

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED

JAN 30 2013

COMMISSION ON ETHICS

FILED

2013 FEB 1 AM 11 49

In re JOHN MARKS,

Respondent.

DIVISION OF
ADMINISTRATIVE
HEARINGS

Complaint Nos. 11-053 and 11-054, cons.
DOAH Case Nos. 12-2508-EC
and 12-2509-EC
COE Final Order No. 13-004

FINAL ORDER

This matter comes before the Commission on Ethics, meeting in public session on January 25, 2013, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on November 28, 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, John Marks, did not violate Section 112.3143(3)(a), Florida Statutes, and dismissing the complaint.

BACKGROUND

This matter began with the filing of ethics complaints in 2011, alleging that the Respondent voted to approve the City of Tallahassee's participation in the Federal Broadband Technology Opportunity Program in partnership with the Alliance for Digital Equality, a business entity for which the Respondent served in a compensated position, and that he voted on matters which inured to the gain of Honeywell, a principal by which the Respondent was retained.

On June 20, 2012, the Commission on Ethics found probable cause to believe that the Respondent violated Section 112.3143(3)(a), Florida Statutes, by voting, on September 15, 2010, to approve the City of Tallahassee's participation in the Federal Broadband Technology

Opportunity Program in partnership with the Alliance for Digital Equality, a business entity for which the Respondent served in a compensated position, and by voting, on March 28, 2007, September 19, 2007, June 13, 2007, and June 18, 2008, on matters which inured to the gain of Honeywell, a principal by which the Respondent was retained.

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 October 8, 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 November 27, 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)(l), 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 112.3143(3)(a), Florida Statutes.

Accordingly, the Commission on Ethics concludes that the Respondent, John Marks, did not violate Section 112.3143(3)(a), Florida Statutes, by voting, on September 15, 2010, to approve the City of Tallahassee's participation in the Federal Broadband Technology Opportunity Program in partnership with the Alliance for Digital Equality, a business entity for which the Respondent served in a compensated position, and by voting, on March 28, 2007, September 19, 2007, June 13, 2007, and June 18, 2008, on matters which inured to the gain of Honeywell, a principal by which the Respondent was retained, as alleged in the complaints.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, January 25, 2013.

January 30, 2013
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. Barry Richard, Counsel for Respondent
Ms. Diane L. Guillemette, Commission Advocate
Mr. Erwin Jackson, Complainant
The Honorable Lawrence P. Stevenson, Administrative Law Judge
Division of Administrative Hearings