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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re: **James L. Manfre,**

Respondent.

Complaint No. 14-097

ADVOCATE'S AMENDED RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint, Response to Complaint, Report of Investigation, Response to Report of Investigation, and Supplemental Report of Investigation filed in this matter, submits this Amended Recommendation in accordance with Rule 34-5.006(3), F.A.C. This amended recommendation reflects information gathered at the request of the Commission pertaining to Allegation Three.

RESPONDENT/COMPLAINANT

Respondent, James L. Manfre, serves as Sheriff of Flagler County. Complainant is Linda Bolante of St. Augustine, 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 Sections 112.313(6), and 112.3148(8), 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 September 14, 2014.

The Commission on Ethics rejected a pre-probable cause stipulated agreement and requested further investigation concerning the Respondent's alleged use of a credit card issued to

him by the Flagler County Sheriff's Office. Specifically, the Commission requested information concerning the document titled "Credit Card Purchases." (ROI Exhibit A1)

The Supplemental Report of Investigation was released on April 22, 2015.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by requesting and receiving a paycheck in advance of the normal pay date.

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

ANALYSIS

Respondent originally served as Flagler County Sheriff from January 2001 through January 2005. (ROI 3) He was re-elected to the position in 2012 and started his new term on January 8, 2013. (ROI 3)

During his campaign for re-election, the Palm Coast Observer printed a list of questions and answers from Respondent. (ROI 3) In response to the question "Why should the people vote for you instead of your opponent?" Respondent stated:

The public should vote for me rather than my opponent due to his pattern of unethical behavior over the past nine months that has affected his credibility and that of the department. I will return the office to community policing, high ethical standards and a business approach to budgeting.

(ROI 3) In addition, Respondent is quoted: "You're not supposed to use your position to get things other people cannot get...ignorance of the law is not a defense." (ROI 3)

Respondent's first paycheck for this new term was due to be released on Friday, January 25, 2013, and would cover the pay period from January 8 through January 22, 2013. (ROI 5)

Respondent requested that Linda Bolante, Flagler County Sheriff's Office (FCSO) Business Services Director, release his first paycheck one week early. (ROI 5) Bolante stated that she had not previously issued an advance paycheck, but that she was not pressured by Respondent. (ROI 5)

Bolante gave Respondent a paycheck for his first two weeks salary on January 18, 2013, one week prior to its scheduled release and two days prior to the close of the actual work period. (ROI 5) It appears that Respondent did work the remainder of the pay period. The Sheriff's Office has no written policy that addresses advance issuance of paychecks. (ROI 7)

Respondent gained a short term benefit; however, absent a policy regarding advance issuance of paychecks or pressure upon the Business Services Director, corrupt intent is not shown, and the act would not be considered inconsistent with the proper performance of Respondent's public duties.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no 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 Flagler County Sheriff's Office vehicles for out-of-state personal transportation.

APPLICABLE LAW

See Section 112.313(6), Florida Statutes, as set forth under Allegation One above.

ANALYSIS

Facts

See facts as presented in Allegation One, under Analysis.

In addition, the Report of Investigation details three known trips when Respondent used a FCSO car for out-of-state personal travel.

New Orleans, Louisiana

In January 2013, Respondent drove an FCSO unmarked black Ford Crown Victoria to Destin, Florida to attend the Florida Sheriffs Association's mid-winter conference. (ROI 8) Respondent's wife accompanied him to the meeting. (ROI 10) They decided to take a few vacation days and travel to New Orleans because it is a relatively short drive from Destin. (ROI 10) Respondent drove the FCSO vehicle to New Orleans. (ROI 10) As a result of being stopped by a highway trooper from a state other than Florida, Respondent contacted FCSO regarding the registration for the car.¹ (ROI 8)

Pigeon Forge, Tennessee

The Complaint alleges that Respondent drove a FCSO white Dodge Charger to Pigeon Forge, Tennessee for a vacation with his wife, from May 3 through May 7, 2013. (ROI 16)

In his initial interview and Response to Complaint, Respondent stated that he drove his personal light blue BMW to the Pigeon Forge vacation, then to visit a relative in Charlottesville, Virginia, and returned to Flagler County by way of Pigeon Forge. (ROI 18, Response to Complaint p. 3)

The Commission's investigator delved into the matter further and interviewed Mr. Chet Lagana, the Fleet Services Coordinator for Flagler County. (ROI 19) Per county procedure, the gas pumps require the driver to enter the odometer reading for the car to be fueled. (ROI 19) Over a three month period which included May 2013, the car assigned to Respondent averaged 450 to 500 miles between fill-ups. (ROI 19) For the period between May 2, 2013 and May 10, 2013, the difference in odometer readings was 1,900 miles. (ROI 19) According to MapQuest,

¹ The car was an undercover vehicle with a confidential tag registered to a business in New Symma Beach, Florida. (Complaint p. 4)

the round trip mileage between Flagler County and Pigeon Forge, with a stop in Charlottesville, is approximately 1920 miles. (ROI 20)

In addition, Lewis Bicknell, a part owner of the Pigeon Forge resort where Respondent vacationed, reported that Respondent was driving a white car during his stay in 2013. (ROI 20) Paul Contreras, an employee, specifically recalled that the Respondent drove a white Dodge Charger with tinted windows during his stay. (ROI 22) He remembered Respondent because of a complaint about the noise Contreras' work crew was making in the vicinity. (ROI 22)

In his second interview, Respondent stated that it is possible that he used the FCSO vehicle for the Pigeon Forge trip, but he cannot remember. (ROI 23) He said he may be confusing the Pigeon Forge trip with a trip he made to Naples around the same time for which he drove his BMW. (ROI 23)

Virginia

In August 2013, Respondent drove a FCSO white Dodge Charger to Virginia to visit a relative and/or view colleges for his son. (ROI 24, 27) Undersheriff Richard Staly learned about the trip after the fact when he saw that the vehicle had been involved in a minor accident.² (ROI 25) Undersheriff Staly suggested Respondent write an internal report about the accident. (ROI 25) Respondent replied that he would think about it. (ROI 25) No report was filed. (Complaint p. 5)

The relevant vehicle policy in effect at the time referencing repairs stated:

4. Any needed repairs shall be reported to Fleet Maintenance, via chain of Command. Examples are tires, rusting, scratches, dents, major engine repair, etc. Once approval is received, only approved repair facilities are to be utilized.

* * *

² Undersheriff Staly saw Respondent with the owner of a local paint and body shop who is also the father of a FCSO deputy. (Complaint p. 5)

7. Any time damage is done to the vehicle, whether or not through a traffic crash; it shall be documented on an incident report and reported to the Division Director via the chain of command, and other appropriate actions taken as directed by policy.

(FCSO Policy number 41.3.9, effective 04/25/08)

Analysis

Respondent stated that during the period of time he took the trips listed, he was under the impression that there was no problem with his using a FCSO vehicle for personal trips because it would allow him to return quickly to Flagler County in the event of an emergency. (ROI 23)

The FCSO policy on vehicle use at the time stated:

9. 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.

(ROI 13, FCSO Policy number 41.3.9, effective April 25, 2008) Respondent opined that the above policy pertained only to employees of the Sheriff's Office and was not directed toward his use of agency vehicles. (ROI 13, 14, Response to ROI, p. 3)

The sheriff who served between Respondent's two terms, Donald Fleming, had changed the FCSO vehicle policy twice, once effective April 1, 2007, and again, effective April 25, 2008. (FCSO Policy number 41.3, effective April 1, 2007, and, Policy number 41.3, effective April 25, 2008) The policy in place prior to the changes made by Fleming was implemented by Respondent during his earlier term as sheriff. That policy stated:

3. 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.

(FCSO Policy number 41.3, effective December 1, 2003)

The term "Members" was not defined within any of the vehicle policies.

Respondent updated the policy by "General Order" on April 4, 2014. The new policy differentiates between "Non-Executive Staff Employees" and "Sworn Executive Staff Members."

(ROI 14) The new policy states:

3. Vehicles will not be taken out of county or out of state without permission except as provided in the CBA [Collective Bargaining Agreement]. Non-Executive Staff employees must obtain permission from their supervisor before taking a FCSO vehicle out of Flagler County. Divisions which have approved routine out-of-county trips, will advise FCSO Communications Section via radio.

4. Sworn Executive staff members who are subject to emergency recall may use their assigned vehicle within a three hour emergency recall area of Flagler County. This is necessary to ensure a rapid return to Flagler County in the event of an emergency or critical incident. However, in no event shall an agency vehicle be driven out of state while off-duty unless on official business with prior approval.

(ROI 14, FCSO Policy number: 046, effective April 4, 2014) Respondent explained that he decided to update the vehicle use policy to include executive staff members because he learned that the general public did not agree with deputies being held to a different standard than executive staff. (ROI 14)

Respondent stated that Bolante told him that his predecessor sheriff used his assigned FCSO vehicle to travel for personal reasons and, therefore, he did not think about the legal ramifications of using it for personal travel. (ROI 11) Bolante testified that she did not know if the former sheriff used his assigned FCSO car for personal reasons and denied that she told Respondent he did. (ROI 12) Bolante acknowledged that Respondent spoke to her about his

travel to New Orleans after he returned from that trip. (ROI 9) She explained that she did not warn him that such use of FCSO vehicles may be inappropriate because it did not occur to her at the time. (ROI 9) She also noted that FCSO policy allows deputies to use FCSO vehicles for personal use, but only in Flagler County. (ROI 9)

Undersheriff Staly also knew of Respondent's use of a FCSO vehicle for the New Orleans trip. (ROI 10) Staly did not indicate to Respondent that it was wrong because it did not occur to him at the time. (ROI 10) Undersheriff Staly advised Respondent to reimburse the office for his personal use of the FCSO vehicle for the Virginia trip. (ROI 26) At first Respondent replied, "I'm not doing that." (ROI 26) Upon Respondent's request, Undersheriff Staly called the Florida Sheriff's Association and spoke to an attorney regarding personal use of county issued vehicles. (ROI 26) Staly relayed the advice he received: "you can't un-ring a bell, but you can minimize the damage if a complaint is filed by reimbursing the agency." (ROI 26) At that time, Respondent stated he would reimburse the mileage at 20 cents per mile. (ROI 26) Respondent eventually reimbursed FCSO at the agency rate of 44.5 cents per mile for the Virginia trip for a total of \$667.50. (ROI 27, Exhibit D, Response to Complaint Exhibit 2) Respondent also reimbursed FCSO \$233.50 for mileage between Destin and New Orleans. (ROI 11) The Report of Investigation contains no evidence that Respondent reimbursed FCSO for the Pigeon Forge trip.

After Respondent's use of the FCSO vehicles became public knowledge, he reviewed the vehicle policy in place at the time and concluded that there was no prohibition to his use of the FCSO vehicle. (ROI 27) However, due to public perception, he decided not to use FCSO vehicles for personal travel in the future and to reimburse the county for the Virginia and New Orleans trips. (ROI 15, 27) Respondent maintains that he did nothing wrong, and that using

FCSO vehicles for trips that were personal in nature served the specific public purpose of allowing him to expediently return to Flagler County, if necessary. (Response to ROI, p. 3)

When questioned about the Pigeon Forge trip, Respondent originally stated he drove his blue BMW. Only when he was confronted with evidence that he drove a FCSO vehicle to Pigeon Forge did he state that he may have been confusing that trip with other trips he took using his personal BMW. (ROI 18, 23) If he did take his personal BMW for some trips, then logic follows that Respondent's need to expediently return to Flagler County was not always a determining factor as to whether he should use the county-owned vehicle or his personal car.

The reasoning applied, in part, to the necessity of an agency's "upfront" payment and approval of travel expenses is to protect the public against potential for abuse which could arise if all travel for which any *nominal public purpose* were identified as gifts to an agency. (CEO 13-3, emphasis added) That reasoning could also be applicable here, where the Respondent articulates a *nominal public purpose* for a special privilege of driving a FCSO vehicle to his benefit for personal vacations.

The policy in effect during Respondent's previous tenure, and signed into policy by him, reflects that FCSO vehicles should not be used by "Members" while on leave. In addition, when Respondent updated the policy on April 4, 2014, he acknowledged that taking a county-owned car out of state while off-duty would only be acceptable if the driver was on "official business." Respondent was not on "official business" when he and his wife took vacations to New Orleans, Pigeon Forge, and Virginia, regardless of Respondent's stated nominal public purpose for use of the FCSO vehicle.

Respondent also maintains that he did not have reasonable notice that using a FCSO vehicle for personal trips out of state was improper. (Response to ROI) In order to have acted

"corruptly" one must have acted with reasonable notice that conduct was inconsistent with the proper performance of public duties and would be a violation of law or the code of ethics. Blackburn v. Comm. on Ethics, 589 So. 2d 431 (Fla. 1st DCA 1991).

Only three out-of-state trips by Respondent are known. FCSO learned of two of the trips because of third party intervening factors, the traffic stop on the way to New Orleans, and the damage done to the vehicle in Virginia. Respondent originally denied taking a FCSO vehicle to Pigeon Forge and only admitted confusion when confronted with facts to show he had an FCSO vehicle on that trip. Respondent was less than forthcoming about his use of the county vehicles, which may be viewed as indicia of knowledge of wrongdoing.

Therefore, based on the totality of 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 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 alcohol.

APPLICABLE LAW

See Section 112.313(6), Florida Statutes, as set forth under Allegation One above.

ANALYSIS

Facts

See facts as presented in Allegation One, under Analysis.

In addition, in October 2013, FCSO received a public records request asking for all credit card statements and expenditures that Respondent made on his FCSO issued credit card. (ROI

29) Bolante complied by sending copies of receipts Respondent had submitted to her office, which showed the total of each purchase. (ROI 29) The person making the public records request clarified that he wanted itemized information regarding each purchase. (ROI 29) Neither the Business Services Department nor Respondent had itemized receipts. (ROI 29) Upon direction of FCSO General Counsel, Sidney Nowell, the itemized receipts were obtained from the establishments where Respondent's purchases were made. (ROI 29)

Respondent used the FCSO issued credit card to make the following purchases:

May 14, 2013

While attending the National Law Enforcement Memorial in Washington, D.C., Respondent used the card to pay a \$235.76 bill at the Madhatter Restaurant. (ROI 30) The itemized receipt reflects meals and beverages, including one beer, for twelve people. (ROI 30) Six of the persons present were not employees of the Sheriff's Office. (ROI 30) On October 31, 2013, Respondent reimbursed FCSO for six dinners, ten drinks (including the beer), tax and tip in the amount of \$158.76. (ROI 41, Exhibit D)

July 16, 2013

While attending the National Association of School Resource Officers conference in Orlando, Florida, Respondent used the FCSO issued card to pay an \$86.50 bill at Headwater's Lounge. (ROI 33) The itemized receipt reflects the charges were for food and three alcoholic beverages. (ROI 33) On October 31, 2013, Respondent reimbursed FCSO for one dinner, three wines, tax and tip, for a total of \$52.43. (ROI 41, Exhibit D)

August 3 through August 7, 2013

While attending the Florida Sheriffs Association conference at Marco Island, Florida, Respondent used the FCSO issued card for the following three purchases.³ (ROI 34)

Kurrents

The itemized receipt, dated August 3, 2013, for Kurrents reflects four dinners and one alcoholic beverage. (ROI 34) Undersheriff Staly stated that he and his wife had dinner with Respondent and his wife at Kurrents. (ROI 36) When the bill came, Respondent paid for all four dinners. (ROI 36) Undersheriff Staly assumed Respondent used his personal credit card because Staly does not use his FCSO issued credit card for meal purchases. (ROI 36) When Staly learned that his and his wife's meals had been charged to the Sheriff's Office, he reimbursed for the meals in the amount of \$71.23. (ROI 36, Exhibit C) On October 31, 2013, Respondent reimbursed FCSO for one dinner, one wine, tax and tip, for a total of \$49.34. (ROI 41, Exhibit D)

Quinns

The itemized receipt, dated August 4, 2013, from Quinns reflects dinner for Respondent and his wife and one alcoholic beverage. (ROI 34) On October 31, 2013, Respondent reimbursed FCSO \$40.98 representing one dinner, the wine, tax and tip. (ROI 41, Exhibit D)

Tropiks

The itemized receipt, dated August 7, 2013, from Tropiks reflects that Respondent used the FCSO issued credit card to pay for two breakfast buffets - one for him and one for his wife. (ROI 34) He reimbursed \$30.06 for one breakfast, tax and tip on October 31, 2013. (ROI 41, Exhibit D)

³ An additional charge was disputed. The Sheriff's Office received a credit for that amount. (ROI 34)

Analysis

Respondent states that in January 2013, he asked Bolante how he should use the FCSO credit card. (ROI 38) He maintains that Bolante told him that when he traveled on FCSO related business his hotel would be booked on the card and he should use the card to charge all other expenses while on the trip. (ROI 38) Respondent claims Bolante further instructed that, upon his return, her office would calculate the difference between his per diem and the amount charged and he would be responsible to reimburse FCSO for the difference. (ROI 38) Respondent advised that he did not follow up to reimburse FCSO, despite the credit card charges being obviously larger than his per diem, because he was very busy and he depended upon Bolante to tell him he was using the credit card improperly. (ROI 41) Bolante denies ever telling Respondent that his travel purchases would be offset by his per diem. (ROI 43)

Bolante advised that FCSO did not have a detailed written policy concerning credit card use at the time of Respondent's purchases. (ROI 31) It was her understanding that because FCSO is a state accredited law enforcement agency it follows state policy which prohibits the use of agency credit cards for the purchase of alcohol and meals. (ROI 31)

FCSO Accounting Specialist, Linda Tannuzzi, provided a copy of a written credit card policy⁴ she understood to be in effect at the time. (ROI 32) It states: "Sheriff will make only agency related purchases and return receipts to Finance." (ROI 32, Exhibit A, SExhibit A1)

This document is titled "Credit Card Purchases." (ROI 32, Exhibit A, SExhibit A1) Tannuzzi explained that this document was written by Bolante, shortly after October 2001, during Respondent's first tenure as sheriff, as part of a guidelines manual that is kept in the FCSO Finance Department. (ROI 32, SROI 3)

⁴ Note that the "credit card policy" provided by Tannuzzi is not dated and not in the form of a "General Order" as other FCSO policies have been presented.

Bolante confirmed that she authored the "Credit Card Purchases" document, which she advised was approved by Respondent prior to it becoming part of the Finance Department's manual. (SROI 1) Bolante stated that the "Credit Card Purchases" document was not included in FCSO's policies and procedures manual because it was not a necessary component for FCSO to receive accreditation. (SROI 4)

Although Respondent denies that he ever saw the "Credit Card Purchases" guidelines document, other FCSO members of management were aware of it. (ROI 39, SROI 5, 7, 9) Former FCSO Sheriff Donald Fleming, who served as sheriff between Respondent's two tenures, recalls seeing the "Credit Card Purchases" document, as well as being told by Bolante that the credit card was only for FCSO-related purchases. (SROI 7)

David O'Brien served as Respondent's undersheriff during the last seven to eight months of Respondent's first tenure as sheriff. (SROI 9) He does not recall seeing the "Credit Card Purchases" document but he recalled that Bolante advised him not to use the FCSO issued credit card for personal purchases. (SROI 9)

Importantly, Respondent's most recent undersheriff, Former Undersheriff Staly, stated that the "Credit Card Purchases" document looks similar to a document that Bolante showed him when she issued him a FCSO credit card. (SROI 10) Staly advised Bolante that it would not be necessary to provide a copy of the document to him "because he knew from his years of working in law enforcement that he should not use the credit card for personal purchases." (SROI 10)

Tannuzzi advised that her duties include reviewing and paying the charges that appear on the FCSO billing statements. (ROI 44) She recalls speaking to Bolante about some suspect charges by Respondent shortly after reviewing the June 2013 credit card bill. (ROI 44) Tannuzzi maintains that she spoke to Bolante about the charges and Bolante later relayed that Respondent

did not agree that he should reimburse FCSO for the charges. (ROI 44) Bolante does not remember Tannuzzi bringing the matter to her attention until October 2013 as a result of the public records request. (ROI 45)

Respondent did not save itemized receipts and it appears he has only submitted the general charge total to FCSO Accounting during his current tenure as sheriff. (ROI 29, 37) Bolante recalls that during his prior tenure, from 2001 through 2005, Respondent submitted itemized receipts and did not use the card for alcohol or meals for non-employees. (ROI 47)

After filing the initial ethics complaint, Bolante stated that she learned from FCSO Sergeant Michael Van Buren that in 2004, while attending a work related function in Washington, D.C., Respondent attempted to use the FCSO credit card to pay a food and alcoholic beverages bill of over \$600 at the ESPN Zone Restaurant for a group consisting of approximately six non-FCSO employees and approximately ten other FCSO employees. (SROI 15) Van Buren stated that he knew this to be an improper use of the credit card so he took up a collection to help defray the cost and paid the bill with his personal credit card. (SROI 15) Respondent provided an affidavit acknowledging that he attended the dinner in May 2004 but denied that he attempted to use the FCSO credit card to pay the bill. (SROI 17)

Nine years later, in May 2013, Van Buren attended the aforementioned dinner at the Madhatter restaurant in Washington D.C. where Respondent paid for everyone's meal with the FCSO credit card. (SROI 18) Van Buren explained that he did not warn Respondent about using the FCSO credit card because he was not aware that Respondent was using the FCSO credit card for payment. (ROI 30, SROI 18)

On October 31, 2013, after Bolante received the itemized receipts, she, then-Undersheriff Staly, General Counsel Nowell, and Respondent had a meeting. (ROI 35, 37) As a result,

Respondent agreed to reimburse FCSO for all of the meals purchased for non-FCSO employees and the alcoholic beverages. (ROI 35, 37) Respondent reimbursed FCSO \$344.03, the amount calculated by Bolante and her staff, on October 31, 2013. (ROI 41, Exhibit D)

On January 10, 2014, Respondent signed General Order Number 152, which addresses credit card use. (ROI 32) Respondent's policy states:

A.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.

* * *

B. Unauthorized Charges:

1. Items of personal convenience are strictly prohibited. Examples of personal conveniences include but are not limited to:

* * *

b. Food and restaurant purchases.

* * *

f. Charges for non-FCSO employees.

* * *

i. Alcohol, unless approved by a Senior Commander or designee for an operational necessity.

Respondent explained that "[u]pon being advised in November 2013 that he could not use the agency credit card to purchase meals for the public or alcohol, he never used the agency credit card for that purpose again." (Response to ROI, p. 4) Yet, in fact, he did in May 2014. (SROI 21, 22, 23, SExhibits D1, D2)

After being advised that personal use of the FCSO credit card is improper, and after the Respondent's annual audit for fiscal year 2012-2013 indicated that some travel related items should have been reimbursed but had not been, and after the institution of his own stringent credit card purchase policy, Respondent still used the FCSO credit card to charge a meal for his

wife and alcoholic beverages. (Response to ROI, p. 5, SROI 20, SExhibits C4, E1) When these charges were brought to Respondent's attention, he submitted a sworn affidavit stating that the hotel made the mistake of charging his FCSO credit card, instead of the personal credit card he provided at check-in. He further stated, under oath, that he received a receipt showing that his personal credit card was charged. (SROI 20, 21, 22, SExhibit D1) It was only when he received his personal credit card statement that Respondent realized that both his personal and FCSO cards were charged. (SROI D1) Thus, both credit card statements should reflect charge dates of May 3 and 4, 2014. (SExhibit E1) When the Commission's investigator questioned why the date of the purchases on Respondent's personal credit card statement reflect the charge date of May 23, 2014, over two weeks after the actual purchase dates, Respondent submitted a sworn amended affidavit stating that he believed that charges had been made to his personal credit card and deleting the statement that he had received a receipt showing same and that he was double billed. (SROI 22, SExhibits D1, D2, F) In fact, the hotel was contacted on or around May 23, 2014 and it then charged the amount to Respondent's personal card. (SROI 22)

It must also be noted that, during his prior term as sheriff, Respondent supplied the FCSO accounting division with itemized receipts showing his credit card purchases. (ROI 47, 48) During his recent term, Respondent only submitted the total amount charged on the FCSO credit card, and failed to identify what items were actually charged and/or identify for whom the county was paying. (ROI 29, 30, ROI Exhibit C1, SROI Exhibit B1) Although itemized receipts were not demanded until the public records request was made, Respondent's partial submission may be seen as less than forthcoming.

The facts as presented show that Respondent used the FCSO issued credit card, a resource he was entrusted with, to secure a benefit for his wife and others (the meals and

alcoholic drinks purchased). Respondent may also have personally benefited in terms of goodwill when others thought he had "picked up" the check.

Respondent argues that he lacked notice that the offending credit card charges would be inconsistent with the proper performance of his public duties. It is noteworthy that he ran for office on a platform to "return the office to . . . high ethical standards and a business approach to budgeting." (Response to ROI, p. 4, ROI 3) Nonetheless, it is the duty of public officials to inform themselves of the laws or regulations affecting their governance.

In addition, evidence has been presented that the existing credit card policy allowed only "agency related purchases." Respondent's current policy, pursuant to General Order Number 152, recognizes that food and restaurant purchases, charges for non-FCSO employees, and alcohol (unless approved by a Senior Commander or designee for an operational necessity)⁵ are not agency approved.

Although Respondent states that he "takes full responsibility for his actions..." he continues to blame others for his continued use of the FCSO credit card for personal, improper purchases, which siphons money from the county's coffers. (Response to ROI, p. 5) Even if an expressed policy were absent, Respondent's contention that an agency paid credit card could ethically be used for non-agency related purchases, such as meals for non-employees and alcohol, is not based in any public service protocol. Common sense dictates that items charged to FCSO and paid by FCSO should be related to FCSO operations.

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.

⁵ Advocate finds it difficult to envision a circumstance where the credit card purchase of alcohol would be an operational necessity.

ALLEGATION FOUR

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, 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 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).

ANALYSIS

See facts as presented in Allegation One and Two, under Analysis.

In addition, Undersheriff Staly owns an investment property in Pigeon Forge, Tennessee. (ROI 50) He uses the property for vacation approximately three times a year, taking a week or an extended weekend on each occasion. (ROI 50) The property is managed by a rental company and typically rents for \$370 to \$430 per night. (ROI 50) The property grosses around \$60,000 per year in rental income. (ROI 50)

Undersheriff Staly allowed Respondent to use his Pigeon Forge property from May 3 through May 7, 2013 at no cost other than the cleaning fee of \$75. (ROI 50)

On October 17, 2013, the Florida Sheriffs Association held an ethics training webinar which included materials related to gift reporting. (ROI 52) At the conclusion of the call, Respondent came to Undersheriff Staly's office and related that another sheriff had been advised to file a gift disclosure based on a stay at a friend's house. (ROI 51) Undersheriff Staly agreed with the advice and stated that Respondent should file a disclosure for the gift of lodging in Pigeon Forge. (ROI 51) Respondent voiced concern that he would be penalized because the filing would be late. (ROI 51) A few days later, Respondent told Undersheriff Staly that he was thinking about filing the disclosure, but would claim the rental value at \$99 per night. (ROI 51) Undersheriff Staly advised against filing with a reduced value because the property is advertised at \$370 to \$430 a night. (ROI 51) Respondent does not recall having talked to Undersheriff Staly about the ethics training or being told the property's normal rental rate. (ROI 55)

Respondent did not file a gift disclosure until he learned that this Ethics Complaint was to be filed against him. (ROI 51) On May 27, 2014, Respondent disclosed that he received a gift of lodging at Pigeon Forge, TN, from May 3 to May 5, 2013 valued at \$44 per night for a total of \$132. (ROI 51, Exhibit F) Respondent stated that he was advised by his executive assistant that he could claim the value of the lodging at \$44 per night.⁶ (ROI 55)

A gift disclosure must be accurately and timely filed. Respondent's filing fails on both requirements.

The evidence suggests that Respondent received advice from his Undersheriff and his executive assistant as to the value of the lodging. (ROI 51, 55) However, regardless of advice received, the value of the gift is properly determined by application of the statute above. Undersheriff Staly does not live in Pigeon Forge and only vacations there a few times per year.

⁶ \$44 per night is the Florida per diem rate minus the meal allowance.

The property is not his residence,⁷ nor is it "private." It is primarily rented out to the general public for the owner's profit. If Respondent stayed at the Pigeon Forge property for three nights, as is disclosed, he should have valued the gift at a minimum of \$370 X 3 nights, for a total of \$1,110.

Respondent's gift disclosure was also filed late. He received the gift in May 2013, in the second calendar quarter. Consequently, he should have filed the gift disclosure before the last day of the third calendar quarter - by September 30, 2013. Respondent's filing was more than seven months late.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by requesting and receiving a paycheck in advance of the normal pay date.

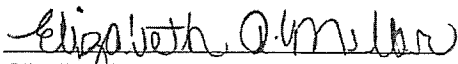
2. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using Flagler County Sheriff's Office vehicles for out-of-state personal transportation.

⁷ 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)

3. There is probable cause to believe that Respondent 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 alcohol.

4. There is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to properly report a gift.

Respectfully submitted this 1st day of June, 2015.


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