FLORIDA
COMMISSION ON ETHICS

FEB 2 1 2025

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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Bryan Lober,

Respondent. **Complaint No.: 24-166**

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ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Referral, 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

Respondent, Bryan Lober, served on the Brevard County Commission. The case was referred by the Florida Department of Law Enforcement.

JURISDICTION

The Commission on Ethics voted to investigate the Referral and the Executive Director 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 February 3, 2025.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by corruptly using his official position and/or a resource within his trust to secure a special privilege, benefit, or exemption for himself and/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

Respondent served as the Brevard County District Two Commissioner from November 20, 2018 to April 1, 2022. (ROI 4) On February 22, 2022, the Brevard County Commission requested that Rachel Sadoff, the County Clerk of Court and Comptroller, perform an audit of all the County Commissioners' P-card purchases, including Respondent's. (ROI 8) Sadoff and her staff also inventoried equipment and interviewed County staff and the Commissioners. (ROI 8) Based on the results of that audit and inventory, Sadoff contacted Florida Department of Law Enforcement (FDLE) in November 2022 to investigate further. (ROI 8) FDLE's investigative report, completed in May 2024, was attached to the referral that initiated this case, and formed the basis of the Report of Investigation.[1]

The Report of Investigation identified eight of Respondent's financial transactions that potentially violated the Code of Ethics, including five purchases Respondent made using his County issued P-card, and three purchases Respondent made using the County's tax-exempt certificate, to avoid paying taxes on purchases made in connection with his re-election campaign. (ROI 11-13, 16-18, 20, 23, 25, 27, 28) Then-County Attorney Abigail Jorandby researched the County's policies and administrative orders, finding that there were none that addressed P-card use by County Commissioners, only County employees. (ROI 6) However, when Respondent was issued his P-card, he signed an agreement explicitly stating that the P-card was for business related expenses only, not for personal purchases, and that improper use of the card can be considered a

[1] FDLE's investigative summary includes some purchases that were made on the County P-card belonging to the District Two Chief of Staff, Robert "Fritz" VanVolkenburg, because Respondent used Mr. VanVolkenburg's P-card before he was issued his own.

misappropriation of County funds. (ROI 10, Exhibit A) The County's tax-exempt certificate also states that using it for personal purchases is a third-degree felony. (ROI 26, Exhibit B)

Use of a County P-Card for Personal Expenses

The first identified P-card purchase was a $605 charge made for two Bivy sticks on May 25, 2021. (ROI 11-13) A Bivy stick is a device that enables text message and email communication anywhere in the world via satellite signals. (ROI 12) In the Spring of 2021, Respondent asked the Brevard County Public Safety Office Director, Matthew Wallace, if Wallace would like his office to have satellite communication abilities in the event of an emergency or natural disaster. (ROI 13) Wallace said that he would, and Respondent subsequently gave him the first of the two Bivy sticks. (ROI 13) It is clear that the first of the two Bivy sticks was given to a County official for use in connection with official County business shortly after its purchase. There is no evidence the first Bivy stick was used for personal reasons.

While Respondent was on a trip to Maine from August 4, 2021, to August 20, 2021, he used the second Bivy stick to send and receive 22 messages. (ROI 14) None of those messages pertained to County business. (ROI 14) On March 4, 2022, after the audit was requested by the County Commission, Respondent gave the second Bivy stick to County Clerk Sadoff. (ROI 15) This constitutes evidence that Respondent was using the second Bivy stick for personal reasons, until the audit was requested by the County Commission.

The second and third P-card purchases were for $49.99 each, on August 4, 2021 and September 4, 2021, to subscribe to the service required monthly subscription to operate the Bivy sticks. (ROI 12) Because Respondent did not turn over the second Bivy stick to the Clerk until after her audit and inventory began, and because Respondent did not subscribe to the Bivy stick service until he was on a personal trip in Maine, and canceled the subscription shortly thereafter,

there is sufficient evidence to conclude that Respondent was using the second stick for personal reasons, particularly because he did not keep the subscription active so that the Bivy stick would be ready in case of an emergency or natural disaster.

The fourth P-card purchase is a Steelcase brand office chair, purchased at a total price of $759.50 on July 5, 2021. (ROI 16) Brevard County has a policy to tag any County asset that cost more than $750, and inventory it annually. (ROI 17) However, Respondent purchased the chair using a $9.50 gift card, purchased with his own funds, and a $750.00 charge to the P-card. (ROI 16) The chair was delivered to the County office building on July 10, 2021. (ROI 16) However, Ms. Sadoff's audit failed to locate the chair. (ROI 16) Thereafter, Respondent purchased a replacement chair with his personal funds. (ROI 16) There is no evidence to indicate the current location of the original chair or who may have removed it from County property. Therefore, there is insufficient evidence to conclude that this purchase was made for personal reasons.

The final P-card purchase was made on December 21, 2021, in the amount of $179.00, for a Business Prime Membership to Amazon. (ROI 18) The FDLE report noted that the purchases made on this Business Prime Membership matched the purchases made on Respondent's personal Amazon account, which indicates that the two accounts are linked. (ROI 18). Some of the benefits Respondent would have received on his personal account because of this link include free shipping, Prime Day deals, and Prime early access. (ROI 18) Therefore, there is sufficient evidence to conclude that this purchase was made for personal reasons.

Use of the County's Tax Exempt-Certificate for Campaign Supplies

Respondent also allegedly made three purchases for his re-election campaign using the County's tax-exempt certificate. (ROI 23-28) The first of these purchases was made for four items from Rockler Companies, Inc., in the amount of $1,717.00, which were identified on Respondent's

campaign records as "sign building tools and supplies/fasteners." (ROI 23, 27, Exhibit C1-C2, D1) Records reflect that Respondent used the County's tax-exempt certificate to avoid paying $124.48 in taxes for this campaign purchase. (ROI 23)

The final two purchases were made in July 2021, in the amounts of $37.98 and $103.99, which are also listed on Respondent's campaign records as "sign building tools and supplies." (ROI 28, Exhibit G1) Copies of invoices provided by Rockler indicate that Respondent avoided paying taxes on these purchases. (ROI 28, Exhibit F1-F2)

At the time in question, Respondent used his position and/or public resources in a manner that was inconsistent with the proper performance of his public duties to secure a personal benefit(s).

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

ALLEGATION TWO

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

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

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. See Analysis in Allegation One.[2]

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

RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using his public position and/or public resources to secure a special privilege, benefit, or exemption for himself and/or another.

2. There is 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 and/or another.

[2] In CEO 19-23, the Commission expounded on the intent requirement of the Constitutional amendment, noting that it is "highly similar, if not identical," to the intent required to show a violation of Section 112.313(6) because both the rule and the amendment "require an act or omission committed with a 'wrongful intent' and for the purpose of obtaining a result 'inconsistent with the proper performance' of one's public duties."

Respectfully submitted this 21st day of February, 2025.

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