

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: EILEEN MCGUIRE,)
) Case No. 99-1490EC
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Carolyn S. Holifield, conducted a formal hearing in the above-styled case on October 4, 1999, in Palatka, Florida.

APPEARANCES

For Advocate: Virlindia Doss, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: Allen C.D. Scott, II, Esquire
Scott & Scott
101 Orange Street
St. Augustine, Florida 32084-3564

STATEMENT OF THE ISSUES

Whether respondent violated Section 112.3142(2)(b), Florida Statutes, with regard to her 1996 financial disclosure obligations, and, if so, what penalty is appropriate.

PRELIMINARY STATEMENT

On October 27, 1998, the Florida Commission on Ethics entered an Order Finding Probable Cause to believe that Respondent, Eileen McGuire, as a member of the Welaka Town Council, violated Section 112.3145(2)(b), Florida Statutes. On

March 30, 1999, this case was forwarded to the Division of Administrative Hearings for assignment of an administrative law judge.

At hearing, the Advocate called four witnesses: Respondent, Eileen McGuire; Putnam County Assistant Supervisor of Elections, Susan McCool; Commission on Ethics Financial Disclosure Coordinator, Shirley Taylor; and Ethics Commission Investigator, Bob Malone. The Advocate had nine exhibits received into evidence, and three joint exhibits were also admitted. Respondent had six exhibits received into evidence and called no witnesses.

The proceeding was recorded but was not transcribed. At the conclusion of the hearing and by agreement of the parties, the time set for filing proposed recommended orders was October 28, 1999. Prior to that date, Respondent requested and was granted an extension of time in which to file proposed recommended orders. Both parties timely filed Proposed Recommended Orders under the extended time frame.

FINDINGS OF FACT

1. Respondent, Eileen McGuire, is now and at all times material to this proceeding has been a member of the Town Council of the Town of Welaka, Florida.

2. As a public official, Respondent is subject to the applicable requirements of Chapter 112, Florida Statutes. Respondent was first appointed to the Welaka Town Council (Town

Council) on October 24, 1995. Subsequently, she was elected to the Town Council in March 1996, and was re-elected in 1998.

3. As an elected public official, Respondent was required to file an annual CE Form 1, Statement of Financial Interests (Statement of Financial Interests), for the year 1996 with the Supervisor of Elections Office of Putnam County, Florida (Putnam County Supervisor of Elections or Supervisor of Elections). The 1996 Statement of Financial Interests was required to be filed by July 1, 1997.

4. On June 23, 1997, Respondent submitted her 1996 Statement of Financial Interests with the Putnam County Supervisor of Elections. However, Respondent failed to sign and date the 1996 Statement of Financial Interests she submitted to the Supervisor of Elections.

5. Respondent's failure to sign and date her 1996 Statement of Financial Interests was inadvertent and unintentional.

6. All the official records of the Putnam County Supervisor of Elections reflect that Respondent's 1996 Statement of Financial Interests was submitted to that office on June 23, 1997. Moreover, on that same day, Respondent's 1996 Statement of Financial Interests was accepted, received, stamped, and deemed filed by the Supervisor of Elections.

7. The Putnam County Supervisor of Elections, deemed Respondent's 1996 Statement of Financial Interests filed on

June 23, 1997, notwithstanding the fact that the form was not signed or dated.

8. Respondent was not given any written notice of any alleged defect in or failure to properly file her 1996 Statement of Financial Interests either by the Putnam County Supervisor of Elections or any other government officer or agency.

9. In October 1997, Respondent received a telephone call from an employee of the Putnam County Supervisor of Elections who advised that she needed to sign some documents that she had previously filed.

10. Soon after Respondent received the aforementioned telephone call from the Supervisor of Elections Office, she went to that office and signed the document which was presented to her for her signature. The form that Respondent mistakenly signed was the CE Form 10, Annual Disclosure of Gifts From Governmental Entities and Direct Support Organizations and Honorarium Event Related Expenses (CE Form 10), which was attached to the Form 1 when it was presented for signature.

11. Notwithstanding the voluntary mutual effort of the parties to correct the oversight relative to Respondent's failure to sign her 1996 Statement of Financial Interests, the original form was thereafter filed away unnoticed until the advent of this proceeding.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

13. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (The Code of Ethics for Public Officers and Employees).

14. Respondent, as a member of the Welaka Town Council, was a local officer subject to the requirements of Part III, Chapter 112, Florida Statutes. Section 112.3145(1)(a)1., Florida Statutes. The definition of a "local officer" found in Section 112.3145(1)(a), Florida Statutes, includes persons elected to political office in any political subdivision, and the definition of "political subdivision" found in Section 1.01(8), Florida Statutes, includes towns.

15. In the present case, Respondent is specifically charged with violation of Section 112.3145(2)(b), Florida Statutes, in connection with her 1996 Statement of Financial Interests. That section provides:

(b) Each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment

or, in the case of a specified state employee, from the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or within 30 days from the date of appointment, whichever comes first.

16. Penalties for violations of Chapter 112, Florida Statutes, including failure to file required disclosures include, among other things, impeachment, removal from office, public censure and reprimand, and civil penalties not to exceed \$10,000. Section 112.317, Florida Statutes.

17. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. Department of Transportation v. J.S.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative: that Respondent violated Section 112.3145(2)(b), Florida Statutes. Therefore, the burden of proving the charges against Respondent is on the Commission. Moreover, the alleged violation against Respondent must be proven by clear and convincing evidence. Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

18. Here, it is not disputed that Respondent was required to file her 1996 Statement of Financial Interests with the Putnam County Supervisor of Elections no later than July 1, 1997.

19. The undisputed evidence established that Respondent's 1996 Statement of Financial Interests was submitted with the Putnam County Supervisor of Elections on June 23, 1997, a week prior to the statutory deadline for such filing; that the disclosure form was unsigned and undated; and that Respondent's failure to sign the form was inadvertent and unintentional. Moreover, the evidence demonstrates that Respondent's 1996 Statement of Financial Interests was accepted, received, stamped in, and deemed filed.

20. Section 112.3145(6)(c), Florida Statutes, provides in pertinent part as follows:

(c) Not later than 30 days after July 1 of each year, the Secretary of State and each supervisor of elections shall determine which persons required to file a statement of finance interests in their respective offices have failed to do so and shall send delinquency notices by certified mail to such persons. Each notice shall state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or Commission on Ethics if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, he or she is required by law to notify the Commission on Ethics of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement by September 1 of the current year, such person shall be subject to the penalties provided in s. 112.317.

21. In the instant case, if the inadvertent failure of Respondent to sign and date her disclosure form had constituted a

failure to file within the meaning of the statute, she, like all others who failed to file, would have been entitled to specific written notice of her failure to file, a statutory grace period, and all the other protections afforded by the statute. The evidence demonstrated that Respondent received no delinquent notices because the Supervisor of Elections Office considered that when Respondent submitted her financial disclosure form, it had been filed.

22. Respondent's failure to sign and date her 1996 Statement of Financial Interests was clearly an oversight. Accordingly, this omission does not constitute a failure to make financial disclosure as required by Section 112.3145(2)(b), Florida Statutes.

23. Nonetheless, given that Respondent now has actual notice that the signature and date were omitted from her form, Respondent's showing of good faith in meeting the spirit, as well as the letter of the law, dictates that she sign the 1996 Statement of Financial Interests.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

RECOMMENDED that the Florida Commission on Ethics determine that the public interest would not be served by proceeding further against Respondent, and dismiss the complaint.

DONE AND ENTERED this 20th day of January, 2000, in
Tallahassee, Leon County, Florida.

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of January, 2000.

COPIES FURNISHED:

Virlindia Doss, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Allen C.D. Scott, II, Esquire
Scott & Scott
101 Orange Street
St. Augustine, Florida 32084

Sheri L. Gerety, Complaint Coordinator
Florida Commission on Ethics
2822 Remington Green Circle, Suite 101
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

Phil Claypool, General Counsel
Florida Commission on Ethics
2822 Remington Green Circle, Suite 101
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.