

JoAnne Leznoff
Chair
John Grant
Vice Chair
Michelle Anchors
Antonio Carvajal
Travis Cummings
Don Gaetz
Glenton "Glen" Gilzean, Jr.
William "Willie" N. Meggs
Jim Waldman



State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

C. Christopher Anderson, III
*Executive Director/
General Counsel*

Kerrie J. Stillman
Deputy Executive Director

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

"A Public Office is a Public Trust"

April 21, 2021

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

Re: Complaint No. 18-168, In re DUSTIN DANIELS

Dear Governor DeSantis:

The Florida Commission on Ethics has completed a full and final investigation of a complaint involving Dustin Daniels, former Chief of Staff for the Mayor of the City of Tallahassee. 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 Mr. Daniels violated the Code of Ethics in the manner described by our order, we recommend that you impose a civil penalty upon him in the amount of \$1,000 (one thousand dollars) and that you publicly censure and reprimand him. 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. Elizabeth A. Miller, Assistant Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Christopher Anderson, III", is written over a horizontal line.

C. Christopher Anderson, III
Executive Director

CCA/ks

Enclosures

cc: Ms. Jennifer S. Blohm, Attorney for Respondent
Ms. Elizabeth A. Miller, Commission Advocate
Mr. Jennings L. DePriest, Complainant

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re DUSTIN DANIELS,)
)
 Respondent.)
)
)
)
)
)
 _____)

Complaint No. 18-168
DOAH Case No. 20-3599EC

Final Order No. 21-004

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session April 16, 2021, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on February 19, 2021. In the RO, the ALJ recommends that the Commission enter a final order finding that Respondent, while serving as the Chief of Staff for the Mayor of Tallahassee, violated Section 112.313(6), Florida Statutes.¹

Standards of Review

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

¹ While the Commission's Advocate filed an exception to the penalty recommended in the RO for this violation, the Advocate subsequently withdrew the exception. The Respondent has not filed any exception to the RO.

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.

An agency may accept the entirety of 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.

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 Administrative Law Judge of the Division of Administrative Hearings rendered on February 19, 2021. The findings are based upon competent substantial evidence and the proceedings upon which the findings are based complied with essential requirements of law.

Conclusions of Law

The Commission on Ethics accepts and incorporates into this Final Order And Public Report the conclusions of law in the Recommended Order from the Administrative Law Judge of the Division of Administrative Hearings rendered on February 19, 2021.

Penalty and Disposition

Accordingly, the Commission on Ethics determines that the Respondent violated Section 112.313(6), Florida Statutes. However, in accordance with Section 120.57(1)(l), Florida Statutes, the Commission increases the penalty from a civil penalty of \$250 recommended by the Administrative Law Judge, and recommends the Governor impose a civil penalty of \$1,000 upon the Respondent and that the Governor publicly censure and reprimand the Respondent. The increase in penalty is based upon a review by the Commission of the complete record, the Commission's reasons for increasing the penalty are stated with particularity below, and citations to the record justifying the increase are set forth below:

Reasons for increase in penalty

Underlying the ALJ's determination of a violation by the Respondent is his finding that the Respondent improperly used Mayor's Office email for an advertisement for a partisan fundraiser, finding in paragraph 47 of the Recommended Order that: The undersigned finds Mr. Daniels's justification for this particular email to be less than credible; a person of Mr. Daniels's position—the Chief of Staff to the Mayor of a large Florida city—should know that sending an advertisement for a partisan fundraiser to contacts and constituents from a public email was inconsistent with the performance of his public duties and would be violative of Florida Law.

The findings in paragraphs 52 and 71 of the Recommended Order mirror the ALJ's finding in paragraph 47 (that a person of the Respondent's high position in City government sending of an email via public means for a partisan purpose violated the law). All of these findings, which are part of the record in this matter pursuant to Section 120.57(1)(f), Florida Statutes, are reasons for increasing the penalty in this matter.

Section 112.311, Florida Statutes (Legislative intent and declaration of policy) provides that purposes of the standards of conduct in the Code of Ethics, which the ALJ has found that the Respondent violated, are to protect the integrity of government, to prevent the use of public position for private gain, to promote the public interest, and to maintain the respect of the people in their government.

Section 112.313(6), Florida Statutes, which was found to have been violated by the Respondent, is not merely a "strict liability" or "status" offense requiring no actual or affirmative wrongdoing. Rather, it is an offense requiring intentional conduct. As such, it is a more serious offense against the public trust, and one more fitting of the penalty of public censure and reprimand, in addition to a dollars-and-cents fine. Penalties of many previous matters of this Commission involving Section 112.313(6) have included public censure and reprimand. This is not a case of an inadvertent error by a low-level rank-and-file public employee; rather, it is intentional wrongful conduct by a high-ranking government official for a private (not public) purpose.

A civil penalty of \$250 is inadequate for a violation of a statute requiring intentional wrongful conduct, such as Section 112.313(6), Florida Statutes, considering the maximum civil penalty under Section 112.317, Florida Statutes, is \$10,000.

Citations to the record justifying an increase in penalty

The contents of paragraphs 47, 52, and 71 of the Administrative Law Judge's Recommended Order, which show the seriousness of the violation and the Respondent's culpability.

Page 50 of DOAH Joint Exhibit 7—the Respondent admitted that he had the final decision on the content sent out in the mass emails, again affirmed that he was the individual who approved and sent out these emails, and acknowledged the FL DEMS fundraiser email was not an appropriate email and should not have been sent out of the Mayor's Office.

Page 177 (top of page numbering) of DOAH Transcript Volume II—the Respondent admitted that he was the administrator of the program, that he put together fliers that would be sent out through the program, and that he was the boss
.....

ORDERED by the State of Florida Commission on Ethics meeting in public session on

April 16, 2021.

April 21, 2021
Date Rendered



JoAnne Leznoff
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, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709, OR AT THE COMMISSION'S PHYSICAL ADDRESS OF 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303; 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: Ms. Jennifer S. Blohm, Attorney for Respondent
Ms. Elizabeth A. Miller, Commission Advocate
Mr. Jennings L. DePriest, Complainant
The Honorable Robert J. Telfer, III, Division of Administrative Hearings