FLORIDA
COMMISSION ON ETHICS
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Vanessa Baugh,

Respondent.
_____/

Complaint Nos. 21-039 through 21-052, 21-057, 21-059, 21-060, 21-064 (consolidated)

ADVOCATE'S SECOND AMENDED RECOMMENDATION

The undersigned Advocate, after reviewing the Complaints and Report of Investigation filed in this matter, submits this Second Amended Recommendation in accordance with Rule 34-5.006(3), F.A.C. The amendments clarify how Respondent received a disproportionate benefit.

RESPONDENT/COMPLAINANTS

Respondent, Vanessa Baugh, serves as a County Commissioner for Manatee County. Complainants are Kyria Holcomb, Sarah Taylor, Virginia A. McCollum, Renee Corbitt, Laura Hakim, Kellie Potter, Deborah Heagerty, Patricia A. Thomas, Emma Bright, William Mitchell, Kathleen Morash, Lorna Dunston, Mary Conway, of Bradenton, Florida; Charlie Stephenson, of Sarasota, Florida; Darrion Danforth, of Ruskin, Florida; Gary Hays, of Palmetto, Florida; Joseph Weinzettle, of Tarpon Springs, Florida; and Jennifer L. Hamey, of Ellenton, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaints were legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Article II, Section 8(g)(2), Florida Constitution, and Section 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on September 21, 2021.

ALLEGATION ONE

Respondent is alleged to have violated Article II, Section 8(g)(2), Florida Constitution,[1] by putting her name at the top of the Manatee County randomly selected list of recipients to receive a COVID-19 vaccination.

APPLICABLE LAW

Article II, Section 8, provides as follows:

Article II, Section 8, provides as follows:

> **Ethics in government.**—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:
>
> (g)(1) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.
>
> (2) A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

ANALYSIS

Respondent was elected to the Manatee County Commission in 2012 and was reelected to that position in 2016 and 2020. (ROI 40, 43) She became County Commission Chair in January 2021. (ROI 43) Respondent is a resident of Lakewood Ranch and represents, in pertinent part, areas with the zip codes 34202 and 34211. (ROI 40)

[1] Article II, Section 8(g)(2) will be redesignated as Article II, Section 8(h)(2) on December 31, 2022.

The COVID -19 Vaccine Distribution Process in Manatee County:

On December 23, 2020, Governor Ron DeSantis issued Executive Order Number 20-315 instructing all providers to only administer any COVID-19 vaccine to long-term care facility residents and staff, persons 65 years of age and older, and health care personnel with direct patient contact. (ROI 6, 7, 34, Exhibit A-6)

On January 6, 2021, the Manatee County Board of County Commissioners, including Respondent, unanimously voted to establish a COVID-19 vaccine standby pool so residents age 65 and older could avoid long lines by pre-registering online or by telephone. (ROI 6) When the County received a shipment of vaccines, residents eligible to receive the vaccine were randomly selected and then scheduled for administration of the vaccine.[2] (ROI 6)

Early COVID-19 Statistics in Manatee County:

On February 9, 2021, there was an estimated population of 405,733 people in Manatee County. (ROI 11) There were approximately 265,000 eligible individuals in the County-managed vaccination pool at the relevant time. (ROI 24) The vaccination pool of eligible people was not limited to Manatee County residents but was open to any Florida resident who wished to register. (ROI 24)

In early 2021, Manatee County had a 22% vaccination rate for seniors, which was the third lowest rate of Florida's 67 counties. (ROI 11) For the first week of February 2021, 1,010 Manatee County residents in the zip code 34202 tested positive for COVID-19 and 1,523 cases were recorded in zip code 34211.[3] (ROI 41) The six other zip codes in Manatee County each reported over 2,000 positive cases, with the 34221 zip code reporting over 4,300 positive cases. (ROI 41)

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[2] None of the other Manatee County Commissioners participated in events related herein or had communication with Respondent about the event outside of a public meeting. (ROI 30)

[3] These numbers came from the Florida Department of Health's COVID-19 dashboard. (ROI 41)

Manatee County received 43,200 doses of the Moderna vaccine from the State of Florida between January 1, 2021 and February 14, 2021. (ROI 41)

At the relevant time, there were 7,285 eligible registrants from the County's vaccine list located in area codes 34202 and 34211. (ROI 24, 35) All of the 7,000 + were frontline health care workers or individuals over the age of 65. (ROI 24) A total of 3,200 vaccines[4] were distributed during an event at Lakewood Ranch.[5] (ROI 17)

Lakewood Ranch Vaccination Site:

In early February 2021, Governor Ron DeSantis called former State Senator Pat Neal to assist in finding a Southwest Florida location where vaccinations could be administered. (ROI 8) Senator Neal brought Rex Jensen, the developer of Lakewood Ranch planned community,[6] into the conference call. (ROI 7) By the end of the call, Jensen had agreed to host a vaccination site in Manatee County. (ROI 7, 8)

Respondent stated that Lakewood Ranch was chosen as the vaccination site because of the high percentage of seniors living in the area with a correspondingly low vaccination rate. (ROI 19) Jensen did not have the resources available to coordinate the scheduling of appointments so he reached out to Respondent for assistance. (ROI 7, 12) He specifically sought Respondent's help because she was the Chair of the County Commission. (ROI 8) Jensen asked Respondent if the event could be held at the County-owned facility of Premier Sports Campus in Lakewood Ranch. (ROI 12, 45)

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[4] Three thousand vaccines were scheduled but Governor DeSantis brought an additional 200 doses when he visited the site. (ROI 17)

[5] This event was also known as a pop-up vaccination event. (ROI 44)

[6] Jensen is also the CEO of Schroeder Manatee Ranch, Inc. (ROI 7)

Respondent's Involvement in the Distribution Process:

Respondent contacted Cheri Coryea, Manatee County Administrator, to determine if Premier Sports Campus would be available for a vaccination site. (ROI 29) When Respondent mentioned that she wanted to distribute the vaccines to individuals in only two of the five zip codes making up Lakewood Ranch, Administrator Coryea encouraged her to stick to the County's list to select recipients. (ROI 29) Respondent refused citing as her motive that the people in her district would love her. (ROI 29)

When Respondent received confirmation that the vaccinations would be available, she contacted Jacob Saur, the Manatee County Public Safety Director, to ascertain if the County's lottery for vaccinations could be used to check for Lakewood Ranch zip codes in an effort to determine who within those zip codes could receive a vaccination. (ROI 12) Director Saur emailed Matthew Arriaga, Applications and Development Team Leader, Manatee County IT Department, inquiring about the number of vaccine-eligible people in the 34202 and 34211 zip codes. (ROI 35) Arriaga accomplished Respondent's request by creating a filtered view of the database and then copying the application to only look at the two selected zip codes. (ROI 35)

Director Saur confirmed Respondent's request of him to pull names from the general vaccine list of those eligible individuals residing in the two zip codes in Lakewood Ranch and he advised Respondent that limiting vaccinations to specific areas would be a departure from what previously had been done when scheduling vaccinations in the County. (ROI 21) Director Saur unsuccessfully attempted to contact the State's Emergency Management office to confirm that the vaccine was to be used in specific zip codes. (ROI 29)

Subsequently, Director Saur sent a list to Respondent of individuals eligible for the vaccination from the aforementioned two zip codes. (ROI 15) Respondent noticed five names in

particular were not on the list – Rex Jensen (age 67), his father Lawrence Jensen, Robert Keehn and his wife, Marie, and Respondent herself. (ROI 16) Respondent asked Jensen if he and his elderly father would like to receive the vaccination, to which he answered affirmatively. (ROI 13) Respondent added Robert and Marie Keehn to the list because Mrs. Keehn had been calling and emailing Respondent in frustration about their inability to receive the vaccination. (ROI 14) This list of five names was dubbed the "VIP list" by the press. (ROI 18)

On February 15, 2021, Respondent emailed Director Saur the list of five names, along with their dates of birth, addresses, and phone numbers and asked him to contact those individuals directly to schedule vaccination appointments. (ROI 16, 29, Exhibit C)

When Respondent informed Director Saur that she had been working with the Governor's office to bring the vaccination site to Lakewood Ranch, Director Saur asked Respondent who she was working with at the state level but Respondent could not name anyone. (ROI 21, 22) When he "asked her how, how will we legally do this because that's not the guidance I've been given by the State," Respondent answered, "I'm the Chair. So um, is the Chair not good enough?"[7] (ROI 22)

Andrea Goodman, former Manatee County Vaccine Temp Supervisor, received an email from Marsha Bacon, Mantee County 311 Supervisor, with Respondent's list of five names. (ROI 37, Exhibit C) Bacon gave Respondent's list to Dylan Buotte, 311 COVID Manatee County Vaccine Temp Supervisor, and tasked him with scheduling the appointments for those five individuals. (ROI 36, Exhibit C) Boutte was given the task because he had supervisory access to the County's vaccine list and he had to go into the system to edit the status of each individual on the list. (ROI 36) The County's vaccine list had over one hundred thousand people on it at the time the Lakewood Ranch event took place. (ROI 24) To accommodate Respondent's request, Boutte

[7] As stated earlier, Respondent became the Chair of the Manatee County Commission in January 2021. (ROI 43)

had to remove residents from their current status in the vaccine pool and place them in a "pending status" so the system would allow him to proceed with the scheduling process for the five individuals. (ROI 36)

Respondent's List of Five:

As stated previously, Respondent's list of five residents included Respondent, Rex Jensen and his father, Lawrence Jensen, and Robert and Marie Keehn.[8] (ROI 16)

Robert and Marie Keehn, former neighbors of Respondent's, made the list because Marie had been calling and emailing Respondent "voicing significant concern and frustration about the fact that she and her husband had been unable to receive the vaccine even though their names had been on the County's list for a long time." (ROI 14) Both received the vaccination because of Respondent's actions. (ROI 33) The Keehns reside in the 34202 zip code. (ROI 39) Respondent's campaign reports do not indicate that they contributed money to Respondent. (ROI 40)

Rex Jensen made the list because Respondent knew he was age 67 so she asked if he would like his name to be added to the County's list. (ROI 9) When Respondent asked Jensen if he would like anyone else added, he said, "Yeah, my dad [Lawrence] if you can do it." (ROI 11) Lawrence Jensen chose not to receive the vaccination due to underlying health concerns. (ROI 13) Respondent stated that the Jensens were added to the list because, "Had it not been for him [Rex Jensen], we would not be having shots in the arms. So, that's why [he was included]." (ROI 49) Rex Jensen did not support Respondent in the primary election and he never asked for anything in return for being added to the list. (ROI 9) According to Respondent, Rex Jensen only contributed to her first campaign in 2012. (ROI 50) Rex Jensen's driver's license lists his zip code as 34212

[8] The press referred to this list as a "VIP list." (ROI 18) Respondent stated that the other Commissioners "attacked with everything they had" due to this and the name given to the list shocked and angered her. (ROI 18)

and Lawrence Jensen's driver's license lists his zip code as 34208, thus, they do not reside in either of the two zip codes targeted by Respondent. (ROI 39)

Lastly, Respondent put her name on the list because she was "putting this on [organizing the event] so I'm going to get the shot as well." (ROI 25, 26) She did not receive the vaccination at the event because she was shocked and angered at the way the list of five names had been portrayed by the media. (ROI 18)

Director Saur opined that "it was his belief she [Respondent] intended for the individuals on the list of five names to be scheduled to get a shot, not to be placed in the pool with the rest of the eligible recipients from those two zip codes." (ROI 25)

Following the vaccine event at Lakewood Ranch, Respondent called Director Saur inquiring whether he had released to the newspaper the list of five names, identified in the press as the VIP list, who were to be recipients of the vaccine at the event. (ROI 28) She told Director Saur that the list contained personal information for her friend Rex Jensen and she intended to find out who released the information. (ROI 28) Director Saur believed Respondent was attempting to threaten him. (ROI 28)

Respondent and her husband reside in the 34202 zip code and she owns a business[9] in the 34202 zip code. (ROI 39) She received a total of $94,679.20 in campaign contributions in her most recent election.[10] (ROI 40) She received $11,118.00, or approximately 11.74% of the total contributions from the 34202 and 34211 zip codes, which are a part of her district. (ROI 40) Accordingly, Respondent's campaign reports do not indicate any recent contributions from the four names on Respondent's list. (ROI 40) There is no evidence of a quid pro quo. (ROI 13)

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[9] Respondent's business is Vanessa Fine Jewelry. (ROI 39)

[10] Information regarding campaign contributions came from Respondent's campaign treasurer reports for the most recent election, dated October 1, 2019 through February 1, 2021. (ROI 40)

If Respondent had any doubt about the ethicalness of her actions, it should have been confirmed when Director Saur and Administrator Coryea expressed their concern directly to her. (ROI 21, 23, 29) Apparently prior to the event, there had been "recent complaints and negative newspaper articles concerning the fairness of the County's vaccine distribution system."[11] (ROI 31) As justification for limiting the event to residents of the two zip codes, plus the Jensens, Respondent asserted that traffic would create a hazardous condition if the whole County was included and she contends (incorrectly) Director Saur confirmed with the State Emergency Management Department that narrowing the larger lottery pool to only two zip codes was no problem. (ROI 45, 47)

Respondent was a public officer at all times relevant. It is alleged that Respondent received a "disproportionate benefit" by her actions involving the distribution of COVID-19 vaccinations. This refers to a voter-approved prohibition on public officials and employees using their offices to benefit themselves, their families, or employers. This prohibition found in the Florida Constitution became effective on December 31, 2020, thus any events occurring before that date are inapplicable to a violation of the amendment.

Rule 34-18.001, *Florida Administrative Procedure*,[i] sets out the definition of the term "disproportionate benefit" as the term is used in the applicable constitutional article. "'Disproportionate benefit' means a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties." Rule 34.18-0012(a), F.A.C. Several factors are listed in the administrative rule for the Commission on Ethics consideration in determining whether a benefit, privilege, exemption or result constitutes a disproportionate benefit. Those summerized factors are:

[11] Mike Hotaling, Senior Manager of IT Services for Manatee County, was reluctant to scale down distributions to two zip codes for those reasons. (ROI 31)

(a) The number of persons, besides the public officer, who will experience the benefit, privilege, exemption, or result;

(b) The nature of the interests involved;

(c) The degree to which the interests of all those who will experience the benefit, privilege, exemption, or result are affected;

(d) The degree to which the public officer receives a greater or more advantageous benefit, privilege, exemption, or result when compared to others who will receive a benefit, privilege, exemption, or result;

(e) The degree to which there is uncertainty at the time of the abuse of public position as to whether there would be any benefit, privilege, exemption, or result, and, if so, the nature or degree of the benefit, privilege, exemption, or result must also be considered; and

(f) The degree to which the benefit, privilege, exemption, or result is not available to similarly situated[ii] persons.

Soon after the Constitutional amendment became effective, the Commission on Ethics issued an opinion interpreting it. In CEO 21-1, a police officer questioned whether the Code of Ethics would prohibit him from accepting a reduction in rent in exchange for providing part-time, off-duty services as a Courtesy Officer for the apartment complex. Although those facts were analyzed under several statutes, the Commission's analysis of the facts as they pertained to the Constitutional prohibition is instructive here. The Commission found that "where the arrangement is not available to otherwise similarly-situated potential tenants in the general public, we find that the benefit is disproportionate." COE 21-1, pg. 5.

In the instant case, Respondent's benefit[12] was direct, identifiable, and specific – she put her name at the top of the Manatee County's vaccination list. Not only was her benefit not available

[12] The Constitutional provision is narrower than the "misuse of public position" statute. Section 112.313(6), Florida Statutes, prohibits Respondent from securing a benefit for herself and others. The Constitutional provision prohibits a benefit for Respondent, her spouse, children, or employer; or for any business with which she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which she owns an interest. It is not believed that the four individuals on the "VIP list" fall into these categories.

to otherwise similarly situated individuals, but it was grossly disproportionate in that she jumped ahead of 265,000 eligible vaccine recipients for the potential life-saving drug.[13]

Lastly, to meet the requisite intent for a violation, the public officer or public employee must act, "or refrain from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with proper performance of his or her public duties." Rule 34-18.001(4), F.A.C.

To get this benefit for herself, Respondent abused her position. Her actions indicate a wrongful intent. Specifically, she exercised influence over employees under her control to gain exclusive access for herself to a dose of a scarce vaccine. In fact, she took exclusive control of the distribution of all 3,200 vaccine doses to achieve her goal.

The Manatee County Commission, including Respondent, unanimously adopted a vaccine distribution policy to prevent any preferential treatment and to ensure that all eligible recipients were treated in a fair and impartial manner when the COVID vaccines became available. Respondent was expected to strictly enforce the policy such that all individuals were expected to perform their public duties in a professional manner without any impropriety or even the appearance of impropriety. However, the distribution process was not spared from political interference by Respondent. Her conduct is indicative of an abuse or a wrongful intent because the benefit she received was obtained in a manner that was inconsistent with the proper performance of her public duties.

The Florida Legislature has expressly declared the public policy of the State that public office is a public trust to be held for the sole benefit of the people. In support of the public policy,

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[13] https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html

the Legislature also included mandatory provisions governing the conduct public officials must avoid to prevent conflicts between their private interests and those of the general public they serve. §112.311, Fla. Stat. Respondent abused her position as the Chair and member of the Manatee County Commission to receive a disproportionate share of the vaccine for herself. Respondent's conduct significantly contravenes the provisions and intent of the Florida Constitution.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8(g)(2), Florida Constitution.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using or attempting to use her public position and/or resources to deviate from Manatee County's COVID-19 vaccine distribution policy to serve specific individuals and zip codes.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, 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.

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

> "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.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.

2. Respondent must have:
   a) used or attempted to use his or her official position or any property or resources within his or her trust,
   or
   b) performed his or her official duties.

3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.

4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

The facts are set forth above under Allegation One. To recap:

December 2020 State established guidelines;

January 6, 2021 County Commissioners established guidelines;

January 2021 Manatee County began its vaccine distribution efforts;

February 9, 2021 Cheri Coryea learned the County would get 3,000 additional vaccines;

Respondent called Cheri Coryea about using Premier Sports Campus as a vaccination site;

Mike Hotaling, Senior Manager of IT Services for Manatee County, received a request from Manatee County Public Safety to support the vaccination event at Premier Sports Campus;

February 12, 2021 Matthew Arriaga, Applications and Development Team Leader, Manatee County IT Department, informed Director Saur that the County's vaccine database indicated 7,285 eligible registrants located in the two zip codes;

February 15, 2021	Director Saur sent Marsha Bacon, Manatee County 311 Supervisor, Respondent's list of five individuals to add to the vaccination list for the Premier Sports Campus event;
	Marsha Bacon sent an email to Andrea Goodman, former Manatee County Vaccine Temp Supervisor, advising that Respondent wanted to schedule five individuals for vaccinations;
	Andrea Goodman directed Dylan Buotte to schedule the five individuals for vaccinations;
	Robert and Marie Keehn were scheduled for vaccinations on February 17;
February 17, 2021	Robert and Marie Keehn, and Rex Jensen received vaccinations; and
February 23, 2021	Manatee County Sheriff's Office initiated an investigation into Respondent's actions. The sheriff's office's report notes that their investigation "clearly indicates" that Baugh "knowingly and intentionally attempted to obtain a benefit for herself and others," but the actions did not rise to the level of crime. An investigator noted that any civil punishment will be handled by the Florida Commission on Ethics, which will be provided with a copy of the findings.

(ROI 8-45)

As a public officer, Respondent voted to implement the County's COVID-19 vaccine standby pool for eligible residents and other individuals. Distribution of the vaccine was to be done on a random basis with certain high-risk categories moved to the front of the line. At the time, COVID-19 vaccines and COVID-19 resources were extremely limited, and Manatee County individuals were ill or dying from the virus. See "Whereas clauses" in R-20-041. (Exhibit D)

Since supplies were limited in the initial stages of vaccine deployment, it was vital that public officials and governments ensured that they allocate the vaccine fairly and that each dose reached its intended recipient. Shortly after the County's policy was adopted, Respondent made a decision to take action on the distribution of the vaccine that was contrary to the County's official policy, for which she had favorably voted. That action involved Respondent deciding that two zip

codes within her district should have priority access to scarce resources and disrupted the equitable distribution of those resources. Furthermore, she decided that five individuals, including herself, should not wait in the pool of potential recipients to be randomly selected but rather be first in line for the vaccine.

Respondent's unilateral decision undermined the fairness of the County's distribution scheme, was a display of out-right favoritism, and may have interfered with vital public health goals for the community, which all undermined the common good.

To carry out her decision, she used her official position to exert authority over County employees to perform their official duties in disobedience of the local emergency proclamation. Prior to the COVID-19 emergency, the County Commissioners were required to conduct business through the County Administrator. Manatee County Resolution R-09-234 states, in part:

> All direction of the Board to County staff shall be made through the County Administrator. Except for purposes of inquiry and information, individual commissioners shall not interfere with or issue direction to employees, officers, or agents under the direct or indirect supervision of the County Administrator. (ROI 42)

Due to the COVID-19 pandemic, several Manatee County Resolutions were enacted by the County Commission to deal with the crisis. (ROI 42) Specifically, R-20-041 was adopted on March 16, 2020. (ROI 52, Exhibit D) This Resolution waived "procedures and formalities required by law of a political subdivision. . . until such time as the Local Emergency declared herein is terminated or expired or seven (7) days from the effective date of this Resolution, whichever is sooner."[14] (Exhibit D) R-20-041 expired on March 23, 2020, and R-20-045 was immediately adopted and effective from March 24, 2020 until March 31, 2020. (ROI 52, Exhibit D) The

[14] "The Board of County Commissioners hereby waives procedures and formalities required by law of a political subdivision, as authorized by Section 252.38(3), Florida Statutes, and Section 2-13-17 of the Manatee County Code." (Exhibit D-2)

Resolutions continued to be adopted on a weekly basis during the relevant time periods. (Exhibit D)

Any directives to County employees before the first Resolution was adopted and at the conclusion of the last Resolution were prohibited. The only conversations disclosed in the Report of Investigation that Respondent had directly with County employees, occurred when the procedures and formalities required by law were waived due to the emergency created by COVID-19. Respondent's conversations to employees may have been authorized but, to the extent she encouraged employees to violate policies, procedures, and the law, those conversations were inappropriate and were done with a wrongful intent that was inconsistent with the proper performance of her public position.

The purpose of Respondent's actions was to obtain all the vaccine and distribute it at her discretion, which resulted in a benefit for a specific population – her constituents, friends, acquaintances, and herself.

As further indication that Respondent "misused her public position," assuming the vaccines had been distributed equally to all local zip codes, the charts below indicate the disparity caused by Respondent's disruption of a process intended to be fair and just. It is inescapable that vaccinating 43.9% of the eligible people in Respondent's district (zip codes 34202 and 34211) which recorded the lowest infection rate of all eight of the Manatee County zip codes, is significant when only 1.21% of the entire eligible population would have been vaccinated with the random distribution system. All other zip codes with much higher COVID-19-positive populations received none of the 3,200 doses. Two zip codes chosen by Respondent should have equitably received only 88 doses but, instead, received 3,200 doses.

GROUP	NUMBER VALUE	UNITS
People eligible for vaccine county-wide[15]	265,000	People
Doses allotted for Manatee County	3,200	Doses
One dose per how many people	82.8	People/Dose
This means there was enough vaccine that you could only give a dose to every 82.8 people		

Eligible people in zip codes 34202 & 34211	7,285	People
Number of "blocks" of 82.8 people	88.0	Blocks of 82.8 People
This means that if you give one dose in every 82.8 "blocks" of people, zip codes 34202 & 34211 would get 88.0 doses total		

TRIVIA		
3,200 doses for 265,000 people	1.21%	Percentage of population that can get a shot
1.21% of the population in zip codes 34202 & 34211	88	People
3,200 doses for 7,285 eligible people in zip codes 34202 & 34211	43.9%	Percentage of population that got vaccinated

The facts support elements one, two, and three for a violation of misuse of public position. Respondent knew that her actions were inappropriate because she voted in favor of establishing a County-wide random lottery for vaccine distribution. But, if she had any doubt, several employees questioned the legitimacy of her actions.

[15] This number includes eligible individuals who may reside outside the Manatee County but chose to register. (ROI 24)

It was only by reason of her public position that she had the opportunity and, it was only because of her public position, that she was able to direct County employees to carry out her wishes. In other words, *but for* her position, she would have been unable to "jump the line" and direct the distribution of the vaccines, thus seek and/or attempt to obtain a personal benefit for herself and others. In addition, Respondent's motive was so the people in her district would love her.

Respondent violated her oath of office by using her position to undermine the County's response to the public health emergency for her personal benefit and others whom she favored. The law says that public officials cannot use their official position to secure unwarranted privileges or exemptions for themselves or others, including the misappropriation of services or other public resources for private purposes. That means that Respondent could not use State and County resources to benefit herself, friends, acquaintances, campaign donors, or constituents because that is not fair, it is wrong, and it is unlawful.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Article II, Section 8(g)(2), Florida Constitution, by putting her name at the top of the Manatee County randomly selected list of recipients to receive a COVID-19 vaccination.

2. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using or attempting to use her public position and/or resources to deviate from Manatee County's COVID-19 vaccine distribution policy to serve specific individuals and zip codes.

Respectfully submitted this 5th day of November, 2021.

ELIZABETH A. MILLER
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[i] **34- 18.001 Scope and Applicability of Chapter.**

(1) The purpose of this chapter is to provide notice and guidance to public officers or public employees, as well as to the general public, regarding the definition of the term "disproportionate benefit," as that term is used in Article II, Section 8(h)(2) of the Florida Constitution, as well as the requisite intent for finding a violation of the prohibition contained in Article II, Section 8(h)(2) of the Florida Constitution.

(2) Definitions

(a) For the purpose of Article II, Section 8(h)(2) of the Florida Constitution, "disproportionate benefit" means a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.

(3) The Commission will consider the following in determining whether a benefit, privilege, exemption, or result contitutes a "disproportionate benefit":

(a) The number of persons, besides the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, who will experience the benefit, privilege, exemption, or result;

(b) The nature of the interests involved;

(c) The degree to which the interests of all those who will experience the benefit, privilege, exemption, or result are affected;

(d) The degree to which the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, receives a greater or more advantageous benefit, privilege, exemption, or result when compared to others who will receive a benefit, privilege, exemption, or result;

(e) The degree to which there is uncertainty at the time of the abuse of public position as to whether there would be any benefit, privilege, exemption, or result, and, if so, the nature or degree of the benefit, privilege, exemption, or result must also be considered; and

(f) The degree to which the benefit, privilege, exemption, or result is not available to similarly situated persons. As used in this chapter, "similarly situated persons" means those with a commonality or like characteristic to the public officer or public employee that is unrelated to the holding of public office or public employment, or a commonality or like characteristic to the public officer's or public employee's spouse, children, or employer, or to any business with which the public officer or public employee contracts, serves as an officer, partner, director, or proprietor, or in which he or she owns an interest.

(4) The requisite intent for finding a violation of the prohibition in Article II, Section 8(h)(2) of the Florida Constitution is that the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.

[ll] For the purposes herein, "'similarly situated persons' means those with a commonality or like characteristic to the public officer or public employee that is unrelated to the holding of public office or public employment, or a commonality or like characteristic to the public officer's or public employee's spouse, children, or employer, or to any business with which the public officer or public employee contracts, serves as an officer, partner, director, or proprietor, or in which he or she owns an interest." Rule 34.18-0012(a), F.A.C.

CEO 21-1—February 5, 2021

CONFLICT OF INTEREST

CITY POLICE OFFICER RECEIVING RENT REDUCTION IN EXCHANGE FOR PROVIDING SECURITY SERVICES

To: Stephen K. Aldrich, Chief of Police (City of Holly Hill)

SUMMARY:

A police officer's acceptance of an offer from a landlord of an apartment complex, exchanging a reduction in rent for part-time, off-duty work as a Courtesy Officer, will not be prohibited by Sections 112.313(2), 112.313(4), or 112.313(7)(a), Florida Statutes. Also, the acceptance of the rent reduction is not indicative of the wrongful intent required to show a violation of Section 112.313(6) or Article II, Section 8(g)(2), Florida Constitution. CEO 78-29, CEO 78-29, CEO 79-81, CEO 83-75, CEO 91-52, CEO 92-48, CEO 94-19, CEO 94-36, CEO 03-15, and CEO 19-23 are referenced.

QUESTION:

Does the Code of Ethics for Public Officers and Employees or the Sunshine Amendment operate to prohibit a police officer from accepting a reduction in rent in exchange for providing part-time, off-duty services as a Courtesy Officer for the apartment complex offering the rent reduction?

Under the circumstances presented, this question is answered in the negative.

In your written inquiry, you explain that an apartment complex within the City limits has requested to have a police officer reside on its premises and serve as the apartment complex's Courtesy Officer when off duty. The inquiry states that a Courtesy Officer has some functions similar to a security officer, reporting crime matters to the on-duty police officers and performing minimal documentation of quality-of-life issues of the residents within the apartment complex. The inquiry relates that the City Police Department requires its officers to disclose in-kind reductions of rent on federal income tax filings. With this background, you ask whether a City Police Officer may accept rent reductions from an apartment complex in exchange for serving as a Courtesy Officer.

In reviewing whether such an arrangement is a conflict of interest, analysis under Section 112.313(7)(a), Florida Statutes, is required. Section 112.313(7)(a) states:

> No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first clause of this statute prohibits a public officer or employee from having employment or a contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of this statute prohibits a public officer or employee from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or that would create an impediment to the full and faithful discharge of his or her public duties.

When considering the first and second clauses of Section 112.313(7)(a), the Commission on Ethics has consistently found that there is nothing inherently conflicting about a police officer (or other similar public officer) accepting off-duty work as a security guard with an entity that is not regulated by or doing business with the police officer's agency. See CEO 77-79 (police officer working as a security guard when off duty); CEO 78-29 (police officer working as a security director for a corporation located in the same municipality when off duty); CEO 79-81 (highway patrol trooper working to provide private escort services to trucks with oversized loads); and CEO 92-48 (FDOT motor carrier compliance officers working for private transportation construction contractors in a role that protects roadside equipment and facilitates traffic control the safety of road crew personnel, when off duty).

More similar to the scenario you propose, we have found in the past that no conflict of interest is created when a law enforcement officer barters for rent-free or rent-reduced arrangements in exchange for their work as a security officer. See CEO 94-19 (police officer receiving rent reduction in exchange for off-duty work as a security officer) and CEO 03-15 (deputy sheriff working during off-duty hours as security at a private campground in exchange for a free-of-charge stay at a camp site).

Given these numerous and consistent past opinions, we find that no conflict of interest inherently arises under either the first or second clause of Section 112.313(7)(a) when a police officer, in an arm's-length agreement with a private landlord, accepts a total or partial reduction in rent in exchange for the performance of duties as a Courtesy Officer.

Further, because the police officer under the facts presented will be accepting a reduction in rent, which is no doubt a thing of value, analysis under Sections 112.313(2) and 112.313(4), Florida Statutes, is appropriate, too. Section 112.313(2), states:

> No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

Section 112.313(4), states:

> No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Section 112.313(2) prohibits a public officer or employee, among others, from soliciting or accepting anything of value when there is an understanding that the solicitation or acceptance would influence an official action of the public officer or employee. Section 112.313(4) prohibits one from accepting anything of value that he or she knows or should know is offered to influence his or her official action.

There is no indication in the facts presented that any police officer in your department has solicited a reduction in rent from the apartment complex. There also is no indication from the facts that any police officer's acceptance of the reduction in rent would have any bearing on any official action he or she might take. In fact, as we noted in CEO 94-19, the bartered-for exchange of the rent reduction for labor as a Courtesy Officer "mitigates against the arrangement being viewed as attempts to influence the official conduct of the police officers." The preference of a landlord for having a police officer as a tenant at an apartment complex, without also attempting to influence the police officer's official conduct, is not an improper motive for offering the free or reduced-rate rent under Sections 112.313(2) and 112.313(4). See CEO 83-75 and CEO 94-19. So long as there is no express or implied attempt to persuade the police officer to take an official action as part of the arrangement for reduced rent, there is no indication that Sections 112.313(2) and 112.313(4) will be implicated.

Lastly, it is appropriate to analyze the proposed arrangement for reduced rent through the lens of Florida's "misuse of position" prohibition found in Section 112.313(6), Florida Statutes, and also the "abuse to obtain a disproportionate benefit" prohibition found in Article II, Section 8(g)(2), Florida Constitution.[1] Section 112.313(6) states:

> No public officer [or] employee of an agency . . . 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 . . . .

"Corruptly" is defined in Section 112.312(9), Florida Statutes, to mean that an action is "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."

Essentially, Section 112.313(6) prohibits public officers and employees from corruptly using or attempting to use their official positions or property or resources placed within their trust due to their public employment, and it prohibits them from performing their official duties wrongfully and in a manner inconsistent with the proper performance of their public duties so they may secure a special privilege, benefit, or exemption for themselves or another.

Similarly, Article II, Section 8(g)(2), Florida Constitution states:

> A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

The Commission on Ethics did indeed engage in rulemaking to define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation. The rule defines a disproportionate benefit as "a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties." Rule 34-18.001(2)(a), F.A.C. The rule also specifies that the requisite intent necessary for finding a violation of the disproportionate benefit prohibition is "that the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties." Rule 34-18.001(4). In CEO 19-23, we expounded on the intent requirement of the Constitutional amendment, noting that it is "highly similar, if not identical," to the intent required to show a violation of Section 112.313(6) because both the rule and the amendment "require an act or omission committed with a 'wrongful intent' and for the purpose of obtaining a result 'inconsistent with the proper performance' of one's public duties." CEO 19-23.

In the context of the opinion process and in the absence of a thorough engagement in fact finding (e.g., as in a complaint or referral investigation), we are unable to determine definitively whether a particular police officer in your department, in a particular context, would have the requisite wrongful intent necessary to implicate the "misuse of position" statute and the "abuse to obtain a disproportionate benefit" Constitutional provision. See CEO 91-52 and CEO 94-36. We can, however, speak generally about the intent element and we can expound on whether the benefit is disproportionate, in order to provide advice and guidance.

Where Rule 34-18.001(2), F.A.C., speaks to the wrongful intent that must be demonstrated to show a violation of the Constitutional provision, Rule 34-18.001(3), F.A.C., speaks to the methodology for determining whether a particular benefit is disproportionate. Those factors are:

> (a) The number of persons, besides the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, who will experience the benefit, privilege, exemption, or result;
> (b) The nature of the interests involved;
> (c) The degree to which the interests of all those who will experience the benefit, privilege, exemption, or result are affected;
> (d) The degree to which the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, receives a greater or more advantageous benefit, privilege, exemption, or result when compared to others who will receive a benefit, privilege, exemption, or result;
> (e) The degree to which there is uncertainty at the time of the abuse of public position as to whether there would be any benefit, privilege, exemption, or result, and, if so, the nature or degree of the benefit, privilege, exemption, or result must also be considered; and
> (f) The degree to which the benefit, privilege, exemption, or result is not available to similarly situated persons. As used in this chapter, "similarly situated persons" means those with a commonality or like characteristic to the public officer or public employee that is unrelated to the holding of public office or public employment, or a commonality or like characteristic to the public officer's or public employee's spouse, children, or employer, or to any business with which the public officer or public employee contracts, serves as an officer, partner, director, or proprietor, or in which he or she owns an interest.

Rule 34-18.001(3)(a-f), F.A.C.

In the instance where a police officer receives a rent reduction, or even a rent reduction in exchange for part-time work, where the arrangement is not available to otherwise similarly-situated potential tenants in the general public, we find that the benefit is disproportionate.

Though a public officer may receive a benefit, and though that benefit may indeed be disproportionate to that which would be available to the public at large, that is not automatically indicative of an abuse or a wrongful intent. To the contrary, we find that an arm's-length agreement for reduced rent in exchange for part-time work generally is not, in and of itself, a demonstration of a wrongful intent to obtain that benefit in a manner that is inconsistent with the proper performance of one's duties. We also note that a landlord's preference for police officer tenants is not evidence of a police officer's state of mind. Without the presence of some other fact indicating a wrongful intent on the part of the police officer, violations of Section 112.313(6) and Article II, Section 8(g)(2), Florida Constitution, are not indicated.

In conclusion, Sections 112.313(2), (4), and (7) will not pose a barrier to a police officer accepting a rent reduction in exchange for part-time work as a Courtesy Officer, as described in your inquiry. Assuming there are no facts in a particular officer-apartment complex situation indicating that the police officer has a wrongful intent to obtain a result that is inconsistent with the proper performance of his or her duties, Section 112.313(6) and Article II, Section 8(g)(2), Florida Constitution also will not be implicated.

Your question is answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on February 5, 2021, and **RENDERED** this 10th day of February, 2021.

LoAnne Leznoff, *Chair*

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[11] On December 31, 2022, when a new subsection (f) becomes effective and is included in the State Constitution, the citation of this provision will be redesignated to Article II, Section 8(h)(2), Florida Constitution.