DATE FILED
FEB 07 2022
COMMISSION ON ETHICS
CONFIDENTIAL

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re CARA HIGGINS,	)	
	)	Complaint No. 21-178
Respondent.	)	
	)	

AMENDED DETERMINATION OF INVESTIGATIVE JURISDICTION
AND ORDER TO INVESTIGATE

UPON REVIEW of this complaint, I find as follows:

1. This complaint[1] was filed by Jolynn Cates Reynolds of Cudjoe Key, Florida.[2]

2. The Respondent, Cara Higgins, allegedly serves as a member of the Board of Directors of the Florida Keys Aqueduct Authority (FKAA).

3. The complaint alleges that the Respondent misused her official position for the benefit of a business entity owned by persons connected to her in a private capacity and in contravention of FKAA procurement policies. In particular, the complaint alleges that the Respondent ensured that an internally identified possible conflict of interest for senior management FKAA staff associated with the company's ownership by the spouse of an FKAA senior employee, and significant deficiencies contained in the bid package submitted in November 2020 by a company owned by the Respondent's personal friend and alleged paramour, would be overlooked or disregarded for the benefit of the individual and/or a company, thereby

[1] An amendment to the complaint was filed on February 2, 2022.
[2] According to the complaint, the Complainant is employed as the Director of Engineering of the Florida Keys Aqueduct Authority.

facilitating the company's subsequent selection for contract with the FKAA. This indicates possible violation of Section 112.313(6), Florida Statutes, by the Respondent.[3]

4. However, other allegations of the complaint regarding the Respondent's alleged creation of a hostile working environment following an affair the Respondent had with the Complainant's husband; the Respondent's "highly offensive" participation in an FKAA meeting held via electronic means while sitting the Complainant's husband's vehicle; and the Respondent's alleged desire to scrutinize and discuss the FKAA's engineering and/or contract procurement procedures and other documentation in conjunction with FKAA Board meetings, substantively fail to indicate a possible violation of Section 112.313(6).[4] In order to indicate a possible violation of this provision, a complaint must substantively allege, in a factual, nonconclusory manner, that a respondent corruptly used or attempted to use her public position or resources within her public trust, or that she corruptly performed her official duties, in order to

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[3] The allegations of the complaint concern conduct which occurred prior to the December 31, 2020, effectiveness date of the prohibition against abuse of public position to obtain a disproportionate benefit contained in Article II, Section 8(g)(2), Florida Constitution (and which will be redesignated as Article II, Section 8(h)(2) on December 31, 2022). Further, because the complaint does not allege in a factual, nonconclusory manner that the Respondent was attempting to benefit herself, her spouse, children or employer, or any business with which she contracts, in which she is an officer, partner, director, or proprietor, or in which she owns an interest—the allegations do not trigger the prohibition currently found in Article II, Section 8(g)(2) of the Florida Constitution.

[4] Section 112.313(6), Florida Statutes, provides:

> 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.

Pursuant to Section 112.312(9), Florida Statutes, "corruptly" is defined 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.

benefit herself or another; it is not enough that a detriment to a complainant or another is alleged. The allegations pertaining to the Respondent's inappropriate conduct associated with the alleged affair the Respondent had with the Complainant's husband, and her participation in an FKAA electronic meeting while sitting the Complainant's husband's vehicle, do not allege any particular benefit that the Respondent would have received by engaging in the alleged activities. While her alleged actions may have been detrimental to the Complainant, this effect is not a sufficient basis for investigation under Section 112.313(6). Further, the Respondent's desire to scrutinize and discuss the FKAA's engineering and/or contract procurement procedures, absent facts not alleged in the complaint, is not inconsistent with the proper performance of her public duties as would support the "wrongfulness" required under Section 112.313(6), Florida Statutes.

5. The complaint also substantively fails to indicate a possible violation of Section 112.3143(3)(a),[5] Florida Statutes. Section 112.3143(3)(a) prohibits a public officer from voting on a measure that would inure to his or her own special private gain or loss or to the special private gain or loss of a relative,[6] business associate, or a principal by whom the public officer has been retained. In the event that a voting conflict is present, Section 112.3143(3)(a) requires

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[5] Section 112.3143(3)(a), Florida Statutes, provides:

> No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

[6] Section 112.3143(1)(c), defines "relative" to include the public officer's "father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law."

abstention, public disclosure, and the filing of a memorandum of voting conflict, and certain other procedures to be followed. Although the complaint alleges that the Respondent may have voted on measures which inured to the special private gain of her alleged paramour, or to the detriment of the Complainant, neither the alleged paramour nor the Complainant is alleged to be a relative, business associate, or a principal of the Respondent for the purposes of the voting conflict statute.

6. Further, the allegations that the Respondent impermissibly engaged in employment retaliation against the former FKAA Executive Director and others fails to indicate a possible violation of a provision of the Code of Ethics over which the Commission has jurisdiction. Although the "Whistle-blower's Act" is found within the Code of Ethics, beginning at Section 112.3187, Florida Statutes, the Commission on Ethics plays no role in its administration.

7. Also, an amendment to the complaint further alleges that the Respondent who is a "reporting individual"[7] subject to the gifts law set forth in Section 112.3148, Florida Statutes, accepted gifts from James (Jim) Reynolds having a value in excess of $100 during a period wherein Mr. Reynolds was actively engaged in seeking to influence the official decisionmaking capacity of the FKAA and/or its Board to select himself and/or his company (All Aspects Engineering Services) for contract with the FKAA, and, after being so selected, during a period wherein Mr. Reynolds and/or his company was providing services to the FKAA pursuant to contract as a vendor thereof. This indicates possible violation of Sections 112.313(2), 112.313(4), and 112.3148(4), Florida Statutes, by the Respondent.

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[7] Section 112.3148(2)(d), defines "[r]eporting individual" to mean any individual, including a candidate upon qualifying, who is required by law, pursuant to s. 8, Art. II of the State Constitution or s. 112.3145, to file full or limited public disclosure of his or her financial interests . . ."

8. The amendment to the complaint further alleges that the Respondent accepted gifts from Mr. Reynolds having a value in excess of $100 which were not reported via the filing of a CE Form 9, "Quarterly Gift Disclosure." This indicates possible violation of Section 112.3148(8), Florida Statutes, by the Respondent.

WHEREFORE staff of the Commission on Ethics shall conduct a preliminary investigation of this complaint, including the amendment to the complaint, for a probable cause determination of whether the Respondent has violated Sections 112.313(2), 112.313(4), 112.313(6), 112.3148(4), and 112.3148(8), Florida Statutes, as set forth above in paragraphs 3, 7 and 8 above.

February 7, 2022
Date

Kerrie J. Stillman
Executive Director

KJS/cmk