

FLORIDA  
COMMISSION ON ETHICS  
JUL 06 2015  
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BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

**CONFIDENTIAL**

**In re: JAMES L. MANFRE,**

**Complaint No. 14-097**

**Respondent.**

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**RESPONDENT'S RESPONSE TO ADVOCATE'S AMENDED RECOMMENDATION**

The Respondent, by and through undersigned Counsel, after having reviewed the Complaint, Response to the Complaint, Report of the Investigation (ROI), the Supplemental Report of the Investigation (SROI), the Response to the Supplemental Report of the Investigation, the Advocate's Recommendation (AR), and the Advocate's Amended Recommendation (AAR), submits this response to the Advocate's Amended Recommendation pursuant to Rule 34-15.007(3), F.A.C. This Response will show that the AAR lacks a factual basis upon which the Commission can establish that probable cause exists to find that a violation occurred. The Respondent states the following in support thereof.

**JURISDICTION**

The Respondent does not dispute the identity of the Complainant or the jurisdiction of the Commission to examine the allegations set forth herein.

**OVERVIEW**

All of the allegations in the Complaint against the Respondent occurred within the first eight months of his taking office as Sheriff of Flagler County in January 2013. While the Respondent takes responsibility for his actions, the Commission should not lose sight of the fact that the Complainant in this matter was the Director of Business Services for the Flagler County Sheriff's Office during the entire period when the alleged violations occurred. The Complainant,

during the relevant period, was serving as the “chief financial officer, finance manager and grants administrator for the Sheriff’s office. She supervised the Business Services Division which was responsible for accounts payable, payroll, purchasing, and records requests.” Moreover, the Complainant had knowledge of nearly every action she included in the Complaint yet she failed to give any notice whatsoever to the Respondent that there was any problem with his conduct. Not until October 2013, when she learned that her department had not been monitoring travel expense accounts, did she begin this defensive posture of accusing the Respondent of unethical conduct. It bears repeating that the Respondent takes responsibility for his actions but a reasonable person in his position had every right to depend upon the “chief financial officer” or at least persons under her supervision to ensure that the public funds were being properly accounted for. The Complainant failed to fulfill that responsibility.

#### **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 actor 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 resulting from some act or omission which was inconsistent with the proper performance of public duties.

### **LEGAL ANALYSIS**

In order to find a violation of the Code of Ethics (Fla. Stat. 112.313(6)) the Commission *must* prove that the Respondent acted corruptly. The legislature has defined “corruptly” as “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.” Section 112.312(9), Fla. Stat. (1999). To satisfy this statutory element, proof must be adduced that Appellant acted “*with reasonable notice that [his or] her conduct was inconsistent with the proper performance of [his or] her 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). (Emphasis added.) As the court found in *Blackburn*, the existence of a statute is not sufficient notice that the actions of which the Respondent stands accused are a violation of the statute.

The Respondent is clear that, at this stage, the Commission only has to establish probable cause that a violation occurred. The Advocate's Amended Recommendation, taken from the cited sources, appears to make light of this requirement. Instead, the Advocate ignores the undisputed lack of reasonable notice and instead relies on what she defines as "common sense," the Sheriff's prior term eight years ago, and her unsupported inferences and speculations as outlined below. None of the sources upon which she relies constitute reasonable notice that meets statutory muster. Despite the court's admonition that the statute itself is not sufficient notice, the statute was the beginning and end point of the Complainant's allegations. As such, the Respondent requests that the Commission reject the probable cause recommendations and dismiss the Complaint against the Respondent.

#### **ALLEGATION ONE**

The Respondent agrees with the Advocate's recommendation of no probable cause for Allegation One.

#### **ALLEGATION TWO**

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using Flagler County Sheriff's Office vehicles for out-of-state personal transportation. The Respondent does not dispute the use of the vehicle assigned to him to take the three trips described in the Recommendation: to New Orleans, Louisiana, in January 2013; to Pigeon Forge, Tennessee, in May 2013 (although he does not have specific recall); and to Virginia in August 2013. However, the Advocate's recitation of the facts related to the Virginia trip contains information unsupported by the ROI. The Commission's Determination of Investigative Jurisdiction and Order to Investigate did not include an investigation into whether there was a failure to report the accident. (See Exhibit A.) The ROI is silent on the issue of whether the

minor accident was internally reported and therefore the Commission should not consider this suggestion by the Advocate. The Advocate cites the internal vehicle policy regarding the reporting of the accident; however, the ROI simply points to a conversation the Respondent had with the owner of the local body shop owner. Significantly, the ROI makes no reference regarding how the Respondent came to have this conversation. (ROI ¶25).

**The Advocate's Recommendation for Probable Cause fails to identify evidence of corrupt intent from which a reasonable person could infer that a violation has occurred.**

While the Respondent acknowledges that at this stage of the proceedings, the Advocate needs to establish that a reasonable person considering the facts would conclude that there is probable cause to believe a violation has occurred, the Advocate fails to consider all of the facts. The Respondent's intent in taking the agency-issued vehicle was to allow him to return at any time to Flagler County more expeditiously than he might otherwise. The Attorney General opined in AGO-74-384 that individuals who are on duty all the time and expected to arrive quickly may use a public vehicle for personal use. (See Exhibit B.) As such, the Respondent's rationale for the use of the assigned vehicle is consistent with this reasoning. In the absence of any rule, statute or law that is more specific than this Attorney General Opinion, the Respondent urges the Commission to find that there is no probable cause to believe that there has been a violation of the Ethics rules. While the Advocate or others may disagree with the Respondent's reason for using the vehicle, such disagreement does not rise to the level of establishing a corrupt intent and there is no law, regulation, opinion or authority to show that Respondent's reason establishes corrupt intent.

The facts before the Commission may establish that the Respondent could have made better decisions about some of his actions related to the use of the agency vehicle, but the ROI conclusively establishes that once an incident involving any of the allegations was brought to his

attention as being questionable, the Respondent changed his conduct and, not only that, he implemented policies to prevent the action from reoccurring.

Because Chapter 112.313(6) standing alone is insufficient to establish “corrupt intent,” the Advocate builds inference upon inference and some false facts to establish corrupt intent. For example, in an effort to establish corrupt intent, the Advocate relies on internal policies that did not cover the Respondent and her wrong assumption that the only way the Flagler County Sheriff’s Office learned of the trips was because of some incident that occurred during the trips. Such reliance is misleading, unsupported and too speculative for this proceeding.

**FCSO Internal Policies had a different application to the Respondent than to road deputies.**

Each of the internal policies that the Advocate cites and upon which she relies requires approval by a “supervisor.”<sup>1</sup> As the Respondent is a Constitutional officer, from whom should he receive permission for the use of his vehicle? As an elected official, the Respondent is unquestionably sensitive to reactions by the public that elected him. When the public became aware of his use of vehicles and did not agree with how he used the vehicle, the Respondent “conceded that taking the vehicle to Virginia was an error and a poor choice.” (ROI ¶24) As discussed above, he ceased his actions and implemented a policy that covers his use of vehicles as well as use by other employees who have assigned vehicles. He also reimbursed the agency for mileage associated with use of the vehicles. An admitted error, a poor choice and mileage reimbursement do not constitute corrupt intent.

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<sup>1</sup> “Vehicles will not be taken out of county without permission. All members taking a Flagler County Sheriff’s Office vehicle out of Flagler County must obtain permission from their Supervisor.” (AR p. 7) “Member(s) who are assigned an Agency vehicle and are scheduled to take annual leave, sick leave, administrative leave or other leave for five (5) working days or more shall return the Agency vehicle to the FCSO parking area, lock it, and turn the keys over to their immediate supervisor. ... The Members [sic] [Division Director] must approve exceptions.” (AR p. 7)

The Advocate also wrongly equates the Respondent's duties and responsibilities with those of the deputy sheriffs who report to him when she attempts to make the policies applicable to him. The Sheriff is the Sheriff 24 hours a day, 365 days per year; there is no "off duty" period, there is not a work shift for the Sheriff. If an incident occurs in Flagler County, he is expected to respond, regardless of where he is; no deputy sheriff or anyone else at the agency has that level of responsibility. From the Respondent's perspective, being in the Sheriff's car allowed him to fulfill that duty in a way that being in his personal vehicle would not allow. While it is unlikely that he would have driven his agency vehicle with lights and sirens through two or three states to return to Flagler County, having the option of using lights and sirens certainly would have been of assistance if the need had arisen. Moreover, the Respondent's use of the agency vehicle is not a "special privilege"; rather, he viewed its use as consistent with being Sheriff. *See AGO 74-384.*<sup>2</sup>

The Advocate's reference to the ability to quickly return to Flagler County as "a nominal public purpose" (AAR p. 10) has a deeper and different meaning to the Respondent. In taking his role of Sheriff seriously, he is not without the ability to make choices, to take the assigned vehicle or to take his personal vehicle. The Advocate also questions the Respondent's rationale for using the assigned vehicle when he could not recall which vehicle he took on the trip to Tennessee and attempts to somehow parlay his inability to recall which vehicle as somehow indicative of wrongful intent. The inability to remember an incident that has no particular significance is not indicative of anything other than a memory lapse.

The Advocate's recitation of the history of vehicle policies at the Flagler Sheriff's Office is irrelevant and policies that that he approved eight years prior cannot provide "reasonable notice" for actions that he should take eight years later. A policy he implemented in 2007 or

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<sup>2</sup> Although the Advocate cites to CEO13-3, the facts are distinguishable.

2008 is immaterial to the facts and circumstances of this proceeding. Coming into office in January 2013, the Respondent had not fully analyzed what policy changes had been made in the eight years he was out of office. A logical direction would be to ask someone who had been present for the entire time. As such, asking the Complainant what his predecessor had done was an acceptable way to learn information during those first few months in office. Unfortunately, he relied on her to his detriment.

**The Advocate's conclusion that the "Respondent was less than forthcoming about his use of County vehicles, which may be viewed as indicative of knowledge of wrongdoing" is without a factual basis in the ROI or SROI.**

The Advocate speculates, without any evidence, that the Respondent used his vehicle for trips other than the three mentioned in the ROI. The Respondent states that at the time he took the trips, he believed he had a right to take the vehicle wherever he went. To extrapolate the Respondent's belief into "knowledge of wrongdoing" appears inconsistent with a finding of corrupt intent. The Advocate speculates that the Sheriff's Office learned of two of the trips because of third-party intervening factors. The ROI states the opposite. For the first trip to New Orleans, the ROI states that the Complainant said that the "Respondent talked to her about using the FCSO vehicle to travel to New Orleans after his return from the trip." (ROI ¶9) Further, the ROI (¶ 10) states that Undersheriff Staly believed that the Respondent decided to take the trip to New Orleans while at the Sheriff's Association conference in Destin and the Respondent advised the Undersheriff of his intent during the conference. As such, the Advocates' conclusion that the FCSO learned of the New Orleans trip because of "third party intervening factors" is simply false. Significantly, neither the Complainant nor the Undersheriff expressed any concern before or after the trip regarding the Respondent's use of the vehicle concerning the New Orleans trip. (ROI ¶9, 10)



### **The Virginia trip**

With regard to the Virginia trip, the ROI does not address how the Sheriff's Office learned of the Virginia trip. Undersheriff Staly stated that he learned of the trip to Virginia when he saw the Respondent speaking to the owner of a local body shop *and* the Respondent told him the agency vehicle had been involved in a minor accident. (ROI ¶25) The ROI does not address how the Respondent came to have the meeting with body shop owner. The Advocate wrongly speculates that if there had not been an accident during the Virginia trip, the Sheriff's Office would not have known about the use of the vehicle. The ROI contains no facts to support such an unreasonable inference. Further, if the Respondent did not believe he was doing anything wrong, why would he try to hide any trip?

### **The trip to Pigeon Forge**

The Advocate characterizes the Respondent's inability to remember if he took the Sheriff's car to Pigeon Forge as being "less than forthcoming." The Respondent also states that his wife reminded him of other trips they had taken where they took their personal vehicle rather than the agency vehicle during this same period. The Advocate infers that the Respondent's failure to recall specifics of a particular trip is somehow evidence of wrongful intent.

As discussed above, in every instance, the Respondent did not believe that he was doing anything wrong when he took the vehicle on the trips. Even after reviewing the existing policies, he did not believe he was doing anything wrong. Despite his belief in his right to take the agency vehicle wherever he went, after reasonable notice of the public's disagreement, the Respondent did not take his agency vehicle on any other trips and has reimbursed the agency for mileage for all of the trips.

The Advocate makes much of the Respondent's response when confronted with the allegations. While the Respondent takes responsibility for his actions, he does not dispute his extreme disappointment and sense of betrayal that the Director of Business Services, the Complainant in this matter, did not suggest to him that she believed that his use of his agency vehicle was problematic. Merely bringing the action to his attention would have at least allowed him to conduct further research to determine a course of action going forward. When the Undersheriff brought the matter of reimbursement for mileage to his attention, the Respondent researched the issue and decided to make the reimbursement.

Based on the foregoing, the Advocate fails to establish that facts exist that would allow a reasonable person to conclude that there is probable cause to believe that a violation has occurred. The Respondent therefore requests that the Commission reject the Advocate's Amended Recommendation of probable cause.

### **ALLEGATION THREE**

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using a credit card issued and paid by the Flagler County Sheriff's Office to charge meals for non-employees and for purchasing alcohol. The Respondent denies that the Advocate has stated sufficient facts that would allow a reasonable person to conclude that probable cause exists to find that a violation has occurred. Instead, the Advocate states facts that would allow a reasonable person to conclude that the Respondent submitted receipts and other travel documentation based on what he believed to be the correct procedure of the Flagler County Sheriff's Office and relied on the Director of Business Services to provide necessary guidance or ask for additional information, if necessary. The Commission should not lose sight of the fact that when the Respondent learned in October 2013 that he was not using the card correctly, he

reimbursed the agency and promulgated a policy defining the proper use of the agency credit card.

The Respondent received the agency credit card from the Complainant. Absent from the ROI and SROI is any mention that the Respondent was advised that he was not following agency policy with regard to use of the credit card. In fact, the Complainant admits that there was not a “detailed written policy concerning the use of the agency credit card at the time these charges were made by the Respondent.” (ROI ¶31) In December 2014, just prior to the Commission’s meeting, the Complainant submitted a document that contained enough different testimony that the Commission requested additional information. During the December 14, 2014, hearing in this matter, the Commission questioned the origin and significance of an undated and unsigned document presented by a clerk in the Complainant’s former department. (SROI ¶1) The Supplemental Report of the Investigation confirmed that this unsigned and undated document has never been an official policy of the Flagler Sheriff’s Office but was rather a procedural document drafted for use in the accounting department. (SROI ¶3) It is unclear why the Advocate assumes the power and authority to elevate an accounting procedure document only used and seen by the accounting department to the position of an FCSO policy. Such a mischaracterization is prejudicial to the Respondent and should be disregarded by the Commission.

Despite testimony from the former Undersheriff that the document “looks similar” to a document that Mrs. Bolante showed him when he she issued him a credit card, such a “showing” to the former Undersheriff cannot be imputed to the Sheriff. The Undersheriff was new to the agency and was the Complainant’s supervisor so her showing the document to him is of no consequence regarding the Sheriff’s understanding. While the Advocate appears to suggest that

the Respondent should have known about this accounting procedure document, the Complainant who was responsible for the accounting department stated that she “did not think of the document in question because it was never included in the FCSO’s policies and procedures manual.” (SROI ¶4) Further Commander Bob Weber who has been with the FCSO since 2003 has never seen the accounting procedures document. (SROI ¶2)

Despite the Complainant’s role as the Business Services Manager, her use of the accounting procedures document to explain the credit card use is inconsistent. Apparently, she showed the document to Former Sheriff Fleming, Former Undersheriff Staly but not to former Undersheriff David O’Brien and not to the Respondent after he approved the form during his first term of office. (SROI ¶7-10) As such, any attempt to use this document to provide reasonable notice to the Respondent of the credit card use guidelines is specious.

The Complainant admits in ROI ¶43 that she did not talk to the Respondent about his use of the agency credit card for the purchase of alcoholic beverages and meals for non-employees until the Weston public records request. Both the ROI and the SROI show that the Complainant did not ask the Respondent for itemized receipts until October 2013 when she realized that the business services division did not have the required receipts, nor had they sought the receipts from the Respondent. (ROI ¶29, SROI ¶25) Even though the Complainant left the duty of seeking itemized receipts to a clerk, the Respondent’s assistant provided whatever receipts were sought. (SROI ¶26) If the clerk did not have sufficient information, there is no evidence that she made that known to anyone. The Complainant’s department obtained the itemized receipts from the vendors and, upon learning that he owed reimbursement, the Respondent complied. The Complainant could have taken this action at any time. (ROI ¶42)

The Advocate makes much of the Respondent's response to being told that he had to make reimbursements for charges made to the credit card. The Respondent was justifiably upset with the Complainant; a reasonable person in the Respondent's position would likely have had the same response. As a newly elected public official<sup>3</sup>, the Respondent learned ten months into his term that because the chief financial officer had failed to provide adequate direction and follow-up for travel expenses, realized her failure because of a public records request and was telling him that 1) he hadn't provided sufficient information for the last ten months; 2) the lack of documentation was now being made public and, on top of that, 3) he has to make reimbursements because of her failings. Further adding to the Respondent's concern and response is the Complainant's admission that she remembered how the Respondent submitted travel expenses during his first term (he did not) and yet she failed to bring his past behavior to his attention at any time. (ROI ¶47) He was not upset about having to make the reimbursements or about having to comply with any policy; he was upset because he had a person on his team who had not been performing her duties.

The SROI highlights inconsistencies in the testimony of the Complainant and lack of an explanation for her reasons for including information in a December 2014 submission that was different from her initial testimony under oath. The most striking of the inconsistencies is the testimony of the Complainant and what she said (and what Undersheriff Staly said) that Sgt. Van Buren said about the Respondent's credit card usage during his first term. (SROI¶ 13-15) Any testimony regarding Sgt. Van Buren's statement must be disregarded as malicious hearsay. Sgt. Van Buren's testimony is inconsistent and has no place in this proceeding and proves nothing about the Respondent's conduct during his first term.

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<sup>3</sup> The Advocate notes that the Respondent was serving in his second term after an eight year absence and appears to expect that he was supposed to remember the details of submitting travel expenses from his prior term when he had lived as a private citizen in the intervening eight years he was not in office.

The Respondent is clear that he did not attempt to use the credit card to pay for the meal. Attending the Law Enforcement Memorial ceremony is a memorable event for the Respondent. He and others attended because a respected member of the agency had been killed in the line of duty.

The Advocate has left to the trier of fact whether the Complainant “mis-instructed” the Respondent on the use of the agency credit card. There is, however, no dispute that the “chief financial officer” of any organization needs to ensure compliance with what she believes to be the policy and practices of the agency.

When the Respondent traveled to Tallahassee, he presented a credit card to the hotel for incidentals. The hotel receipt he received contained only a room charge. (See Exhibit E2 SROI, attached here as Exhibit C.) The Respondent could rightly believe that any charges not included on this checkout receipt would have been included in his personal credit card because he gave his personal credit card for incidentals. The hotel receipt does not include any charges for food or drink. To conclude that the Respondent misused his agency credit card for this incident is an example of making a mountain out of a mole hill. The same is true for the reimbursement of the charges for the meal at Carrabas. General Order 152 requires the accounting department to monitor use for compliance and to collect reimbursement if there has been an improper use. Based on SROI ¶¶11-12 and Exhibit B of the ROI, the policy operated as it should. (See Exhibit D.)

Because the AAR fails to set forth facts from which a reasonable person could find probable cause, the Respondent requests that the Commission reject the Advocate’s Amended recommendation and dismiss this allegation.

## ALLEGATION FOUR

The Respondent is alleged to have violated Section 112.3148(8) by failing to properly report a gift.

## APPLICABLE LAW

Section 112.3148, Florida Statutes, provides as follows:

(8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics on the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section.

\* \* \*

(7)(e) Lodging provided on a consecutive days shall be considered a single gift. Lodging in a private residence shall be valued at the per diem rate provided in s. 112.061(6)(a) 1. less the meal allowance rate provided in s. 112.061(6)(b).

The Advocate uses a Black's Law Dictionary definition of "residence" to determine that the cabin in Pigeon Forge, Tennessee, owned by Undersheriff Richard Staly was not a private residence.<sup>4</sup> Notwithstanding the foregoing, a reasonable reading of the definition establishes that the cabin is a residence. Despite the fact that Undersheriff Staly goes to this residence three to four times per year, the Advocate chose not to find that being at this residence that often qualifies as "living in a given place for some time" or "bodily presence plus an intention to make the place one's home" as a private residence. The definition cited by the Advocate clearly states that "a

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<sup>4</sup> "Residence. 1. The act or fact of living in a given place for some time... 2. The place where one actually lives, as distinguished from a domicile. – *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously. 3. A house or other fixed abode, a dwelling...Black's Law Dictionary (10th ed. 2014)" The Respondent questions such reliance as there is no cite to this reference in the statutes or on the Ethics Commission Form. Further, the AR fails to cite a reference to the use of this definition in anyplace other than the AR.

*person may have more than one residence at a time.”* The Undersheriff offered the Respondent the use of the residence at a time when the value of the residence was zero because no income was expected during that period. While there are periods when the value of a rental of the residence ranges from \$370 to \$430 per night that was not the value in May 2013 when the Respondent visited there.

As the owner of the property, Undersheriff Staly retained the right to assess the value of his residence at any time. If the owner of a property such as the cabin, could not change the value of his property, such businesses like Priceline and Hotwire.com would not exist. In May 2013, the value of the property was not the full amount of the rental; it was free use of the Undersheriff's residence except for the cleaning fee. As such, the Respondent knew he stayed there two nights, left, returned and stayed for another night. Because the Respondent believed that he was staying at the Undersheriff's private residence, he did not believe that the two night stay (\$44 per night x 2 = \$88) met the reporting threshold of \$100. The Respondent filed the Disclosure in an abundance of caution after the Complaint was filed.

Although the Respondent stayed at the cabin for three nights, he stayed two consecutive nights, left for a night and then returned for a third night. Because the Respondent reasonably believed that his stay at the Undersheriff's residence did not rise to the level of the \$100 reporting requirement, his disclosure was not untimely because no disclosure was required. Wherefore the Respondent requests that the Commission reject the Advocate's recommendation of probable cause.



WHEREFORE, based on the foregoing, the Respondent request that the Commission find no probable cause on the three remaining allegations and dismiss the Complaint against the Respondent.

Dated: July 6, 2015

Respectfully submitted,

/ s / Linda Bond Edwards

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BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

**DATE FILED**

JUN 05 2014

COMMISSION ON ETHICS

In re JAMES L. MANFRE,

Respondent.

Complaint No. 14-097

**CONFIDENTIAL**

DETERMINATION OF INVESTIGATIVE JURISDICTION  
AND ORDER TO INVESTIGATE

UPON REVIEW of this complaint, I find as follows:

1. This complaint was filed by Linda Bolante, of St. Augustine, Florida.
2. The Respondent, James L. Manfre, serves as the Sheriff of Flagler County.
3. The complaint alleges the Respondent had his paycheck as Sheriff issued early.

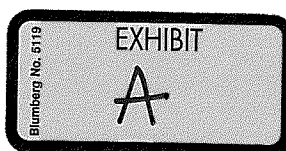
This indicates possible violation of Section 112.313(6), Florida Statutes, by the Respondent.

4. The complaint next alleges the Respondent used Sheriff's Office vehicles for personal or private purposes. This indicates possible violation of Section 112.313(6), Florida Statutes, by the Respondent.<sup>1</sup>

5. The complaint further alleges the Respondent failed to disclose a gift that he received, namely spending five consecutive nights in a co-worker's cabin. This indicates possible violation of Section 112.3148(8), Florida Statutes, by the Respondent.<sup>2</sup>

<sup>1</sup> The complaint also alleges the Respondent violated Section 316.066(1)(e), Florida Statutes, by failing to report an accident which occurred while he was driving a vehicle. This provision does not set forth a standard of conduct enforceable by the Commission on Ethics.

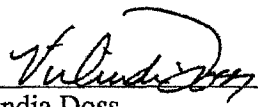
<sup>2</sup> The alleged free repair of a Sheriff's office vehicle is indicative of a gift to the Office, not to the Respondent personally.



6. Finally, the complaint alleges the Respondent purchased food and drink, including alcoholic beverages, for himself and others using a Sheriff's Office credit card. This indicates possible violation of Section 112.313(6), Florida Statutes, by the Respondent.

WHEREFORE staff of the Commission on Ethics shall conduct a preliminary investigation of this complaint for a probable cause determination of whether the Respondent has violated Sections 112.313(6) and 112.3148(8), Florida Statutes, as set forth above.

6/5/14  
Date

  
Virindia Doss  
Executive Director

VAD/gps



## Florida Attorney General Advisory Legal Opinion

Number: AGO 74-384

Date: December 23, 1974

Subject: Use of vehicles off duty

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SHERIFFS MAY ASSIGN VEHICLES TO PERSONNEL FOR USE BOTH ON AND OFF DUTY

To: Melvin G. Colman, Orange County Sheriff, Orlando

Prepared by: Zollie M. Maynard, Jr., Assistant Attorney General

### QUESTION:

May a county sheriff's department assign department vehicles to department personnel on a permanent basis for use both on and off duty?

### SUMMARY:

A sheriff may assign sheriff's department vehicles to his personnel on a permanent basis for use both on and off duty if it is done pursuant to rules and regulations that ensure that the program will serve a valid public purpose and that such rules and regulations are, in fact, complied with.

Your question is answered in the affirmative subject to the following qualifications.

"The office of sheriff is a constitutional office in Florida (Art. VIII, s. 6, Fla. Const.), and it is declared legislative policy to preserve the independence of sheriffs, as constitutional officials, concerning the purchase of supplies and equipment and the selection, employment, discharge, and compensation of personnel. (Fla. Stat. 30.53)." See 29A Fla. Jur. *Sheriffs* s. 15. The direct responsibility given the sheriff for the purchase of supplies and equipment also embodies the responsibility for the use of that equipment.

The basic issue relative to that responsibility has been stated in AGO 074-295, as follows:

"Since public funds may be spent only for a public purpose, municipal property may be used only for a public purpose." Although that opinion dealt with municipalities, and the question herein relates to property

under the control of a sheriff, the issue is the same.

In that instance I concluded that "city employees may not use city-owned automobiles for their personal business or pleasure." However, I went on to state, "[t]here may, of course, be situations in which the use of a city automobile would personally benefit a city employee incidentally, while the *overall purpose* served by that use would be primarily a public one." Again the same considerations would apply to sheriff's department personnel as apply to persons working for a city. I cited as an example in that opinion that "if a city employee must be 'on call' or duty, at all times while at home, it would seem to be a valid public purpose to provide this person with a city automobile to respond to emergencies . . . ." I said that the driving of the automobile to and from work by the employee would be a personal benefit incidental to the public purpose and, therefore, proper. However, I restricted the use to that of driving to and from work.

It is obvious from my response in the above-cited opinion that each situation wherein a governmental body seeks to allow private use of public property must be examined separately and the justification for such use should be determined by the individual factual situation.

In your question you have presented a situation in which you would assign law enforcement vehicles to individual officers on a permanent basis for use both on and off duty. You would do so under specific guidelines set forth in a general order issued by you in which you state that two of the objectives of this program would be to: "D. Provide quicker response time to certain types of calls and therefore increase the opportunity to apprehend the criminal." and "G. Provide quicker response of off duty personnel when called back to duty because of an emergency." In my opinion, if the vehicles are used to fulfill the above-stated objectives their use would be a direct benefit to the public and any personal use of the vehicle by an officer would be an incidental benefit.

However, my determination that the program (if actually implemented according to the guidelines) would serve a valid public purpose, is not based solely on the specific portions of your general order which are set out in this opinion. The complete content of the order including such things as regulations requiring that "radio contact be maintained at all times to insure availability for response to any emergency . . . ." and stating that the "vehicles may not be used outside the jurisdictional limits of Orange County without express permission of the Bureau Commander," as well as other parts of the order, also formed the basis of my determination.

Finally, I must stress that it is not the fact that the objectives are stated that is important in determining whether the activity serves a valid public purpose. The most important thing is whether or not the objectives are actually fulfilled by the use of the vehicles in that

particular manner. Therefore, it would be incumbent upon anyone using such a program to keep such data and information as is necessary to be able to show specifically how the program is meeting the objectives which make the program one which serves a valid public purpose. Also, frequent periodic reviews of the total program should be conducted to make sure the program serves that valid public purpose on a continuing basis.

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**FOUR  
POINTS**  
 BY SHERATON

Manfre, James      Page Number    1  
 Booking            Guest Number   118740      Arrive Date   05-03-2014 17:14  
 51 River Trail Drive   Folio ID        A                Depart Date   05-05-2014 13:00  
 Palm Coast United      No. Of Guest   2  
 States 32137  
 Room Number        906  
 Time                  05-04-2014 16:51

*CHD OUT  
4:52*

Invoice

Date	Reference	Description	Charges	Credits
05-03-2014	RT906	Room Charge	\$306.00	
05-03-2014	DEPOSIT	Deposit Applied		\$-689.63
05-03-2014	VI	Visa	\$76.63	
05-04-2014	VI	Visa	\$153.50	
05-04-2014	half night	Room Chrg Retail	\$136.44	
05-04-2014	half night	State Tax	\$8.19	
05-04-2014	half night	County Tax	\$2.05	
05-04-2014	half night	Tourism Tax	\$6.82	
		** Total	\$689.63	\$-689.63
		** Balance	\$-0.00	

*REFUND  
OFF TAXES*

For your convenience, we have prepared this zero-balance folio indicating a \$0 balance on your account. Please be advised that any charges not reflected on this folio will be charged to the credit card on file with the hotel. While this folio reflects a \$0 balance, your credit card may not be charged until after your departure. You are ultimately responsible for paying all of your folio charges in full.

EXPENSE SUMMARY REPORT

Currency: USD

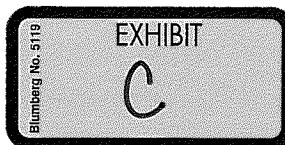
Date	Room & Tax	Food & Bev	Telecom	Other	Total	Payment
05-03-2014	\$306.00	\$0.00	\$0.00	\$0.00	\$306.00	\$-613.00
05-04-2014	\$153.50	\$0.00	\$0.00	\$0.00	\$153.50	\$153.50
Total	\$459.50	\$0.00	\$0.00	\$0.00	\$459.50	\$-459.50

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*E2*



# FLAGLER COUNTY SHERIFF'S OFFICE



## GENERAL ORDER

<b>Effective Date:</b> January 10, 2014	<input checked="checked" type="checkbox"/> New <input type="checkbox"/> Rescinds: <input type="checkbox"/> Amends:	<b>Number:</b> 152
<b>Subject:</b> Credit Card Use		
<b>Distribution:</b> All Employees	CALEA Standards: CFA Standards: None PSCAP Standards: FCAC Standards:	

- I. Scope and Purpose** - This General Order (GO) applies to all Flagler County Sheriff's Office (FCSO) personnel and establishes policy and procedures to ensure fiscally sound use of FCSO credit cards.
- II. Discussion** - FCSO employees are entrusted and empowered to make credit card purchases. Along with this empowerment comes responsibility. Card holders are expected to make sound business decisions that are in the best interest of the FCSO, i.e., obtain best pricing, etc., and to always comply with the policies and procedures set forth in this GO.
- III. Policy** - FCSO credit cards will only be used for authorized purchases for which a public purpose can be demonstrated.
- IV. Forms:**
- Training and Travel Form. FCSO Form # TRNG-014.
- V. Procedure:**
- A. Authorized Use:
1. FCSO credit cards issued to individual employees on a temporary basis after approval from the Business Services Division (BSD) Senior Director, Undersheriff or Sheriff will have the FCSO name, account number and expiration date, and are to be used for authorized purchases only.
  2. FCSO credit cards issued to the Sheriff, Undersheriff and Senior Commanders/Directors will have the FCSO name, individual employee's title and name, account number, expiration date and are to be used for authorized purchases only.
  3. Authorized purchases consist of all travel or training or investigative related purchases and other Division Commander/Director approved operating

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expenses that require immediate purchase. Travel, training and investigative related expenses include, but are not limited to:

- a. Car rental.
  - b. Lodging.
  - c. Registration fees.
  - d. Parking.
  - e. Miscellaneous travel related emergencies.
  - f. Airfare.
  - g. Fuel.
4. Exceptions to the authorized purchases noted above must be approved by the Division Sr. Commander/Director.
  5. Credit cards will not be used for any personal transactions. Improper use of the credit card will result in consequences ranging from suspension of the card to termination of employment. Employees will be required to reimburse the FCSO for purchases that are determined by the Business Services Division to not be an authorized public expenditure.

B. Unauthorized Charges:

1. Items of personal convenience are strictly prohibited. Examples of personal conveniences include but are not limited to:
  - a. Cash advances.
  - b. Food and restaurant purchases.
  - c. Entertainment.
  - d. Employee moving expenses.
  - e. Third party payments (PayPal, another merchant processes the charge).
  - f. Charges for non-FCSO employees.
  - g. Items used generally for the personal convenience of employees (portable heaters, fans, refrigerators, microwaves, coffee pots and clocks, lamps or picture frames for private offices, etc.). This does not preclude items necessary for overall division or section operation.
  - h. Surcharges or convenience fees. Merchants are not allowed to charge a fee for accepting a credit card payment unless the fees are charged for all methods of payment (cash, check, debit cards, vouchers, etc.).
  - i. Alcohol, unless approved by a Senior Commander or designee for an operational necessity.

C. Division Responsibilities:

1. Each Division is responsible for ensuring that sufficient funds are budgeted in their expense line account to cover purchases made with a FCSO credit card.

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2. Items will not be charged to the FCSO credit card if the item is available via a purchase order and it is not an urgently needed purchase.
3. The FCSO is a Florida Sales Tax Exempt agency. Each Division is responsible for providing merchants with a copy of the FCSO Sales Tax Exempt Certificate to ensure that sales tax is not charged when making purchases. The FCSO tax exempt number is 85-8012621909C-1. Copies of the FCSO Sales Tax Exemption Certificate can be obtained from the BSD's Finance Unit. If a Florida merchant insists on imposing the Florida state sales tax after being presented with the FCSO tax exemption number, the employee will pay the tax. The Finance Unit is responsible for obtaining reimbursement of the tax paid.
4. Each Division is responsible for notifying the Purchasing and Inventory Manager that an item(s) purchased on the FCSO credit card is to be delivered to the FCSO's Purchasing and Inventory Unit and to be placed on the inventory list, if applicable.
5. Back up documentation, such as original receipts/invoices, must be obtained for all transactions charged to the credit card and an explanation for the charge written on the receipt. Receipts should reflect what was purchased.
6. If a credit card is lost or stolen, the individual assigned is responsible for immediately notifying the BSD Senior Director to minimize the liability to the FCSO. After hours, the BSD Senior Director or designee shall be immediately contacted.

C. BSD Finance Unit Responsibilities:

1. Maintain the credit card database and file all documentation.
2. Coordinate the issuance, replacement or cancellation of credit cards.
3. Pay the monthly credit card invoices.
4. Review all charges for compliance with this policy. Policy violations shall be immediately reported to the BSD Sr. Director who shall notify the individuals immediate Division Commander/Director or the Undersheriff.
5. Immediately collect reimbursement for unauthorized charges from the employee.
6. The BSD Finance Assistant will review the monthly credit card invoice for all charges ensuring accuracy of amounts and approving those charges for payment. The assistant will code all charges with the 14-digit expense account number and attach the credit card invoice with the back-up documentation.
7. The BSD's Finance Assistant will be responsible for handling any disputed charges with the Credit Card Company and/or vendor.

**JAMES L. MANFRE**  
Sheriff of Flagler County

*BJ*