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BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

CONFIDENTIAL

In re: Robin Hatcher,

Respondent.

Complaint No.: 22-060

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, Robin Hatcher, serves as the City Clerk for the City of Bristol. Complainant is James Kersey of Bristol, 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(g)(2), Florida Constitution,<sup>1</sup> and Section 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on June 6, 2022.

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<sup>1</sup> This section will be redesignated as Article II, Section 8(h)(2) on December 31, 2022.

## **ALLEGATION ONE**

Respondent is alleged to have violated Article II, Section 8(g)(2), Florida Constitution, by abusing her public position to obtain a disproportionate benefit for herself.

## **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**

Respondent has been serving as Bristol City Clerk since August 1998. (ROI 4) One of her duties is to oversee and manage the City funds held in City Hall, along with Deputy City Clerk Nicole Day.<sup>2</sup> (ROI 4, 7) They are the only employees responsible for managing the City's money and accounts, including the cash held at City Hall. (ROI 4, 7) Respondent stated that either she or Day make daily bank deposits. (ROI 4) In contrast, City Attorney Jackson Summers stated that deposits were made weekly.<sup>3</sup> (ROI 14)

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<sup>2</sup> Deputy City Clerk Nicole Day has served as Deputy Clerk since September 2014. (ROI 7)

<sup>3</sup> City Attorney Summers has served as the attorney for the City of Bristol since December 2017. (ROI 13)

Respondent planned to donate \$200 of her personal funds, on Friday, January 21, 2022, to the Blountstown High School Girls Weightlifting Team but she did not have time to go her bank to withdraw the money. (ROI 5) Instead, Respondent took \$200 out of the cash drawer at City Hall and left a note in the drawer indicating she took the \$200. (ROI 2, 5) The note read: "\$200.00 as soon as the credit union opens this morning. I got busy & let it close on me yesterday. Yikes, sorry. – Robin." (ROI 7)

Respondent intended to repay the \$200 on Monday, January 24, 2022 but claims she was too busy to go to her bank that day and Deputy Clerk Day was working remotely. (ROI 5, 7) On Tuesday, January 25, 2022, Respondent put \$200 in the cash drawer to replace the \$200 she took the previous Friday. (ROI 5)

Respondent's direct supervisor is Mayor James Kersey.<sup>4</sup> (ROI 4) Respondent did not seek the Mayor's permission, or anyone else's, prior to taking the \$200 from the City funds. (ROI 5) Deputy Clerk Day did not notice the \$200 missing from the cash drawer on Friday, January 21<sup>st</sup>. (ROI 7) However, when she arrived at City Hall on January 25, 2022, she saw Respondent's note in the cash drawer. (ROI 7) She confirmed that on Tuesday, January 25, 2022, Respondent replaced the \$200 in the cash drawer. (ROI 5, 7)

On March 28, 2022, Deputy Clerk Day spoke with Respondent regarding Respondent's management of cash in City Hall. (ROI 8) As a result of the conversation, Respondent suggested they meet with City Council Chair Margaret Rankin, Mayor Kersey, and City Attorney Summers about the cash drawer. (ROI 8)

On March 30, 2022, Deputy Clerk Day approached Mayor Kersey to discuss Respondent's actions regarding the cash drawer. (ROI 9) On April 4, 2022, Mayor Kersey called for a private

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<sup>4</sup> Mayor Kersey has served as the Mayor of Bristol since November 2021. (ROI 9)

meeting with Chair Rankin, City Attorney Summers, Deputy Clerk Day, and Respondent. (ROI 9) Respondent confirmed to Mayor Kersey that she took \$200 from the cash drawer on January 21, 2022 and replaced it on January 25, 2022. (ROI 5, 9) After the meeting, Respondent and Deputy Clerk Day were instructed to deposit the cash at City Hall in the bank on a daily basis to help eliminate the possibility of money being taken out of cash drawer for personal use. (ROI 14)

Respondent acknowledged that on “rare occurrences” she has taken money out of the cash drawer at City Hall but has always replaced the money she took. (ROI 6) She could not recall the amount of money she has taken in the past, or the dates she took the money, but claimed she has always replaced the exact amounts she took. (ROI 6)

The Charter of the City of Bristol contains the following sections regarding the City’s funds and cash:

83<sup>rd</sup> - “CITY TREASURER”

The City Clerk shall serve as City Treasurer, which said officer shall be the custodian of all money of the City and shall keep and preserve the same in such manner and in such place or places as shall be determined by City Council.

84<sup>th</sup> - “PAYMENT OF MONEY”

Money shall be paid out of the City Treasury only on warrants or checks signed by the Chairman of the City Council and counter-signed by the City Clerk.

(ROI 11)

In addition, the City’s Personnel Policy and Procedures Manual for disciplinary actions reflects “Abuse or theft of City property” as a punishable offense.<sup>5</sup> (ROI 12) Mayor Kersey advised that the City has not administered any disciplinary action to the Respondent as a result of her taking \$200 of the City funds. (ROI 10)

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<sup>5</sup> A copy is retained in the Investigator’s file located with the Commission on Ethics.

City Attorney Summers advised that the City of Bristol is audited on an annual basis and, during his tenure, all City audits have “come back clean” with no missing funds. (ROI 13)

The Florida Legislature has expressly declared the public policy of the State that public office is a public trust to be held for the sole benefit of the people. In support of the public policy, the Legislature also included mandatory provisions governing the conduct public employees must avoid to prevent conflicts between their private interests and those of the general public they serve. §112.311, Fla. Stat.

Respondent abused her position as the City Clerk and City Treasurer. She received a disproportionate share because her actions were taken for a personal purpose that no one - public officials, City employees, or citizens - are permitted to take. Respondent’s conduct significantly contravenes the provisions and intent of the Constitution.

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(g)(2), Florida Constitution.

### **ALLEGATION TWO**

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using City funds for a personal purpose.

### **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 facts are set forth above under Allegation One. Agency resources apply to all resources under an employee's control including, but not limited to, computers, equipment, vehicles, and cash.

A special privilege or benefit can range from avoiding a cost or expense by the use of resources to support an outside business or paying a discounted government rate for a personal phone call. Respondent's temporary use of the City's cash resulted in a private benefit or gain for herself. She obtained a personal use of a public resource available to her only because of her public position (i.e., custodian of all the City's money).

Respondent's actions were corrupt in that she used the City cash drawer as her personal piggy-bank to loan herself interest-free money for a personal benefit. Her actions were not intended to accomplish any official City purpose. Respondent's use on January 21<sup>st</sup> was not an exception, but rather appeared to be Respondent's rule because, even though she claims to have taken money on "rare occasions," she believed she could do so when necessary. (ROI 6)

Reimbursing for a personal use may not impose significant administrative burdens on the City but it created an inappropriate personal use and also created the misperception that personal use of the City's money is permitted as long as it's repaid.

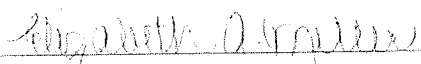
Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

### RECOMMENDATION

1. There is probable cause to believe that Respondent violated Article II, Section 8(g)(2), Florida Constitution, by abusing her public position to obtain a disproportionate benefit for herself.

2. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using City funds for a personal purpose.

Respectfully submitted this 14<sup>th</sup> day of June, 2022.

  
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