

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: ADAM PRINS,  
Respondent.

Case No. 14-1582EC

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RECOMMENDED ORDER

A final hearing was conducted in this case on June 16, 2014, in Live Oak, Florida, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Advocate: Melody A. Hadley, Esquire  
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For Respondent: Jimmy E. Hunt, Esquire  
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STATEMENT OF THE ISSUE

The issue is whether Respondent violated section 112.313(6), Florida Statutes (2013), by corruptly using his position as a member of the Live Oak City Council to direct the Live Oak Fire Chief to perform duties at his sister's apartment,

thereby securing a benefit for himself or others, and, if so, what is the appropriate penalty.<sup>1/</sup>

PRELIMINARY STATEMENT

On March 12, 2014, the Florida Commission on Ethics (Commission) issued an Order Finding Probable Cause to believe that Respondent Adam Prins (Respondent), as a member of the Live Oak City Council, violated section 112.313(6), Florida Statutes. The Commission forwarded the case to the Division of Administrative Hearings on April 8, 2014.

The case was assigned to Administrative Law Judge W. David Watkins. A Notice of Hearing dated April 17, 2014, scheduled the hearing for June 16, 2014. On June 13, 2014, the case was transferred to the undersigned to conduct all further proceedings. The hearing took place as scheduled.

At hearing, the Advocate called four witnesses: George "Chad" Croft, Alan Bedenbaugh, Robert E. Farley, and Beau Jackson. The Advocate did not offer any exhibits into evidence. Respondent testified on his own behalf and called eight other witnesses: Scott Lane, Leslie Allen, Bennie Thomas, Deborah Prins, Marilyn Prins, Wendell Hill, David Poole, and Robert Cathcart. Respondent's exhibits numbered 2, 5, and 6 were admitted into evidence. Respondent's Exhibits 3 and 4 were proffered.

A ruling on the admissibility of Respondent's Exhibit 1 was withheld. Upon consideration, Respondent's Exhibit 1 is admitted.

A two-volume Transcript was filed on July 8, 2014. The parties timely filed their Proposed Recommended Orders which have been duly considered in the preparation of this Recommended Order.

References to the Florida Statutes are to the 2012 version, unless otherwise indicated.

#### FINDINGS OF FACT

##### Background

1. At all times material to this proceeding, Respondent served as a member of the Live Oak City Council. At the time of the events giving rise to this proceeding, Respondent had served as a councilman for two years, and had been employed full-time as a corrections officer for the Suwannee County Sheriff's Office for five years.

2. Respondent is subject to the requirements of Part III, chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees, for his acts and omissions during his tenure as a member of the City Council.

3. George "Chad" Croft is the Fire Chief for the City of Live Oak. At the time the relevant events took place, he had been the Fire Chief of the City of Live Oak for about 10 years.

Prior to that, he served as the Assistant Fire Chief, as a Lieutenant with the fire department, and as a firefighter. He has worked for the Fire Department for over 25 years.

4. Chief Croft injured his shoulder in July 2011. He had surgery on his shoulder on May 30 or 31, 2012. The injury was deemed work related and thus placed him under workers' compensation. Chief Croft was on workers' compensation leave during the relevant time period. However, he was coming in periodically as needed to take care of certain city business as instructed by then City Administrator Bob Farley. This included attending city council meetings, answering e-mails, working on the fire department budget, and working on time sheets. Chief Croft considered these assignments to be "light duty."

#### Tropical Storm Debby

5. In late June of 2012, Live Oak was inundated with rain from Tropical Storm Debby. There was widespread flooding of businesses and homes. The flooding began the evening of June 25, 2012, but it had been raining for three or four days prior to that evening. While Live Oak is prone to flooding, multiple witnesses testified to the severity of the flood and the damage it caused. This was an unusually severe flood, even for Live Oak.

6. The city fire station was the hub for the City's initial response to the storm and resulting flooding, and

operated as the Emergency Operations Center (EOC) until a formal EOC was opened. The fire station was noisy and bustling with activity the evening of June 25, as one would expect during such an emergency. Sand had been dumped in one of the fire station bays, and state prisoners and volunteers were filling sandbags. Residents were coming in to pick up the sandbags. Calls were coming in for rescue and assistance.

7. On June 25, 2012, Respondent had worked the 6:00 a.m. to 6:00 p.m. shift at the Suwannee County jail, and then went home. Shortly after 8:00 p.m., Respondent received a call from Keith Mixon, a newly elected councilman, who advised Respondent that Helvenston Street, a main street in Live Oak, was flooding. Respondent went to Helvenston Street to meet Mr. Mixon and saw the flooding. Respondent called the police chief, Buddy Williams, and told him that barricades were needed to keep passing cars out of the water on Helvenston Street. Respondent and Mr. Mixon stayed in that area for a while to assist in traffic control until help arrived. Respondent then went to the fire station.

8. While at the fire station, Respondent inquired as to the whereabouts of the city administrator, Bob Farley.

9. Alan Bedenbaugh is the training safety officer for the Live Oak Fire Department, and the safety officer for the City of Live Oak. At the time of the storm, Chief Croft was his

supervisor, and continues to serve in that capacity.

Mr. Bedenbaugh was at the fire station on the evening of June 25, as he was working a 24-hour shift. Mr. Bedenbaugh called Chief Croft, who was at home, to update him on how the city was being impacted by the storm. He informed Chief Croft that Respondent was at the fire station asking the whereabouts of department heads who were not at the fire station. During emergencies such as tropical storms, the Fire Chief is responsible for directing the necessary assistance to various entities to minimize the overall impact of the storm to the city. Examples of his responsibilities would be rescuing citizens and assisting with road closures. Chief Croft had information regarding the whereabouts of the department heads, and drove to the fire station in his city-owned vehicle to give Respondent this information. When Chief Croft arrived at the fire station, it was dark.

10. Chief Croft informed Respondent that the city administrator, Bob Farley, and the public works director had gone to an out-of-town conference. This news upset Respondent. Respondent then called Mr. Farley at 10:35 p.m. and asked Mr. Farley where he was and why was he not at the fire station. Mr. Farley recalls Respondent saying, "Where the hell are you" and telling him to "get your ass down here," and informed Mr. Farley that people were being rescued from their homes.

Mr. Farley responded that he did not know the flooding was that bad, informed Respondent that he had not yet left town for the conference, and drove into town. At that time, Mr. Farley lived about nine miles outside of the City. When Mr. Farley got there, he met with Respondent. Chief Croft and Police Chief Williams were there as well.

11. Four witnesses, including Respondent, testified as to what Respondent said to Mr. Farley during this telephone call. Chief Croft and Mr. Bedenbaugh, who were at the fire station and overheard Respondent talking on the phone, testified that Respondent told Mr. Farley that he needed to come down to the fire station or he could be dismissed. However, Respondent and Mr. Farley insist that Mr. Farley was not threatened about his job or about anything else. While Respondent's tone was harsh, Mr. Farley was not offended by Respondent's tone of voice or choice of words in light of all the circumstances surrounding the phone call. Respondent and Mr. Farley were the participants of the phone call and, therefore, heard both sides of the conversation and its context. Therefore, more weight is given to their description of the phone call between Respondent and Mr. Farley that night than to those witnesses who overheard only one side of the phone call in a noisy environment. In any event, Mr. Farley drove to the fire station, saw the extent of the flooding, and agreed that he needed to be there. After

arriving at the fire station, Mr. Farley authorized Respondent to use a city truck to deliver sandbags.

12. Mr. Farley met Mayor Garth Nobles at City Hall where Mr. Nobles signed a formal Declaration of Emergency. The Declaration is dated June 26, 2012 at 12:01 a.m.

13. At some point during the evening, Respondent assisted with removing several Hispanic residents from a flooded mobile home in the area. Respondent speaks Spanish, and translated for these residents during this process. Respondent also filled sandbags and, at some point during the storm, delivered the filled sandbags to residents' homes.

14. At 1:08 a.m. on June 26, Marilyn Prins, Respondent's mother, called Respondent and informed him that there was flooding in an area of town called Tara Trace where his sister, Debby Prins, lived. Mrs. Prins asked her son to check on his sister who lived alone.

15. Respondent and Chief Croft got into Croft's assigned city vehicle and drove to Tara Trace. There is conflicting testimony as to exactly what was said prior to their leaving. Chief Croft did not recall Respondent's exact words, but testified that Respondent essentially told him to get in the car, and that they were going for a ride. Respondent testified that Croft offered to go with him. Mr. Bedenbaugh testified that he overheard Respondent say "Let's get in the car and go



for a ride." Mr. Croft, while acknowledging that Respondent was not verbally abusive to him and made no actual threats against him, insists he felt compelled to accompany Respondent because of what he overheard in the fire station during the phone conversation between Respondent and Mr. Farley. Regardless of whether Respondent asked Chief Croft to accompany him or whether Chief Croft volunteered, there is no dispute that Respondent did not threaten him.

16. Chief Croft drove to Tara Trace with Respondent in the vehicle. He was familiar with Tara Trace but did not know Debby Prins or where she lived. Respondent pointed out her apartment.

17. When they arrived at Debby Prins' apartment, there was already flood water in the home. Debby Prins was inside and asked if Respondent and Chief Croft would help move seven boxes of food out of a bedroom closet and onto the kitchen counter to keep the boxes out of the flood water. Again, there is conflicting testimony about exactly what was and was not said, but all three persons moved the boxes as Ms. Prins had requested. Respondent and his sister saw Chief Croft wince in pain while moving the boxes. When Respondent asked him what was wrong, Chief Croft responded that he recently had shoulder surgery. Chief Croft did not assist in moving any boxes after that.

18. There is again conflicting testimony about what happened after Respondent and Chief Croft exited Debby Prins' apartment. The totality of the evidence establishes that Respondent and Chief Croft then left to go knock on doors of several neighbors in the Tara Trace subdivision to warn them about the impending flood. Flooding was severe in the Tara Trace neighborhood, and some of Ms. Prins' neighbors were elderly. This was done in the very early hours of the morning of June 26, at a time when, but for Respondent and Chief Croft going door to door to awake and alert them, most residents would have been asleep and otherwise unaware of the severity of the flood.

19. After leaving Tara Trace, Respondent returned to the fire station and continued volunteering his time to assist the residents of Live Oak. After having worked a 12-hour shift at the county jail, Respondent worked as a volunteer from 8:00 p.m. Monday, June 25, until about 10:00 a.m. on Thursday, June 28. Respondent and other city councilmen volunteered their services and assisted residents by delivering sandbags to residents in their districts.

20. At some point after the events of June 25, Chief Croft told the Mayor, Sonny Garth Nobles, about going to Tara Trace and moving boxes in Ms. Prins' apartment. Approximately one year after Tropical Storm Debby, Chief Croft prepared a written

statement in which he addressed the above described events of June 25, 2012, at Mayor Nobles' request. In this statement, Chief Croft stated that he was directed by Respondent to go to Tara Trace and to move and relocate boxes in Ms. Prins' apartment, and that he felt that Respondent misused his powers as a Councilman in doing so.

21. Chief Croft did not inform Mr. Farley of the events regarding moving boxes at Debby Prins' home, or of any problem Chief Croft may have had with Respondent's actions the night of June 25 and early morning of June 26. Mr. Farley was Chief Croft's immediate supervisor. Mr. Farley learned about these allegations upon reading a newspaper article about the ethics complaint investigation. The investigation did not commence until more than one year after the events of June 25 and 26, 2012.

22. In June 2012, while Mr. Farley as City Administrator supervised at-will employees, such as the Fire Chief, a majority vote of the City Council had the power to terminate such employees. Now retired, Bob Farley was terminated from his position as City Administrator by the City Council in October 2012.

23. The Fire Department has no written or unwritten policy regarding the removal or relocation of personal private property during an emergency.

24. Based on the totality of the evidence, there is not clear and convincing evidence that Respondent corruptly directed Chief Croft to perform duties at his sister's apartment in an attempt to secure a benefit for himself or others.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. See § 120.57(1), Fla. Stat. (2014).

26. Section 112.322, Florida Statutes, 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, which is referred to as the Code of Ethics for Public Officers and Employees.

27. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, the Commission, through its Advocate, is asserting the affirmative: that Respondent violated section 112.313(6) by misusing his position to attempt to secure a benefit for himself or others.

28. Commission proceedings which seek recommended penalties against a public officer or employee require proof of

the alleged violation(s) by clear and convincing evidence. See Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

29. As noted by the Supreme Court of Florida:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re: Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

30. Section 112.313(6) 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.

31. The term "corruptly" is defined by section 112.312(9) 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.

32. The Order Finding Probable Cause alleges that there is probable cause to believe that the "Respondent, as a member of the City Council of the City of Live Oak, Florida, violated section 112.313(6) by using his position to direct the Live Oak Fire Chief to perform duties at his sister's apartment."

33. In order to establish a violation of section 112.313(6), the Advocate must establish that: 1) the Respondent is or was a public officer or employee; 2) Respondent used or attempted to use his or her official position or any property or resources within his trust; 3) Respondent's actions were taken in order to secure a special benefit for himself or for others; and 4) Respondent's actions were taken corruptly.

34. In this case, it is clear that Respondent, as a member of the Live Oak City Council, is a public officer and was a public officer at the time of the alleged incidents in this case.

35. However, the totality of the evidence adduced at hearing failed to clearly and convincingly establish that Respondent used or attempted to use his position as a member of the City Council to secure a special privilege for himself or others, i.e., his sister, much less that he did so with corrupt intent.

36. While Chief Croft asserts that he felt threatened because of the telephone conversation he overheard in the fire station, he acknowledged that Respondent was not verbally abusive to him at the fire station and did not make any actual threats against him. Moreover, Chief Croft's testimony regarding the events of June 25 and 26 did not produce in the mind of the undersigned a firm belief or conviction, without hesitancy, that threats or intimidation were used by Respondent when they rode in the Chief's city-owned car to check on Debby Prins and other residents of the Tara Trace neighborhood.

37. There is no evidence that Mrs. Prins specifically referenced boxes that needed to be moved at her daughter's home in Tara Trace in her phone call to her son. The purpose of the trip was not to move the boxes. After Respondent and Chief Croft arrived at her apartment, Debby Prins asked them to move seven boxes to higher places (e.g., the kitchen table) within the apartment. Her apartment was one of several which Respondent and Chief Croft went to in an effort to warn people of the flood. Moving seven boxes within an apartment at the request of a city resident during an emergency situation was not the focus of the trip.

38. Did Respondent's sister receive a benefit from Respondent and Chief Croft? Her boxes of food were moved from the floor of a closet to a higher location within the apartment.

Was this benefit meaningfully greater than the benefit received by other residents? The undersigned is not persuaded that it was. The moving of the boxes was one of many things done by Respondent, Chief Croft, and others to help residents during this emergency. It is concluded that moving the boxes was incidental to the main purpose of Respondent and Chief Croft's trip to Tara Trace, i.e., to check on Respondent's sister and other residents in their severely flooded neighborhood, and to warn them of the emergency of the impending flood.

39. Even if moving the boxes were to be construed as a benefit to others, the Advocate must prove that Respondent acted "corruptly" in securing that special benefit for his sister.

40. To satisfy the statutory element of corrupt intent, the advocate must demonstrate with clear and convincing evidence that Respondent acted "with reasonable notice that [his] conduct was inconsistent with the proper performance of [his] public duties and would be a violation of the law or the code of ethics." Blackburn v. State, Comm'n on Ethics, 589 So. 2d 431, 434 (Fla. 1st DCA 1991).

41. The evidence did not show that Respondent acted with reasonable notice that his conduct was inconsistent with the proper performance of his public duties. Blackburn, supra. In this case, the evidence persuasively established that there were legitimate, non-corrupt reasons for Respondent to go to Tara



Trace, including to his sister's apartment, with the Fire Chief in a city-owned vehicle, in the midst of a significant emergency event.

42. The conclusion that Respondent was not corruptly motivated to take the actions he did is bolstered by the extensive time he spent engaged in other volunteer activities helping many other residents of Lake City, including working with city officials in addition to Chief Croft, for the days following the events of June 25 and 26, 2012. The undersigned concludes that no violation of section 112.313(6) has been demonstrated.

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, Adam Prins, did not violate section 112.313(6), Florida Statutes.

DONE AND ENTERED this 20th day of August, 2014, in Tallahassee, Leon County, Florida.



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Barbara J. Staros  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of August, 2014.

ENDNOTE

<sup>1/</sup> At hearing and again in the Proposed Recommended Order, the Advocate raised the allegation that Chief Croft has been subject to retaliation by Respondent. The Order Finding Probable Cause does not charge Respondent with this offense and, therefore, does not place Respondent on notice that this issue would be raised. Respondent cannot be disciplined for an offense of which he is not charged. Accordingly, no findings of fact or conclusions of law will address this issue herein. See Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005).

COPIES FURNISHED:

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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.