State of Florida
COMMISSION ON ETHICS
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January 29, 2020

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol, 400 S. Monroe St.
Tallahassee, Florida 32399-0001

Re: Complaint Nos. 17-113, 17-127, 18-034, 18-076, and 18-080, In re WANDA RANGE

Dear Governor DeSantis:

The Florida Commission on Ethics has completed a full and final investigation of a complaint involving Wanda Range, a former Mayor and former member of the City Council for the City of Midway. Pursuant to Section 112.324(8), Florida Statutes, we are reporting our findings and recommending appropriate disciplinary action to you in this case. Enclosed are copies of our final order and of our file in this matter. As we have found pursuant to a Recommended Order of an Administrative Law Judge of the Division of Administrative Hearings that Ms. Range violated the Code of Ethics in the manner described by our order, we recommend that you impose a civil penalty upon her in the amount of $1,500 (one thousand five hundred dollars) and that you publicly censure and reprimand her. If we may be of any assistance to you in your deliberations, please do not hesitate to contact us. We would appreciate your informing us of the manner in which you dispose of this matter. For information regarding collection of the civil penalty, please contact the Office of the Attorney General, Ms. Melody A. Hadley, Assistant Attorney General.

Sincerely,

C. Christopher Anderson, III
Executive Director

CCA/sjz

Enclosures

cc: Mr. Mark Herron, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Ms. Casandra Neal, Complainant
Mr. Barry L. Bonnett, Complainant
Ms. Auburn Ford, Complainant
Ms. Carolyn Russ Francis, Complainant
Mr. Ronald J. Colston, Complainant

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re WANDA RANGE, Respondent.	Complaint Nos. 17-113; 17-127; 18-034; 18-076; 18-080 (consolidated) DOAH Case No. 19-3176EC Final Order No. 20-001

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on January 24, 2020, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on November 8, 2019.

Background

This matter began with the filing in 2017 and 2018 of five separate ethics complaints by Casandra Neal, Barry L. Bonnett, Auburn Ford, Carolyn Russ Francis, and Ronald J. Colston ("Complainants") against Wanda Range ("Respondent"). By orders filed October 9, 2017; October 12, 2017; April 9, 2018; and two separate orders filed on June 19, 2018, the Executive Director of the Commission on Ethics determined that the complaints were legally sufficient to indicate possible violation of the Code of Ethics and ordered Commission staff to investigate the complaints, resulting in one Report of Investigation for the consolidated complaints dated February 7, 2019.

By order rendered April 17, 2019, the Commission found probable cause to believe the Respondent violated Section 112.3135, Florida Statutes, by voting on the appointment and/or advocating for the appointment of her relative to a position within her agency and/or her agency

voting to appoint and/or advance her relative. The Commission also found probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using her position to appoint her relative to the position of City of Midway Mayor Pro Tem. The Commission also found probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using a City of Midway-owned vehicle and/or City of Midway-issued gasoline credit card for personal use. Lastly, the Commission found probable cause to believe the Respondent violated Section 112.3148(8), Florida Statutes, by failing to report the gift of the personal use of the City of Midway-owned vehicle and/or City of Midway-issued gasoline credit card.

The matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order. The Respondent and the Advocate filed a joint prehearing stipulation on August 5, 2019. A formal hearing was held before the ALJ on August 12, 2019. The Advocate and Respondent filed proposed recommended orders with the ALJ.

On November 8, 2019, the ALJ entered his RO finding that Respondent violated Section 112.3135, Florida Statutes, and recommending a civil penalty of $1.00 be imposed against the Respondent. The ALJ further found in the RO that the Respondent did not violate Sections 112.313(6) or 112.3148(8), Florida Statutes.

On November 25, 2019, Advocate timely submitted to the Commission her exceptions to the RO. On December 4, 2019, Respondent timely submitted her response to Advocate's exceptions to the RO. Respondent did not submit any exceptions to the RO. Both Respondent and Advocate were notified of the date, time, and place of the Commission's final consideration of this matter; and both were given the opportunity to make argument during the Commission's consideration.

Standards of Review

The agency may not reject or modify findings of fact made by an 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. 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.

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.

An agency may accept a hearing officer's findings of fact and conclusions of law, yet still reject the recommended penalty and substitute an increased or decreased recommended penalty. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Under Section 120.57(1)(l), Florida Statutes, an agency may reduce or increase the recommended penalty only upon a review of the complete record, stating with particularity the agency's reasons for reducing or increasing the recommended penalty, and citing to the record in support of its action.

Having reviewed the RO, the complete record of the proceeding, Advocate's exceptions, and Respondent's response to Advocate's exceptions, and having heard the arguments of Advocate and Respondent, the Commission on Ethics makes the following rulings, findings, conclusions, recommendation, and disposition:

Ruling on Advocate's Exceptions

1. In her first exception, Advocate takes issue with paragraph 89, pages 23-24 of the RO, which provides:

> 89. Considering the above statutory criteria, in order to establish that Respondent violated section 112.3215(2)(a), the following elements must be proved:
>
> > 1. Respondent must be a "public official" as that term is defined by Section 112.3135(1)(b), Florida Statutes.
> >
> > 2. Respondent must have appointed, employed, promoted, or advanced, or advocated for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control.
> >
> > 3. The action taken by Respondent must have been taken for an individual who is a relative of the Respondent.

> 4. In the case of municipalities with less than a population of 35,000, it must be that the agency in which the Respondent is serving or over which the Respondent exercises jurisdiction or control has land planning responsibilities.

Advocate notes that the reference to Section 112.3215(2)(a) appears to be a scrivener's error and should instead be a reference Section 112.3135(2)(a), Florida Statutes. In her response to Advocate's exceptions, Respondent agreed that the reference appears to be a scrivener's error and did not object to the acceptance of Advocate's first exception.

We agree that Section 112.3135 is the statute at issue being analyzed in Paragraph 89. Therefore, we strike the citation to Section "112.3215(2)(a)," and correct the statutory citation in paragraph 89 to be Section 112.3135(2)(a). Advocate's first exception is accepted, as it makes clear the citation of the applicable law and, thus, is as, or more, reasonable than the language used in paragraph 89.

2. In her second exception, Advocate takes issue with paragraph 89, pages 23-24 of the RO, above. In particular, Advocate seeks to delete the "fourth element" the ALJ listed among the elements to be proven to establish a violation of the anti-nepotism law, Section 112.3135. As a basis for this exception, Advocate notes that the "fourth element" included by the ALJ is a reference to exemption language within Section 112.3135. Section 112.3135(2)(a) provides:

> A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over

> the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide. [Emphasis added.]

Advocate argues that the burden to prove the exemption rests with the party seeking the benefit of that exemption. Respondent does not object to the acceptance of this exception.

We have previously called the emphasized language in Section 112.3135(2)(a), quoted above, an "exemption" in our advisory opinions issued pursuant to Section 112.322(3), Florida Statutes. See CEO 95-12; CEO 98-22. The courts have held, in a variety of contexts, that the person seeking the benefit of an exemption has the burden to prove the exemption applies. See, e.g., Ratley v. Batchelor, 599 So. 2d 1298, 1305 (Fla. 1st DCA 1991) (vehicle operator had the burden to prove he obtained a special permit to satisfy an exemption from a general prohibition); Brock v. Westport Recovery Corp., 832 So. 2d 209, 211 (Fla. 4th DCA 2002) (debtor had the burden to prove the statutory exemption for head of household applied in a garnishment action); Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985) (government agency had the burden to prove it benefited from an exemption to the public records law). In light of this, we find that it is a more reasonable conclusion of law that, in the context of the anti-nepotism law of Section 112.3135, the burden of proving the exemption rests with the public official who seeks to benefit from the exemption. For this reason, Advocate's second exception is accepted.

3. In her third exception, the Advocate takes issue with paragraphs 117 and 118 of the RO, in which the ALJ writes:

> 117. While there was not evidence of a formal assignment of the Vehicle to Respondent, as Mayor, it was understood by the City Manager that the Vehicle was kept at Respondent's residence. Without a policy in place and considering Respondent's use of the Vehicle for City business intermittently with personal use, the Vehicle was arguably an incident of Respondent's employment as Mayor.
>
> 118. The Commission argues that the lack of a policy is not a defense to a finding of corrupt intent, and points to Respondent's ethics training and her awareness that personal use of City-paid postage would be wrong as evidence of Respondent's notice that her personal use of the Vehicle and City Fuel Card was prohibited. However, considering the City's lack of a policy regarding personal use, coupled with Respondent's official use of the Vehicle and City Fuel Card with intermittent personal use, a history of personal use of a city vehicle by a former city manager, as well as the practice of allowing the Vehicle to be kept at Respondent's home and leaving a fuel card in the Vehicle for use by Respondent and other City employees, that argument is insufficient to clearly and convincingly prove that Respondent had reasonable notice or intent that her conduct was inconsistent with the proper performance of her public duties or would be a violation of the law or code of ethics. See Blackburn.

In particular, Advocate takes exception to the implication in paragraphs 117 and 118 that an agency policy is necessary to find a violation of Section 112.313(6), Florida Statutes. In disagreement, Respondent notes that the RO does not make such an implication, given that paragraphs 117 and 118 cited many factors as evidence of the lack of notice that her personal use of the city vehicle and city fuel card was prohibited and the lack of corrupt intent, of which the lack of an agency policy was just one.

We agree with both Advocate and Respondent that the RO does not explicitly say that an agency policy is required to find as a matter of law that a public officer or employee misused their official position or property or resources in his or her trust in violation Section 112.313(6).

To the extent that such an interpretation could be gleaned from the RO, we disagree and note that an agency policy is not necessary as a matter of law to find a violation of Section 112.313(6). We note that such a violation could be established with clear and convincing evidence where the public officer or employee is on notice, express or constructive, of the expectations held for the his or her public position, even in the absence of an explicit agency policy prohibiting the subject conduct.

In this case, where the RO considers several factors in paragraphs 117 and 118 that lead the ALJ to conclude "that it is insufficient to clearly and convincingly prove that Respondent had reasonable notice or intent that her conduct was inconsistent with the proper performance of her public duties or would be a violation of the law or code of ethics," while stating our view of the law, above, we do not disturb the factual (evidential) findings of paragraphs 117 and 118.

4. In her fourth exception, Advocate takes issue with the implication in paragraph 127 that intermittent personal and business-related use—mixed use—renders a thing of value, as a matter of law, not a reportable gift. Respondent objects to the exception, arguing that paragraph 127 does not make such an implication. Paragraph 127 of the RO states:

> In addition to her personal use, however, the evidence also established that Respondent used the Vehicle and City Fuel Card for official business. Given Respondent's intermittent business and personal uses, the evidence was insufficient to establish continuous personal use for over a year, as argued by the Commission.

We agree with both Advocate and Respondent that the RO does not explicitly say that the mixed personal and business-related use of a thing of value, without more, would render it an unreportable gift as a matter of law. To the extent that such an interpretation could be understood from the RO, we disagree and note that a thing of value used for personal and business-related matters (mixed use) can be a reportable gift.

In this case, where the RO in paragraph 128 points to a lack of evidence to show that specific and discrete instances of personal usage of the city vehicle and city fuel card ever crossed reportable thresholds for gifts, we do not disturb the factual (evidential) findings as written in paragraph 127.

5. We now consider Advocate's fifth and sixth exceptions together. In her fifth exception, Advocate takes issue with paragraph 132 of the Penalty section in the RO. Advocate requests that all but the first sentence of paragraph 132 be stricken and not be adopted by the Commission in its final order.

In her sixth exception, Advocate takes issue with the penalty recommended in the Recommendation section of the RO. Advocate requests that the Commission increase the recommended penalty, by recommending a public censure and reprimand and a civil penalty of $1,500.

In paragraph 132, the RO states the ALJ's reasoning for the penalty:

> In this case, the only violation supported by clear and convincing evidence was Respondent's violation of the anti-nepotism provision of Section 112.3135. Proof for that violation did not require a showing that Respondent intended to violate the law. In fact, the evidence otherwise showed that Respondent received legal advice prior to her vote opining that she was permitted to vote for her cousin. While Respondent's vote technically violated the anti-nepotism provision, under the circumstances, a substantial penalty is not justified. Rather, a nominal penalty, without censure or reprimand, is appropriate.

The Recommendation section states:

> Based on the foregoing Findings of Fact and Conclusions of Law, it is:
>
> RECOMMENDED that a Final Order and Public Report be entered finding that Respondent, Wanda Range, violated section 112.3135, Florida Statutes, and recommending the imposition of a nominal civil penalty of $1.00 for that violation, and further

> finding that Respondent Wanda Range did not violate sections 112.313(6), or 112.3148(8), Florida Statutes, as alleged in the Order Finding Probable Cause.

In support of her exceptions, Advocate argues that paragraph 132 should be stricken in part because the focus on Respondent's *mens rea* is not relevant to any elements of the anti-nepotism provision. Advocate also supports her exceptions by arguing that the conclusion in paragraph 132 that "the evidence otherwise showed that Respondent received legal advice prior to her vote opining that she was permitted to vote for her cousin," when the RO actually finds in paragraph 22 that "the preponderance demonstrates that the City Attorney advised that it was not a voting conflict for relatives to vote for each other for Mayor and Mayor Pro-Tem." Additionally, Advocate argues in support of her exceptions that the RO incorrectly concludes that Respondent's lack of intent to violate the anti-nepotism provision indicates that she only "technically violated" [¶ 132, Recommended Order] the law.

In support of the specific penalties sought in her sixth exception, Advocate cites two previously-issued final orders of the Commission. In In re Sam Stevens (Final Order No. 19-030)—the respondent in that case is Respondent's (Wanda Range's) cousin and became Mayor Pro-Tem after Respondent voted for him—the Commission recommended the respondent (Sam Stevens) be issued a civil penalty of $500 and be issued a public censure and reprimand. In that case, the respondent stipulated that he violated the anti-nepotism prohibition when he, a member of the city council, voted for his cousin to become Mayor. In In re Jody Strozuk (Final Order No. 18-001), the Commission recommended the respondent be issued a civil penalty of $2,000 and be issued a public censure and reprimand. In that case, the respondent stipulated that he violated the anti-nepotism provision by hiring his son to his agency. Advocate argues that these recent precedents demonstrate that a monetary fine larger than $1.00 is justified.

Respondent opposes the fifth exception, arguing that Advocate's focus on the finding in paragraph 22 that Respondent "sought"[1] legal advice ignores the context for making that finding

[1] Despite assertions to the contrary, the record and the Recommended Order do not actually reflect that Respondent ever *sought* any legal advice on the subject of the May 4, 2017 vote—only that she *received* legal advice at the precipice of voting for her cousin to become Mayor Pro-Tem. In Respondent's Response to the Advocate's Exceptions to Recommended Order, Respondent argued:

> Exception Five focuses on Conclusion of Law 132. The Advocate seeks to strike portions that reflect the Findings of Fact that formed the basis for the Administrative Law Judge's penalty recommendation. The Advocate takes issue with conclusion that the *Respondent sought* legal advice as to whether she could vote on electing her cousin to serve as Mayor Pro-tempore. In support, she sets [*sic*] cites Findings of Fact 21 and 22. However, the Advocate ignores the entire factual predicate for the conclusion that *Respondent sought* legal advice as to whether she could vote on electing her cousin to serve Mayor Pro-tempore.

Emphasis added. The Findings of Fact in the RO, however, state:

> 18. The following month, at its May 4, 2017, meeting, the City Council considered the issue of electing a Mayor and Mayor Pro-Tem as provided by the City Charter.
>
> 19. At the meeting, *Councilman Colston asked* if it was legal for relatives to vote for each other. The minutes of the City Council for that date indicate that "Interim City Attorney Thomas explained he had heard a rumor and did research and it is legal."
>
> * * *
>
> 22. Considering the conflicting evidence, it is found that the preponderance demonstrates that the City Attorney advised that it was not a voting conflict for relatives to vote for each other for Mayor and Mayor Pro-Tem.

Emphasis added.

The RO reiterates this point in its Penalty section at paragraph 132: "Proof for that violation did not require a showing that Respondent intended to violate the law. In fact, the evidence otherwise showed that Respondent *received* legal advice prior to her vote opining that she was permitted to vote for her cousin." Emphasis added.

of fact in paragraphs 18-21. Respondent argues against the sixth exception, stating that the ALJ issued the $1.00 civil penalty after weighing the all the evidence. Respondent also argues that a nominal penalty, as applied to Respondent, is a significant penalty requiring no enlargement.

With regard to the fifth exception, we do not find that the indication in paragraph 132 of the RO that Respondent merely committed a technical violation of the anti-nepotism provision, nor the conclusion flowing from that premise—that the penalty should be nominal—to be supported by the findings in the Findings of Fact section of the RO [¶¶ 1-78, Recommended Order] or the reasoning in the Penalty section of the RO [¶¶ 130-132, Recommended Order]. Paragraph 132 begins with the observation that the elements of the anti-nepotism violation do not require a finding as to Respondent's mental state or intention and finds that the elements of the violation were proven, but nevertheless concludes that the penalty only should be nominal due to the absence of proof that Respondent intended to violate the anti-nepotism provision; the RO does not mention any other factors as justification of a nominal penalty. Where the purpose, in part, of the Code of Ethics for Public Officers and Employees, Part III of Chapter 112, Florida

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The transcript of the hearing is also consistent on this point. During Respondent's cross examination of Councilman Ronald Colston, the witness testified:

> Q: Okay. In the middle of that page, there's some minutes that I'm going to ask you about. Did you question the city attorney --
> A: Yes, I did.
> Q: -- at the city council meeting on May 4th if it was legal for relatives to vote for each other?
> A: Yes, I did.

Transcript, p. 209.

To the extent the penalty ultimately recommended in this Final Order and Public Report is mitigated by the findings of fact in paragraphs 22 and 132 of the RO, this Commission does not understand paragraphs 22 and 132 of the RO to state or imply that the Respondent *sought* the legal advice that was rendered just before the subject vote, as is written in Respondent's Response to the Advocate's Exceptions to Recommended Order.

Statutes, of which the anti-nepotism provision in Section 112.3135 is a part, is to "promot[e] the public interest and maintai[n] the respect of the people in their government" [See Section 112.311(6), Florida Statutes] and the purpose, in part, for civil penalties is, as the RO acknowledges in paragraph 131, to deter future disobedience of the law, the issuance of a merely nominal penalty—one supported only by Advocate's failure to prove a non-element of the violation—is not reasonable. To the extent that Respondent's mental state was such that she did not intend to incur a violation of the anti-nepotism provision, as evidenced by receiving the legal advice of the City Attorney about the propriety of voting for her cousin to be Mayor Pro-Tem [¶¶ 19-22, Recommended Order], we find it is more reasonable, instead, to consider it, at most, a mitigating factor, among other factors, not a legal defense, and to consider it in the context of our prior final orders.

In accord with penalties imposed in prior cases,[2] and based upon a review of the complete record, the Commission on Ethics finds that public censure and reprimand, in addition to a civil penalty of $1,500, is warranted because Respondent was a member of the City Council of the City of Midway [¶ 1, Recommended Order; Joint Prehearing Stipulation, ¶ E.1.] and, as such, was a public official as that term is defined in Section 112.3135(2)(a), Florida Statutes;

[2] In re Sam Stevens, Final Order No. 19-030 (issued June 7, 2019) (adopting the Joint Stipulation of Fact, Law, and Recommended Order entered into between the Advocate for the Commission and the Respondent where, as a City Councilmember and/or the Mayor Pro Tem for the City of Midway, Respondent violated Section 112.3135, Florida Statutes, by voting on the appointment and/or advocating for the appointment of his relative to a position within the agency and/or his collegial body voting to appoint and/or advance his relative, resulting in a $500 civil fine for the anti-nepotism violation and a public censure and reprimand) and In re Jody Storozuk, Final Order No. 18-001 (issued January 24, 2018) (adopting the Joint Stipulation of Fact, Law, and Recommended Order entered into between the Advocate for the Commission and the Respondent where, as the District Manager of the Port Malabar Holiday Park Mobile Home Park Recreation District, Respondent violated Section 112.3135(2)(a), Florida Statutes, by employing one or more of his relatives to work with the recreation district, resulting in a $2,000 civil fine for the anti-nepotism violation and a public censure and reprimand).

Respondent voted in her capacity as a City Council member to make Councilman Sam Stevens the Mayor Pro-Tem of the City of Midway on May 4, 2016 [¶ 29, Recommended Order; Transcript, p. 44]; the members of the City Council alone elect one of the members to be the Mayor Pro-Tem [¶ 5, Recommended Order; Advocate's Exhibit 9, pp. 9-10]; the Mayor is recognized as the head of city government, may take control of the police during times of grave public danger or emergency and has the power to appoint additional temporary officers and patrolmen, presides at all meetings of the City Council, and has other duties [¶ 6, Recommended Order; Transcript, pp. 37-43; Advocate's Exhibit 9, pp. 9]; the position of Mayor Pro-Tem has all the duties and powers of Mayor in the event of the Mayor's incapacity [¶ 30, Recommended Order; Advocate's Exhibit 9, pp. 10; Transcript, p. 194] and, as such, elevation of a member of the City Council to the position of Mayor Pro-Tem constitutes an appointment, promotion, or advancement to a position in City government over which Respondent, as Mayor and as a member of the City Council, exercised jurisdiction or control; Councilman Stevens was Respondent's first cousin [¶ 10, Recommended Order; Joint Prehearing Stipulation, ¶ E.4; Transcript, p. 43] and, as such, constitutes a "relative" as that term is defined in Section 112.3135(1)(d), Florida Statutes; another member of the City Council, Councilman Colston, asked whether it was legal for relatives to vote for each other [¶ 19, Recommended Order; Transcript, p. 209] and, in response, the City Attorney advised that it was not a voting conflict for relatives to vote for each other for Mayor and Mayor Pro-Tem [¶ 22, Recommended Order; Advocate's Exhibit 2, p. 1; Transcript, pp. 58-59]; the population of the City of Midway is less than 4,000 [¶ 8, Recommended Order; Respondent's Exhibit 6, p. 7 (page 6 of deposition)]; and the City Council of the City of Midway has land use and/or zoning responsibilities [¶ 9, Recommended Order; Respondent's Exhibit 6, p. 7 (page 6 of deposition); Transcript p. 193]

and, as such, appointments to or within the City Council of the City of Midway are not exempt from the anti-nepotism provisions of Section 112.3135(2)(a), Florida Statutes. Therefore, the Commission on Ethics finds that public censure and reprimand and a $1,500 civil penalty, is warranted. The Commission accepts Advocate's fifth and sixth exceptions and increases Respondent's recommended penalties to be a public censure and reprimand and a $1,500 civil penalty for Respondent's violation of Section 112.3135, Florida Statutes.

Findings of Fact

The Commission on Ethics accepts and incorporates into this Final Order and Public Report the findings of fact in the Recommended Order from the Division of Administrative Hearings.

Conclusions of Law

Except to the extent modified above in granting Advocate's exceptions, the Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Disposition

Accordingly, the Commission on Ethics determines that Respondent violated Section 112.3135, Florida Statutes, and recommends that the Governor publicly censure and reprimand Respondent and impose a civil penalty of $1,500 upon Respondent.[3]

[3] And the Commission on Ethics determines that Respondent did not violate Sections 112.313(6) or 112.3148(8), Florida Statutes.

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 24, 2020.

January 29, 2020
Date Rendered

Kimberly B. Rezanka
Kimberly B. Rezanka
Chair, Florida Commission on Ethics

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, AND SECTION 112.3241, 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, AT EITHER 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303 OR 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, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Ms. Casandra Neal, Complainant
Mr. Barry L. Bonnett, Complainant
Ms. Auburn Ford, Complainant
Ms. Carolyn Russ Francis, Complainant
Mr. Ronald J. Colston, Complainant
The Honorable James H. Peterson, III, Division of Administrative Hearings