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

In re: Cara Higgins,

Respondent.
_____/

Complaint Nos.: 21-001 and 21-178
Consolidated

ADVOCATE'S RECOMMENDATION

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

RESPONDENT/COMPLAINANTS

Respondent, Cara Higgins, serves as a member of the Board of Directors of the Florida Keys Aqueduct Authority in Key West, Florida. Complainants are Thomas Grant Walker of Key West, Florida, Robin L. Rouse of Old Town, Florida, and Jolynn Cates Reynolds of Cudjoe Key, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaints and Amended Complaint were legally sufficient and on November 3, 2021, ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.313(6), Florida Statutes. On January 26, 2021, the Executive Director issued another Determination of Investigative Jurisdiction and Order to Investigate whether Respondent violated Section 112.313(6), Florida Statutes, based on other alleged facts. On February 7, 2022, the Executive Director issued an Amended Determination of Investigative Jurisdiction and Order to Investigate whether Respondent violated Sections 112.313(2), 112.313(4), 112.3148(4), and

112.3148(8), 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 April 14, 2022.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using her official position for the benefit of persons connected to her in a private capacity and in contravention of the Florida Keys Aqueduct Authority's policies and procedures.

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

Respondent has served as a member of the Florida Keys Aqueduct Authority (FKAA) Board of Directors (Board) for approximately seven years. (ROI 32)

James "Jim" Reynolds (Reynolds) served as the FKAA Executive Director from 2003 through 2011. (ROI 22) In 2011, he formed Reynolds Engineering Services, Inc. (ROI 22) Since March 2017, Reynolds has had a 28.3 percent ownership interest in All Aspects Inspection Services (AAIS). (ROI 8, 22)

Since 2017, Reynold's wife, Jolynn Cates Reynolds (Ms. Reynolds), has been employed as the FKAA's Director of Engineering. (ROI 22) Ms. Reynolds holds no ownership interest in either Reynolds Engineering Services or AAIS. (ROI 22) In November 2019, the Reynolds stopped residing in the same home.[1] (ROI 23)

Respondent has been involved in a romantic relationship with Reynolds. (ROI 33) The Board was advised of this relationship during its February 2020 meeting. (ROI 33) Respondent maintains they have separate residences and completely separate and independent finances. (ROI 33)

The Board entered into an employment contract with Thomas Grant Walker on November 13, 2019 to serve as Executive Director. (ROI 1, 32) Pursuant to that contract, Walker's annual performance evaluation was required to be conducted by the Board on or near his anniversary date.

[1] The Reynolds filed for divorce in January 2020 and divorced in April 2020. (ROI 23)

(ROI 32) Walker was terminated by the Board on November 13, 2020, after Respondent made the motion to terminate his contract and the Board voted 4 to 1 in favor of his removal. (ROI 5)

Pope-Scarborough Architects[2] was competitively selected as the Architect-of-Record to design and certify completion of a new $14 million dollar Administration Building in Key West. (ROI 7, 33) AAIS contracted with the FKAA to perform inspection services on the new $14 million dollar Administration Building in Key West. (ROI 7, 33)

On September 10, 2020, the FKAA held an "Administration Building Leadership Team."[3] (ROI 8) Tom Pope, the co-owner of Pope-Scarborough, advised that he received a telephone call from Reynolds, representing AAIS, expressing an interest in providing inspection services as a subcontractor to Pope-Scarborough for construction inspections related to the new FKAA Administration Building. (ROI 8, 24) Pope-Scarborough is statutorily prohibited from performing the inspections or hiring a company to perform them. (ROI 24) Ms. Reynolds explained that, as a State agency, the FKAA is not required to obtain inspections on construction projects from local entities; however, the FKAA felt it was prudent, due to the project's size, to have regular inspections performed. (ROI 24) Staff discussed whether they were required to advertise a new Request for Quote (RFQ) for the services or if they could select a firm from their Library of General Services Engineers of Record from the 2017 Capital Improvement Project (CIP) Engineers of Record. (ROI 24) Staff decided to move forward with K2M, a company already pre-qualified since 2017, because of time constraints. (ROI 24)

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[2] "The project was constructed via a Construction Management-at-Risk (CMAR) delivery method in which the construction manager agrees to deliver the completed project within a Guaranteed Maximum Price (GMP). The CMAR firm selected was a joint venture between the Gulf Southern Construction Company and Keystar Construction firms. Both the design and CMAR firms were competitively selected by the Board through a bid process." (ROI 7)

[3] The participants at this meeting were Pope, then-FKAA Deputy Director Kerry Shelby, the FKAA Chief Financial Officer, Ms. Reynolds serving as the FKAA Director of Engineering, the Gulf-Keystar Project Manager, and Walker. (ROI 8)

Following the September 10, 2020, meeting, Walker met with then-FKAA Deputy Director Kerry Shelby and Ms. Reynolds to discuss potential conflict issues related to AAIS involving Ms. Reynolds and her then-separated husband. (ROI 9, 24) FKAA Board Attorney Robert Feldman confirmed for Walker that there potentially could be a conflict of interest if AAIS was selected to work on the project. (ROI 9) It was determined that Pope-Scarborough was not statutorily permitted to provide building threshold inspection services through its contract as the Architect-of-Record for the FKAA and, therefore, AAIS could not be hired by Pope-Scarborough as a subcontractor, even if no actual conflict existed based on the marriage relationship of the Reynolds. (ROI 9) Walker contacted Pope and advised him of both potential conflicts. (ROI 9) Nonetheless, Walker advised Pope the FKAA planned to procure the inspection services through a separate procurement process. (ROI 9)

The next day, Walker received a telephone call from Pope who advised he had discussed the matter with Reynolds who indicated he understood the direction provided by the FKAA. (ROI 9)

During the week of September 14, 2020, Walker directed FKAA staff to proceed with the procurement process to retain a qualified inspection firm for the Administration Building Project. That process was conducted in accordance with the law[4] that permitted FKAA staff to review the short-listed firms' profiles and qualifications submitted to the FKAA for Capital Improvement Projects (CIP) during 2017 to determine which firms on the list were qualified to perform the required inspection services. (ROI 10) Staff selected the K2M firm and began negotiations with that firm. (ROI 10)

[4] Consultant's Competitive Negotiation Act (CCNA) found in Section 287.055, Florida Statutes. (ROI 10)

On September 21, 2020, Pope contacted Walker and said that he had received a telephone call from Reynolds. (ROI 11) Reynolds told Pope that he had discussed the Administration Building inspections with FKAA Board members and that he believed his company, AAIS, would have the support of those FKAA Board members he spoke with to perform the inspection services on the project. (ROI 11) Walker reiterated the aforementioned conflicts informing Pope that the FKAA would be securing a company to perform the inspection services. (ROI 11)

On September 29, 2020, Ms. Reynolds met with FKAA Attorney Feldman and Walker and she learned that Pope-Scarborough received a proposal from AAIS to perform the inspection services on the new Administration Building. (ROI 25) Attorney Feldman discussed with the group an inquiry made by FKAA Board member Richard Toppino as to why Reynolds' firm was not permitted to perform the inspections. (ROI 25) Attorney Feldman explained conflict of interest concerns to Toppino who asked Feldman to call Reynolds and explain the conflicts to him. (ROI 25)

Between September 21 through October 19, 2020, the FKAA staff and K2M met to review project needs, the scope of work, negotiate a budget, and finalize an agreement. (ROI 12) On September 28, 2020, Pope-Scarborough received an unsolicited proposal from AAIS in the amount of $80,000 to perform the FKAA Administration Building inspections. (ROI 13) Pope informed Walker of the proposal. (ROI 13)

On October 27, 2020, FKAA Board Attorney Feldman advised Walker he received a telephone call from Reynolds citing concerns about the K2M "Scope of Services" being presented to the Board the following day. (ROI 14) Attorney Feldman advised Reynolds that he understood staff had completed its review and approved the matter to be presented to the Board the following day for inspection services totaling $288,715 to be conducted by K2M. (ROI 14)

Two hours before the October 28, 2020 Board meeting, Respondent emailed FKAA executive staff requesting the following documents be emailed to all Board members prior to the meeting: 1) The most recent FKAA RFQ for CIP's - Engineering Services dated February 10, 2017; 2) K2M's submittal package in response to the February 10, 2017 RFQ; and 3) Section 287.055, Florida Statutes - Acquisition of Professional Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services (CCNA). (ROI 15, 26)

All five FKAA Board members attended the October 28, 2020 Board meeting. (ROI 16) Ms. Reynolds presented Agenda Item DOE-04, along with an FKAA staff recommendation to contract with K2M for inspection services related to the new Administration Building. (ROI 16) Respondent expressed concerns about the agenda item and stated she believed an agreement with K2M would violate the CCNA[5] claiming the Administration Building's estimated $14 million dollar cost required the inspection services to be procured using a separate RFQ process and not from the FKAA's 2017 CCNA RFQ solicitation because the Administration Building was not included in the prior solicitation as a CIP in 2017.[i] (ROI 16, 17)

In response, Ms. Reynolds confirmed that the Administration Building was not contemplated in the 2017 RFQ CIP solicitation, but stated it was added by staff under "emergency conditions" that staff believed was consistent with the Governor's Emergency Order issued after the original building was damaged by Hurricane Irma.[6] (ROI 16) Both FKAA Attorney Feldman and FKAA Internal Auditor Timothy Esquinaldo advised the Board that the FKAA had followed a similar engineering procurement practice over the past 16 years and, although the FKAA had been questioned in the past about this practice by both the Office of the Auditor General and the Office of Attorney General, but the two sides (the FKAA and the two State agencies) "agreed to

[5] Section 287.055, Florida Statutes
[6] Landfall was on September 10, 2017. (ROI 16)

disagree." (ROI 16, 18) After further discussion, the Board tabled the vote until further research could be conducted. (ROI 16, 26) It was clear to Walker that the Board was unhappy selecting K2M and that they agreed with Respondent, thus, he authorized a new RFQ be advertised on November 6, 2020 for inspection services.[7] (ROI 19) Walker said there was nothing improper about issuing a new RFQ to select a firm to perform inspection services for the FKAA. (ROI 19)

On October 29, 2020, Respondent sent emails to FKAA Attorney Feldman, FKAA Auditor Esquinaldo, and FKAA Executive Assistant Pam Albury regarding the FKAA's procedures for procuring professional services. (ROI 19) Respondent also contacted then-FKAA Deputy Executive Director Shelby requesting all emails between K2M and Shelby. (ROI 19)

On November 6, 2020, Walker updated the Board at its meeting advising that the inspection services for the Administration Building project would be secured through a new RFQ process. (ROI 27) Ms. Reynolds does not know what prompted Walker to reverse his prior direction for staff to use the CCNA to select K2M based on K2M's response to the 2017 CIP RFQ. (ROI 27)

On November 13, 2020, the Board met to review Walker's performance as Executive Director. (ROI 28) The Board voted 4 to 1 to terminate Walker immediately and Deputy Executive Director Kerry Shelby was appointed Interim Director of the FKAA. (ROI 28)

On November 25, 2020, the FKAA received quotes from only two firms in response to a new RFQ. (ROI 20) Reynold's company AAIS and Pistorino & Alam Consulting Engineers, Inc. submitted responses but K2M did not submit a response. (ROI 20, 29) Ms. Reynolds knew she would be required to exclude herself from any involvement in the process because her husband's company, AAIS, provided a response. (ROI 29)

[7] The process was expedited because construction was already underway and there was an immediate need for inspections. (ROI 19)

The following day, then-Deputy Director Shelby notified Ms. Reynolds that he had spoken to Chairman of the Board J. Robert Dean and was informed the Board wanted to conduct its own evaluation and selection of the company hired for inspection services. (ROI 29) Ms. Reynolds acknowledged that it is both permissible and proper for the Board to conduct the evaluation of submissions if it elects to do so. (ROI 29)

On December 16, 2020, Walker presented the two responses to the Board to evaluate, rank, and select a firm to perform the inspection services. (ROI 21) In the past, a staff review and selection committee performed this function for the Board but this procedure is not required and Walker advised it was not improper. (ROI 21, 22) Respondent made a motion for the Board to evaluate, rank, and select the company to perform the inspection services. (ROI 30) The motion passed on a 3 to 1 vote with Respondent abstaining. (ROI 21, 30) Respondent did not participate in the subsequent review and ranking of the two submissions due to her relationship with Reynolds. (ROI 30) Reynold's AAIS was selected for the inspection services related to the Administration Building based on the rankings of the four Board members who participated in the process. (ROI 30)

Deputy Director Shelby informed Ms. Reynolds that he would negotiate the agreement with AAIS so that she would be kept out of the process. (ROI 31) On January 26, 2021, the Board approved AAIS, as a part of its consent agenda, and agreed the amount for inspection services would not exceed $79,000. (ROI 31) Respondent declared a conflict related to this item and completed a CE Form 8A "Memorandum of Voting Conflict for State Officers" disclosing that her "law firm has represented All Aspects Inspection Services, LLC listed on the Consent Agenda, DOE-02 Tab 6." (ROI 31)

Respondent maintains that after Reynolds was advised by Pope that Walker did not want AAIS to perform the inspection services on the new Administration Building, Reynolds shared with her that he believed Walker was attempting to retaliate against him for actions he (Reynolds) took in disciplining Walker when Reynolds served as the FKAA Executive Director and Walker was a subordinate employee. (ROI 34) Reynolds informed Respondent that his proposal to perform inspection services was $206,715 less than the agreement staff negotiated with K2M. (ROI 34) Based on this information, Respondent felt she had a duty and obligation to question why Walker recommended K2M for the inspection services without seeking other qualified companies. (ROI 34) Respondent said she learned that K2M did not have a certified building inspector on staff so they would not have been able to perform the actual inspections required and certify the results. (ROI 34)

Respondent acknowledged she stated her concerns during the October 28, 2020 Board meeting, including questioning the legality of approving the $286,715 CCNA contract with K2M without advertising a new RFQ for the project. (ROI 35) She denies that she ever advocated for a certain company to be awarded the inspection services work. (ROI 35) Her only interest was in determining what was in the best interest of the FKAA and taxpayers. (ROI 35) She said that rather than specifically addressing her concerns, Walker chose to personally attack her during the meeting by accusing her of asking questions about the K2M agreement due to her relationship with Reynolds. (ROI 35) Ultimately, the matter was tabled by the Board to allow FKAA staff the opportunity to determine if approving the CCNA contract with K2M violated any Florida law. (ROI 35)

On October 29, 2020, Respondent informed the FKAA legal counsel she had lost all confidence in Walker based on his behavior during the prior day's Board meeting. (ROI 36) She

recognized that the Board was contractually required to complete a performance evaluation of Walker no later than November 13, 2020 so during the November 13th Board meeting, she made a motion to terminate Walker as Executive Director and the Board voted 4 to 1 in favor of termination. (ROI 36)

Respondent advised that rather than research whether K2M could perform the inspection services based on K2M's 2017 RFQ response to the FKAA, Walker unilaterally made the decision to advertise a new RFQ specifically for inspection services. (ROI 37) She advised she was in no way involved in that decision, which was made solely by Walker. (ROI 37)

In December 2020, only two firms responded to the RFQ for the inspection services and the Board selected AAIS to perform the work. (ROI 37) Respondent stated she did not participate in the review process to select AAIS due to her ongoing relationship with Reynolds. (ROI 37)

Respondent is a public officer who is involved in a dating relationship with a vendor of her agency. The relationship was disclosed to the Board.

The second and third elements: use of official position and action corruptly done with an intent to secure a special privilege or benefit for herself or another is not shown. There is evidence that Respondent used her official position and performed her official duties to question the process and legality of using a pre-qualified contractor from their Library of General Services Engineers of Record from the 2017 CIP Engineers Record for a 2020 project. Her actions were within the appropriate scope of her duties. According to Ms. Reynolds, even staff was concerned "whether they were required to advertise a new RFQ for services." (ROI 24) Respondent's actions seemed reasonable and in the best interests of the FKAA and the taxpayers.

Furthermore, Respondent did not otherwise have official involvement in the matter affecting the individual with whom she had a dating relationship.

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.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using her official position to ensure that Jolynn Cates Reynolds, senior management at the Florida Keys Aqueduct Authority, would have a conflict of interest to benefit Respondent's personal friend and paramour.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, is set forth above in Allegation One.

ANALYSIS

In addition to the facts are set forth above under Allegation One, Complainant alleges that 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 facilitating the company's subsequent selection for contract with the FKAA."[8] Respondent recused herself from any official involvement with AAIS after her social and personal relationship began. This allegation lacks any facts to support it.

[8] In re Cara Higgins; Determination of Investigative Jurisdiction and Order to Investigate, pp. 1, 2; November 3, 2021.

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.

ALLEGATION THREE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using her official position to facilitate the award of a contract between her agency and James "Jim" Reynolds and/or his company in spite of the deficiencies contained in the bid package.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, is set forth above in Allegation One.

ANALYSIS

The facts are set forth above under Allegations One and Two. There is no evidence in the Report of Investigation that the bid package submitted by AAIS was incomplete or insufficient.

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.

ALLEGATION FOUR

Respondent is alleged to have violated Section 112.313(2), Florida Statutes, by soliciting or accepting anything of value to her based upon an understanding that her vote, official action, or judgment would be influenced.

APPLICABLE LAW

Section 112.313(2), Florida Statutes, provides as follows

> SOLICITATION OR ACCEPTANCE OF GIFTS. 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.

In order to establish a violation of Section 112.313(2), Florida Statutes, the following elements must be proved:

1. Respondent must have been either a public officer, a public employee or a candidate for nomination or election.

2. Respondent must have solicited or accepted something of value to him or her, including a gift, loan, reward, promise of future employment, favor, or service.

3. Such solicitation or acceptance must have been based upon an understanding that the Respondent's vote, official action or judgment would be influenced thereby.

ANALYSIS

Ms. Reynolds alleged that Reynolds made purchases between June 2020 through July 2021 for the benefit of Respondent. (ROI 38) The questionable expenditures or purchases by Reynolds totaled 41 with 17 of those in amounts greater than $100. (ROI 38)

Respondent and Reynolds took personal trips together in 2020 and 2021. (ROI 44-48, 52, 56, 63) They agreed to split expenses incurred during their trips to avoid any appearance of impropriety. (ROI 45)

They did not split the cost of each item purchased on their trips equally. (ROI 45) The Commission's Investigator reviewed Respondent's bank statements and charge card transactions provided by Ms. Reynolds and determined that Respondent paid 100% of some costs while traveling with Reynolds and Reynolds paid 100% of other costs on the trips. (ROI 45) Both Respondent and Reynolds submitted affidavits addressing the expenditures. (ROI 43, Composite Exhibit A)

The following expenses occurred prior to the date Reynolds contacted FKAA Board members about his company, AAIS, performing inspections of the FKAA Administration Building. (ROI 38, 39) On June 27, 2020, Respondent and Reynolds shared a meal at Antonia's Restaurant in Key West, Florida. (ROI 42) The $236.58 cost of the meal was charged to Reynolds' personal credit card. (ROI 42) Respondent said she was unable to determine the itemized costs for the meal but maintains the total cost, excluding taxes and gratuities, fell below $200, resulting in costs attributable to her of less than $100, if divided equally between herself and Reynolds. (ROI 43, Composite Exhibit A)

In August 2020, Respondent and Reynolds took a trip to Mount Dora, Florida. (ROI 45) Reynolds bought himself a pair of shoes at Becker Best Shoes, Mount Dora, for $139.10. (ROI 44) Expenses Respondent incurred for meals and lodging amounted to $962.82. (ROI 45) Her costs for this trip exceeded the identified expenses incurred by Reynolds by $465.27. (ROI 45)

On September 8, 2020, Reynolds purchased two Delta Airlines round trip tickets for himself and Respondent to travel to Lake Pleasant/Speculator, New York to introduce Respondent to his family. (ROI 46, 47) Respondent's ticket cost of $232.60 was charged to Reynolds' business credit card. (ROI 46)

During their New York trip on October 8-13, 2020, Respondent said she paid more of the trip expenses than did Reynolds. (ROI 48) Respondent purchased $506.60 in groceries, $194.12 in meals and drinks, $657.17 for supplies used during a hiking excursion in the Adirondack Mountains, and spent $200 cash for other purchases. (ROI 48) Reynolds paid $875.00 for the cost of the cabin where they stayed during the trip. (ROI 48) In total, Respondent made purchases and withdrew cash totaling $1,557.89 during the New York trip which represents payments totaling $217.69 more than Reynolds' trip expenditures. (ROI 48)

Respondent did not complete a CE Form 9, "Quarterly Gift Disclosure," related to any of the above-referenced expenditures. (ROI 49)

The following expenses occurred after December 16, 2020, the date Reynolds' company, AAIS, was selected by the FKAA Board to perform the inspection services on the FKAA Administration Building.[9] (ROI 49, 50) As previously noted, in December 2020, Mr. Reynolds began having conversations with the FKAA Executive Staff and Board regarding the possible selection of his company, AAIS, for contract with the Board to provide inspection services. On January 26, 2021, AAIS executed a contract with the FKAA for inspection services.

In late December 2020, Respondent and Reynolds traveled to Mount Dora, Florida on a personal trip. (ROI 52) Ms. Reynolds identified a number of purchases during the trip that were in excess of $100 which were charged to either Reynolds' business credit card or his personal credit card. (ROI 52)

On December 27, 2020, Reynolds charged $226.18 at the 1921 Restaurant in Mount Dora on his personal credit card. (ROI 53) He charged $118.44 to his personal credit card at The Goblin Market Restaurant in Mount Dora. (ROI 53) On December 28, 2020, Reynolds charged $172.26 at Lee Art Glass in Mount Dora to his personal credit card. (ROI 53) On December 29, 2020, he charged $200.79 to his business credit card at Giannis Italian Restaurant in Mount Dora.

Regarding these purchases, Reynolds advised that the $172.26 purchase he made at Lee Art Glass was for two gifts, one for his daughter and one for Respondent's daughter, and no further details were provided to identify the two gifts and the cost of each. (ROI 54)

[9] The contract was approved by the FKAA Board on January 26, 2021. (ROI 49, 50)

Respondent provided bank statements indicating she incurred expenses during the Mount Dora trip totaling $940.02 for food and beverages, which was $144.75 more than the $795.27 in expenses Reynolds incurred during the same trip. (ROI 55)

On February 26 and 27, 2021, Respondent and Reynolds traveled to Naples, Florida, on a personal trip. (ROI 56)

On February 25, 2021, $1,019.95 was charged to Reynolds' business credit card by The Ritz Carlton located in Naples that Respondent and Reynolds maintain was for food and beverages. (ROI 57) On the same day, $125.93 was charged to Reynolds' business credit card by The Ritz Carlton Golf located in Naples. (ROI 58) Reynolds advised the $125.93 charge was a golf shirt he purchased for himself. (ROI 58)

On February 26, 2021, charges of $140.97, $123.05, and $598.00 were charged to Reynolds' business credit card by Tiburon Golf Club located in Naples. (ROI 59) Respondent and Reynolds maintain these charges represent gifts purchased for Reynolds' children and a round of golf. (ROI 59) A photograph provided by Ms. Reynolds appears to indicate Respondent accompanied Reynolds for the round of golf. (ROI 59) Respondent provided bank statements confirming she incurred expenses during this trip to Naples totaling $2,967.82, which exceeded Reynolds' reported expenses by approximately $900. (ROI 60)

On February 27, 2021, two charges were posted to Respondent's account, one in the amount of $2,622.93 was for lodging, and the other in the amount of $344.89 was for a couples massage. (ROI 60)

On April 19, 2021, $2,162.88 was charged to Reynolds' business credit card by the Key West Yacht Club. (ROI 61) The investigation confirmed that Reynolds is a member of the Key West Yacht Club and the questioned expenditure represents his quarterly charges which includes

his monthly membership fee, food, and drinks purchased. (ROI 62) Respondent has maintained her own membership at the Club for the past 15 years, which she pays herself. (ROI 62) Respondent's quarterly charges during the same time period totaled $2,430.75. (ROI 62)

During June 24 - July 11, 2021, Respondent and Reynolds traveled to New Jersey, Lake Pleasant, New York, and Speculator, New York, for a vacation. (ROI 63) On June 24, 2021, $384.10 was billed to Reynolds' personal credit card at the Orchard Park Restaurant in East Brunswick, New Jersey. (ROI 64) On June 26, 2021, $329.30 was billed to Reynolds' personal credit card at Charles Johns Supermarket and General Store in Speculator, New York. (ROI 64) On July 2, 2021, $325.13 was billed to Reynolds' personal credit card at Charles Johns Supermarket and General Store in Speculator, New York. (ROI 64) On July 8, 2021, $242.89 was billed to Reynolds' personal credit card at Melody Lodge in Lake Pleasant, New York. (ROI 64)

Respondent provided bank statements indicating she incurred expenses totaling $8,601.34 for this trip compared to Reynold's total expenses of $4,103.98. (ROI 65) Respondent's purchases were for items such as transportation, lodging, groceries, food, and beverages. (ROI 65) Respondent added that Reynolds paid $1,942.32 for the rental vehicle they used during this trip. (ROI 65)

Respondent maintains she never received a gift from Reynolds during any of the above-referenced trips based on their understanding of CEO 16-01. (ROI 66, Exhibit B) In that opinion, the Commission was asked whether a school board member who was dating a vendor could accept presents worth more than $100 from him. The Commission answered "No." The question came up when a school board member asked about the reporting requirements if traveling and exchanging gifts with her boyfriend, who works for a law firm that counsels the school district. The Commission explained:

> "(D)ue to the lobbying/vendor relationship between the boyfriend's law firm and the District, the member may not solicit gifts of any value from her boyfriend, and may not accept any gift from him, his firm, or his law partners that is valued at more than $100. The member's boyfriend must report any gift to the member that is valued between $25 and $100. If the couple shares the cost of travel, meals, lodging, or other entertainment equally, the member has provided adequate consideration and has not received a gift."

A "gift" is defined in Section 112.312(12)(a), as anything accepted by the donee, or by another on the donee's behalf, or anything paid or given to another on behalf of the donee or the donee's benefit, for which equal or greater consideration is not given within 90 days. The definition includes food, beverages, transportation, or other such expenses Respondent and Reynolds would have encountered while traveling. Reynolds is a prohibited donor in that he is a vendor[10] doing business with Respondent's agency and/or a lobbyist[11] of her agency. As such, Respondent is prohibited from soliciting any gift from Respondent, under Section 112.3148(3), due to his relationship with the FKAA.

Here, Respondent's trips included transportation, lodging, and food expenses shared by both parties. Respondent's payment of those expenses is at least equal to or more than the total value of the various aspects of the trips. Respondent provided adequate consideration and has not received a gift.

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(7)(a), Florida Statutes.

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[10] "Vendor" is defined as "a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services." § 112.3148(f), Fla. Stat.

[11] "Lobbyist" is defined as "any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual . . . or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual . . . or her agency." § 112.3148(2)(b), Fla. Stat.

ALLEGATION FIVE

Respondent is alleged to have violated Section 112.313(4), Florida Statutes, by accepting compensation, payment, or thing of value when she should know that it was given to influence a vote or other official action.

APPLICABLE LAW

Section 112.313(4), Florida Statutes, provides as follows:

> UNAUTHORIZED COMPENSATION. - 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.

In order to establish a violation of Section 112.313(4), Florida Statutes, the following elements must be proved:

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

2. Respondent or Respondent's spouse or minor child must have accepted some compensation, payment or thing of value.

3. When such compensation, payment or thing of value was accepted:

a) Respondent knew that it was given to influence a vote or other action in which Respondent was expected to participate in an official capacity;
or
b) Respondent, with the exercise of reasonable care, should have known that it was given to influence a vote or other action in which Respondent was expected to participate in an official capacity.

ANALYSIS

The facts are presented above in Allegation Four. First, Respondent did not receive something of value from Reynolds because it was established above that they shared expenses,

with Respondent paying equal or more in compensation. Thus, there was not gift. Second, section 112.313(4) requires that a public officer have either actual or constructive knowledge that a provider of an item to the officer intended to influence the officer's vote or other official action by provision of the item. *Commission on Ethics v. Barker*, 677 So. 2d 254 (Fla. 1996).

Dating is a special relationship, and conflicts are all about special relationships. Under the facts presented, Respondent recused herself from any official involvement with the vendor, Reynolds.

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(4), Florida Statutes.

ALLEGATION SIX

Respondent is alleged to have violated Section 112.3148(3), Florida Statutes, by soliciting a gift(s) from a vendor doing business with her agency or a lobbyist who lobbies her agency.

APPLICABLE LAW

Section 112.3148(3), Florida Statutes, provides as follows:

> A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011 or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.
>
> In order to establish a violation of Section 112.3148(3), Florida Statutes, the following elements must be proved:
>
> 1. Respondent must have been a reporting individual or procurement employee.

2. Respondent must have solicited a gift, food or beverage.

3. The gift must have been solicited from a vendor doing business with Respondent's agency, political committee or committee of continuous existence or a lobbyist who lobbies the Respondent or his agency or the partner, firm, employer, or principal of such a lobbyist.

4. The gift must be for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

ANALYSIS

The facts are set forth in Allegation Four above. It has been established that Respondent did not receive a gift from Reynolds. There is no evidence that Respondent solicited or accepted gifts from Reynold. Accordingly, there is nothing for Respondent to disclosure.

Element one is proven as Respondent clearly is a reporting individual. She accepted good, beverages, etc. from Respondent; however, there is no evidence that she solicited anything. Thus, element two is not proven. Since Respondent paid at least equal to her costs and, many times more than Respondent during the same time frame, Respondent has not received a gift within the meaning provided herein. Thus, elements three and four for a violation have not been proven.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes.

ALLEGATION SEVEN

Respondent is alleged to have violated Section 112.3148(4), Florida Statutes, by knowingly accepting, directly or indirectly, a gift from a vendor doing business with her agency and/or a lobbyist who lobbies her agency.

APPLICABLE LAW

Section 112.3148(4), Florida Statutes, provides as follows:
REPORTING AND PROHIBITED RECEIPT OF GIFTS BY INDIVIDUALS FILING FULL OR LIMITED PUBLIC DISCLOSURE OF FINANCIAL INTERESTS AND BY PROCUREMENT EMPLOYEES. A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of $100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

In order to establish a violation of Section 112.3148(4), Florida Statutes, the following elements must be proved:

1. Respondent must have been a reporting individual or procurement employee.

2. Respondent must have knowingly accepted a gift.

3. The donor of the gift must have been a vendor doing business with Respondent's agency, a political committee, or lobbyist who lobbies the Respondent or his agency.

4. Respondent knew or reasonably believed that the gift had a value of more than $100.

ANALYSIS

The facts are set forth under Allegation Four above. It has been established that Respondent did not accept a gift from Reynolds, who is a vendor doing business with Respondent's agency or a lobbyist who lobbies Respondent's agency.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes.

ALLEGATION EIGHT

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, by failing to report a gift(s) valued in excess of $100.

APPLICABLE LAW

Section 112.3148(8), Florida Statutes, provides as follows

> (8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics on the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of $100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to $100 or less, except the following:
> 1. Gifts from relatives.
> 2. Gifts prohibited by subsection (4) or s. 112.313(4).
> 3. Gifts otherwise required to be disclosed by this section.

Section 112.312(12)(a), Florida Statutes, provides in its relevant part:

> "Gift" for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days. . . .

ANALYSIS

The facts are set forth under Allegation Four above. It has been established that Respondent did not receive a gift(s) from Reynolds. Accordingly, there was no need for her to file a CE Form 9, "Quarterly Gift Disclosure."

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using her official position for the benefit of persons connected to her in a private capacity and in contravention of the Florida Keys Aqueduct Authority's policies and procedures.

2. There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using her official position to ensure that Jolynn Cates Reynolds, senior management at the Florida Keys Aqueduct Authority, would have a conflict of interest to benefit Respondent's personal friend and paramour.

3. There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using her official position to facilitate the award of a contract between her agency and James "Jim" Reynolds and/or his company in spite of the deficiencies contained in the bid package.

4. There is no probable cause to believe that Respondent violated Section 112.313(2), Florida Statutes, by soliciting or accepting anything of value to her based upon an understanding that her vote, official action, or judgment would be influenced.

5. There is no probable cause to believe that Respondent violated Section 112.313(4), Florida Statutes, by accepting compensation, payment, or thing of value when she should know that it was given to influence a vote or other official action.

6. There is no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes, by soliciting a gift(s) from a vendor doing business with her agency or a lobbyist who lobbies her agency.

7. There is no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting, directly or indirectly, a gift from a vendor doing business with her agency and/or a lobbyist who lobbies her agency.

8. There is no probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to report a gift(s) valued in excess of $100.

Respectfully submitted this 2nd day of May, 2022.

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[i] "I have a major problem with this item for several reasons. Number one, the legality of it. Back in April of 2017, yes, the Board did approve several engineering firms to provide on a continuing contract basis, to provide services. However, I think this is a complete violation of the Consultants Competitive Negotiation Act [CCNA] under the Statute. We did not go out for a bid for this and the scope of the project outlined in the 2017 RFQ did not include the Administration Building. In 2017, the Administration Building was not even in our Capital Improvement Plan. We weren't even talking about it at the time. That was even prior to the hurricane. I think that relying on a company that has a continuing contract and not going out for bid is exactly what the Act is designed to prevent. I don't get it. This is a 14 plus million dollar project. The continuing contract clause that's in the Statute says no project that exceeds 4 million dollars. And if we then went and said for some reason we still didn't need to go out for bids because of the costs, it still violates the Act which is why I asked that staff go ahead and forward the Board members the actual Statute and then the other part of the Statute where, if you weren't under a continuing contract, it would still be a violation. I'm really concerned about this. The Office of the Attorney General, you know, has issued lots of opinions about these recurring contracts and what they say is that this is an exception to competitive bidding, but that the Statute should be read narrowly and utilized sparingly to avoid the appearance of circumventing requirements of the Statute and that public agencies must comply with the Statute for services not contemplated by the original consulting contract. I don't think under any stretch of the imagination that RFQ that went out in 2017 had this project - it wasn't even on the table. It wasn't even in our program. So I have a real concern with why we are being asked to go ahead and do this when I think it's a clear violation of the Statute. I have other reasons why I'm opposed to it. ... I think it's outrageous. I really do." (ROI 17)