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State of Florida
COMMISSION ON ETHICS
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Executive Director

JUN 04 2015

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General Counsel/Deputy Executive Director

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"A Public Office is a Public Trust"

June 3, 2015

Robert E. Larkin, III
Matthew D. Stefany
Allen Norton & Blue
906 North Monroe Street
Tallahassee, Florida 32303

Confidential

RE: Complaint No. 14-182, In re DAVID MORGAN

Dear Mr. Larkin and Mr. Stefany:

Enclosed, for your information, is a copy of the Advocate's Recommendation in the above-referenced complaint. If you wish to provide us with a written response for consideration at the probable cause hearing, it should be filed with our office no later than Monday, July 6, 2015.

The complaint will be considered at the **Friday, July 24, 2015**, Commission meeting. The meeting has been scheduled to begin at 10:00 a.m. in the Third Floor Courtroom, First District Court of Appeals, 2000 Drayton Drive, Tallahassee, Florida.

Under the Commission's rules, the Respondent, the Complainant, and their counsel may attend the hearing to observe the Commission's deliberations. The Respondent and the Commission Advocate will be given five minutes each to provide oral statements to the Commission. That statement, as well as any written statement you may choose to send in advance of the meeting, may address only the preliminary investigation and the applicability of the law to the circumstances set forth in the investigative report. No witnesses may be called at this hearing and no new evidence may be introduced. The sole purpose of the probable cause hearing is to evaluate the results of the preliminary investigation. If you plan to attend, please notify our office at least two days prior to the meeting.

If the Commission finds no probable cause to believe that a violation has occurred, the complaint will be dismissed and no further action will be taken. If the Commission finds probable cause, the Respondent will have the right to a full, evidentiary hearing before any final determination is made.

Please do not hesitate to contact this office if you have questions concerning this matter.

Sincerely,

Handwritten signature of Millie W. Fulford in cursive.

Millie W. Fulford
Complaint Coordinator

cc: Elizabeth A. Miller, Commission Advocate

JUN 03 2015

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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re: David Morgan,
Respondent.

Complaint No. 14-182

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, David Morgan, serves as Sheriff of Escambia County. Complainant is Gene M. Valentino of Pensacola, 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 the 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 May 28, 2015.

ALLEGATION

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using Escambia County Sheriff Office's staff and audio visual equipment to produce a television commercial for the Complainant's opponent during a 2014 campaign for the Escambia County Board of County Commissioners.

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

Respondent is the Escambia County Sheriff. (ROI 1) David Craig has been a civilian employee of the Escambia County Sheriff's Office (ECSO) since 2009. (ROI 3, 6) Craig is currently the ECSO Coordinator of Community Relations. (ROI 6) Craig also owns Reality News Network, also known as Reality Advanced, which is a private advertising agency he operates when he is not working for the ECSO. (ROI 6, Exhibit A) Respondent advised that ECSO's policy specifically prohibits the use of agency resources for personal or commercial use. (ROI 15)

During June 2014, Douglas Underhill, a candidate for the Escambia County Board of County Commissioners, contacted Craig and requested that Reality News Network provide advertising services for his upcoming campaign. (ROI 7) Reality News Network provided \$14,000 in services which were paid for by Underhill's campaign. (ROI 7, composite Exhibit B) Additionally, Reality News Network derived a profit by retaining a percentage of the airtime bought on Underhill's behalf. (ROI 8)

On June 11, 2014, at Underhill's request, Craig asked Respondent to appear in a video recorded commercial for Underhill's campaign and make a statement of support. (ROI 9) The 30 second political commercial included a 10 second statement of support for Underhill's candidacy by Respondent. (ROI 9) Recording began sometime after 7:31 a.m. on June 11, 2014, as confirmed by text messages, and was completed by 8:00 a.m. according to Craig. (ROI 9, 10, Exhibit C) Underhill confirmed that the video commercial was recorded in the early morning

hours of June 11, 2014. (ROI 14) Respondent stated the commercial was recorded prior to 9:00 a.m., the start of Craig's workday at ECSO. (ROI 15) Craig stated that he arrived at work near his normal start time of 9:00 a.m., without the necessity to use annual leave. (ROI 11) Craig further stated that the video recorded commercial was not produced while he was serving the ECSO as alleged in the complaint. (ROI 12) Craig claims that he used a camera and editing equipment owned by Reality News Network and denied using any ECSO resources in the production of Underhill's election campaign commercial. (ROI 12)

Complainant advised that "[r]ecords will show [Sheriff] Morgan and the Escambia County Sheriff's Department Employee, David Craig [sic] spending county time and money on the job producing this commercial." (Complaint p. 5) Complainant told the Commission's investigator that he was not referring to documents or similar records when he made that statement. (ROI 4) Rather, he believed the "verbal record" of what the witnesses told him was sufficient to investigate whether a violation of the Code of Ethics occurred. (ROI 4) Complainant stated that he has no personal knowledge regarding Respondent's involvement in the production of the commercial. (ROI 4)

Complainant provided contact information for six witnesses who he believed would have knowledge of the allegations in the Complaint. (ROI 5) The Commission's investigator interviewed the witnesses and reported that "none of them admitted seeing the filming of the commercial in question, and they were otherwise unable to provide information. . . ." (ROI 5)

The allegation against Respondent is based solely on hearsay. The investigation did not reveal any corroborating evidence to support Complainant's hearsay statement. Thus, there is no evidence that Respondent used or attempted to use his official position as sheriff or any video

recording property or staff resources within his trust to secure a special privilege or benefit for a political opponent of Complainant's.

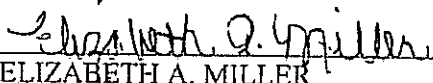
Therefore, based upon the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using Escambia County Sheriff Office's staff and audio visual equipment to produce a television commercial for the Complainant's opponent during a 2014 campaign for the Escambia County Board of County Commissioners.

Respectfully submitted this 3rd day of June, 2015.


ELIZABETH A. MILLER
Advocate for the Florida Commission
on Ethics
Florida Bar No. 578411
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The Capitol, PL-01
Tallahassee, Florida 32399-1050
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