

OCT 30 2023

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

CONFIDENTIAL

In re: David Law,

Respondent.

Complaint No.: 23-094

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, David Law, serves as the Chairman of the Board of Supervisors of the Coquina Water Control District Board. Complainant is Tonya Schumacher of Okeechobee, 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 Sections 112.313(6), 112.3135, and 112.3143(3), Florida Statutes. On September 28, 2023, the Executive Director issued an Order for Supplemental Investigation of Facts Materially Related to Complaint. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on September 29, 2023.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.3143(3), Florida Statutes, by voting on a matter(s) that inured to his or a relative's special private gain or loss and/or failing to follow disclosure requirements.

APPLICABLE LAW

Section 112.3143(3)(a), Florida Statutes, provides as follows:

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.

Section 112.3143(1)(d), Florida Statutes, defines special private gain or loss as follows:

"Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

In order to establish a violation of Section 112.3143(3)(a), Florida Statutes, the following elements must be proved:

1. Respondent must have been a county, municipal or other local public officer serving on a collegial body.

2(A). Respondent must have:

1) voted in his or her official capacity on a measure which would have inured to the Respondent's own special private gain or loss,

or

2) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a principal by whom the Respondent was retained or to the parent organization or subsidiary of a corporate principal by which the Respondent was retained,

or

3) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a relative or business associate of the Respondent.

OR

(B). When abstaining from a vote because of a conflict, the Respondent, prior to the vote being taken, must have failed to publicly state to the assembly the nature of his or her interest in the measure described in paragraph 2(A), above.

OR

(C). After abstaining from a vote because of a conflict, the Respondent failed to disclose the nature of his or her interest in the measure described in paragraph 2(A), above, as a public record in a memorandum filed within 15 days after the vote occurred with the

person responsible for recording the minutes of the meeting at which the vote occurred.

ANALYSIS

The Coquina Water Control District (CWCD) is an Independent Special Taxing District and its funding is derived from landowners within the District. (ROI 25, 26) The CWCD is governed by a three-member Board of Supervisors elected by the landowners within the District. (ROI 26)

CWCD Supervisors are elected on a one-acre, one-vote basis. (ROI 25, 26) Section 112.3143(3)(b), Florida Statutes, provides in part, that “an officer of an independent special tax district elected on a once-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.”

Respondent has served as a Supervisor for the CWCD for the past six years and currently serves as the Chairman. (ROI 32) Complainant served as the CWCD Office Manager from May 2022 through May 2023. (ROI 4)

Scott Fitzpatrick serves as the CWCD’s General Counsel. (ROI 25) To cut costs, the Board felt it was unnecessary for Attorney Fitzpatrick to attend every meeting, so it was expected that Paralegal Erin Fralix¹ would attend meetings and report to him if any legal issues arose. (ROI 28)

In August 2022, the CWCD Board hired Superintendent Howard Sensaboy’s stepson. (ROI 5) Complainant advised that Paralegal Fralix opined that even though the CWCD Employee Handbook prohibits the employment of relatives, she (Paralegal Fralix) had spoken to a labor attorney and verified that it was permissible to hire Superintendent Sensaboy’s stepson, stating

¹ Fralix has served as a paralegal with the CWCD since 2007. (ROI 19) She served as a paralegal for the prior General Counsel, Anthony Young, who is also her father. (ROI 19)

“As long as the Board agrees to hire a family member of a current employee, they can vote to do so.” (ROI 5)

At a December 1, 2022 CWCD Board meeting, Respondent asked Paralegal Fralix if it was permissible for the CWCD to hire his son. (ROI 4) Complainant alleges that Paralegal Fralix advised that she did not find any issue with the hiring. (ROI 4, 7) Supervisor Michael Vincent² was absent from the meeting. (ROI 11) With two of the three Supervisors present, Respondent made a motion to hire his son, as a fulltime probationary (90-day) employee, which passed with Respondent and Supervisor Mitch Teardo voting. (ROI 4, 13)

Employees are hired on a part-time probationary status for 90 days. (ROI 16) After the 90-day period, the Board votes on whether to give the employee a permanent status which includes benefits. (ROI 16)

Complainant alleges that in March 2023, Respondent instructed her, in private, to make his son a permanent employee and provide him benefits and a pay increase. (ROI 4, 8) Believing this to be improper, Complainant held the paperwork until she received confirmation from the other Supervisors that it was permissible. (ROI 8)

At an April 13, 2023 CWCD meeting, the one item on the agenda involved hiring Respondent's son as a permanent employee. (ROI 9) Complainant advised that Paralegal Fralix stated that Attorney Fitzpatrick opined that the only proper way for the CWCD Board to hire Respondent's son would be if he recused himself from participating in the entire action. (ROI 8) The meeting minutes reflect that Paralegal Fralix had received “advice of counsel” that the newly appointed Supervisors, Frank DuPreez³ and Richard Polak, would need to discuss and vote on

² Vincent served for seven years prior to his resignation in March 2023. (ROI 11)

³ DuPreez resigned after the April 2023 meeting. (ROI 30)

whether to hire Respondent's son as a permanent full-time employee which they did. (ROI 29, Exhibit D) Respondent abstained from the vote. (ROI 9)

While abstaining, Respondent failed to publicly state his reason for the abstention nor did he file a CE Form 8B, "Memorandum of Voting Conflict." (ROI 23) Paralegal Fralix opined that it was "understood" by those present that the matter involved his son. (ROI 23)

Vincent advised that upon learning of the hiring of Respondent's son, he advised Respondent that it was not allowed. (ROI 11) He advised that Paralegal Fralix frequently responded that "she would have to check with labor laws or attorneys" regarding actions coming before the Board for a vote but opined that she never actually followed through verifying the legality of any issues coming before the Board. (ROI 11) Vincent advised that the proper procedure was for applications to be collected by Superintendent Howard Sensaboy who would then interview the applicants and bring recommendations to the Board. (ROI 12, 16)

Teardo,⁴ who seconded the December 2022 motion to hire Respondent's son, advised that he "felt kind of blindsided by Respondent's motion to hire his son." (ROI 14) Teardo trusted that Paralegal Fralix would have said something if it was improper. (ROI 14) Teardo advised that it was only after the fact that he and Respondent discovered that they had not followed proper procedure. (ROI 14) Teardo acknowledged that there were other applicants for the position. (ROI 14) He stated that at the time, Respondent's son "did not have a job and was living on his [Respondent's] couch." (ROI 14)

Sensaboy,⁵ having been employed by the CWCD for 19 years, has also served as a Superintendent for 7 years. (ROI 16) He advised that the hiring procedure calls for the Board to

⁴ Teardo served from October 2012 until his resignation in March 2023. (ROI 14)

⁵ Sensaboy advised that Paralegal Fralix reported that a labor attorney did not see an issue with the CWCD hiring his stepson as long as someone else was the stepson's direct supervisor. (ROI 18)

approve his recommendation unless concerns are raised. (ROI 16) Sensaboy and Polak advised that an employee's permanent status had to be voted on by the Board. (ROI 16, 31)

Sensaboy advised that at the time Respondent made the motion to hire his son, there were two other applicants for the position for which Respondent was aware. (ROI 17) He advised that Respondent's son had not applied for the position at the time the motion was made. (ROI 17) He further advised that Respondent's son should have applied for the position prior to Respondent hiring him in order to follow the proper procedures. (ROI 17) However, he acknowledged that he did not feel confident with the other applicants and hoped someone with experience would apply. (ROI 17)

Paralegal Fralix advised that Respondent spoke to her prior to the December 2022 meeting about hiring his son and that she told him she would speak to Attorney Fitzpatrick to obtain his opinion. (ROI 20) She advised that Respondent did not allow her an opportunity to speak to Attorney Fitzpatrick before he made the motion to hire his son at the December meeting. (ROI 20) She further advised that when spoke to Attorney Fitzpatrick subsequent to the meeting, he informed her to "just make sure that it's brought up at the next meeting, and for [Respondent] to recuse himself and let the other two board members hire him permanently." (ROI 20)

Paralegal Fralix advised that she was unsure if the CWCD Employee Handbook contains any prohibitions against hiring a relative. (ROI 22) In fact, the Handbook does contain prohibitions. (ROI 6) However, Paralegal Fralix suggests that Respondent was unaware of the prohibition. (ROI 22) This scenario belies reality considering Respondent inquired if it was permissible and Paralegal Fralix researched the issue.

Attorney Fitzpatrick advised that he has no direct knowledge of Respondent having made a motion and voting to hire his son. (ROI 27) Attorney Fitzpatrick further advised that Paralegal

Fralix never spoke to him about Respondent wanting to hire his son before the December meeting, nor soon after that meeting, nor prior to the April 2023 meeting. (ROI 27, 28) He advised that he first heard about this matter in May 2023 when Paralegal Fralix contacted him as the instant complaint was filed. (ROI 27)

Respondent advised that due to the CWCD being short staffed and because it had funds in its budget to hire an additional employee, he made a motion and voted to hire his son. (ROI 32) Respondent explained that the Board had to vote on his son's permanent employment because Complainant failed to immediately follow his instructions to change his son's employment status. (ROI 33)

Respondent advised that he never spoke to Paralegal Fralix nor received consultation from her about hiring his son prior to making the motion and voting. (ROI 32) This is contrary to the information provided by Paralegal Fralix. (ROI 20)

Respondent contends that he is unaware of any rule in the CWCD Employee Handbook prohibiting him from hiring a relative. (ROI 32) Respondent contends that he did not complete a CE Form 8B because he was unaware of the requirement and no one informed him. (ROI 33)

Regarding the December 1, 2022 vote to hire Respondent's son on a probationary basis, Respondent was not prohibited from voting by statute. Thus, there is no violation regarding this vote.

Regarding the April 13, 2023 vote to hire Respondent's son on a permanent basis, while Respondent was not required to abstain, once he did, he had an obligation to abide by the requirements of public disclosure and written disclosure via a CE Form 8B. He did not abide by these requirements. Thus, there is a violation of the statute regarding this vote.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3143(3), Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.3135(2)(a), Florida Statutes, due to his son's employment position with the Coquina Water Control District.

APPLICABLE LAW

Section 112.3135, Florida Statutes, provides as follows:

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

The term "collegial body" is defined by Section 112.3135(b), Florida Statutes, as follows:

(b) "Collegial body" means a governmental entity marked by power or authority vested equally in each of a number of colleagues.

The term "public official" is defined by Section 112.3135(c), Florida Statutes, as follows:

"Public official" means an officer, including a member of the

Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

The term “relative” is defined by Section 112.3135(d), Florida Statutes, as follows:

for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

ANALYSIS

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. In addition, the CWCD Employee Handbook provides, “... no employee may hold a position with Coquina while a relative serves on Coquina’s Board of Supervisors.” (ROI 6, Exhibit C1) The Handbook references Section 112.3135, Florida Statutes, and provides, “Additionally, no individual may be appointed, employed, promoted or advanced in or to a position in Coquina if such action has been advocated by a Coquina official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such action is made by collegial body of which a relative of the individual is a member.” (ROI 6, Exhibit C1) Pertinent to the instant complaint, Section 112.3135(d), Florida Statutes, includes “son” and “stepson” in its definition of relative. (ROI 6)

There is sufficient evidence to reflect Respondent's actions regarding the hiring of his son by the CWCD is in violation of the relevant statute. Respondent, at minimum, advocated for his son's hiring. In addition, the Board in which Respondent is a member, voted to hire his son.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3135(2)(a), Florida Statutes.

ALLEGATION THREE

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

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:

(g)(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. Regarding the actions taken by Respondent to get his son hired, his assertion of ignorance of the CWCD policy, particularly the policy that forbids the hiring of relatives of a CWCD Supervisor, and applicable ethics laws should be treated dubiously.

Furthermore, Respondent acknowledged that he directed Complainant to give his son permanent status benefits before the CWCD Board voted on the matter. He intentionally attempted to circumvent the CWCD's permanent hiring procedures which would have provided employee benefits to his son. There is sufficient evidence to reflect a violation of the relevant statute.

In addition, Complainant alleges that after the resignation of Vincent and Teardo, Respondent became hostile towards her. (ROI 10) He announced that Complainant would no longer serve solely as Office Manager and that she would have additional duties like trash collection and driving trucks. (ROI 10) Complainant subsequently received a doctor's note stating that she was unable to fully perform her new duties. (ROI 10) Complainant advised that she was moved to part-time because she was physically unable to perform her new duties and her other duties only took 20 hours a week to complete. (ROI 10) She contends that Respondent made it so she was unable to accrue any additional annual leave or sick leave but did allow her to retain her insurance. (ROI 10) She further advised that she was instructed by Respondent to not contact anyone at CWCD, including Paralegal Fralix and Attorney Fitzpatrick, about her part-time status. (ROI 10)

Respondent never believed the CWCD required a full-time secretary (presuming Office Manager) and, thus, he informed Complainant about her additional duties. (ROI 34) He advised that after Complainant provided the doctor's note, she stopped coming to work which led to him making her a part-time employee. (ROI 34)

Paralegal Fralix advised that Respondent was not in favor of Complainant being hired as Office Manager. (ROI 24) Vincent and Teardo decided to hire her. (ROI 24) After they resigned, Respondent unilaterally assigned additional duties to Complainant. (ROI 24) Paralegal Fralix advised that the additional duties were not a part of Complainant's job description when she was

initially hired. (ROI 24) However, Paralegal Fralix advised that Complainant was never made a part-time employee and never lost any benefits or leave time. (ROI 24)

Teardo advised that Complainant was hired as Office Manager because she knew how to handle the paperwork and office duties for the CWCD. (ROI 15) Teardo advised that Complainant and Sensaboy begin to work side-by-side after Complainant received supervision duties of some of the employees, which created turmoil in the workplace. (ROI 15) Teardo was aware that Respondent and Sensaboy began to treat Complainant unfairly, including verbally attacking her. (ROI 15) He opined that happened because she continued to find “crooked things they [Respondent, Superintendent, and Paralegal] were doing” and would make those matters public during Board meetings. (ROI 15)

Regarding this portion of the allegation, the totality of the circumstances warrants a pursuant of further discovery.

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.

ALLEGATION FOUR

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his position to benefit himself and/or his son.

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. See the Analysis in Allegation Three.

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.

RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Section 112.3143(3), Florida Statutes, by voting on a matter(s) that inured to his or a relative's special private gain or loss and/or failing to follow disclosure requirements.
2. There is probable cause to believe that Respondent violated Section 112.3135, Florida Statutes, due to his son's employment position with the Coquina Water Control District.
3. 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 his son.
4. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using his position to benefit himself and/or his son.

Respectfully submitted this 30th day of October, 2023.


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