

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: WILLIAM ARISTIDE,
Respondent.

Case No. 16-3860EC

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on September 14, 2016, at sites in Tallahassee and Miami, Florida.

APPEARANCES

The Advocate: Melody A. Hadley, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: Michael R. Band, Esquire
Michael R. Band, P.A.
1200 Alfred I. DuPont Building
169 East Flagler Street
Miami, Florida 33131

STATEMENT OF THE ISSUES

The issues in this case are (a) whether Respondent, a high school principal, is a "local officer" required annually to file a disclosure of financial interests pursuant to the Code of Ethics for Public Officers and Employees; and, if so, (b) whether Respondent willfully failed or refused to file an annual statement of financial interests for the year 2013, in violation of section 112.3145(8)(c), Florida Statutes.

PRELIMINARY STATEMENT

At a meeting in executive session on October 23, 2015, the Florida Commission on Ethics determined that probable cause existed to believe that Respondent William Aristide, as an employee of the Miami-Dade County Public Schools, had willfully failed or refused to file an annual statement of financial interests for the year 2013, in violation of section 112.3145(8)(c). On July 11, 2016, the commission forwarded the case to the Division of Administrative Hearings ("DOAH"), where the undersigned administrative law judge was designated to preside over the formal hearing.

The final hearing took place, as scheduled, on September 14, 2016. The Advocate called the following witnesses: Mr. Aristide and Kimberly Holmes. In addition, the Advocate's Exhibits 2 through 10 and 12 were received.

In his case, Mr. Aristide testified on his own behalf and presented the following additional witnesses: Dionne Plummer, Kerby Delancy, Karen Fryd, Wallace Aristide, Stephanie Frederick, Cornelius Handfield, and Kevin Lawrence. As well, Respondent's Exhibits 2 through 4 were admitted into evidence.

The parties stipulated to the admission of Joint Exhibits 1 through 6. They also filed a Joint Prehearing Stipulation, which will be discussed below, as relevant.

The final hearing transcript was filed on October 6, 2016. Thereafter, each side timely filed a proposed recommended order.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2016, except that all references to statutes or rules defining disciplinable offenses or prescribing penalties for committing such offenses are to the versions that were in effect at the time of the alleged wrongful acts.

FINDINGS OF FACT

1. At the time of the final hearing, Respondent William Aristide ("Aristide") was the principal of Booker T. Washington Senior High School in Miami, Florida, a position he had held at all times material to this proceeding. In that capacity, he has been, at all times, an employee of the Miami-Dade County Public Schools ("M-DCPS"), a school district in the state of Florida.

2. On March 25, 2015, the Florida Commission on Ethics ("Commission") mailed to Aristide a Notice of Assessment of Automatic Fine, which informed Aristide that a daily fine of \$25.00 had run against him for each day his 2013 Statement of Financial Interests had remained unfiled after September 2, 2014. Because Aristide had filed his disclosure statement more than 60 days after this deadline, the notice advised, the Commission had assessed the maximum fine amount of \$1,500.00

against him, which would need to be paid within 30 days unless Aristide appealed the imposition.

3. Aristide neither appealed the assessment nor paid the fine. Therefore, on April 30, 2015, the Commission sent Aristide a Final Notice of Assessment of Automatic Fine for Failure to Timely File Form 1, Statement of Financial Interests, which informed him that he had waived his right to appeal, and that if he failed to pay the fine within 30 days, the Commission would "enter an order setting [his] fine at \$1,500 and [would] utilize all methods allowed by law to collect this fine."

4. Aristide did not pay the fine. Consequently, on July 29, 2015, the Commission rendered a Default Final Order finding that "William Aristide, Miami-Dade County Public Schools, Employees, was on the list of persons required to file a Statement of Financial Interests for the year 2013"; that he had not timely filed the statement and thus been fined \$1,500.00; that he had failed to appeal the assessment of the fine and thereby waived the right to do so; and that the fine remained unpaid. Based on these findings, the Commission "affirmed" the fine amount of \$1,500.00, ordered that Aristide pay the fine within 30 days, and warned that nonpayment would trigger collection efforts, including withholding of salary until satisfaction of the debt.

5. Aristide still did not pay the fine. So, the Commission exercised its authority to request M-DCPS to withhold from Aristide's paychecks the maximum amount allowable under the law and to remit such withheld payments to the Commission until the fine was paid. M-DCPS complied. On December 15, 2015, the Commission received from the school district the final installment on the \$1,500.00 debt, which, by that coercive means, Aristide has paid in full.

6. Meantime, the Commission began taking steps to fulfill its obligations under section 112.3145(8)(c), which requires that, whenever a person accrues the maximum automatic fine of \$1,500.00, the Commission "shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful." On April 15, 2015, the Commission issued a Determination of Investigative Jurisdiction and Order to Investigate, which stated that Aristide "allegedly serves as Principal for Miami-Dade County Public Schools, a position requiring the annual filing of a Statement of Financial Interests (CE Form 1)," and directed staff to "conduct an investigation . . . for a probable cause determination as to whether [Aristide] has willfully failed or refused to file an annual disclosure statement."

7. On October 28, 2015, its investigation complete, the Commission entered an Order Finding Probable Cause announcing

"that there is probable cause to believe that [Aristide], as a local officer required to file financial disclosure, violated Section 1123145(8)(c) [sic], Florida Statutes, by willfully failing or refusing to file an annual CE Form 1, Statement of Financial Interests for the year 2013, required to be filed by him due to his holding or having held the position of principal for a Miami-Dade public school." The Commission, accordingly, ordered a public hearing, and, on July 11, 2016, the matter was referred to DOAH.

8. On September 8, 2016, ahead of the final hearing in this case, the parties filed a Joint Prehearing Stipulation. The parties stipulated to the fact that Aristide "was aware that he was required to file a CE Form 1 every year including for the year 2013." JPS at 7. They stipulated, as well, to the legal conclusion that Aristide "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 the principal of Booker T. Washington Senior High School." Id. at 8. Finally, in his unilateral statement of position, Aristide "acknowledge[d] that his position as a principal required the filing of a CE Form 1, 'Statement of Financial Interests' for 2013." Id. at 3.

9. Throughout this proceeding, the parties have operated under the belief that Aristide is a "local officer" required by

statute to file financial disclosure statements because he is a public school principal. This assumption, however, is not legally correct. As will be discussed below, a public school principal, qua principal, is not a "local officer." Rather, a public school principal is a "local officer" only if he is a "purchasing agent having authority to make any purchase exceeding" \$20,000.00 on behalf of the school district, or happens to hold some other position which, unlike principal, is included in the definition of a "local officer." See § 112.3145(1)(a)3., Fla. Stat. (defining "local officer"). (For ease of reference, the term "Local Purchasing Agent" will be used to refer to a person who has the authority to make any purchase "on behalf of any political subdivision of the state or any entity thereof" exceeding "the threshold amount provided for in s. 287.017 for CATEGORY ONE,"^{1/} and who, for that reason, falls within the definition, qua purchasing agent, of a "local officer" for purposes of section 112.3145.)

10. The only public position that Aristide held is that of school principal. The Commission did not allege, nor did the parties stipulate to, any facts concerning the nature and extent of Principal Aristide's unilateral authority to spend M-DCPS's money as a purchasing agent. There is, moreover, no direct evidence in the record to support a finding that Aristide was able, on his own authority, to make any purchase in excess of

\$20,000.00 for the school district. Aristide testified, credibly, that in "Miami-Dade County a principal cannot write a check for over a thousand dollars without having three bidders It's difficult to get a check without that. And the second part of it even after, let's say I agree to something, it's costing \$1500, there are five additional signatures above me to make sure that whatever the process is it's completed and is so forth." Tr. 106-07. This testimony establishes that Aristide had spending authority, but it fails to prove, even by implication, that he possessed the unilateral power to approve the expenditure of \$20,000.00 in public funds for any purchase.^{2/}

11. Because it is not common knowledge that M-DCPS principals, or any of them, are authorized independently to make purchases exceeding \$20,000.00, the fact cannot simply be assumed. The strongest circumstantial evidence of this fact is Respondent's Exhibit 2, a composite comprising several years' worth of M-DCPS financial disclosure forms, signed by Aristide, which (he credibly testified) his employer requires "principals to file." Tr. 104. The form (FM-4198), titled "FINANCIAL DISCLOSURE FOR CALENDAR YEAR _____," states at the top: "PERSONNEL AUTHORIZED TO MAKE PURCHASES EXCEEDING \$20,000 [Sec. 297.017(1), F.S.]," followed by the definition of "purchasing agent" codified in section 112.312(2).

12. Form FM-4198 (or at least so much of it as is in evidence) contains no information or instructions regarding who must file. Aristide's testimony proves that that "principals" must file the form, but *not* that principals are authorized to make purchases exceeding \$20,000.00. Form FM-4198 could reasonably support the narrow inference that personnel (perhaps even *all* personnel) having purchasing power in excess of \$20,000.00 must file, but it does not support the larger inference that *only* such personnel must file. Indeed, Aristide's testimony negates such an inference unless one assumes that principals are authorized to spend more than \$20,000.00 on a purchase, which is the very fact at issue.

13. Thus, while it might be reasonable to infer from the face of Form FM-4198 that all personnel authorized to make purchases exceeding \$20,000.00 must file, it is *not* reasonable to infer therefrom that all personnel who must file are authorized to make purchases exceeding \$20,000.00. The undersigned declines without hesitation to infer that Aristide possessed the power to spend more than \$20,000.00 on any purchase, for there are no proven basic facts which logically compel—with the persuasive force of clear and convincing evidence no less^{3/}—an inference to that effect.^{4/}

14. The upshot is that the Commission has failed to offer evidence sufficient to prove that Aristide is, in fact, a "local

officer" required to file a statement of financial interests. Because, for want of proof, the undersigned cannot make a finding of fact that Aristide holds a position that meets the definition of a "local officer,"^{5/} he is compelled to conclude, for reasons that will be explained more fully below, that the Commission lacks jurisdiction to maintain this proceeding, which accordingly must be dismissed.

CONCLUSIONS OF LAW

15. Section 112.3145(2) (b), Florida Statutes, provides that "[e]ach state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year." For purposes of this requirement, the terms "state officer," "local officer," and "specified state employee" are separately defined. A person holding public office or public employment is obligated to file a financial disclosure form (i.e., is a "Filer") only if he or she meets the definition of one of these types of public servant.

16. As a school principal working for M-DCPS under an employment contract, Aristide is a Filer only if he meets the definition of a "local officer." Generally speaking, the term "local officer" includes all persons holding elective office in any political subdivision of the state, e.g., county commissioners, as well as persons appointed to local boards, councils, commissions, and the like, e.g., members of planning

or zoning boards. Aristide is not an elected or appointed official.

17. The term "local officer" also includes persons holding any "one of more of the following" specifically identified positions:

mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; finance director of a county, municipality, or other political subdivision; chief county or municipal building code inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator, with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; district school superintendent; community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, on behalf of any political subdivision of the state or any entity thereof.

§ 112.3145(1)(a)3., Fla. Stat. (emphasis added). Notably absent from this list of positions is public school principal. While this omission is sufficient, of itself, to conclude that school principals, as principals, are not "local officer" Filers, the inclusion of district school superintendents drives the point home. *Expressio unius est exclusio alterius.*^{6/}

18. In previous opinions, the Commission "has advised that public school principals and other employees of a school

district are required to file financial disclosure annually if they have the authority to make any purchase exceeding" the minimum amount necessary to be considered a Local Purchasing Agent. CEO 82-63 (Fla. Comm'n on Ethics July 29, 1982); see also, e.g., CEO 80-43 (Fla. Comm'n on Ethics May 21, 1980). At the time CEO 82-63 was issued, the statutory threshold for achieving Local Purchasing Agent status was a mere \$100.00 of independent spending power. In those days, no doubt most, if not all, school principals possessed the independent authority to make purchases exceeding \$100.00, and surely, more than 30 years later, they all do.

19. But the threshold is no longer \$100.00. As mentioned above, it is \$20,000.00 today and has been that amount at all times relevant to this case. This substantial increase obviously reflects a desire to adjust for something other than inflation; presumably, the intent was to materially reduce the number of persons who, as Local Purchasing Agents, would be Filers. The undersigned cannot and will not infer that Aristide has the unilateral power to spend tens of thousands of dollars in public funds simply because he is a school principal. Competent substantial evidence (or a stipulation of fact) directly establishing such authority must be introduced before it can be found that a school principal is a Local Purchasing Agent and, as a Local Purchasing Agent, a "local officer" Filer.

20. The undersigned is, of course, fully aware of the parties' stipulation that Aristide is a Filer "during his tenure as [a] principal," and of Aristide's admission that "his position as a principal required" him to file a statement of financial interests for the year 2013. Aristide's admission, however, "cannot create an otherwise nonexistent legal duty." Alvarez v. Smith, 714 So. 2d 652, 653 (Fla. 5th DCA 1998). Moreover, the parties' stipulation on a question of law—namely Aristide's legal obligation to file financial disclosure forms—is "not binding on the administrative law judge and he [is] free to disregard it." Diaz de la Portilla v. Fla. Elec. Comm'n, 857 So. 2d 913, 917 n.3 (Fla. 3d DCA 2003). To the extent these stipulations were factual in nature, it is clear that no agreement as to the dispositive fact, i.e., that Aristide possesses sufficient independent spending power to be considered a Local Purchasing Agent, was reached. See McClash v. Dep't of Bus. & Prof'l Reg., 798 So. 2d 775, 776 (Fla. 2d DCA 2001). Rather, the parties' stipulations were based on the mistaken belief that the law obligates school principals such as Aristide, in their capacities as principals, to file statements of financial interests.

21. Finally, as mentioned, the question of whether Aristide is a Local Purchasing Agent (or some other "local officer") goes to the Commission's subject matter jurisdiction.

The Commission's jurisdiction to prosecute alleged violations of section 112.3145(8) (c) obviously extends only to Filers. A high school principal is not, without more, a "local officer," and thus he is not a Filer unless he happens to be a "local officer" for some reason beside the fact that he is a school principal. In the past, school principals have been found to be Filers when, in fact, they possessed enough unilateral spending authority to qualify as Local Purchasing Agents, who (unlike school principals) are "local officers." In this proceeding, the Commission has never made factual allegations which, if proven or stipulated to, would establish that Aristide is a Local Purchasing Agent (or some other "local officer"). Thus, the parties' stipulation that Aristide is subject to the financial disclosure requirements of chapter 112 amounts to a prohibited—and ineffectual—stipulation to jurisdiction. See Grand Dunes, Ltd. v. Walton Cnty., 714 So. 2d 473, 474-75 (Fla. 1st DCA 1998).

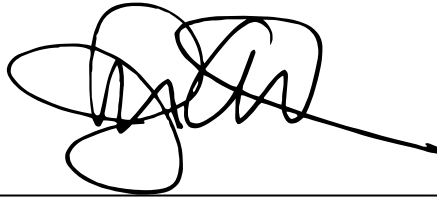
22. It is concluded, therefore, that the parties did not effectively stipulate to facts sufficient to establish that Aristide is a Filer.

23. The Commission, in sum, is without jurisdiction to proceed in this matter.

RECOMMENDATION

Based on the foregoing, it is RECOMMENDED that the Commission enter a final order dismissing this proceeding for lack of jurisdiction.

DONE AND ENTERED this 2nd day of November, 2016, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of November, 2016.

ENDNOTES

^{1/} Since July 1, 2010, and at all times relevant to his case, the threshold amount provided for in section 287.017, Florida Statutes, for CATEGORY ONE has been \$20,000.00. See Ch. 2010-151, § 15, Laws of Fla.

^{2/} It is not even clear that Aristide possessed the authority to requisition such a purchase, but if he did, the authority to *request* a purchase is not the same as the authority to *make* a purchase. See § 112.312(20), Fla. Stat. (definition of "purchasing agent").

^{3/} The Commission has the burden of proving Aristide's culpability by clear and convincing evidence. Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83, 84 (Fla. 1st DCA 1997).

^{4/} The undersigned believes it would not be reasonable to infer, under any standard of proof, that unilateral authority to approve any \$20,000.00 purchase on behalf of the school district inheres in the position of M-DCPS principal. Although the undersigned would not be surprised to learn that all of the district's principals are authorized to make purchases exceeding \$20,000.00, neither would he think it unusual if none did, or if some do and some do not, depending on the particular circumstances. Were it necessary to make an affirmative finding in this regard, therefore, the undersigned would not draw the inculpatory inference, i.e., that all principals possess such spending power and thus Aristide did, even under a lesser standard of proof.

^{5/} To be clear, the undersigned is not finding, affirmatively, that Aristide is not a "local officer" for purposes of section 112.3145, but is determining, rather, only that the Commission has failed, in this case, to prove that he *is*—a fact upon which the Commission's jurisdiction depends. Put in slightly different terms, the Commission (or its Advocate) lacks standing, in effect, to prosecute a person under section 112.3145(8)(c) unless that person is shown by the Commission to have been obligated in the first instance to file the statement of financial interests he is alleged willfully to have failed to file. As the party seeking relief, the Commission had the burden of proving its right to initiate and maintain this prosecution, which it failed to meet; the Commission's subject matter jurisdiction hung in the balance. Cf. Abbott Labs. v. Mylan Pharms., Inc., 15 So. 3d 642, 651 n.2 (Fla. 1st DCA 2009) ("[S]tanding in the administrative context is a matter of subject matter jurisdiction and cannot be conferred by consent of the parties."). It is possible, of course, that evidence not offered in this case would show that Aristide is, in fact, not only a high school principal, but also a Local Purchasing Agent. Therefore, if Aristide knows that he possesses enough spending power to qualify, qua Local Purchasing Agent, as a "local officer," then he should continue to file statements of financial interests to avoid facing future enforcement proceedings for noncompliance, where adequate proof of his purchasing authority might be offered.

^{6/} As employees working under written contract, see section 1012.33(1)(b), Florida Statutes, school principals do

not fit comfortably within the common legal meaning of the term "officer." See Black's Law Dictionary 977 (5th ed. 1979) (definition of "officer" notes that one important test for distinguishing an "officer" from an "employee" is whether the position is held "merely by a contract of employment by which the rights of the parties are regulated"). Thus, it should not be surprising that the legislature left school principals off the list of local Filers. Further, a principal may be dismissed "during the term of [his written employment] contract only for just cause." Id. Indeed, to dismiss a principal for just cause during the term of his or her contract, the "charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, any crime involving moral turpitude." § 1012.33(6)(b), Fla. Stat. A principal facing such charges is entitled to an administrative hearing before the district school board, whose final decision may be appealed to the district court. Id. Given that the only prescribed penalty for a violation of section 112.3145(8)(c) is removal of the guilty party from his or her public office or public employment, i.e., dismissal, the mention of school principals in the definition of "local officer" would have necessitated an amendment of section 1012.33 to avoid a conflict between these statutes. As it stands, if a school principal were found guilty of willfully failing, as a Local Purchasing Agent, to file a statement of financial interests, then the only "public office" from which he could be removed would be that of Local Purchasing Agent. Such a removal would be achieved, in full, merely by limiting his independent spending power to \$20,000.00 per purchase, at which point the principal would no longer be a "local officer."

COPIES FURNISHED:

Melody A. Hadley, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050
(eServed)

Michael R. Band, Esquire
Michael R. Band, P.A.
1200 Alfred I. DuPont Building
169 East Flagler Street
Miami, Florida 33131
(eServed)

Virlindia Doss, Executive Director
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
(eServed)

C. Christopher Anderson, III, General Counsel
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
(eServed)

Millie Wells Fulford, Agency Clerk
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
(eServed)

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.