

DATE FILED

OCT 24 2012

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

FILED

2012 OCT 25 AM 11 12

In re OEL WINGO,
Respondent.

)
DIVISION OF
ADMINISTRATIVE
HEARINGS
)

Complaint No. 10-183
DOAH Case No. 11-6265-EC
COE Final Order No. 12-186

FINAL ORDER

This matter comes before the Commission on Ethics, meeting in public session on October 19, 2012, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on August 8, 2012. The Recommended Order (a copy of which is attached and incorporated herein by reference), recommends that the Commission enter a final order finding that the Respondent, Oel Wingo, did not violate Section 112.313(6), Florida Statutes, and dismissing the complaint.

BACKGROUND

This matter began with the filing of an ethics complaint in 2010, alleging that the Respondent, who was the City Manager of the City of Holly Hill, violated Section 112.313(6), Florida Statutes, by entering into employment contracts with City department heads to protect herself from a reduction in pay and by falsifying and destroying public records. The allegations were found to be legally sufficient and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On October 26, 2011, the Commission issued an Order finding probable cause to believe that the Respondent violated Section 112.313(6), Florida Statutes, by attempting to enter into, or entering into, pre-dated employment agreements with the City's department heads; and/or by attempting to destroy or destroying public records and/or

evidence of prior wrongdoing; and/or by attempting to enter into or entering into agreements which exceeded the Respondent's purchasing authority.

The matter was then forwarded to the Division of Administrative Hearings (DOAH) for assignment of an Administrative Law Judge (ALJ) to conduct the formal hearing and prepare a recommended order. The parties filed a Joint Prehearing Stipulation, and a formal evidentiary hearing was held before the ALJ on April 10-11, 2012. A transcript was filed with the ALJ and the parties timely filed Proposed Recommended Orders. The ALJ's Recommended Order was transmitted to the Commission, the Respondent, and the Advocate on August 8, 2012, and the parties were notified of their right to file Exceptions to the Recommended Order. No Exceptions were filed.

Having reviewed the Recommended Order and the record of the proceedings, the Commission makes the following findings, conclusions, rulings, and determinations:

STANDARDS FOR REVIEW

Under Section 120.57(1)(1), 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)(I), Florida Statutes, an agency 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 conclusions of law or interpretations of administrative rules, the agency must state with particularity its reasons for rejecting or modifying such conclusions of law or interpretations of administrative rules 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. An agency 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 therefore in the order, by citing to the record in justifying the action.

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

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

DISPOSITION

Based upon our review of the complete record, there is competent substantial evidence to

support the ALJ's findings of fact and his ultimate finding that the Respondent did not violate Section 112.313(6), Florida Statutes.

Accordingly, the Commission on Ethics concludes that the Respondent, Oel Wingo, did not violate Section 112.313(6), Florida Statutes, by entering into employment contracts with City department heads to protect herself from a reduction in pay, or by falsifying and destroying public records, or by entering into agreements which exceeded her purchasing authority.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, October 19, 2012.

October 24, 2012
Date Rendered



Susan Horovitz Maurer
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: Mr. Mark Herron, Counsel for Respondent
Ms. Diane L. Guillemette, Commission Advocate
Mr. Mark D. Barker, Complainant
The Honorable W. David Watkins, Administrative Law Judge
Division of Administrative Hearings