

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause)	DOCKET NO. 880240-TC
Proceedings Against Commercial)	ORDER NO. 21891
Ventures, Inc. for Failure to Comply)	ISSUED: 9/13/89
with Commission Rules.)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER DENYING MOTION

BY THE COMMISSION:

On February 11, 1988, this docket was initiated to address several unresolved complaints brought against pay telephones owned and operated by Commercial Ventures, Inc. (Commercial Ventures). By Order No. 19085, issued April 4, 1989, we directed Commercial Ventures to show cause why it should not be fined \$7,000 for the apparent failure of its payphones to comply with Commission rules. Commercial Ventures denied any wrongdoing and requested a hearing pursuant to section 120.57, Florida Statutes. A Commission panel comprised of Commissioners Herndon and Beard, with Commissioner Beard designated the Prehearing Officer, was appointed to preside at the hearing.

The hearing was held November 14, 1988, in Miami, Florida. On January 30, 1989, Commercial Ventures, through its attorney, Howard Rose, filed its Motion to Disqualify the Hearing Officer for Good Cause. The motion alleges that Commissioner Beard should be disqualified from participation in further proceedings due to his bias and prejudice toward Commercial Ventures.

We have carefully reviewed the allegations contained in the motion and have found them to be unfounded and without merit. Accordingly, the motion is denied. We hereby conclude that Commissioner Beard is qualified to address all pending issues that remain in this docket.

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Discussion

Florida Statutes section 120.71(1) provides that any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

This statutory provision is codified in Rule 25-21.004, Florida Administrative Code. Our rule describes the procedures to be followed by any party to a Public Service Commission proceeding who seeks to disqualify a commissioner. Rule 25-21.004, F.A.C., provides that any commissioner may be disqualified from hearing or deciding any matter where it can be shown that that commissioner has a bias or prejudice for or against any party to the proceeding or a financial interest in its outcome. The rule explicitly states that the motion must contain facts which support any allegations of bias or prejudice. While the statutes and rules fail to define conduct that demonstrates "prejudice" sufficient for disqualification, there exists case law on point. Accordingly, we support the prevailing view that a party must demonstrate that a judge, or as in this case, an agency head, harbors personal bias or prejudice. Personal bias or prejudice stems from an extrajudicial source and causes a judge to render an opinion on the merits based on information other than what the judge learned from participation in or exposure to the proceedings. See United States v. Phillips, 664 F.2d 971 (5th Cir. 1981); United States v. Serrano, 607 F.2d 1145 (5th Cir. 1979), cert. denied, 445 U.S. 965 (1980); In Re Grand Jury Proceeding, 559 F.2d 234 (5th Cir. 1977); Wilson v. Renfro, 91 So.2d 857 (Fla. 1957).

We have applied the above standard against the facts Commercial Ventures relies on to support its allegations. We find no evidence sufficient to indicate a real or demonstrable prejudice or bias on the part of Commissioner Beard. We conclude that all the decisions made by Commissioner Beard have been based solely upon information he has acquired as a result of his participation in this matter. Commercial Ventures' motion is hereby denied.

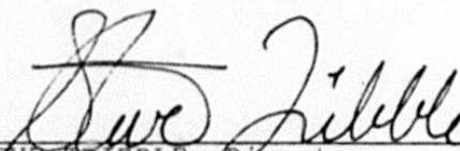
Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission, that the Motion to Disqualify the Hearing Officer for Good Cause filed by Commercial Ventures, Inc. is hereby denied. It is further

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ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission this 13th
day of SEPTEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DWS

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.