

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: LONNIE EVANS, ) Case No. 10-6459EC  
 )  
Respondent. )  
 )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On December 14-15, 2010, an administrative hearing was held in Bushnell, Florida, before Lisa Shearer Nelson, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Diane L. Guillemette  
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Plaza Level One, The Capitol  
Tallahassee, Florida 32399-1050

For Respondent Candace Hawthorne, Esquire  
Frank Moore: 319 East Main Street  
Tavares, Florida 32278

For Respondent E. Gary Early, Esquire  
Lonnie Evans: Messer, Caparello & Self, P.A.  
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STATEMENT OF THE ISSUES

The issues for determination are whether Respondent, Lonnie Evans, violated section 112.313(6), Florida Statutes (2008), by misusing his position by using the Chief of Police's city-owned vehicle for campaigning, and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On July 21, 2010, the Florida Commission on Ethics (COE or the Commission) issued an Order Finding Probable Cause against Respondent Lonnie Evans, based upon COE Complaint Nos. 10-043, 10-047, 10-074, and 10-075, filed against Mr. Evans by Ronnie Owens, Cynthia Martin, Lucy Brunette, and Timothy Bronson. The complaints alleged that then-Mayor Evans had campaigned for mayor in the city-owned police car driven by Chief of Police Frank Moore. The Order Finding Probable Cause against Lonnie Evans was referred to the Division on July 28, 2010, for assignment of an administrative law judge.

At the request of the parties, the case was consolidated for the purpose of hearing with DOAH Case Nos. 10-1284 and 10-6456, which contained allegations against City of Coleman Police Chief Frank Moore regarding the December 2008 campaign. The cases were scheduled for hearing December 14-15, 2010. The parties filed a Supplemental Prehearing Statement which contained stipulated facts that have, where relevant, been incorporated into the findings of fact below.

At hearing, Petitioner presented the testimony of Ronnie Owens, Cleveland Williams, Bob Bolesta, Carolyn Bolesta, Gloria Bronson, Timothy Bronson, Lucy Burnette, and James Dingle. Petitioner's Exhibits numbered 1-3 and 5-16 were entered into evidence. Respondent Evans presented the testimony of Carolyn

Evans, Lonnie Evans, and Ron Maolli, while Respondent Moore testified on his own behalf and presented the testimony of Ann Moore, Akiko Teagle, and Richard Callaway. Respondents' Joint Exhibits numbered 1-10 were admitted into evidence. Respondent Moore also requested that an additional exhibit, consisting of statements made by Timothy and Gloria Brunson dated July 21, 2010, be admitted into evidence. Admission of those documents was denied, and they were proffered. Although not considered in the preparation of either Recommended Order, the proffered statements are included, in a separate envelope, with the exhibits admitted into evidence and forwarded to the Commission.

At the close of the Commission's case, the Advocate moved to amend the pleadings to conform to the evidence, and the motion was denied. See Pilla v. Sch. Bd. of Dade Cnty., 655 So. 2d 1312, 1315 (Fla. 3d DCA 1995).

While the cases were consolidated for hearing, it was agreed that separate recommended orders for each respondent would be issued for consideration by the Commission. The Transcript of the proceedings was filed with the Division on January 10, 2011. All parties timely filed their Proposed Recommended Orders, which have been carefully considered in the preparation of this Recommended Order. All references to Florida Statutes are to the 2008 codification, unless otherwise indicated.

FINDINGS OF FACT

1. Lonnie Evans served as mayor of the City of Coleman for twelve years. Prior to his service as mayor, he was on the City Council for 24 years.

2. Frank Moore was an officer with the City of Coleman Police Department prior to Lonnie Evans' first election as Mayor, and became the Coleman Chief of Police at some point after Evans' first election as mayor. Chief Moore retired in 2010, but remains employed by the City of Coleman as a reserve officer.

3. Respondents Moore and Evans were, at all times relevant to this proceeding, subject to the requirements of chapter 112, part III, Florida Statutes, otherwise known as the Code of Ethics for Public Officers and Employees.

4. Lonnie Evans ran for re-election as mayor in 2008, and was defeated by Eve Carruthers. The election was held on December 8, 2008.

5. Coleman is a small town in Sumter County, Florida, with approximately 600 residents and 200 registered voters. Because of the size of the community and the nature of their jobs, Frank Moore and Lonnie Evans know each other fairly well, and are, in turn, well-known in the community.

6. At the time relevant to this case, the police department in the City of Coleman consisted of three officers: the police chief, one additional full-time patrol officer, and one reserve

officer. During at least part of the time relevant to these proceedings, the full-time patrol officer was James Dingle.

7. On December 9, 2009, an Order Finding Probable Cause, which forms the basis for DOAH Case No. 10-1284, was filed by the Commission on Ethics. The Order Finding Probable Cause was based upon a complaint filed by James Dingle against Police Chief Moore regarding the 2008 election campaign several months after his employment was terminated by the Coleman City Council.

8. The probable cause finding was reported in a local newspaper in January of 2010. Cynthia Martin, a City of Coleman Council member, showed the newspaper article to Timothy Bronson. Ms. Martin had run against Lonnie Evans in a previous election for mayor, and lost.

9. As a result of Ms. Martin's encouragement, Timothy Bronson filed a complaint with the Commission against Lonnie Evans on March 3, 2010, fifteen months after the last election in which Mr. Evans was a candidate (COE Complaint No. 10-043). The complaint stated that the mayor and the chief of police had, for each election, come to the Bronson house and asked he and his mother to vote for Mayor Evans. The complaint indicated that Chief Moore had stated that if Evans was elected, then he would get to keep his job.

10. The mayor of Coleman does not have the authority to hire or fire the police chief. Only the city council can take that action. Frank Moore continued to serve as police chief for

the City of Coleman for well over a year after the election, until sometime in 2010, when he retired.

11. Timothy Bronson and his mother, Gloria Bronson, claimed that Chief Moore would drive by their home and pull into their driveway. They would come out to the fence and speak to him. From their position on the other side of the fence from the car, they claimed that, on one occasion, they could see campaign signs for Lonnie Evans in the back floorboard of the patrol car. Timothy Bronson also testified that on one occasion, Lonnie Evans was in the patrol car with Chief Moore, and asked his mother to vote for him. Mrs. Bronson did not testify to any such request by Lonnie Evans, and testified that when Frank Moore came to the house, Lonnie Evans was not with him.

12. In his taped interview, Timothy Bronson recalled that Chief Moore was driving a white unmarked car, but at hearing insisted that the car Chief Moore drove on these occasions was gray. Mrs. Bronson testified that the car was either white or "brownish."

13. Chief Moore acknowledged that he sometimes drove by the Bronson home, usually in response to a complaint by Mrs. Bronson, such as people speeding on her street. He agreed that he sometimes stopped and spoke to her and her son, but denied talking about the mayoral race. He also flatly denied ever having Lonnie Evans in his patrol car at the Bronson home.

14. The patrol cars have dark tinted windows in the back, and the view is obstructed by both the tint and the barrier separating the front and back seats. It is unlikely that either of the Bronsons would be able to see signs in the floorboard of the backseat from a location on the other side of the fence from the car.

15. Mrs. Bronson admitted at hearing that she suffers from short-term memory loss as a result of a medical event.

16. On April 14, 2010, Lucy Burnette also filed a complaint against Lonnie Evans with the Commission on Ethics. In her complaint (Ethics Complaint 10-074), she claimed that Mayor Evans came with Chief Moore, in the police car while Chief Moore was in uniform, to the local fruit stand and asked her to vote for him. Ms. Burnette did not file a complaint against Chief Moore.

17. The complaint was written out by Cynthia Martin, while Ms. Burnette volunteered at the fruit stand. She acknowledged at hearing that some of the statements contained in the written statement were not true, and she wished that she had read the statement more closely before she signed it. For example, the statement in her complaint that "the former mayor asked me to vote for him while he was with the chief of police, in uniform" was not true. According to Ms. Burnette, Mr. Evans did not get out of the car and did not speak to her.

18. Ms. Burnette testified that Chief Moore and Mayor Evans came to the fruit stand in a gray city police car. Mayor Evans was in the passenger seat. Chief Moore got out of the car, according to Ms. Burnette, and told her she needed to talk to Mayor Evans about what she wanted and she could possibly get it. The only indication as to when this incident supposedly occurred was that it happened just before the 2008 election.

19. Ms. Burnette had an ongoing issue with the City of Coleman over her attempts to run a deli or barbeque on her property. At one point, while she claimed she was not a resident of Coleman, Chief Moore had been directed to "shut her down." She claimed that she wanted, but did not need, a license to operate, and that Chief Moore told her to talk to the mayor and he could help her get the license she sought.

20. Although the record is unclear, it appears that her licensure problem exists because her property is not zoned for commercial use, and that in order for her to get a license, she would have to seek a variance from the city council. In any event, Mayor Evans does not issue licenses or direct them to be issued. While he may have had some influence on the decision-making process, the comment made by Chief Moore, if in fact he made it, made no reference to the election or voting for Mayor Evans. Ms. Burnette simply made the assumption that Chief Moore was implying that a vote for Mayor Evans would help Ms. Burnette's efforts to receive a license. She even referred



to Chief Moore's statement as some sort of bribe by Mayor Evans, delivered through Chief Moore.

21. Chief Moore often stopped by the fruit stand on his way home from work to buy some fruit. Lucy Burnette often complained to him about her problems related to getting a license when he stopped by. He testified that he told her, on more than one occasion, that she should talk to Mayor Evans or members of the city council about her problem, but did not talk to her about the election or ask her for votes. His testimony is credited.

22. Lucy Burnette's written complaint indicates that there were witnesses to Chief Moore and Mayor Evans coming to the fruit stand in the police car. Investigator Maolli from the Commission on Ethics was unable to locate any witnesses to corroborate her account.

23. On April 14, 2010, Ronnie Owens filed complaints with the Commission on Ethics against both Chief Moore and Mayor Evans (COE Complaint Nos. 10-075 and 10-076). According to Mr. Owens, Cynthia Martin approached Mr. Owens and told him about "the election thing," and asked him if he saw Chief Moore and Lonnie Evans in the car together. She asked him to file complaints with the Commission on Ethics, and actually wrote out the complaints for him to sign.

24. Prior to Ms. Martin approaching him, Mr. Owens was not aware that there was any problem with the mayor and the police chief campaigning while on duty. He admitted that he filed the

complaints after he had a "run-in" with Chief Moore over an incident that took place at a local store.

25. The City of Coleman is bisected by a railroad track. Residents living in the neighborhood on the west side of the track are predominately African-American. This area of the town is sometimes referred to as "the quarters." It is not unusual for some residents of the quarters to sit at a table in a lot on the corner, or on someone's front porch, and play cards or dominos.

26. Mr. Owens claims that prior to the election, he and some other men were sitting at Mr. Robert T's house playing dominos. Mayor Evans and Chief Moore drove up in the gray Crown Vic and walked over to the men, and Chief Moore asked them to support Lonnie Evans in his election. One of the men asked Evans for a campaign sign, and Evans indicated he did not have any with him, but would bring one back. Mr. Owens testified that Lonnie Evans later returned, in his truck, and gave a campaign sign to one of the men.

27. Mr. Owens stated that there were five men present when Mayor Evans and Chief Moore came by the quarters. None of the other men testified at hearing, and Investigator Maolli was unable to find any who could corroborate that Evans and Moore came to the quarters in the police car while Moore was in uniform.

28. Each incident reported by the Bronsons, Ms. Burnette, and Mr. Owens involved the use of a city-owned police car while campaigning. The City of Coleman owns three police cars: a marked patrol car, a white Crown Victoria, and a gray Crown Victoria. The passenger compartment of the police cars contains a computer, printer, video system, radar unit, and other equipment. By necessity, this equipment takes up space not normally filled in a regular vehicle.

29. The City Council had approved Chief Moore's use of a car as a "take home" vehicle, and he used the white Crown Victoria almost exclusively. He drove the white police car back and forth to work from his home in Cedar Hill. He testified credibly that he was allowed to make stops in the city car, for example to pick up a grocery item, on his way to and from work. It was not permissible to use the car for personal entertainment or trips. Chief Moore also drove his personal car, a Buick Lucerne.

30. Lonnie Evans stopped driving, at the urging of his wife and son, by either September or early October of 2008, because of his declining eyesight. As a consequence, he did not drive during the 2008 campaign. He was driven to campaign by his wife, Carolyn, in their red Jeep SUV, by a member of the City Council and former postmistress Vergie Everett (who passed away in February of 2010) in her Cadillac, or on one occasion, by Chief Moore in his privately-owned Buick. Both men testified credibly

that when Chief Moore drove Mr. Evans, it was on a weekend and Chief Moore was dressed in jeans and a t-shirt. It is doubtful that Lonnie Evans would have returned to the quarters driving his own truck, as Mr. Owens testified. It is more likely that when he campaigned, he was being driven by his wife in their SUV, and that he took the campaign sign out of the back of the SUV.

31. Both men also testified that there was one occasion when Lonnie Evans rode in the front seat of the white police car while it was driven by Chief Moore. A benefit was held to help Cleveland Williams, a former member of the city council, who had become disabled. After the benefit, the proceeds were counted at City Hall and placed in an envelope for delivery. Mayor Evans accompanied Chief Moore to deliver the funds raised at the benefit. The two men rode past the location in the quarters where the men played dominos on their way to Mr. Williams' home, but did not stop.

32. Because of the amount of equipment and the "accumulated mess" in the police car, Mayor Evans found it exceedingly uncomfortable and was emphatic that he would not repeat the experience.

33. With the exception of one of the men in the quarters requesting a sign, there is no claim that at any time signs or flyers or campaign literature of any kind were distributed to any of the complainants.

34. Based on the totality of the evidence presented, there is not clear and convincing evidence that Mayor Evans or Chief Moore ever used a city vehicle to campaign during the December 2008 election.

#### CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2010).

36. The Florida Commission on Ethics is authorized to conduct investigations and to make public reports on complaints concerning violations of chapter 112, part III, Florida Statutes, which is referred to as the Code of Ethics for Florida Public Officers and Employees.

37. The Advocate has the burden to establish the allegations in the Order Finding Probable Cause by clear and convincing evidence. Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997); see also Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

38. Clear and convincing evidence requires more than a preponderance of the evidence and less than the criminal standard of beyond a reasonable doubt. In re Graziano, 696 So. 2d 744, 753 (Fla. 1997).

39. As stated by the Supreme Court of Florida,

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

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

40. The Order Finding Probable Cause in Case No. 10-6459 alleges that Respondent, "as Mayor of the City of Coleman, Florida, violated Section 112.313(6), Florida Statutes, by misusing his position by using the Chief of Police's city owned vehicle for election campaigning."

41. At hearing, the Advocate sought to introduce evidence of other instances where Lonnie Evans may have abused his position in violation of section 112.313(6), that were not alleged factually in the Order Finding Probable Cause. The Advocate took the position that, as long as the evidence presented supported a violation of the statutory provision charged, it did not matter whether the facts were alleged in the Order Finding Probable Cause. The undersigned does not believe that is a correct interpretation of the law.

42. Section 120.54(5), Florida Statutes, requires the adoption of uniform rules of procedure which are the rules of procedure to be followed by all agencies subject to chapter 120,

unless granted an exemption by the Administration Commission.  
Subsection (b) identifies those areas requiring uniform rules.  
Section 120.54(5)(b)4. provides in pertinent part:

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:

a. The identification of the petitioner.

\* \* \*

c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.

d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.

e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.

f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.

g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action. (Emphasis supplied.)

43. Florida Administrative Code Rule 28-106.2015 deals with agency enforcement and disciplinary actions, and provides:

(1) Prior to the entry of a final order . . . to take other enforcement or disciplinary action against a licensee or person or entity subject to the agency's jurisdiction, the agency shall serve upon the licensee an administrative complaint. For purposes of this rule, an agency pleading or communication that seeks to exercise an agency's enforcement authority and to take

any kind of disciplinary action against a licensee or other person shall be deemed an administrative complaint.

\* \* \*

(3) The agency's administrative complaint shall be considered the petition, and service of the administrative complaint on the respondent shall be deemed the initiation of proceedings.

(4) The agency's administrative complaint shall contain:

\* \* \*

(b) The statutory section(s), rule(s) of the Florida Administrative Code, or the agency order alleged to have been violated.

(c) The facts or conduct relied on to establish the violation. (Emphasis supplied.)

44. Reference to a statutory violation without supporting factual allegations does not place Respondent on notice of the charges against him. Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996) (reference to the statute without supporting factual allegation insufficient to place Appellant on notice of charges against him). Therefore, in the undersigned's view, it would have been improper to consider evidence against Lonnie Evans to support factual allegations never identified in the Order Finding Probable Cause.

45. At the close of the Advocate's case, she moved for the pleadings to conform to the evidence, which would have, in effect, added an additional factual basis for discipline against



Mayor Evans, for events that took place at the police station. In the Advocate's Proposed Recommended Order, reference is made to the statutory authority to investigate facts and parties materially relevant to the complaint.

46. The motion was denied.<sup>1/</sup> A similar motion was made in Pilla v. Sch. Bd. of Dade Cnty., 655 So. 2d 1312 (Fla. 3d DCA 1995), and denied. In determining that the hearing officer was correct to deny the motion, the court noted that the teacher was entitled to fair notice and an opportunity to be heard on each of the charges against him. The same can be said here.

47. It is true that section 112.322(1) authorizes the COE to investigate facts and parties materially related to a complaint. However, the power referenced is a power to investigate, and Florida Administrative Code Rule 34-5.0043(2) provides that "the Advocate may recommend and the Commission may order a public hearing as to those violations of the Code of Ethics which are indicated by such facts." Here, the Order Finding Probable Cause did not reference them, despite the fact that a previous complaint had clearly implicated Lonnie Evans. Accordingly, the undersigned has made factual findings on those incidences that could fairly be said to be encompassed within the allegations of the Order Finding Probable Cause.

48. The Order Finding Probable Cause alleges a violation of section 112.313(6), which provides:

(6) 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.

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

50. Section 112.313(1) defines a "public officer" as "any person elected or appointed to hold office in any agency, including any person serving on an advisory body." Section 112.312(2) defines "agency" as "any state, regional, county, local or municipal government entity of this state . . . ."

51. "Corruptly" is defined in section 112.312(9) as "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."

52. In this case, it is clear that Mayor Evans was a public official at the time of the alleged incidents in this case. However the evidence was simply not clear and convincing that he

used his official position, or resources within his trust, in order to gain a special benefit for himself or that any actions he took were taken corruptly.

53. Lucy Burnette filed a complaint against Mayor Evans, but testified at hearing that he never spoke to her or asked her for a vote. Moreover, Chief Moore never asked her for a vote on his behalf. There is no clear and convincing evidence that Mayor Evans took any action with respect to Lucy Burnette, much less that he did so corruptly or to achieve a benefit. There is no clear and convincing evidence to establish that Mayor Evans campaigned in the quarters using a city-owned police car.

54. Similarly, Ronnie Owens seemed more motivated by his prior run-in with Chief Moore, and there were no corroborating witnesses who could confirm his allegations.

55. Mrs. Bronson flatly rejected the notion that Lonnie Evans accompanied Frank Moore to her home, and the more credible evidence indicates that he did not.

56. Moreover, with the exception of Officer Dingle's complaint against Chief Moore, which appears to be the catalyst for all of these complaints, all of the complaints were filed well over a year after the election was over and upon the suggestion of Cynthia Martin. She even wrote out the complaints on two occasions. To describe the filing of the complaints as part of a conspiracy goes too far. However, it appears from the evidence that, other than Officer Dingle's, the complaints are

grounded more on the power of suggestion than upon the witness's memory of actual events.

57. This is especially true where, as here, there was an instance where Respondent Moore drove Lonnie Evans to campaign before the election. However, the credible evidence presented demonstrates that when Chief Moore accompanied Lonnie Evans, it was on his own time and not in uniform. Similarly, there was an incident when the two were in the police car together. However, the purpose was not to campaign, but to deliver funds to the recipient of a benefit. No violation of section 112.313(6) has been demonstrated.

#### RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED that the Florida Commission on Ethics enter a Final Order and Public Report finding that no violation of section 112.313(6) has been demonstrated.

DONE AND ENTERED this 16th day of February, 2011, in  
Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of February, 2011.

ENDNOTE

<sup>1/</sup> Because the motion was denied, and the Order Finding Probable Cause did not reference anything related to alleged actions taken at the police station, the undersigned has not included the findings of facts with respect to that incident in this Recommended Order. The incident is discussed in the Recommended Order issued in Case No. 10-1284, issued this same date. In any event, it was recommended that the Commission find that there was no clear and convincing evidence to support a finding that Chief Moore abused his position in violation of section 112.313(6). The same recommendation would be made, had the conduct been properly alleged, with respect to Lonnie Moore.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.