

JUL 11 2023

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

CONFIDENTIAL

In re: McKenzie Fleurimond,

Respondent.

Complaint No.: 23-042

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.

RESPONDENT/COMPLAINANT

Respondent, McKenzie Fleurimond, serves as a City Commissioner for the City of North Miami Beach. Complainant is Stephanie Kienzle of Davie, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaints were legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Article II, Section 8(h)(2), Florida Constitution,¹ and 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 July 5, 2023.

¹ On December 31, 2022, the constitutional subsection found in Section 8(g)(2) of Article II of the Florida Constitution was redesignated as Section 8(h)(2).

ALLEGATION ONE

Respondent is alleged to have violated Article II, Section 8(h)(2), Florida Constitution, by abusing his public position in order to obtain a disproportionate benefit for himself.

APPLICABLE LAW

Article II, Section 8, provides as follows:

Ethics in government.—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(g)(1) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(2) A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

ANALYSIS

Respondent was appointed to serve as a City Commissioner for the City of North Miami Beach during 2010 through 2011 and has continuously served since his election in 2018. (ROI 1, 5) It is alleged that he used a City-issued purchasing card (P-card) to make a \$300 contribution to the Florida Democratic Party in the form of a ticket to an event being sponsored by the Florida Democratic Party. (ROI 1, 3)

According to Shereece George, Chief Procurement Officer,² City of North Miami Beach, the City's practice when issuing a P-card is to provide the card holder with a copy of the "Purchasing Card Agreement," which they are required to sign and acknowledge. (ROI 11, Exhibit

² Shereece George was employed in the City's purchasing office at the time of the allegations but was not serving as the Chief Procurement Officer. (ROI 11)

A) However, she was unable to locate a copy the "Purchasing Card Agreement" signed by Respondent and is unable to confirm it was actually provided to him when he was issued a P-card. (ROI 13) Respondent has no specific recollection of having been provided a copy of the Agreement. (ROI 9) The Agreement lists as item number 3 that the P-card is solely for allowable purchases directly related to the performance of the card holder's official duties and it cannot be used for non-City business. (ROI 12, Exhibit A) Item number 5 acknowledges receipt of the purchasing policies and procedures and notes that failure to follow the policies may result in revocation of P-card privileges. (ROI 12)

The City's P-card "Policy and Procedures Manual," Section III, titled "Limitations on Use of Procurement Cards," sets out multiple prohibited uses, including "[a]ny item(s) for personal or non-City use" and "Gifts and Donations." (ROI 14, Exhibit B)

Respondent stated that he made a "last minute decision" to attend the Florida Democratic Party's 2021 Leadership Blue Weekend. (ROI 6) The Florida Democratic Party's annual Leadership Blue Weekend is described online as "a weekend in support of FDP [Florida Democratic Party] and Florida's Democratic candidates!" (ROI 7) The 2021 Leadership Blue Weekend information stated that all conference events, "are free and open to all Democrats unless otherwise noted," and that the conference included, "Training, meetings, guest speakers and a Gala." (ROI 7) However, a \$300 ticket was required to attend the Gala.³ (ROI 7)

³ The Gala registration page for the 2021 Conference is no longer active or available for review online. (ROI 8) The current Gala registration page for the 2023 event scheduled for July contains the following notice: "This ActBlue page supports the Florida Democratic Party's Federal Account." (ROI 8) The page also notes, "Your contribution will benefit Florida Democratic Party - Federal Account." (ROI 8)

On December 3, 2021, Respondent charged \$300 on his P-card for "Act Blue FL Democratic P."⁴ (ROI 3, Complaint pp. 3-6) Respondent said that the \$300 charge went through the normal City review process. (ROI 9)

Unauthorized purchases using the P-card are required to be reimbursed to the City. (ROI 13) Respondent was never notified that the \$300 was a non-approved expenditure or that he owed the City a refund for this purchase. (ROI 9, 13, 15) As of July 5, 2023, Respondent had not reimbursed the City. (ROI 15)

John Herin, Interim City Attorney, City of North Miami Beach, has more than twenty years of experience working with local governments and recently was named Interim City Attorney. (ROI 10) The City has been embroiled in political turmoil since approximately 2020 and as a result of the November 2022 election, the City Commission and City leadership has changed. (ROI 10) In March 2023, the then-City Attorney resigned and the then-City Manager was terminated. (ROI 10) Currently, no commissioner has possession of a City P-card due to questions related to its misuse. (ROI 13)

Respondent's use of a City's P-card to make a "donation/contribution" to a political party would be an unauthorized use of the card. (ROI 10) The subject line of an email sent to Respondent from ActBlue.com on December 3, 2021, the date of his payment, reads, "Thank you for your contribution to Florida Democratic Party - Federal Account!" (ROI 3, 4, Complaint, pp. 8, 9) The email acknowledges receipt of his \$300 contribution and includes one ticket to the Florida Democratic Party Leadership Blue 2021 Gala held in Orlando during the Florida Democratic Party's 2021 Leadership Blue Weekend. (ROI 4, Complaint, pp. 8-10)

⁴ The transaction was posted on December 6, 2021. (ROI 3)

Usually, Respondent would have submitted a prior authorization request to travel on trips such as this but due to his last-minute decision to attend this conference he went ahead and charged the \$300 for the event to his City-issued P-card.⁵ (ROI 6) He believed it was "the all-inclusive cost of the conference," including attending the Gala and all conference sessions offered during the weekend. (ROI 6)

Respondent said he understood at that time that making a political contribution using his City-issued P-card would be inappropriate and, had he been aware the \$300 charge was considered a political contribution, he maintains he would not have used his City P-card for it. (ROI 6) A person of Respondent's position – City Commissioner – should know that purchasing a ticket to the Democratic Party's Leadership Blue weekend would be political in nature and constitute a political donation. If there was any doubt of this from the registration page, the "contribution receipt" Respondent received specifically thanks him for his one-time contribution in support of the Florida Democratic Party and should have alerted him that spending public funds for a political donation was inconsistent with the performance of his public duties. Hence, the City's policy and Code of Ethics would be violated. (Complaint, p. 9) Respondent made no attempt to reimburse the City. (ROI 9, 13, 15)

A ticket to the Democratic Party's gala had a limited or no public purpose. The basic test for determining whether an expenditure of public funds violates the state pledging-credit constitutional provision of Art. VII, § 10, Fla. Const. is whether such expenditure is made to accomplish a public purpose. *Miccosukee Tribe of Indians of Florida v. South Florida Water Management Dist.*, 48 So. 3d 811 (Fla. 2010). Any benefit to Respondent was as a private party and more than incidental to any public purpose.

⁵ This contradicts Respondent's statement that "the charge went through the normal City review process." (ROI 9)

Since there was no public purpose, it is concluded that Respondent received a "disproportionate benefit." Rule 34-18.001(2), Fla. Admin. Code, defines the term "disproportionate benefit" as "a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties." The Rule lists several factors the Commission should consider in determining whether a benefit, privilege, exemption, or result constitutes a "disproportionate benefit." The language in Rule 34-18.001 further emphasizes this point. Rule 34-18.001(2) states the term "disproportionate benefit" encompasses only a benefit, privilege, exemption, or result that is "inconsistent with the proper performance" of a public officer's or public employee's public duties. In other words, if the benefit, privilege, exemption, or result arising from the public officer's or public employee's conduct is contemplated by and consistent with the standards governing his or her public conduct, a "disproportionate benefit" will not be present.

Clearly, Respondent's \$300 donation to the Democratic Party was not contemplated as part of his public duties, as it is inconsistent with the P-card policies and procedures which specifically prohibit expenditures for any items(s) for personal or non-City use, entertainment, and gifts and donations. Accordingly, Respondent used the City's credit card to give himself a disproportionate benefit.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8(h)(2), Florida Constitution.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his City-issued credit card for a purchase(s) having limited or no public purpose.

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

ANALYSIS

The facts and circumstances are presented above under Allegation One. As stated, Respondent's \$300 contribution to the Florida Democratic Party's 2021 Leadership Blue Weekend,

which included one ticket to the Florida Democratic Party Leadership Blue 2021 Gala, was inconsistent with the proper performance of Respondent's public duties. At the time, Respondent said that he knew making a political contribution using his City-issued P-card would be inappropriate and there is evidence that Respondent received notice that it was a political contribution. Actions inconsistent with public duties coupled with a wrongful intent to receive a benefit violates the Code of Ethics.


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.

RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Article II, Section 8(h)(2), Florida Constitution, by abusing his public position in order to obtain a disproportionate benefit for himself.
2. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using his City-issued credit card for a purchase(s) having limited or no public purpose.

Respectfully submitted this 11th day of July, 2023.


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