of Chief Subic also convincingly shows that Respondent further attempted to use her position when she told Chief Subic that if he did not fire Officer Rexford, she would fire Chief Subic. Finally, the weight of the evidence indicates that Respondent set up the special Town Council meeting to intimidate Officer Rexford and to retaliate against Officer Rexford and the police department for the traffic stop.

26. In sum, Respondent's behavior and actions were inconsistent with the proper performance of her public duties

She misused her position in violation of Section 112.313(6), Florida Statutes.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. See § 120.57(1), Fla. Stat. (2008).

28. Section 112.322, Florida Statutes (2006), and Florida Administrative Code Rule 34-5.0015, authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (2006) (the Code of Ethics for Public Officers and Employees).

29. 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, the Commission, through its Advocate, is asserting the affirmative, i.e. that Respondent violated Section 350.042, Florida Statutes (2006).

30. Commission proceedings that seek recommended penalties against a public officer or employee 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 Commission must establish its burden in this case by clear and convincing evidence.

31. "[T]he term 'public officer' includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body." See § 112.313(1), Fla. Stat. (2006). Section 112.312(2), Florida Statutes (2006), defines "agency" as including any "municipal government entity".

32. Section 112.313(6), Florida Statutes (2006), provides as follows:

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.

33. The term "corruptly" is defined by Section 112.312(9), Florida Statutes (2006), as follows:

(9) "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

34. The Commission met its burden in regard to the following elements: (a) Respondent was a public officer;

(b) Respondent used or attempted to use her official position;
(c) Respondent's actions were taken to secure a special privilege, benefit or exemption for herself; and (d) Respondent acted corruptly as defined by statute.

35. Respondent improperly invoked her position as a member of the White Springs Town Council during her confrontation with Officer Rexford during the traffic stop and in her demand that Chief Subic fire Officer Rexford. She also set up and encouraged citizens to attend the special Town Council meeting to intimidate Officer Rexford and to retaliate against him for the traffic stop.

36. Respondent clearly acted with wrongful intent to obtain a benefit that was inconsistent with her public duties. As noted by the Commission in its Final Order and Public Report in In re: Fred Peel, 15 F.L.A.R. 1187 (Fla. Comm'n on Ethics 1992):

It is possible for the corrupt intent required by the statute to be formed instantaneously, and a premeditated plan for securing a special benefit is not required by the statute. Even a reflexive reaction may rise to the level of corrupt intent, depending on the circumstances.

See also In re: Lisa Marie Phillips, DOAH Case No. 05-1607EC (February 1, 2006) (Recommended Order, p. 13, ¶ 33).

37. The issue of intent is a matter for the trier of fact

to determine. See Dobry v. State, 211 So. 2d 603 (Fla. 3d DCA 1968). Intent is seldom susceptible of direct proof but usually is shown by circumstantial evidence. See Busch v. State, 466 So. 2d 1075 (Fla. 3d DCA 1984); Williams v. State, 239 So. 2d 127 (Fla. 4th DCA 1970). "Intent may be presumed from the facts and circumstances surrounding the act." See Board of Regents v. Videon, 313 So. 2d 433 (Fla. 1st DCA 1975). Such is the case here.

38. In sum, the clear and convincing evidence presented at the final hearing established each of the requisite elements to prove that Respondent, as a member of the White Springs Town Council, violated Section 112.313(6), Florida Statutes (2006).

PENALTY

39. The penalties available against public officials who misuse their positions include: impeachment, removal from office, suspension from office, public censure and reprimand, forfeiture of no more than one-third-salary for no more than 12 months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits. See § 112.317, Fla. Stat. (2006). As Respondent is no longer in office, the available monetary penalties are limited to \$10,000 per violation and restitution.

40. Respondent's actions went well beyond a threat. After telling Officer Rexford that she was a Town Council member and

warning him that he would find out who she was in the morning, Respondent took immediate action by meeting with Officer Rexford's supervisor and demanding that Officer Rexford be fired. That same evening, Respondent initiated a special Town Council meeting in retaliation for the traffic stop. While Respondent ultimately did not have the power to unilaterally fire Officer Rexford or the Chief, there were no other mitigating circumstances, and Respondent's blatant use of her official position to intimidate and retaliate cannot be ignored. Considering other cases involving threats and intimidation,^{2/} a public reprimand and a civil penalty of seven thousand five hundred dollars (\$7,500) is reasonable and appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is:

RECOMMENDED:

That the Commission enter a final order finding that Respondent violated Section 112.313(6), Florida Statutes (2006), and imposing on her a public reprimand and a civil penalty in the amount of \$7,500.

DONE AND ENTERED this 29th day of January, 2009, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of January, 2009.

ENDNOTES

^{1/} While the Order Finding Probable Cause refers to Respondent as a member of the White Springs "City" Council instead of "Town" Council, the Charter introduced into evidence refers to the "Town of White Springs" and the "Town Council." Therefore, references to White Springs and its officials herein shall be "Town" as opposed to "City."

^{2/} Five prior cases involving the use of a public position to threaten or intimidate are: In re: Tom Ramiccio, 23 F.A.L.R. 895, 902 (Fla. Comm'n on Ethics 2000) [DOAH Case No. 00-265EC], aff'd per curiam, 792 So. 2d 471 (Fla. 4th DCA 2001); In re: Jimmy Whaley, 20 F.A.L.R. 2262 (Fla. Comm'n on Ethics 1997) [DOAH Case No. 97-143EC]; In re: Al Paruas, DOAH Case No. 04-3831EC (Recommended Order, July 29, 2005); In re: Lisa Marie Phillips, DOAH Case No. 05-1607EC (Recommended Order, February 1, 2006); In re: Charles Dean, DOAH Case No. 07-0646EC (Recommended Order, January 31, 2008).

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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.