FLORIDA
COMMISSION ON ETHICS
SEP 23 2021
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Homer Bradley Harvey,

Respondent. **Complaint No. 20-063**

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ADVOCATE'S AMENDED RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Amended Recommendation in accordance with Rule 34-5.006(3), F.A.C. The Recommendation was amended to correct a scrivener's error in the "Therefore" clause under Allegation Three on page ten. The recommendation of probable cause did not change.

RESPONDENT/COMPLAINANT

Respondent, Homer Bradley Harvey, served as the Wakulla County Property Appraiser. Complainant is Mike Stewart of Crawfordville, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.313(6), Florida Statutes, and Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes. The Commission on Ethics has jurisdiction over these matters pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on August 12, 2021.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by providing himself with compensation in excess of the statutorily prescribed salary.

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.

ALLEGATION ONE

The Wakulla County Commission (Commission) provides approximately $50,000 annually to the Wakulla County Tax Collector's Office and the Property Appraiser's Office to assist the County in collecting special tax assessments approved by the Commission. (ROI 7, 10)

Initially, the program began with the Property Appraiser's Office gathering the necessary data on properties that were subject to the assessments. (ROI 10) That information then was provided to a third-party vendor contracting with the County. (ROI 10) In 2012, Wakulla County Property Appraiser Donnie Sparkman convinced the County Commission that his office could do all the work and save the County money. (ROI 10) Respondent was Deputy Property Appraiser at that time and he mainly handled these duties for which he received additional compensation. (ROI 7, 10)

In November 2016, Respondent was elected Wakulla County Property Appraiser and took office on January 2, 2017. (ROI 4) Respondent hired Katie Taff when he took office to serve as the Special Assessment Coordinator for the Property Appraiser's Office. (ROI 8, 15) Taff said that the County-appropriated funds for duties related to special assessments were not sufficient to cover her salary, the difference was made up by funds from the Property Appraiser's Office. (ROI 9)

Stacey Roddenberry, Director of Management Services, Wakulla County Property Appraiser's Office, was responsible for office finances; however, Respondent retained those duties after being elected and during his tenure as the Property Appraiser. (ROI 15, 16)

Richard Powell, a Certified Public Accountant (CPA) and co-owner of the firm Powell and Jones, CPA, has conducted annual audits of all Wakulla County constitutional offices, including the Wakulla Property Appraiser's Office for the past ten years. (ROI 7)

During the 2017-2018 financial audit, Respondent advised CPA Powell that he had passed the "special assessments" duties to someone else in the office which should have been Taff. (ROI 8) During the 2018-2019 pre-audit discussions, Respondent told CPA Powell that he continued to pay himself additional compensation related to special assessments, but he could not produce any records to verify his work. (ROI 8) According to Taff, Respondent only occasionally performed the duties related to special assessments. (ROI 9)

In late 2019, CPA Powell learned of some concerning issues in the Property Appraiser's Office and decided to personally conduct an audit of the office, which concluded in September 2019. (ROI 7)

An employee of the Property Appraiser's Office reported alleged questionable activity by Respondent to the Wakulla County Sheriff's Office. (ROI 4, 5) On September 27, 2019, Wakulla County Sheriff Jared F. Miller requested the Florida Department of Law Enforcement (FDLE) investigate the allegations. (ROI 5) After an FDLE investigation, Respondent was arrested[1] and immediately suspended from office by the Governor.[2]

As the Deputy Property Appraiser, Respondent's salary was not fixed by the legislature and additional compensation was not prohibited. (ROI 11) However, as the Property Appraiser, Respondent could not be compensated above the amount approved by the legislature. §145.10, Fla. Stat. (ROI 7) On March 4, 2020, Respondent advised CPA Powell, via email, that he was no longer receiving additional compensation related to special assessments. (ROI 13) He indicated that he would reimburse the County for any excess compensation he received above the amount

[1] Respondent "was arrested on charges of engaging in an organized scheme to defraud over $50,000, a first-degree felony, and engaging in an organized scheme to defraud over $20,000 but less than $50,000, a second-degree felony." Letter to FL Commission on Ethics from Mike Stewart, Chair, Wakulla County BOCC, dated April 22, 2020. (Complaint)

[2] Executive Order 20-105. (ROI 4)

allowed by law. (ROI 13) There is no evidence that he reimbursed the County for any of the compensation received illegally. (ROI 13)

FDLE reported the following findings:

Fiscal Year	Statutory salary	Salary Respondent paid himself	Excess amount over what Respondent was statutorily allowed	Amount Respondent reimbursed
2016-2017	$103,211	$153,409.33	$50,198.33	$0
2017-2018	107,501	$156,772.35	$49,271.35	$0
2018-2019	$108,336	$185,074.00	$76,738.00	$0

(ROI 12, 13)

At all times relevant herein, Respondent was a public officer and was bound by the Florida Constitution and the Florida Code of Ethics. Pursuant to Section 112.313(6), "No public officer . . . shall corruptly use or attempt to use his . . . official position . . . to secure a special privilege, benefit, or exemptions for himself. . . ." The basic principle underlying the Ethics Act is that those in public service must use their positions for the public's benefit and not for their own private gain or the private gain of another.

Respondent "admits," as evidenced by reporting the excess income to the U.S. government and by filing amended CE Form 6s, that he received unauthorized cash payments totaling $176,207.68 and made personal credit card purchases with the County-issued card for himself and his family totaling $33,028.62. Respondent had set up and/or took advantage of a situation ripe for exploitation – he alone controlled all aspects of financial management. Respondent took advantage of an environment that gave him an unbelievable opportunity to not only commit fraud but to cover it up and conceal it because there are no checks and balances in place.

Simply put, a public official may not treat his office's public funds as though it is a bank that exists for the benefit of himself and others. Respondent tried to hide this financial arrangement by filing inaccurate CE Form 6s. In authorizing these cash payments, Respondent used his official position to provide unwarranted benefits to himself and others. That violates the law.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using the Property Appraiser Office's credit card for personal purchases.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, is set forth under Allegation One.

ANALYSIS

The Wakulla County Property Appraiser's Office has one credit card. (ROI 18) The office policy states that the credit card can be used for "office supplies, vehicle repairs, educational events for employees and travel expenses for employees." (ROI 18) All payments for charges require the Property Appraiser's approval. (ROI 18)

In addition to the facts set forth under Allegation One, CPA Powell noticed numerous credit card charges during his 2019 audit that did not appear to have a public purpose. (ROI 15, 17)

Respondent maintained possession of the one credit card, and he alone was responsible for approving expenditures and payroll, signing checks and recording transactions, and making entries in the accounting records. (ROI 18) CPA Powell pointed out that this system constituted a material weakness in internal control. (ROI 19) Greg James, the Wakulla County Finance Director, stated that over a three-year period Respondent used the office credit card to make $38,198 in non-office related purchases. (ROI 29)

The non-office related charges are as follows:

Date or Fiscal Year	Location of purchase	Item(s) Purchased	Purchase labeled in the Property Appraiser's records as	Amount of purchase(s)	Reimbursed amount
2016-2017	Walmart	9 items: Rugs, clothes hangers, Bud Light beer, meats, luggage, tee shirts, shorts, sodas, sunscreen	Supplies purchased for the Property Appraiser's Office	$1,551.94	$0
April 12, 2017		Carnival cruise tickets for sail date July 14, 2017		$3,231.30	Reimbursed on Feb. 21, 2020, during the criminal investigation
2017-2018	Walmart	13 entries: Michelob Ultra Lime, Sangria, juices, snorkel and mask, boxer briefs, women's swim shoes, makeup, shorts, deer corn, hunting blind, game camera, targets, batteries	Supplies purchased for the Property Appraiser's Office	$2,709.88	
2017-2018	Neece Tire and Auto Service	New tires and alignment for his personal vehicle	Purchased for office vehicle	$1,618.96	
2018-2019		6 entries: Smirnoff Ice, Michelob Ultra Lime, sodas, sausage, hamburger & hot dog buns, bug spray, pain relievers, women's water shoes, 5 qt. cooler, floor lamp, saucepan, butter dish, men's cologne, cigarettes, Bluetooth speaker	Supplies purchased for the Property Appraiser's Office	$956.95	Reimbursed $504.98 in response to the 2019 audit findings
2018-2019	Home Depot	Fireplace, tools, lumber, misc. items, 5,000 lb. jack		$646.32	

	(2 separate purchases) Tractor Supply (3 separate purchases)			$196.73	
April 2017 – February 2019	Faircloth Automotive	12 charges relating to Respondent's personal vehicle	Field office vehicle repair	$22,116.54	Reimbursed $9,300.86 in early 2020 for FY 2018-2019; Respondent said charges to the card were "in error"[3]

(ROI 14-29)

Respondent reimbursed the County in February 2020 for some of the charges made during the 2018-2019 fiscal year, leaving a balance of $28,692 still owed to the County. (ROI 29)

Respondent perpetrated a financial statements fraud scheme by intentionally creating misstatements, falsifications, and/or omissions of material information in the Property Appraiser's Office records. In *some* instances, Respondent made no attempt to hide his corrupt activities (e.g., charges for cruise, fireplace, tools, 5,000 lb. jack) either believing that what he was doing was perfectly acceptable or expecting that no one would be watching. In *most* instances though, Respondent tried to cover his tracks by attempting to provide a legitimate cover for some credit card charges by labeling them as office supplies.

Respondent perpetrated an asset misappropriation scheme by stealing and/or misusing the Property Appraiser's Office resources. Lastly, Respondent perpetrated a corruption scheme by misusing his influence, public office, and/or official position in transactions in a way that violated

[3] The owner of Faircloth Automotive, Charles Joseph "Joey" Faircloth, advised that the business does not keep card information on file; thus, the credit card would have submitted for payment each time the vehicle was serviced. (ROI 28)

his duty to the taxpayers and citizens he served in order to gain a direct benefit for himself and others.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

ALLEGATION THREE

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2017 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution provides:

> (a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.
>
> * * *
>
> (i) Schedule-On the effective date of this amendment and until changed by law:
>
> (1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:
>
> a. A copy of the person's most recent federal income tax return; or
>
> b. A sworn statement which identifies each separate source and amount of income which exceeds $1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.
>
> * * *

Section 112.3144(1), Florida Statutes, provides as follows

(1) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year shall file that disclosure with the Florida Commission on Ethics.

ANALYSIS

In addition to the facts set forth under Allegations One and Two above, Respondent underreported his income as the Wakulla County Property Appraiser on his 2017 and 2018 CE Form 6s, "Full and Public Disclosure of Financial Interests." (ROI 30, Exhibit A)

Year	Income reported as reflected in Respondent's IRS W-2 Form	Amount of income under reported
2017	$190,299.73	$107,501*
2018	$163,826.86	$108,336*

*These amounts were statutorily prescribed salary amounts for his position as Property Appraiser. (ROI 30)

On April 14, 2020, Respondent filed CE Form 6Xs, "Amendments to Full and Public Disclosure of Financial Interests," for 2017 and 2018. (ROI 31, Exhibit B) The corrected income amounts reflect Respondent's IRS W-2 statements for the corresponding years. (ROI 31) Respondent's 2017 CE Form 6, as originally filed, was inaccurate.

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, Florida Constitution, and Section 112.3144, Florida Statutes.

ALLEGATION FOUR

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2018 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, as set forth under Allegation Three, above.

ANALYSIS

The facts are set forth above under Allegation Three. Respondent's 2018 CE Form 6, as originally filed, was inaccurate.

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, Florida Constitution, and Section 112.3144, Florida Statutes.

RECOMMENDATION

It is my recommendation that,

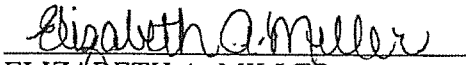
1. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by providing himself with compensation in excess of the statutorily prescribed salary.

2. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using the Property Appraiser Office's credit card for personal purchases.

3. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2017 CE Form 6, "Full and Public Disclosure of Financial Interests."

4. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2018 CE Form 6, "Full and Public Disclosure of Financial Interests."

Respectfully submitted this 23rd day of September, 2021.



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