

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PATRICIA G. BEAN,)
) Case No. 11-5466EC
Respondent.)
)
_____)

RECOMMENDED ORDER

An administrative hearing in this case was held on April 12, 2012, in Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings

APPEARANCES

The Advocate: Melody A. Hadley, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

For Respondent: H. Ray Allen, II, Esquire
Carlton Fields, P.A.
Suite 1000
4221 West Boy Scout Boulevard
Tampa, Florida 33607

STATEMENT OF THE ISSUES

The issues in this case are whether former Hillsborough County Administrator Patricia G. Bean (Respondent) violated section 112.313(6), Florida Statutes (2011),^{1/} and, if so, what penalty, if any, should be imposed.

PRELIMINARY STATEMENT

On September 14, 2011, the Florida Commission on Ethics (Commission) issued an Order Finding Probable Cause (Order),

alleging that the Respondent violated section 112.313(6) "by approving a 1% raise in salary for herself and others without the approval of the Hillsborough County Board of County Commissioners" (BCC). The Order directed that a public hearing be conducted on the allegation.

On October 24, 2011, the Commission transferred the case to Division of Administrative Hearings (DOAH) and requested that an Administrative Law Judge (ALJ) be assigned to conduct the public hearing and prepare a recommended order. The case was assigned to the undersigned ALJ, and, on October 25, 2011, an Initial Order was issued, requesting that the parties provide dates of availability for the hearing. Based on the response to the Initial Order, the hearing was scheduled to occur on January 24 and 25, 2012, by video teleconference between Tampa and Tallahassee. On December 30, 2011, the parties filed a Joint Motion for Continuance, and the video teleconference was rescheduled to April 12 and 13, 2012. On April 3, 2012, the parties filed a Joint Motion to Change Venue to Tallahassee and stated that the hearing could be completed in one day. On April 4, 2012, the hearing was rescheduled to April 12, 2012, in Tallahassee.

At the hearing, the Advocate presented the testimony of the Respondent and had one exhibit admitted into evidence. The

Respondent testified separately on her own behalf. Joint Exhibits 1 through 9 and 11 were admitted into evidence.

The Transcript of the hearing was filed on April 26, 2012. Both parties filed proposed recommended orders on May 7, 2012, that have been considered in the preparation of this Recommended Order.

Prior to the hearing, the parties filed a Joint Prehearing Stipulation including a statement of admitted facts that have been adopted and incorporated herein as appropriate.

FINDINGS OF FACT

1. Beginning in 2003, and at all times material to this case, the Respondent was employed as the county administrator for Hillsborough County, Florida.

2. In Spring 2006, various departments of the Hillsborough County government were engaged in reviewing their responsibilities and developing proposals to increase efficiencies and reduce costs for upcoming budget years.

3. An "executive team" of county employees met periodically to determine which of the proposals met or exceeded efficiency goals that were targeted towards reducing costs while maintaining services.

4. In the Summer or Fall of 2006, the Respondent, Deputy County Administrator Walter Hill, and County Budget Director Eric

Johnson began to discuss ways to encourage and reward department directors who met efficiency goals.

5. At that time, the county government had three existing "award" options that could be used to reward employees for exceptional service.

6. One award consisted of a paper certificate called the "Extra Mile Award." There was no monetary gain associated with receiving an "Extra Mile Award."

7. The second award (the "Productivity Award") included a monetary bonus and was available to most employees (with some exceptions) for exceptional performance.

8. The third award was the "Discretionary 1% Merit Increase" available to senior management employees. This award consisted of a one percent "merit" salary increase over and above any regular pay raise that the employee would have received.

9. The Respondent, along with Deputy County Administrator Hill and County Budget Director Johnson, decided to use the "Extra Mile Award" and the merit salary increase to reward department directors who met efficiency goals.

10. The Respondent was responsible for the final determination as to which employees would receive awards.

11. The "Extra Mile Certificate" awards were announced at a budget "kick-off" meeting on the morning of February 1, 2007.

12. After the meeting, the Respondent issued a written congratulatory memo to each employee who received a certificate. She also used the memo to notify those employees who had been awarded the salary increase.

13. The Respondent's department met the efficiency goals. At the time of the budget kick-off meeting, the Respondent believed that her employment contract with Hillsborough County precluded her from accepting it, and she excluded herself from the salary increase.

14. The Charter of Hillsborough County provided that the "compensation" for the county administrator "shall be fixed by the Board of County Commissioners by ordinance" and that such compensation "may be set by contract if allowed by and pursuant to ordinance."

15. The Respondent's employment contract with Hillsborough County established her initial salary as \$179,000. According to Section 6 of the contract, the Respondent was entitled to receive the same "annual market equity increase" provided to "all other unclassified managerial employees of the County." The section also stated that additional salary or benefit increases could be granted by action of the BCC within 60 days of her annual performance evaluation.

16. Hillsborough County Attorney Renee Lee and Director of the Hillsborough County Environmental Protection Commission

Richard Garrity also met the efficiency goals, but their employment contracts with the county contained provisions similar to those of the Respondent, and, so, the Respondent excluded Ms. Lee and Mr. Garrity from receiving the salary increase. Both received the "Extra Mile Award" at the budget kick-off meeting.

17. After the meeting had concluded, Ms. Lee sent an email addressed to the Respondent and Deputy County Administrator Hill wherein she asserted that the terms of her contract allowed her to receive "the award."

18. In the email, Ms. Lee cited a provision in her contract that referenced entitlement to "such other benefits" as were made available to other county employees.

19. Although there appears to have been some confusion regarding the names of the awards available to recognize county employees for their performance, it was clear that the reference to the "Extra Mile Award" in Ms. Lee's email referred to the salary increase.

20. The Respondent's employment contract contained language similar to that cited in Ms. Lee's email, whereby the Respondent was entitled to the "benefits" available to other managerial employees in the county.

21. As the county attorney, Ms. Lee reported directly to the BCC and, pursuant to the county charter, was the chief legal advisor for the BCC on all matters of county business, including

personnel matters. The Respondent had no managerial authority over the county attorney at any time relevant to this proceeding.

22. There is no evidence that the Respondent discussed the matter with Ms. Lee. After receiving Ms. Lee's email, the Respondent directed Deputy County Administrator Hill to contact Christina Swanson (director of the Employee Benefits Division in the county's Human Resources Department) and ask her to evaluate Ms. Lee's email.

23. Deputy County Administrator Hill apparently did so, and Ms. Swanson thereafter asked Ms. Lee to provide a written legal opinion addressing whether the salary increase could be awarded under the terms of the contracts.

24. On February 2, 2007, Ms. Lee issued a written legal opinion addressed to Ms. Swanson, stating that both Ms. Lee and the Respondent could receive the salary increases under the terms of their respective contracts.

25. Although she had received a law degree, Ms. Swanson had not worked as a practicing attorney.

26. The issues of the whether the salary increases underlying this case constituted a "benefit" of employment with Hillsborough County, and whether Ms. Lee's written legal opinion was correct, are not at issue in this proceeding.

27. After Ms. Swanson received Ms. Lee's written legal opinion, the Human Resources Department processed the forms

required to implement the salary increases for the Respondent and for Ms. Lee.

28. The Respondent testified that she discussed the matter with Ms. Swanson after Ms. Lee issued the legal opinion. Ms. Swanson did not recall the conversation. In any event, the evidence fails to establish that the Respondent directed Ms. Swanson, or any other employee in the Human Resources Department, to process the paperwork required to implement the salary increases.

29. On February 7, 2007, George Williams, the director of the county's Human Resources Department, signed the form ("Report of Change of Status"), approving the one percent salary increase awarded to the Respondent. The Respondent's hourly salary rate was increased from \$101.82 to \$102.84, effective January 7, 2007. The Respondent did not receive a copy of the form.

30. Deb Dahma, a staff member in the Human Resources Department, signed the form approving the one percent salary increase awarded to Ms. Lee. The signature on that form was undated.

31. There is no evidence that the Respondent directed either Mr. Williams or Ms. Dahma to sign the forms.

32. The executed forms were sent to the county's payroll department, and their salary increases were implemented.

33. On February 8, 2007, Ms. Lee authored another email to Ms. Swanson wherein she opined that, upon review of Mr. Garrity's contract, he was also eligible for the salary increase. There is no evidence that the Respondent participated in any effort to award the salary increase to Mr. Garrity, or that he accepted or received the salary increase.

34. Both the Respondent and Ms. Lee accepted the salary increases.

35. The county administrator's staff was responsible for preparation of agendas for BCC meetings. The Respondent participated in the preparation process and could direct placement of items on the agenda.

36. The Respondent did not provide the BCC with an opportunity to consider the salary increases referenced herein and did not seek the explicit approval of the salary increases from the BCC either prior to or after they were implemented.

37. The Respondent believed that the Human Resources Department, which handled personnel matters, would seek any approval of the salary increases required from the BCC, but the Human Resources Department did not bring the matter to the BCC for review.

38. Although the BCC approved the Respondent's salary, including the increase underlying this case, during the Respondent's subsequent performance review, the evidence fails to

establish that the BCC was advised that the salary included an increase that had not been approved by the BCC.

39. At some later point, the Respondent's salary increase apparently became a matter of conflict with the BCC, and her salary was reduced to negate the one percent increase. The Respondent reimbursed Hillsborough County for the funds she received through the salary increase.

40. The Respondent's employment as the Hillsborough County administrator was eventually terminated.

41. An investigation of the circumstances of the raise that was conducted by the Florida Department of Law Enforcement resulted in no criminal charges being filed against the Respondent.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

43. The Advocate has the burden to establish the allegations against the Respondent by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

44. In Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983), the court developed a working definition of "clear and

convincing evidence" that has been adopted by the Florida Supreme Court in In re Davey, 645 So. 2d 398 (Fla. 1994), and which provides as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz, 429 So. 2d at 800.

45. The Advocate has alleged that the Respondent has violated section 112.313(6), which 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.

46. Section 112.312(9) defines "corruptly" 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.

47. The evidence fails to establish by clear and convincing evidence that the Respondent has violated section 112.313(6), because there is no credible evidence that the Respondent acted with "wrongful intent."

48. The Advocate has asserted that the Respondent acted "corruptly" by failing to advise the county attorney that the Respondent believed contract employees were precluded from accepting the award.

49. The county attorney was an independent employee of the BCC with direct responsibility for a legal determination as to whether the salary increases could be awarded to contract employees who were otherwise entitled to receive them. Although the Respondent acknowledged that she initially believed that her contract precluded her from receiving the salary increase, the county attorney determined otherwise. Whether the opinion of the county attorney was correct is not at issue in this proceeding.

50. There was no evidence that the Respondent had any communications with the county attorney regarding the eligibility of contract employees to receive the salary increase underlying this proceeding. There was no evidence that the Respondent directed the county attorney to issue any opinion whatsoever or that the Respondent was authorized to challenge Ms. Lee's legal opinion. To the contrary, given the responsibilities assigned to both the Respondent and Ms. Lee by the county charter, it was

reasonable for the Respondent to defer to the written legal opinion prepared by the county attorney.

51. The Advocate has also asserted that the Respondent acted "corruptly" by failing to bring the matter before the BCC for their consideration. The evidence fails to establish that the Respondent was under an obligation to present the matter to the BCC.

52. The evidence fails to establish that the routine employment benefit matters for county employees required approval by the BCC. Once the county attorney issued a written legal opinion stating that the salary increases were available to contract employees as would be any other benefit made available to other employees, the Respondent had no obligation to refer the matter to the BCC for approval.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Ethics enter a final order and public report finding that Patricia G. Bean did not violate section 112.313(6) and dismissing the complaint filed in this case.

DONE AND ENTERED this 31st day of May, 2012, in Tallahassee,
Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of May, 2012.

ENDNOTE

^{1/} References to Florida Statutes are to the 2011 version, unless
otherwise indicated.

COPIES FURNISHED:

Melody A. Hadley, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

H. Ray Allen, II, Esquire
Carlton Fields, P.A.
4221 West Boy Scout Boulevard, Suite 1000
Tampa, Florida 33607

Kaye B. Starling, Agency Clerk
Florida Commission on Ethics
3600 Maclay Boulevard, South, Suite 201
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

Virilindia Doss, Executive Director
Florida Commission on Ethics
3600 Maclay Boulevard, South, Suite 201
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

C. Christopher Anderson, III, General Counsel
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.