

DATE FILED

APR 04 2012

FILED
BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS 32

COMMISSION ON ETHICS

DIVISION OF
ADMINISTRATIVE
HEARINGS

In re HERBERT S. ZISCHKAU, III,))	Complaint No. 10-020
Respondent.)	DOAH Case No. 11-3967EC
))	
))	Final Order No. 12-046
))	

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on March 30, 2012, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on February 8, 2012. In the RO, the ALJ recommends that the Commission enter a final order finding that the Respondent, as a member of the Deltona City Commission, did not violate Section 112.3143(3)(a), Florida Statutes, by voting on a December 9, 2009, motion on whether to investigate his actions. Neither the Commission's Advocate nor the Respondent filed any exception to the RO.

Standards of Review of a DOAH Recommended Order

Under Section 120.57(1)(1), 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.

However, the agency may not reject or modify findings of fact made by an ALJ unless the agency 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 upon which the findings were based did not comply with essential requirements of law. See, e.g., Freeze v. Department 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, 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. 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 on Ethics is bound by that finding.

Having reviewed the RO and materials from the record of the DOAH proceeding, the Commission on Ethics adopts the recommendation of the ALJ, finds that the Respondent did not violate Section 112.3143(3)(a), Florida Statutes, and dismisses the complaint.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 30, 2012.

April 4, 2012
Date Rendered


Robert J. Sniffen
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. Darren J. Elkind, Attorney for Respondent
Mr. Lonnie Neil Groot, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Mr. Nick Dancaescu, Attorney for Complainant
The Honorable Barbara J. Staros,
Division of Administrative Hearings