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COMMISSION ON ETHICS
MAY 06 2015
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Linda Bond Edwards
Rumberger, Kirk & Caldwell, P.A.
Attorneys at Law
215 South Monroe Street
Suite 702 (32301)
Post Office Box 10507
Tallahassee, Florida 32302-2507
Phone: 850.222.6550
Fax: 850.222.8783
ledwards@rumberger.com
www.rumberger.com

May 6, 2015

Virlindia Doss, Executive Director
Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709

VIA UNITED STATES MAIL AND
FACSIMILE TRANSMISSION
488-3077

Re: In re James L. Manfre
Complaint No. 14-097
Our File No.: F300 - 121460

Dear Ms. Doss:

I submit this response to the April 22, 2015, Supplemental Report of Investigation (Supplemental Report) in the above-referenced matter. Throughout the investigation of the allegations against Sheriff James Manfre, the Respondent in this case, he has argued that the Commission on Ethics cannot establish that he has violated the State of Florida ethics laws because there is no evidence of corrupt intent.

As such, the Respondent requests that the Commission dismiss any remaining allegations in the complaint because the Commission lacks credible evidence to prove that the Respondent had the requisite corrupt intent to violate the State of Florida Ethics laws. The case law is very clear that in order to prove a violation of the ethics laws, the Commission must prove corrupt intent. Corrupt intent is shown when an officer acts with wrongful intent, that is, with *reasonable notice* that his conduct is inconsistent with the proper performance of public duties and is a violation of the law or the Code of Ethics in Part III of Chapter 112. (Emphasis added.) *Blackburn v. Commission on Ethics*, 589 So. 2d 431, 436 (Fla. 1st DCA 1991). Prior Commission final orders and opinions provide fair and reasonable notice as to what conduct is prohibited by Section 112.313(6). *Blackburn, supra*.

Based on this standard, none of the allegations can be proven because there is not reasonable notice that any of the Respondent's conduct violates any law or the Code of Ethics found in Part III of Florida Statutes, Chapter 112.¹

Allegations of Credit Card Misuse

Nothing in the initial Report of the Investigation or the Supplemental Report in the present case suggests that the Respondent acted with a corrupt intent. The Complainant challenged the Respondent's arguments that he lacked notice that his actions violated State law.

¹ Undersigned counsel has been unable to identify an ethics opinion that addresses the same or similar facts in this matter.

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The Report of Investigation and the Supplemental Report show that the Complainant, who was the Director of Business Services for the Flagler County Sheriff's Office, was not directly involved in how travel expenses were accounted for and delegated that responsibility to an accounting clerk. The Supplemental Report confirms that there has not been a policy in place that addressed the use of agency credit cards at the Flagler County Sheriff's Office since 2003. (Supplemental Report ¶¶2, 3, 4). Moreover, the unsigned, undated copy of a document provided by an accounting clerk at the Flagler Sheriff's Office was found to be part of an accounting procedures manual that the Respondent approved during his first term. However, there is no evidence that he ever had a copy of the document or that there was any specific discussion of the provisions other than the Complainant's general instruction to use the agency credit card only for FCSO related purchases. (Supplemental Report ¶6) Whatever information the Complainant shared with anyone else about credit card usage is immaterial to the information she provided to the Respondent. The Respondent has always maintained that he never intended for the agency to pay for any expense that was not for a public purpose. Moreover, whenever the Sheriff was asked for information regarding any purchase, the information was provided. There is no credible evidence that the Respondent was ever asked for an itemized receipt or told that he needed to provide one. (Supplemental Report ¶24, 25)

Further, there is no credible evidence that the Complainant, or anyone else at the agency, provided any information to the Respondent that there were problems with how travel expenses were accounted for during his first term. Although the Complainant tried to explain that an employee of the Sheriff's Office, Sgt. Michael Van Buren claims he advised the Respondent in 2004 during his first term about the proper use of the agency credit card, when questioned about the incident, Sgt. Van Buren could not recall if anyone said anything to the Respondent about the use of the credit card. (See Supplemental Report ¶ ¶ 13-14). Despite her comments in her December 8, 2014 letter she "reported, and the investigator is aware, Mr. Manfre engaged in the same type of conduct during his initial term as Flagler County Sheriff and was specifically advised of the wrongfulness of the conduct." During the Supplemental Investigation, the Complainant could not provide any evidence to support her statement. According to the Supplemental Report, the Complainant also "clarified" that she did not counsel the Respondent about any improper use of the FCSO credit card during his first term as Sheriff because she had no knowledge at the time that he improperly used or attempted to use the credit card." (Supplemental Report ¶ 19) Moreover, the Complainant admitted that although she knew about Sgt. Van Buren's supposed disclosure prior to writing the December 8, 2014, letter, and even though she has been represented by counsel throughout this matter, she could not provide an explanation as to why she did not make this disclosure to the investigator.

The Supplemental Report, like the initial report fails to establish reasonable notice to the Respondent that he was engaging in conduct that violated the Ethics laws. As such, the Commission lacks credible evidence to prove corrupt intent.

Other Allegations

Although not a part of the supplemental investigation, the Respondent re-asserts that there is no credible evidence of corrupt intent in how the Respondent used the agency vehicle, that he improperly received his first paycheck or that he failed to report a gift. The Respondent


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refers the Commission to the response to the initial report of the investigation regarding the remaining allegations.

The Respondent fully understands the Commission's right to investigation allegations; however, there comes a point at which an investigation turns from an opportunity to gather information about an allegation to harassment of the subject. This investigation is a hair away from crossing that line and the Respondent therefore requests that the Commission dismiss all allegations because he has not violated the Ethics laws.

Sincerely,


Linda Bond Edwards

LBE/ams

cc: Sheriff James Manfre
Sidney Nowell, Esq.

Law Offices
RUMBERGER, KIRK & CALDWELL
Professional Association
215 South Monroe Street, Suite 702
Post Office Box 10507
Tallahassee, Florida 32302-2507
Telephone: (850) 222-6550
Telecopier: (850) 222-8783

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DATE: May 6, 2015

TO: Ms. Virlynida Doss, Executive Director FAX NO.: 488-3077

FROM: Linda Bond Edwards, Esq.

RE: Case Name: In re James L. Manfre
Complaint No.: 14-097

NUMBER OF PAGES (including this page): 4

COMMENTS:

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