

AUG 27 2024

STATE OF FLORIDA
COMMISSION ON ETHICS

RECEIVED

In re: Randall Fine,

Respondent.

DOAH Case No.: 23-2760EC

COE Case No.: 22-079

MOTION TO RECONSIDER WHETHER PROBABLE CAUSE EXISTS

COMES NOW, Randall Fine, by and through the undersigned ("Respondent") and respectfully requests the Commission on Ethics (the "Commission") reconsider whether the instant Complaint and investigation results in probable cause to believe Respondent violated Article II, Section 8(h)(2) of the Florida Constitution and Section 112.313(6), Florida Statutes. In support of reconsideration, Respondent states:

1. Respondent serves as a Florida State Representative and, therefore, is subject to the provisions of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes.

2. On May 18, 2022, a sworn Complaint was filed with the Commission alleging Respondent violated the Code of Ethics.

3. Under Section 112.322, Florida Statutes, the Executive Director of the Commission found the Complaint legally sufficient and subsequently ordered a preliminary investigation of the Complaint to determine if probable cause existed.

4. On March 7, 2023, the Report of Investigation was released.

5. On March 20, 2023, in a well-reasoned and thorough analysis of the facts and law which governed this specific Complaint, the Commission Advocate recommended no probable cause be found on the matters investigated. A true and correct copy of the Advocate's formal recommendation is attached hereto as Exhibit 1.

6. Unfortunately, when this matter was previously considered, the Commission rejected the advice of its Advocate and determined that probable cause existed to find that Respondent violated Article II, Section 8(h)(2) of the Florida Constitution and Section 112.313(6), Florida Statutes.

7. As part of an oral motion to reject the Advocate's recommendation, one former Commissioner commented that this matter was essentially unique to the identity of the Respondent (i.e., that it somehow mattered that Respondent was Mr. Fine as opposed to someone else).¹ The Commission's decisions must never be motivated by the identity of any particular Respondent. In fact, neither the statutes nor the Commission's former opinions suggest that the identity of any Respondent be a motivating factor in determining whether probable cause could exist. Quite the contrary, justice relies upon equal application of ethics principles and that is precisely why it is commonly understood that "justice is blind."

8. Respondent was not in attendance at the Commission's probable cause hearing due to his pressing duties as a member of the House of Representatives. Those duties required his presence at a committee hearing held at the same time, where he presented significant proposed legislation. Respondent accordingly did not address this matter at the hearing.

9. On July 24, 2023, the case was then forwarded to the Division of Administrative Hearings for a public hearing. After one continuance due to Respondent's legislative schedule, the case was rescheduled for a zoom hearing from May 14 through 16, 2024 at 9:00 a.m., ET.

10. On April 17, 2024, the Administrative Law Judge granted an unopposed motion to relinquish jurisdiction so that this matter could be reconsidered by the Commission.

¹The Commissioner's comments were that . . . "related to other cases related to this we may have taken a different view."

11. Since the 2024 Legislative Session ended, Respondent desires to seek reconsideration of the Commission on Ethics' probable cause determination, dismissal of the proceeding, or such other resolution as may be agreed to between the parties before the Commission.

12. In the present matter, the attached Advocate's Recommendation contains an in-depth analysis of the report of investigation and other pertinent information. The Advocate's Recommendation correctly analyzes and summarizes the law in this proceeding. Thus, the Advocate's Recommendation should be adopted by the Commission.

13. Moreover, there simply is no clear and convincing evidence which supports a finding of any violation in this case. Quite the opposite, the matters discovered during preliminary investigation bolster and support the Advocate's Recommendation of no probable cause.

14. Therefore, Respondent accordingly asks that the Commission reconsider this matter so that the issue can be resolved without further litigation. Should the Commission rightfully agree to reconsider its probable cause finding and close this matter, Respondent would waive any claim of attorneys' fees incurred through such reconsideration. However, should the Commission not agree and continue pressing this proceeding, Respondent reserves his right to claim and be awarded attorneys' fees and costs at the conclusion of this proceeding.

15. The undersigned conferred with Advocate Melody Hadley. The undersigned is authorized to represent that Advocate Melody Hadley takes no position on this motion.

WHEREFORE, Randall Fine, by and through the undersigned, moves the Commission on Ethics to reconsider its previous finding of probable cause in this proceeding.

RESPECTFULLY SUBMITTED on August 26, 2024.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was sent to Melody Hadley, Commission Advocate, Office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399 by email this 26th day of August, 2024.



Richard E. Coates

ADOPTED
MAR 13 2023
MAR 13 2023
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Randall Fine,

Respondent.

Complaint No.: 22-079

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ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Randall Fine, serves as a member of the Florida House of Representatives. Complainant is Jennifer Jenkins in Satellite Beach, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Article II, Section 8(h)(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 March 6, 2023.

ALLEGATION ONE

Respondent is alleged to have violated Article II, Section 8(h)(2), Florida Constitution,¹ by using his position to obtain a disproportionate benefit for himself or another.

APPLICABLE LAW

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:

(h)(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

In early April 2022, Complainant, a Brevard County School Board Member, received and accepted an invitation to participate in the West Melbourne Police Department's annual fundraiser, "Cops on the Coop." (ROI 4, 5) The proceeds from the fundraiser are donated to the Florida Special Olympics. (ROI 4) The fundraiser includes participants remaining on the roof of a local restaurant until sufficient "bail money" donations are collected. (ROI 5) The participants are asked to take a "mugshot," wear a mock jail uniform, and raise funds for bail. (ROI 5)

After Complainant posted her mugshot on her official Brevard County School Board Facebook page on April 15th, West Melbourne City Councilmember John Dittmore posted an

¹ Article II, Section 8(g)(2) was redesignated as Article II, Section 8(h)(2) on December 31, 2022.

apology on Facebook to Respondent and Florida Attorney General Ashley Moody. (ROI 6, 17, 18, Complaint pg. 6) Complainant alleges this was due to Dittmore being outraged by her participation in the fundraiser. (ROI 6)

Complainant alleges that Dittmore was encouraged by Respondent to write the response but acknowledged she has no evidence to support the allegation. (ROI 7, 14) Complainant alleges she was targeted for her political views and acknowledged that she and Respondent have had prior acrimonious dealings. (ROI 14)

Complainant alleges Dittmore allowed Respondent to post his own slanderous comments on the post. (ROI 8) Complainant alleges at some point Dittmore prohibited comments on his Facebook post but allowed Respondent's comments to remain viewable by the public. (ROI 8)

Complainant advised that she spoke with former City Attorney Morris Richardson, now Brevard County Attorney, who informed her that Dittmore contacted him (Richardson) with his own concerns about state funding for the West Melbourne Westbrooke Storm Water Reduction Project (Reduction Project) as well as concerns about Respondent's displeasure with her involvement at the fundraiser. (ROI 9) Attorney Richardson encouraged her to reconsider participating in the fundraiser because it could possibly jeopardize funding for the City from the State.² (ROI 15, 22)

Subsequent to the call, Complainant submitted a public records request to the City for all of Dittmore's communications, including Facebook Messenger communications, text messages, cellular phone logs, and emails to and from Respondent from April 14, 2022 through April 18, 2022. (ROI 9) When Dittmore met with Attorney Richardson to review the text messages, Dittmore informed him that Respondent had advised him (Dittmore) to not release any public

² Complainant participated in the fundraiser where she did not interact with Respondent who was also present. (ROI 17, 20)

records. (ROI 39) Respondent had also suggested that Attorney Richardson be terminated for providing advice to release the information. (ROI 37-39) Respondent stated, "I wasn't serious about taking your funding away. But, if you don't fire your City Attorney, I will take away your funding." (ROI 38) Dittmore took the statement as a threat which he believed to be credible. (ROI 38) Dittmore relayed the information to Attorney Richardson because the Governor had not yet signed the bill for the Reduction Project. (ROI 38) Attorney Richardson was not terminated. (ROI 39)

Complainant alleges the public records that were received demonstrate Dittmore's willingness to participate in the threats made by Respondent regarding City funding. (ROI 10, 11) In addition, Complainant contends that in one of the text messages, Respondent refers to her as a "whore." (ROI 11, Complaint pg. 11)

Dittmore advised that he was concerned that when Complainant publicized her participation in the fundraiser, her supporters mocked Respondent and since he (Respondent) is instrumental in supporting the City and its projects, that her participation could jeopardize funding for the Westbooke Community Storm Water Reduction Project. (ROI 17) In anticipation of issues, Dittmore initiated the post on his private Facebook page apologizing to Respondent. (ROI 17) Dittmore maintains that he was not encouraged by anyone, including Respondent, to write the apology. (ROI 19) The following day, Dittmore received a text from Respondent stating, "Thanks for taking care of it. Jenkins [Complainant] just put your project and Special Olympics funding on the veto list." (ROI 17, Complaint pg. 10)

Attorney Richardson advised that Dittmore told him that Respondent is "vindictive" and that he (Dittmore) intended to clarify the situation so Respondent would not think the City was promoting Complainant. (ROI 21) Attorney Richardson advised that he too feared losing State

funding, so he, unilaterally, contacted Complainant to discuss her participation in the fundraiser and asked her to reconsider participating. (ROI 22) Attorney Richardson advised there was no controversy during the fundraiser and the City received the anticipated State funding. (ROI 22)

Respondent's district includes Brevard County. (ROI 23) He advised that he did not encourage Dittmore to write the Facebook post but acknowledged all of his communications with Dittmore concerning the Facebook post were in the text messages including in the complaint. (ROI 23) Respondent acknowledged making disparaging comments directed toward Complainant in his text communications with Dittmore. (ROI 24) Respondent viewed Complainant's participation in the fundraiser as having a very "high risk" of antagonizing Governor Ron DeSantis and opined that it could have led to the Governor vetoing funds for the Reduction Project. (ROI 24)

Respondent denied ever having indicated he would veto any funding for the City of West Melbourne based on the Complainant's participation in the Special Olympics fundraiser. (ROI 30) Respondent acknowledged recommending that Attorney Richardson be terminated due to his (Richardson) not understanding the requirements for disclosing public records information. (ROI 40, 41) However, Respondent said his comments, Facebook messages, and text messages were made in gest and were not to be considered a serious threat. (ROI 30)

In addition to a public records request to Dittmore, Complainant submitted a public records request to Respondent and his Legislative Aide, Anna Budko via a May 4, 2022 email. (ROI 31) Complainant she requested all communications, including Facebook messenger, text messages, phone logs, and emails between Respondent and Dittmore, from September 1, 2021 through May 4, 2022. (ROI 31) Complainant alleges Respondent failed to respond to a public records request asking for communications between himself and Dittmore, as well as for communications between himself and Mayor Alfrey. (ROI 2)

Respondent said he has no recollection of receiving any public records request from Complainant. (ROI 33) However, he said, if one was submitted to his office, a member of his staff would have been responsible for complying with the request. (ROI 33) Respondent advised that he never instructed his staff not to respond to Complainant's public records request. (ROI 36)

Complainant alleges Respondent and Dittmore communicated with Melbourne Mayor Paul Alfrey about hiring private investigator, Nicolas Sandberg, to surveil her. (ROI 42) Complainant alleges that Mayor Alfrey is Respondent's political ally. (ROI 42) Complainant acknowledged that she is aware of no evidence supporting her allegation that Respondent was involved in creating the "brevardburns.com" website which states that it is devoted to exposing "Lies, Deceit, and Fraud" involving Robert Burns, the editor of "The Space Coast Rocket" website, a separate internet news source. (ROI 42)

It was Mayor Alfrey who hired Sandberg, not Respondent or Dittmore. (ROI 43, 45) However, it was to surveil Robert Burns and Complainant happened to be at the same location as Burns. (ROI 43, 45)

Respondent and Dittmore denied having any involvement with hiring Sandberg. (ROI 47,48) They both deny any involvement in the "brevardburns.com" website. (ROI 47, 48)

Complainant alleges Respondent publicly humiliated her on Facebook when his comments on Dittmore's Facebook post referenced brevardburns.com and said that she was having an affair with Robert Burns. (ROI 26-28) Respondent acknowledged he made disparaging comments about Complainant on Facebook and in text messages. (ROI 28) Respondent stated, "It was not a great decision on my part. But, Mrs. Jenkins [Complainant] is a married woman, who was having an affair with an unmarried man, Robert Burns. She was seen going in and out of his [Burns] house several times....I'm not a big fan." (ROI 28)

While acknowledging that the some of the facts presented may reflect negatively on a person in Respondent's position, these same facts do not indicate an abuse of Respondent's position that allow him or another to receive a disproportionate benefit.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Article II, Section 8(h)(2), Florida Constitution.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his position to secure a privilege, benefit, or exemption for himself or another.

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 underlying facts and circumstances relating to this allegation are contained above in Allegation One. Respondent obviously has strong feelings about Complainant by his use of strong language about her. Respondent's choice of words would indicate that he was using or attempting to use the power and/or the threat of his office to intimidate Dittmore into acting in a certain manner regarding Complainant.

While Respondent engaged in public political and personal discourse with Complainant, an element to prove a violation of the misuse statute requires that Respondent act in a manner that was inconsistent with the proper performance of his public duties for which the evidence presented is insufficient to prove.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is no probable cause to believe that Respondent violated Article II, Section 8(h)(2), Florida Constitution, by using his position to obtain a disproportionate benefit for himself or another.

2. There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using his position to secure a privilege, benefit, or exemption for himself or another.

Respectfully submitted this 6th day of March, 2023.



MELODY A. HADLEY

Advocate for the Florida Commission
on Ethics

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