

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: ROBERT SKIDMORE, III,

Respondent.

Case No. 14-1912EC

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings heard this case on September 23 and October 28, 2014, in Tallahassee and Punta Gorda, Florida, respectively.

APPEARANCES

For Advocate: Diane L. Guillemette, Esquire  
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For Respondent: Emmett Mitchell, IV, Esquire  
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STATEMENT OF THE ISSUES

A. Did Respondent, Robert Skidmore, III, violate section 112.313(6), Florida Statutes (2011),<sup>1/</sup> by using his position as county commissioner to ask a county staff member to approve a zoning application for Beach Road Boutique?

B. Did Mr. Skidmore violate section 112.313(6) by asking a county employee to look for and selectively enforce code violations against J.J.'s Restaurant?

PRELIMINARY STATEMENT

On March 12, 2014, the State of Florida, Commission on Ethics (Commission), issued an Order Finding Probable Cause against Mr. Skidmore, raising the issues described above. The Commission referred the matter to the Division of Administrative Hearings to conduct a public hearing on the charges, as permitted by Florida Administrative Code Rule 34-5.010. Initially, the hearing was scheduled for July 15, 2014. On Mr. Skidmore's unopposed motion, due to illness in a witness's family, the hearing was continued until September 18, 2014. On the parties' request, the hearing was continued and bifurcated with one session to be held on September 23, 2014, in Tallahassee, Florida, and one session to be held October 28, 2014, in Punta Gorda, Florida. The case was heard as scheduled.

Commission Exhibits A through J, K (deposition of Jeff Ruggieri), and L were accepted into evidence. The Commission also presented testimony from Joanna Colburn, Ray Desjardins, Maryann Franks, Shonna Jenkins, Belinda McGlamory, and Erin Mullen-Travis. Mr. Skidmore's Exhibits 1, 3 (deposition of Scott Hemmes), 4 (deposition of Jill Marie Athens Hemmes), 5, and 6

were admitted. Mr. Skidmore testified in his own behalf and offered the testimony of Tim Krebs.

The parties ordered a Transcript, which was filed November 17, 2014. The parties' joint motion to extend the time for filing proposed recommended orders was granted. The parties timely submitted proposed recommended orders which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. At all times relevant to this proceeding, Mr. Skidmore was a Charlotte County commissioner.

#### Beach Road Boutique Zoning

2. Scott and Jill Hemmes, constituents of Mr. Skidmore, owned a business known as Beach Road Boutique in Charlotte County. They sought to obtain a state alcoholic beverage sales license. In order to obtain a license, the applicant must demonstrate local zoning approval. Charlotte County Commission employees enforce and apply zoning regulations in the county.

3. Erin Mullen-Travis is the licensing manager for Charlotte County Planning and Development. During 2011, she was the code compliance and licensing manager. Ms. Mullen-Travis has worked for Charlotte County over 26 years.

4. One of Ms. Mullen-Travis's duties as code compliance and licensing manager was the review and approval of the zoning requirements on applications of establishments wanting alcoholic beverage licenses.

5. Ms. Mullen-Travis first denied the zoning application of Beach Road Boutique on February 17, 2011.

6. Mr. and Ms. Hemmes sought Mr. Skidmore's assistance getting approval for their zoning application.

7. Mr. Skidmore called Ms. Mullen-Travis about the application.

8. Mr. Skidmore told Ms. Mullen-Travis that he had some nice people in his office and that he needed help getting zoning approval for them. In her 26 years of employment with Charlotte County, Mr. Skidmore was the only county commissioner who had ever directly sought her assistance with constituent matters. Other commissioners had always gone through the chain-of-command.

9. He identified the applicant, and Ms. Mullen-Travis explained why the zoning had not been approved.

10. Ms. Mullen-Travis felt intimidated by Mr. Skidmore. Mr. Skidmore, however, did not threaten Ms. Mullen-Travis or explicitly offer any reward available to him because of his position as county commissioner.

11. He did, however, implicitly offer a reward, if she helped the Hemmes.

12. It is common knowledge in Charlotte County that Ms. Mullen-Travis is a NASCAR fan. Among other things, she drives a car with Dale Earnhardt and NASCAR badges and decals.

13. During the call, Mr. Skidmore asked Ms. Mullen-Travis about her affinity for NASCAR. He also offered to get her an autographed photo of Rusty Wallace (a NASCAR driver) and tickets to a race. He told her that he had gone to school with Rusty Wallace's son. This is true. And Ms. Mullen-Travis could not have known it without Mr. Skidmore telling her.

14. Given the context, Ms. Mullen-Travis accurately considered that the tickets and photo were offered in exchange for her approval of the application to the benefit of the Hemmes. Also, the call was made in Mr. Skidmore's official capacity.

15. Charlotte County has a Home Rule Charter (Charter). Section 2.3(A)(1) of the Charter makes the county administrator responsible for all administrative matters and operations. Section 2.3(C)(1) states: "Except for purposes of inquiry and information, the members of the board of county commissioners shall not interfere with the performance of the duties of any employee of the county who is under the direct or indirect supervision of the county administration." Also, the long-established practice was for commissioners to only contact agency directors.

16. Mr. Skidmore's call to Ms. Mullen-Travis was contrary to the Charlotte County Charter and the practice under it. Therefore, it was not an authorized act pursuant to his duties or authorities as a county commissioner.

17. Mr. Skidmore and Ms. Mullen-Travis were the only participants in the call. He denies the conversation. Ms. Mullen-Travis's account is more credible. This is based upon her contemporaneous communications about the call, the common recollection of all witnesses of a NASCAR component to the conversation, the fact that she could not otherwise have known Mr. Skidmore went to school with Rusty Wallace's son, the relative personal interests of the witnesses in the outcome of the proceeding, and the demeanor of the witnesses, particularly of Mr. Skidmore's.

18. Shonna Jenkins worked as a contractor licensing investigator for Charlotte County for a little over seven years. She held that position in 2011 and reported to Ms. Mullen-Travis.

19. Mr. Skidmore had obtained Ms. Jenkins cell phone number. He had a practice of calling her directly to check on contractor licensing matters. He also contacted Ms. Jenkins to ask her to approve the Beach Road Boutique zoning application.

J.J.'s Restaurant

20. After a meeting held on March 3, 2011, Mr. Skidmore flagged Ms. Jenkins down in the parking lot. He asked her to "do

him a favor," and "go shut them [J.J.'s Restaurant] down. I want them out of this f\*\*ing town." Mr. Skidmore wanted Ms. Jenkins to find code violations for J.J.'s Restaurant.

21. Mr. Skidmore said that he would make sure that Ms. Jenkins got a pay raise or a pay grade increase for this.

22. Either the ex-boyfriend or ex-husband of Mr. Skidmore's wife and father of her child had an interest in J.J.'s Restaurant. There was conflict between the two families. Mr. Skidmore had also requested the Charlotte County director of Growth Management, Jeff Ruggieri, to take code enforcement actions against J.J.'s Restaurant.

23. Ms. Jenkins was intimidated and feared her job with the county was in jeopardy if she did not do as Mr. Skidmore asked.

24. Ms. Jenkins reported the conversation to Ms. Mullen-Travis and Joanna Colburn, a licensing investigator, immediately afterwards. Ms. Jenkins was visibly upset and shocked. She also contemporaneously documented the incident.

25. Ms. Jenkins is and has been frank about her dislike for Mr. Skidmore.

26. This hostility, as well as the mental and emotional difficulties Ms. Jenkins suffered as a result of her employment and dealings with Mr. Skidmore, does not undermine her testimony. In light of the witnesses' demeanor and corroborating evidence, her testimony is credible. In addition, although evidence

established Ms. Jenkins was taking several medications, the record does not indicate that the medications in any way affect a person's memory or veracity.

27. Mr. Skidmore's requests to Ms. Jenkins and Mr. Ruggieri to act against J.J.'s Restaurant were in violation of the Charlotte County Charter and, therefore, not authorized acts pursuant to his duties or responsibilities as a county commissioner.

#### CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014). Section 112.322 and Florida Administrative Code Rule 34-5.0015 authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of chapter 112, part II, Florida Statutes (Code of Ethics for Public Officers and Employees).

29. The Commission charges Mr. Skidmore with two violations of the prohibitions of section 112.313(6). That law states:

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.

Elements of the Charged Offenses

30. To prove the alleged violations, the Commission must prove each of the elements of the violation. The elements, in the context of this case are: (1) Mr. Skidmore is a public officer; (2) he corruptly used or attempted to use his official position; (3) to secure a special privilege or benefit; and (4) for himself or others. Section 112.312(9) defines corruptly like this:

"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.

31. To satisfy the statutory element of corrupt intent, the Commission must demonstrate with clear and convincing evidence that Respondent acted "with reasonable notice that [his] conduct was inconsistent with the proper performance of [his] public duties and would be a violation of the law or the code of ethics." Blackburn v. State, Comm'n on Ethics, 589 So. 2d 431, 434 (Fla. 1st DCA 1991). "[D]irect evidence of [wrongful] intent is often unavailable." Shealy v. City of Albany, Ga., 89 F.3d 804, 806 (11th Cir. 1996); see also State v. West, 262 So. 2d

457, 458 (Fla. 4th DCA 1972) ("[Intent] is not usually the subject of direct proof.").

32. Circumstantial evidence may prove the wrongful intent which must be shown to establish a violation of section 112.313(6). See U.S. v. Britton, 289 F.3d 976, 981 (7th Cir. 2002) ("As direct evidence of a defendant's fraudulent intent is typically unavailable, specific intent to defraud may be established by circumstantial evidence and by inferences drawn from examining the scheme itself that demonstrate that the scheme was reasonably calculated to deceive persons of ordinary prudence and comprehension." (internal quotation marks omitted)). For instance, such intent may be inferred from the public servant's actions. See Swanson v. State, 713 So. 2d 1097, 1101 (Fla 4th DCA 1998) (Actions manifest intent.); and G.K.D. v. State, 391 So. 2d 327, 328-29 (Fla. 1st DCA 1980) ("Appellant testified that he did not intend to break the window, but the record indicates that he did willfully kick the window, and he may be presumed to have intended the probable consequences of his actions.").

33. Skidmore was a public officer at the relevant time. The remaining elements will be examined separately for each charge.

Burden and Standard of Proof

34. The Commission seeks a fine of \$10,000 for each alleged violation, as well as public censure and reprimand. The complainant in an administrative proceeding bears the burden of proving its allegations by a preponderance of the evidence. See Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."); Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Vero Beach Land Co., LLC v. IMG Citrus, Inc., Case No. 08-5435 (Fla. DOAH March 4, 2009; Fla Dep't of Agric. & Consumer Servs. July 20, 2009), aff'd IMG Citrus, Inc. v. Vero Beach Land Co., LLC, 46 So. 3d 1014 (Fla. 4th DCA 2010). Consequently, the Commission bears the burden of proof. Commission proceedings that seek recommended penalties against a public officer or employee require proof of the alleged violation(s) by clear and convincing evidence. See Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Therefore, the Commission must prove the elements of the alleged violations by clear and convincing evidence.

35. Clear and convincing evidence is an "intermediate standard," "requir[ing] more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a

reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). For proof to be considered "clear and convincing, . . . 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." In re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983); see also In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995) ("The evidence [in order to be clear and convincing] must be sufficient to convince the trier of fact without hesitancy."). "Although this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." Westinghouse Electric Corp. v. Shuler Bros., Inc., 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

#### Beach Road Boutique Zoning

36. Clear and convincing evidence proves that Mr. Skidmore sought to obtain a benefit for Mr. and Ms. Hemmes. He sought to do it using his direct access to county employees, even though the Charlotte County Charter prohibited him from doing so. This

establishes his wrongful intent. Mr. Skidmore's offer of an inducement also demonstrates wrongful intent.

#### J.J.'s Restaurant

37. Clear and convincing evidence proves that Mr. Skidmore sought to obtain a personal benefit, harm to the father of his wife's child, using his direct access to county employees, even though the Charlotte County Charter prohibited him from doing so. This establishes his wrongful intent.

#### Conclusion

38. The Florida Commission on Ethics proved by clear and convincing evidence that Mr. Skidmore twice violated section 112.313(6).

39. Mr. Skidmore presented a defense theory that the testimony against him was part of a conspiracy by the witnesses, who were county employees opposed to his support for reducing county expenditures, support for staff reductions, and advocacy of privatization. The evidence for the theory and the theory are not persuasive. They do not account for the basic consistency of testimony from several witnesses, basic consistency of the testimony with contemporaneous documents, Ms. Mullen-Travis's knowledge of Mr. Skidmore attending school with Rusty Wallace's son, and the knowledge of Ms. Jenkins and Mr. Ruggieri that there was a contentious relationship between Mr. Skidmore and his wife with someone affiliated with J.J.'s Restaurant.

40. The Commission seeks the maximum penalties provided by law--\$10,000 for each charge.

41. Neither chapter 112, part II, Florida Statutes, nor Florida Administrative Code Chapter 34-5 identifies mitigating or aggravating circumstances.

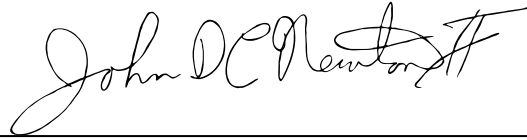
42. The Commission does not identify facts or rationale supporting its proposed maximum penalty.

43. The penalties of public censure and reprimand are severe. By any measure, absent evidence to the contrary, \$10,000 per offense is a very significant fine. It is the same as the maximum fine for first and second-degree felonies. § 775.083, Fla. Stat. (2014).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order and public report be entered finding that Respondent, Robert Skidmore, III, twice violated section 112.313(6) and that he be fined \$5,000 for each violation for a total of \$10,000, together with public censure and reprimand.

DONE AND ENTERED this 27th day of February, 2015, in  
Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of February, 2015.

ENDNOTE

<sup>1/</sup> All references to the Florida Statutes are to the 2011  
compilation unless indicated otherwise.

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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.