

DATE FILED

JUN 17 2009

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

In re CHARLIE CRIST,

Respondent.

Complaint No. 09-043

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, June 12, 2009, the Commission on Ethics met in executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for legal insufficiency, based on the following analysis:

1. This complaint was filed by Anthony W. Wiseman of Umatilla, Florida.
2. The Respondent, Charlie Crist, serves as Governor of the State of Florida.
3. The complaint, via incorporation of several newspapers articles, makes assertions regarding the Respondent's flying on airplanes owned by several individuals (or owned by entities owned by the individuals) who may be lobbyists or principals of lobbyists under Sections 112.3148 and 112.3215, Florida Statutes; regarding an Enterprise Florida trip of the Respondent's to Europe; and regarding trips of the Respondent's on private airplanes for political

party business. However, the complaint does not assert that the Respondent took any flight for personal business using State aircraft.

4. None of the assertions mentioned above against the Respondent substantively alleges a possible violation of either the gifts law codified in Section 112.3148, Florida Statutes, or of the Executive Branch expenditure law codified in Section 112.3215, Florida Statutes.

5. Regarding the lobbyist-owned airplane flights, they are not a "gift" to the Respondent under Section 112.3148 if the Respondent provided equal or greater consideration for the flights within ninety days of taking them, and they are not a prohibited "expenditure" by an executive branch lobbyist to the Respondent if the Respondent provided equal or greater consideration contemporaneously with taking the flights. Section 112.312(12)(a), Florida Statutes; CEO 06-4. Under Article II, Section 8(f), Florida Constitution, and Section 112.322(1), Florida Statutes, while the Commission on Ethics has the authority to investigate legally sufficient complaints, it does not have the authority to audit a situation just to examine innuendo or speculation not grounded in factual allegations. In order to be a legally sufficient complaint, there must be an allegation that the Respondent failed to provide equal or greater consideration, or at least an allegation of facts that reasonably would indicate a possible violation. However, in this matter, the Complainant, candidly, admits that he does not know whether the Respondent paid or not, and has alleged no facts other than those provided in the attached newspaper articles. The articles themselves clearly indicate that the Respondent took multiple flights on private business using private aircraft, and they also quote the Respondent as saying that if he flew on personal business that he paid for the flight. Since nothing in the complaint indicates that the Respondent failed to pay, the complaint is legally insufficient to allow the Commission to investigate these flights.

6. Concerning the trip to Europe, as the Governor heads up Enterprise Florida (Section 288.901(7), Florida Statutes), the trip is neither an expenditure nor a gift from Enterprise Florida (which bore the Governor's travel expenses) or from the business people who accompanied the Governor and who (or whose businesses) paid fees or sponsorships to Enterprise Florida to participate in the trip. See CEO 06-11 in which we advised then Governor Bush that Enterprise Florida's payment of trade mission expenses would constitute neither an expenditure nor a gift under either Section 112.3215 or Section 112.3148, including not being prohibited as indirectly coming from private entities (sponsors) who might be participating in the trip and paying registration fees to Enterprise Florida. Also, the complaint states that the Respondent's fiancée and her sister went on the trip, but there is no allegation about who paid for them, so there is no issue about whether or to what extent their traveling may have involved a gift to the Respondent. Additionally, while there is a statement in the complaint that "[The Respondent] flew first class for about \$8,000 round-trip, courtesy of a Miami travel agency" (see page 17 of the complaint), public records from Enterprise Florida indicate that the ticket was provided to Enterprise Florida, and that it was credited toward a sponsorship for the travel agency by Enterprise Florida, thereby not constituting either a direct or indirect expenditure or gift to the Respondent from either Enterprise Florida or the travel agency. CEO 06-11.

7. The trips referred to in the complaint as being taken by the Respondent on private airplanes for political party business for which the Republican Party either paid or which were considered "in kind" contributions to the Party also are legally insufficient to indicate a violation of either the expenditure statute or the gifts law. The Legislature made it clear in writing the laws codified in Section 112.3148, Florida Statutes, that "any other contribution or expenditure by a political party" is exempted from being a "gift," and subsequently used even broader

language to exempt "any other contribution or expenditure made by or to a political party" from being a prohibited "expenditure" under the Executive Branch law codified in Section 112.3215, Florida Statutes. Section 112.312(12)(b)2, Florida Statutes; 112.3215(1)(d), Florida Statutes.

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on June 12, 2009.

June 17, 2009
Date Rendered

Cheryl Forchilli
Cheryl Forchilli
Chair, Florida Commission on Ethics

cc: Mr. Jason Gonzalez and Mr. Gerald B. Curington, Counsel for Respondent
Mr. Anthony W. Wiseman, Complainant

CF/CCA/mwf