

DATE FILED

OCT 30 2024

COMMISSION ON ETHICS

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

In re DAVID ALFIN, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Complaint No. 24-235

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, October 25, 2024, the Commission on Ethics met in its executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Jeani Duarte of Palm Coast, Florida.
2. The Respondent, David Alfin, allegedly serves as the Mayor of the City of Palm Coast.
3. The complaint alleges that, while at a post office, the Complainant personally observed the Respondent attempting to "intercept mail from an address [where] he does not reside[.]" The complaint claims the Complainant overheard the Respondent tell the postal cashier he should receive the mail as, "I control the City of Palm Coast!" The complaint indicates the cashier did not release the mail to the Respondent.

4. The Commission on Ethics has jurisdiction to investigate only those allegations "based upon personal knowledge or information other than hearsay." See Chapter 2024-53, Laws of Florida (amending Section 112.324(1)(a), Florida Statutes, to require an allegation to be "based upon personal knowledge or information other than hearsay" to be sufficient for investigation). The allegations in paragraph 3 appear to be based on the Complainant's personal knowledge as they concern an interaction at a post office that the Complainant claims to have personally observed. Regardless, even considering the allegations in paragraph 3 on their merits, they do not provide a legally sufficient basis for investigation for the reasons explained below.

5. Section 112.313(6), Florida Statutes, which is the only provision in the Code of Ethics relevant to the allegations in paragraph 3, 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. [Section 112.313(6), Florida Statutes]

Section 112.312(9), Florida Statutes, defines "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.

In order to indicate a possible violation of this provision, a complaint must substantively allege that a respondent corruptly used or attempted to use his or her public position or resources within his or her public trust, or corruptly performed his or her official duties, in order to benefit himself/herself or another; it is not enough that a *detriment* to a complainant or another is alleged.

6. Here, the allegations in paragraph 3, above, fail to indicate a possible violation by the Respondent of Section 112.313(6). Even accepting as true that Respondent attempted to use

his position to obtain another's mail—by asserting to the postal cashier that he "control[s] the City of Palm Coast"—this claim identifies only a detriment to the individual whose mail he was attempting to collect. The complaint does not indicate the Respondent's intentions for obtaining the mail, or how obtaining the mail would bring a special private capacity benefit to himself or any other individual or entity with whom he had a private capacity nexus. Without a factual, nonconclusory allegation identifying a benefit, the allegations fail to indicate the "corruption" required for a possible violation of Section 112.313(6).

7. The complaint next claims the Respondent has been involved in placing an amendment to the City Charter on an upcoming ballot, and has advocated for the amendment in public meetings. The complaint indicates the amendment would remove language in the City Charter limiting the City Council's authority to contract for various projects. In particular, the amendment would remove a \$15 million spending cap on certain types of contracts, a requirement that financing for certain contracts be repaid within 36 months, and a requirement that projects exceeding these two criteria be approved by a referendum vote of the City electorate. The complaint claims the Respondent has publicly supported amending the City Charter to remove these requirements, has failed to inform the public about possible consequences of such an amendment, and has not sufficiently presented the issue for public discussion. The complaint further claims the Respondent is advocating for this language because it will assist area developers, further the interests of a private "special interest group" of which he is a member, and validate projects already approved by the City Council that are in violation of the requirements being removed.

8. The allegations concerning the Respondent's support of the amendment appear to be based on the Complainant's personal knowledge, as she claims to have been at meetings in

which the Respondent publicly supported the amendment. That being said, any allegations concerning the Respondent's motives for amending the charter—including the claims that he is attempting to benefit area developers and a special interest group, as well as to justify past decisions made by the City Council—are speculative in nature. They do not appear to be based on the Complainant's personal knowledge or information other than hearsay, and, for that reason, cannot provide a basis for investigation. Regardless, even if all of the allegations in paragraph 7 were considered on their merits, they still would not provide a legally sufficient basis for investigation, as explained below.

9. The only prohibition in the Code of Ethics relevant to the claims in paragraph 7 is Section 112.313(6). However, even accepting as true that the Respondent has supported and advocated for the amendment to the charter, and even assuming he has not fully informed the public of the effect of the amendment and has kept the matter from public discussion, these claims identify only a detriment to members of the public. They do not identify, in a factual, nonconclusory manner, any special private capacity benefit for the Respondent—or any other individual with whom he had a private capacity nexus—as would be needed to support the "corruption" required for a possible violation of Section 112.313(6). We note the complaint does claim the Respondent is supporting the amendment to benefit area developers and an unspecified special interest group, and to justify various development decisions made by the City Council. However, these claims—which are not supported by any other information in the complaint—are conclusory, and while material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation.

10. The complaint also alleges the Respondent has allowed the amendment to the City charter to stay on the ballot, despite a tie vote by the City Council concerning removing it.

11. The claims in paragraph 10 appear to be based on the Complainant's personal knowledge of a tie vote occurring during a City Council meeting. However, even accepting the claims are true, they do not provide a legally sufficient basis for investigation. As explained in paragraph 9, the complaint fails to identify, in a factual, nonconclusory manner, how placing the amendment on the ballot will result in the type of private capacity benefit that would warrant an investigation under Section 112.313(6), which is the only relevant statutory prohibition.

12. The complaint further alleges the Respondent, along with the other member of the City Council, are attempting to appoint someone to a vacant City Council seat, and have refused repeated requests from the public for a special election.

13. It is not clear from the complaint whether the allegation in paragraph 12 is based on the Complainant's personal knowledge or information other than hearsay. The complaint does not explain the Complainant's basis for believing that the Respondent intends to appoint someone to the vacant seat, or how the Complainant is aware that the Respondent has refused requests for a special election. On this basis alone, the Commission lacks authority to investigate the allegations in paragraph 12. However, even if considered on their merits, the allegations in paragraph 12 do not provide a legally sufficient basis for investigation under Section 112.313(6), which is the only relevant statutory prohibition. Even if the Respondent is exceeding his authority, the complaint does not identify any particular person whom the Respondent is attempting to appoint to the vacant seat, only that he intends to appoint someone. Without an allegation that the Respondent is not only exceeding his authority, but is attempting to benefit someone with whom

he has a private capacity nexus, the allegation in paragraph 12 fails to identify the type of private capacity benefit needed to demonstrate a possible violation of Section 112.313(6).

14. The complaint also alleges the Respondent and other members of City government have redirected \$105 million in State funding—intended to be used to support local infrastructure—towards unrelated projects.

15. It is not clear from the complaint whether the allegations in paragraph 14 are based on the Complainant's personal knowledge or information other than hearsay. The complaint indicates only that there is "evidence" of "misappropriation" concerning the State funding, but it does not explain how the Complainant acquired or became aware of that "evidence." On this basis alone, the Commission lacks the authority to investigate the claims in paragraph 14. However, even if the allegations in paragraph 14 were considered on their merits, they would not provide a legally sufficient basis for investigation. The only relevant statutory prohibition, again, is Section 112.313(6). Even assuming the funds were redirected, the complaint fails to identify any private capacity benefit to the Respondent—or anyone to whom he had a private capacity nexus—from such action. Without a factual, nonconclusory allegation of how redirecting the funds created such a benefit, the allegations in paragraph 14 fail to indicate a possible violation by the Respondent of Section 112.313(6).

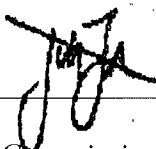
16. Moreover, we note that, even if considered on their merits, the allegations in paragraphs 3, 7, 10, 12, and 14 do not provide a legally sufficient basis to investigate under the prohibition in Article II, Section 8(h)(2), Florida Constitution, as they do not identify any disproportionate benefit to the Respondent, the Respondent's spouse, children, or employer, or any business with which the Respondent contracts, in which he is an officer, partner, director, or

proprietor, or in which he owns an interest, as would be needed to violate the constitutional prohibition.

17. We also note the complaint alleges that several charter officers of the City have been replaced, and that at least one was terminated without cause. Because the complaint does not identify or explain what actions—if any—were taken by the Respondent regarding these replacements and/or removals, this allegation does not provide a basis for investigation against him under any prohibition over which the Commission has jurisdiction.

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Friday, October 25, 2024.

October 30, 2024  
Date Rendered  
  
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Luis M. Fusté  
*Chair, Florida Commission on Ethics*

LMF/gps

cc: Mr. David Alfin, Respondent  
Ms. Jeani Duarte, Complainant