

DATE FILED

MAR 13 2013

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

FILED

In re **STEVEN J. MUELLER,**

Respondent.

2013 MAR 15 PM 12 49

)
) DIVISION OF
ADMINISTRATIVE
) HEARINGS

Complaint No. 10-127
DOAH Case No. 12-3138EC
Final Order No. 13-006

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on March 8, 2013, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on January 24, 2013. In the RO, the ALJ recommends that the Commission enter a final order finding that the Respondent, as a candidate for the Florida House of Representatives, violated Article II, Section 8, Florida Constitution, by filing an inaccurate CE Form 6. 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)(l), 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.

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.

Determination of Violation

Accordingly, the Commission on Ethics concludes that the Respondent, as a candidate for the Florida House of Representatives, violated Article II, Section 8, Florida Constitution, by filing an inaccurate CE Form 6.

Recommended Penalty

The ALJ's recommendation of \$1,500 as a civil penalty for Respondent's violation of Article II, Section 8, Florida Constitution, is accepted.

In consideration of the foregoing and pursuant to Sections 112.317 and 112.324, Florida Statutes, the Commission recommends that the Governor impose a civil penalty upon the Respondent, STEVEN J. MUELLER, in the total amount of \$1,500.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 8, 2013.

March 13, 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, 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. Steven J. Mueller, Respondent
Ms. Melody A. Hadley, Commission Advocate
Ms. Marg Baker, Complainant
The Honorable J. D. Parrish,
Division of Administrative Hearings