DATE FILED
AUG 27 2024
COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re BRYAN LOBER,
Respondent.

Referral No. 24-166

REVIEW OF REFERRAL AND RECOMMENDATION OF SUFFICIENCY TO ALLEGE BREACH OF PUBLIC TRUST OR VIOLATION OF CODE OF ETHICS

UPON REVIEW of a referral, I find and recommend as follows:

1. This referral, from the Florida Department of Law Enforcement (FDLE), was received in the offices of the Commission on Ethics on July 31, 2024.

2. The Respondent named in the referral is Bryan Lober, a former County Commissioner for Brevard County.

3. Section 112.324(1)(b), Florida Statutes, provides that certain agencies, including FDLE, can refer possible violations of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees), or other possible breaches of the public trust, to the Commission. It further provides that the Commission can investigate and handle the referral, provided that at least six members of the Commission determine that the referral is sufficient to indicate a violation or breach.

4. Commission Rule 34-17.005, Florida Administrative Code, provides that the Commission's Executive Director shall review the referral in order to make a recommendation to the Commission as to whether or not the referral is sufficient to allege a violation or breach. The Rule further provides that if the Executive Director recommends that the referral is sufficient, and

at least six members of the Commission find it to be sufficient, an order to investigate the referral shall be entered and transmitted to the Respondent within five days of the Commission's determination; but that if a majority of the Commission finds the referral to be insufficient, it shall be dismissed (with reasons for dismissal), and the respondent and referring agency notified of the dismissal.

5. I believe that the referral is sufficient to invoke the jurisdiction of the Commission, in that it is sufficient to allege possible violation by the Respondent of the prohibition found in Article II, Section 8(h)(2), Florida Constitution (Abuse of Public Position to Obtain a Disproportionate Benefit), as well as a possible violation of Section 112.313(6), Florida Statutes (Misuse of Public Position), and recommend that you find it to be sufficient and enter an order to investigate it. My review and reasoning for my recommendation are set forth below.

6. The referral includes a cover letter from FDLE dated July 31, 2024. The letter indicates the referral concerns conduct in which the Respondent allegedly engaged while in his position as a Brevard County Commissioner. The letter also indicates FDLE has recently completed a criminal investigation regarding the allegations, and that the Office of the State Attorney for the 18th Judicial Circuit has reviewed the investigation and declined to prosecute. The letter states that, in view of the declination by the State Attorney's Office, FDLE has concluded the Respondent's "actions may be more appropriately addressed by the Florida Commission on Ethics." The referral further includes FDLE's investigative summary of the allegations as well as a letter from the State Attorney's Office outlining the terms and conditions of its decision not to prosecute. The investigative summary and the letter from the State Attorney's Office specify the allegations in question against the Respondent, which are detailed below.

7. In particular, the investigative summary and letter from the State Attorney's Office indicate the Respondent, between January 2019 and March 2022, used a County-issued purchasing card to purchase multiple items for personal use. FDLE's investigative summary indicates, in total, that the Respondent used the County-issued purchasing card to make 319 separate purchases totaling approximately $40,000, and that some or all of these purchases were unrelated to County business.

8. The investigative summary and letter from the State Attorney's Office further indicate the Respondent improperly used a County-issued tax-exempt certificate to avoid paying sales tax on at least three personal purchases. FDLE's investigative summary indicates the certificate was used to avoid paying $134.77 in sales tax, in total, and that the three purchases in question were claimed on financial records from the Respondent's personal political campaign.

9. The contents of paragraphs 7 and 8, above, are sufficient to indicate a violation of Article II, Section 8(h)(2), Florida Constitution, as they indicate the Respondent may have abused his public position in order to obtain a disproportionate benefit for himself.[1] And the contents of paragraphs 7 and 8, above, are sufficient to indicate a violation of Section 112.313(6), Florida Statutes, as they indicate that the Respondent may have corruptly used or attempted to use his official position or property or resources within his trust, or that he corruptly performed his official duties, to secure a special privilege, benefit, or exemption for himself.[2]

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[1] Any investigation or findings related to the prohibition in Article II, Section 8(h)(2), Florida Constitution, will relate only to the Respondent's conduct on or after December 31, 2020, which was when the prohibition became effective. It should be noted that the prohibition was redesignated on December 31, 2022, from Article II, Section 8(g)(2) to Article II, Section 8(h)(2).

[2] We note the referral also alleges the Respondent failed to return items bought with the County-issued purchasing card after he left his position. This claim, if true, may be relevant to the allegations described in paragraph 7, above, inasmuch as it may relate to whether the purchases in question were personal in nature. By itself, however, the claim that the Respondent kept certain

WHEREFORE I recommend that you find this referral to be sufficient and that you order that it be investigated for a probable cause determination as to whether the Respondent violated Article II, Section 8(h)(2), Florida Constitution, and Section 112.313(6), Florida Statutes, as set forth above.

August 27, 2024
Date

Kerrie J. Stillman
Kerrie Stillman
Executive Director

KJS/gps

items after leaving his public position does not provide an independent basis for investigation as does not identify a standard of conduct addressed by the post office-holding prohibitions over which the Commission on Ethics has jurisdiction. See Article II, Section 8(f)(3), Fla. Const.; and §§ 112.313(8) and 112.313(14), Fla. Stat.