

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

COMMISSION ON ETHICS
DATE RECEIVED
DEC 19 2007

In re: Michael Bennett,

Respondent.

Complaint No. 07-126

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

PARTIES

Respondent, Michael Bennett, serves as a member of the Florida Senate. The Complainant is Brian Tuttle of West Palm Beach.

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 Section 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on November 8, 2007.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his position for the benefit of a developer by attempting to force the Complainant into a deal with the developer, or as retaliation against the Complainant for his failure to enter into a deal with the developer.

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. The Respondent must have been a public officer or employee.
2. The 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. The Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.
4. The Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

Respondent serves as a member of the Florida Senate. (ROI 9) The alleged misuse of Respondent's position stems from Respondent's removal of a local bill CS/HB 1517 ("Local Bill") from the package for consideration by the Florida Senate during the 2007 legislative session. The Local Bill was for the establishment of the "Orange Hammock Special Taxing District" for the development of approximately 5,771 acres in the City of North Port, Sarasota County. The Complainant, Brian Tuttle, is the principal of the company that was developing the property. (ROI 4-7)

While there is evidence that Respondent asked the Complainant to work out differences with a developer of an adjacent parcel of property, and then later "killed" the bill when he found out that no deal had been reached with the developer, the evidence does not reasonably indicate that Respondent misused his position in doing so. (ROI 7-12) Rather, the evidence indicates that it was necessary for the Complainant to work things out with the adjacent developer because some of the Complainant's development plans impacted land donated by the adjacent developer to North Port and Sarasota County for a school and water treatment. Without approval by the adjacent developer, a reverter clause connected to the donated property may have been triggered. (ROI 20-23, 26) Respondent also had concerns at the time of his removal of the Local Bill from consideration that approval from the local legislative delegation and adjacent counties had not been obtained. The sponsor of the Local Bill, State Representative Michael Grant, confirmed that the bill was not killed as a favor to the adjacent developer, but rather because the Complainant failed to follow through with directions given to him by the local delegation to work things out with the developer, local landowners, and neighboring counties. (ROI 30)


Therefore, based upon 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.

RECOMMENDATION

It is my recommendation that,

There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using his position for the benefit of a developer by attempting to force the Complainant into a deal with the developer, or as retaliation against the Complainant for his failure to enter into a deal with the developer.

Respectfully submitted this 18th day of December, 2007.



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