STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In Re: WALTON NEEDHAM SEILER CASE NO. 94-1511EC
_____/

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Susan B. Kirkland, held a formal hearing in this case on December 27, 1994, in Ocala, Florida.

APPEARANCES

Advocate: Virlindia Doss
Assistant Attorney General
Attorney General's Office
PL-01, The Capitol
Tallahassee, Florida 32399-1050

For Respondent: Walton Neeham Seiler, Pro Se
Route 3, Box 3910
Ft. McCoy, Florida 32137

STATEMENT OF THE ISSUES

Whether Respondent violated Sections 112.313(6),(7) and 112.3145, Florida Statutes, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On April 24, 1991, the Florida Commission on Ethics (Commission) entered an Order Finding Probable Cause to believe that Respondent, Walton Neeham Seiler (Seiler), as an employee of Marion County (County), violated Section 112.313(6), Florida Statutes, with regard to the County's construction certification examination program. The Commission also found probable cause to believe that Seiler, as chief building inspector or the chief administrative employee of the County violated Section 112.3145, Florida Statutes, by failing to disclose the income he received from the construction certification examination program. The Commission also determined that there was probable cause to believe that Seiler violated Section 112.313(6), Florida Statutes, by using his official position to advocate a variance request for the Development and Construction Corporation of America (DECCA) on its Oak Run project. Additionally, the Commission found probable cause to believe that Seiler violated Section 112.313 (7)(a), Florida Statutes, by virtue of his contractual relationship with Belleview Underground Utilities. The case was forwarded to the Division of Administrative Hearings for assignment to a Hearing Officer on March 17, 1994. The case was set for final hearing to commence on July 21, 1994. On July 18, 1994, Seiler requested a continuance. The motion was heard at the time set for final

hearing. The motion was granted and the case was rescheduled for final hearing on December 27, 1994.

At the final hearing, the Advocate called the following witnesses: Jim Kirkland, Murray Fugate, Mike May, Carol Pacheco, Liz Skipper, Oliver Sheffield, Steve Gilman, Gail Cross, Lawrence Letellier, Bill Tenbroeck, David Townsend, and Keith Powell. Advocate Exhibits 1–9, 14–33, 35–38, 40, 41, 48–55 were admitted. Advocate Exhibits 10–13, 34, 42–47 were admitted as hearsay, subject to corroboration by non–hearsay evidence. Seiler called Paul Melin, Roy Abshire, and Keith Powell as witnesses.

No transcript was filed. At the final hearing the parties agreed to submit proposed recommended orders on or before January 13, 1994. The parties timely filed their proposed recommended orders. The parties' proposed findings of fact are addressed in the appendix to this Recommended Order.

FINDINGS OF FACT

1. Beginning on October 18, 1971, Respondent, Walton Neeham Seiler (Seiler) was employed by Marion County (County) as a County Building Inspector. Sometime prior to December 2, 1976, Seiler was promoted to Chief Building Inspector. From December 3, 1976 to October 8, 1984, Seiler was employed with the County as the Building and Zoning Director. According to Seiler, his duties as Building and Zoning Director included the same duties he had as Chief Building Inspector as well as additional supervisory responsibilities. On October 9, 1984, Seiler became the County Administrator and was employed in that capacity until he was terminated from his position on August 26, 1986.

2. The Block Exam is a construction licensing examination furnished by a company called H. Block and Associates (Block). Prior to 1975, the Block Exam was not given in Marion County. Persons wishing to take the test had to go to Gainesville, Florida.

3. Prior to December, 1975, if a person desired to take the Block Exam, the person would go to the County Building Department, fill out an application, give the application to the County employee along with a check made out to Block. County employees would prepare a letter for each applicant and mail the letter, application and check to Block in Gainesville. County employees would also send a letter to the applicant, advising the applicant to call Block within three days of the receipt of the letter and arrange for a time to take the exam in Gainesville. Block would mail the test results to the County. County employees would prepare and send a letter to the applicant, advising the applicant of his test score.

4. At a meeting on December 9, 1975, Seiler approached the County Commission and asked that the County sponsor the Block Exam to be given in the County. The County Commission agreed to sponsor the licensing exams and to enter into an agreement with the local community college to rent space in which to conduct the exams. However, the community college required the County to provide liability insurance and to indemnify the college for any damages

resulting from the use of the college facility. The County Commission could not agree to the insurance and indemnification requirements.

5. The County Commission gave Seiler permission to conduct the Block Exams on his own. At the time permission was granted Commissioners Melin, Kirkland, and Fugate were unaware that Seiler intended to make a personal profit and they assumed that any excess funds would be given to the County. The issue of Seiler personally making a profit was not discussed at the time the County Commission gave Seiler authority to conduct the Block Exams without involving the County. Seiler administered the Block Exams in Marion County from December 20, 1975 until July, 1986.

6. Persons desiring to take the Block Exams during the time Seiler was giving the exams, filled out an application form and left it, with their fee, at the counter at Seiler's County office. Checks for the fees would be made out to Seiler. County employees accepted the applications and gave them to Seiler. When Seiler received a minimum number of applications, he would rent a room for the exam and advise Block that he wanted to give the exam on a certain date. Seiler would fill out a form letter to the applicants, assigning them an exam number and advising them of the date of the exam. He gave the information to the County and County employees mailed out the form letters. A County Employee would order the exam from Block. The test results would be sent to Seiler. He would compile a list of the applicants and their scores and give the list to the County. County employees would mail each applicant a notice of his exam score.

7. County employee time relating to the Block Exams included a minimum of six to eight hours per exam. The letters to Block and to the applicants were sent out on County letterhead and the County paid for the postage.

8. Seiler wrote a letter dated November 1, 1983 to Rodney Buckland on County letterhead, advising Mr. Buckland that the check he submitted to Seiler for the Block Exam was returned to Seiler for insufficient funds. Seiler further advised Mr. Buckland that he would not release Mr. Buckland's exam grade until the exam fee was paid plus $1.00 for a return item fee. Seiler signed the letter as Director of Building and Zoning.

9. When Seiler first began giving the tests, he charged an application fee of $30. Over time, the fee went up to $35, then $40, and $45. The application fee was at least $30 from December 1975 through December 1980 and at least $45 from January 1980 through July 1986.

10. No part of any application fee was ever remitted to the County. Seiler used the application fees which he collected to pay Block for the exams and proctor fees, to rent the room in which the tests were given and to reimburse himself for travel expenses. Seiler kept any amounts that were remaining after these expenses were deducted.

11. Based on Seiler's testimony given at his criminal trial in 1986, I find that the room rent ranged from $125 to $150 per exam.

12. Based on Advocate's Exhibit Number 5, I find the following:

(a) The Block Exam was given by Seiler on December 20, 1975. Block invoiced Seiler for $864.88, which was for 42 exams and proctor fees and expenses.

(b) The Block Exam was given by Seiler on June 12, 1976. Block invoiced Seiler for $1,283.88, which was for 66 exams and proctor fees and expenses.

(c) The Block Exam was given by Seiler on September 11, 1976. Block invoiced Seiler for $634.88, which was for 33 exams and proctor fees and expenses.

(d) The Block Exam was given by Seiler on December 11, 1976. Block invoiced Seiler for $545.88, which was for 25 exams and proctor fee and expenses.

(e) The Block Exam was given by Seiler on June 4, 1977. Block invoiced Seiler $1,422.88, which was for 64 exams and proctor fees and expenses.

(f) The Block Exam was given by Seiler on August 27, 1977. Block invoiced Seiler for $1,374.88, which was for 60 exams and proctor fees and expenses.

(g) The Block Exam was given by Seiler on December 17, 1977. Block invoiced Seiler for $1,966.88, which was for 76 exams and proctor fees and expenses.

(h) The Block Exam was given by Seiler four times in 1978. Block billed Seiler $5,369.64, which was for 219 exams and proctor fees and expenses.

(h) The Block Exam was given by Seiler four times in 1979. Block billed Seiler $8,108, which was for 292 exams and proctor fees.

(i) The Block Exam was given by Seiler on April 19, 1980. Block invoiced Seiler $2,636, which was for 98 exams and proctor charges.

(j) The Block Exam was given by Seiler on October 25, 1980. Block invoiced Seiler $3,0006, which was for 103 exams and proctor charges.

(k) The Block Exam was given by Seiler four times in 1981. Block invoiced Seiler $8,800, which was for 297 used exams, 8 unused exams and proctor charges.

(l) The Block Exam was given by Seiler four times in 1982. Block invoiced Seiler $8,980, which was for 301 used exams, 8 unused exams, and proctor charges.

(m) The Block Exam was given by Seiler five times in 1983. Block invoiced Seiler $10,099 which was for 346 used exams, 24 unused exams, and proctor charges.

(n) The Block Exam was given by Seiler five times in 1984. Block invoiced Seiler $7,683, which was for 260 used exams, 27 unused exams, and proctor charges.

(o) The Block Exam was given by Seiler six times in 1985. Block invoiced Seiler $9,711, which was for 329 used exams, 15 unused exams, and proctor charges.

(p) The Block Exam was given by Seiler at least two times in 1986. Block invoiced $3,604, which was for 119 used exams, 8 unused exams, and proctor charges.

13. It was approximately seventy miles round trip from Seiler's home to the examination site. Seiler claimed 22 per mile as travel expenses. This equates to $15.40 for travel expenses per exam.

14. Based on Advocate Exhibit 5, Seiler's criminal trial testimony that the high range of the room rental rate was $150 for each exam, the finding that Seiler charged at least $30 per exam from 1975 to 1980 and $45 per exam from 1980 to 1986 (unused exams were not counted in determining the gross income), and the travel expenses claimed by Seiler, I find that Seiler received gross and net income related to the Block Exams in the following amounts:

YEAR	GROSS	NET
1975	1260	230.60
1976	3630	669.16
1977	6000	785.36
1978	6570	538.76
1979	8760	-81.60
1980	6030	57.20
1981	13365	3903.40
1982	13545	3903.40
1983	15570	4644.00
1984	11700	3190.00
1985	14805	4104.60
1986	5355	1420.20

15. Seiler's gross salary from his public employment for the years 1976, 1980, 1983, 1984, and 1986 was as follows:

1976	13,894.12
1980	22,678.08
1983	29,888.00
1984	34,931.21
1985	44,172.20

16. In 1985, Seiler received $20,000 in income in the sale of his share of Bellview Underground Utilities, Inc. (Bellview).

17. Based on Seiler's deposition testimony, I find that Seiler received no other income in 1976, 1980, 1983, and 1984 except the

income derived from his public salary. In 1985, Seiler derived his income from his public salary and the sale of Bellview.

18. During the years 1976, 1980, 1983, 1984, and 1985, Seiler's gross income derived from the Block Exams exceeded his gross income for those years by more than 5 percent.

19. Seiler did not report any of his income from administering the Block Exams on his financial disclosure filings for 1976, 1980, 1983, 1984, or 1985.

20. Bellview was a for–profit corporation formed by Seiler, and two others on March 22, 1985.

21. In 1985, the Development and Construction Corporation of America (DECCA) began work on a residential development in Marion County to be known as Oak Run.

22. At this time, Marion County regulations required that access to property (roads) be by a right of way granted by the property owner to either the County or to a homeowner's or other group which would own and maintain the road. County regulations also required that road right of ways be 60 foot in width.

23. At the meeting of the Marion County Plat Committee (Plat Committee) held July 31, 1985, DECCA requested a variance from the County to provide that access for ingress and egress, and for drainage and utilities in it Oak Run project would be by easement instead of right–of–way, with such easements to be 54 feet wide instead of 60 feet.

24. The Plat Committee believed the variances could give rise to two problems. First, the Plat Committee understood that if access were by right of way, building setbacks would be measured from the edge of the right–of–way (the edge of the road); whereas, if access were by easement, the building setbacks would be measured from the center line of the easement (the center of the road); therefore, the Plat Committee reasoned, access by easement would allow the developer to build residences much closer to the road than local regulations allowed. This was the primary concern expressed by the Plat Committee in it July 31, 1985 memorandum recommending denial. The Plat Committee was also concerned that a 54 foot road would simply not be big enough to accommodate the utilities and drainage which would go beneath it.

25. The Plat Committee recommended denial of the request.

26. The variance issue was again raised at the Plat Committee meeting of August 7, 1985. This meeting was attended by DECCA attorney Steve Ryder, DECCA Oak Run Project Engineer Bob Farner, Attorney Mike Milbrath and County Commissioner Murray Fugate, in addition to the Plat Committee members. Mr. Ryder stated that DECCA was asking for access by easement wherein the property line goes to the center of the roads.

27. The Plat Committee again voted not to recommend the

requested variance.

28. The issue of the variance came up a third time on August 23, 1985, at a special meeting of the Plat Committee.

29. Seiler appeared at the August 23rd meeting and represented to the Plat Committee that DECCA was no longer seeking an easement but a right of way. Seiler advocated in an assertive and forceful manner that the Plat Committee recommend that a variance be granted to DECCA. At the time that Seiler appeared at the Plat Committee on August 23, 1985, Bellview had submitted a bid to DECCA to perform the underground utility work for the Oak Run Project. DECCA awarded the contract to Belleview on September 24, 1985.

30. The Plat Committee declined to recommend a variance allowing a 54 foot access by right of way. Seiler told the Chairman of the Plat Committee to put in writing the reasons why the Plat Committee would not recommend the granting of a variance and to submit the reasons to him. Seiler advised that he would take it to the County Commission.

31. The Plat Committee submitted their reasons for denial in writing to Seiler. The memorandum did not address the concern the Plat Committee had concerning the property line extending to the center of road because the Plat Committee was under the impression that an easement was no longer at issue.

32. With the exception of one member, all the members of the Plat Committee worked for the County in subordinate positions to Seiler. As County Administrator, Seiler had the authority to "supervise all personnel except the County Attorney," and "suspend, discharge or remove any employee under the jurisdiction of the Board pursuant to the Marion County Personnel Rules."

33. Seiler appeared at the County Commission meeting on August 27, 1985, at which time the County Commission considered the variance request by DECCA for the Oak Run project. Seiler advocated that the County Commission grant the variance for a 54 foot road by easement. At the time that he appeared before the County Commission, he did not advise the Commissioners that Bellview was bidding for work with DECCA on the Oak Run project. Commissioners Cross, Gilman, and Fugate were unaware at the time that they voted on the DECCA variance that Seiler had an interest in Bellview or that Bellview was seeking a contract with DECCA. Commissioner Abshire was aware that Seiler had an interest in Bellview but was unaware that Bellview was bidding for a contract with DECCA for the Oak Run project.

34. The County Commission approved a 54 foot right of way by easement in the Oak Run project with three foot utility easements on each side of the road.

35. Access by easement did have the effect of establishing the lot owner's property line in the center of the road, rather than at the edge of the road.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees).

37. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. Department of Transportation v. J.W.C. Co.,Inc., 396 So.2d 778 (Fla. 1st DCA 1981) and Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative: that the Respondent violated Sections 112.313(6),(7)(a) and 112.3145(3), Florida Statutes. Therefore, the burden of establishing by a preponderance of the evidence the elements of the Respondent's violations is on the Commission.

38. Section 112.313(6), Florida Statutes provides:

> No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

39. The term "corruptly" is defined by Section 112.312(9), Florida Statutes, to mean:

> [D]one 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 public duties.

40. In order for it to be concluded that Respondent violated Section 112.313(6), Florida Statutes, the Advocate must establish the following elements:

> 1. The Respondent must have been a public officer or employee.
> 2. The Respondent must have:
> (a) used or attempted to use his official position or any property or resources within his trust, or
> (b) performed his official duties.
> 3. The Respondent must have acted to secure a special privilege, benefit, or exemption for himself or others.
> 4. In so doing, the Respondent must have

> acted corruptly, that is, with wrongful intent and for the purpose of benefiting himself or another person from some act or omission which was inconsistent with proper performance of his public duties.

41. The Advocate alleges that Seiler violated Section 112.313 (6) by using county resources to administer the Block Exams while personally retaining the proceeds. Seiler was an employee of Marion County from 1974 through August, 1986 and as such was a public employee. Seiler did use County resources in administering the Block Exam. He used his County staff, on County time, to collect applications and fees and to prepare correspondence to Block and to the applicants. He used County letterhead, envelopes, copiers and postage to compile and mail correspondence to Block and the applicants. He also used County letterhead in a letter to an applicant in an attempt to collect for a bad check which he had accepted as payment for the exam fee. Seiler received a special benefit in that he made a profit in administering the exams which he kept for himself.

42. Seiler did use the County resources with a wrongful intent. He was given permission by the County Commission to conduct Block Exams without involving the County. By using County resources, Seiler did involve the County which was directly contrary to the mandate of the County Commission. Seiler knew that he was not supposed to give the exams on County time and that he was not supposed to work on the exams on County time. Seiler knew that the administering of the Block Exams was not a County function and that it was his private enterprise. Even though Seiler knew that the County Commission had stated that the County was not to be involved, Seiler held out to the applicants and to Block that the exams were being sponsored by the County. Seiler argues that he lacked wrongful intent because the County simply continued to perform the duties that it had performed when Block administered the exams. This argument lacks merit but even if it did have merit, the argument fails when applied to Seiler using County letterhead in an attempt to collect on a bad check and refusing to release the exam score to the applicant until the applicant paid the fee. Collection of bad debts for Block was a service which the County had not performed prior to Seiler's career in administering Block Exams. In Gordon v. State Commission on Ethics, 609 So.2d 125 (Fla. 4th DCA 1992), the Court affirmed the Commission's conclusion that a city commissioner violated Section 112.313(6) when he used city stationery to promote a symposium for which he received compensation.

43. The Advocate has established by a preponderance of the evidence that Seiler violated Section 112.313(6) by using County resources to support Seiler's private enterprise of administering the Block Exams.

44. The Advocate has alleged that Seiler violated Section 112.313(6) by attempting to obtain a variance requested by DECCA. Seiler was a public employee at the time that he appeared before the Plat Committee and before the County Commission, advocating for a variance for DECCA on its Oak Run Project. Seiler was a public

employee and part owner of Bellview when he advocated for the variance for DECCA. He used his position as County Administrator to recommend that the variance be granted to a company to whom Bellview had submitted a bid for the underground utilities for the project for which the variance was sought. It is obvious that Bellview would be in a better position to get a contract with DECCA if one of the owners of Bellview could use his position as County Administrator to recommend to his superiors that the variance be granted. Seiler would personally benefit if Bellview were to get the contract with DECCA for the Oak Run project. Seiler corruptly used his position because he did not advise the County Commissioners that his company Bellview had submitted a bid on the Oak Run project prior to advocating for the variance for DECCA. The Advocate has established by a preponderance of the evidence that Seiler violated Section 112.313(6) by attempting to get the variance for DECCA.

45. Section 112.3145(3), Florida Statutes, provides:

> The statement of financial interests for ... specified local officers ... shall include:
> (a) All sources of income in excess of five percent of the gross income received during the disclosure period by the person in his own name or by any other person for his use or benefit, excluding public salary.

46. Section 112.3145(1)(a), Florida Statutes, provides:

> (a) "Local Officer" means:
> * * *
> 3. Any person holding one or more of the following positions: ... chief administrative employee of a county ... chief county or municipal building inspector.

47. From 1976 to 1984, Seiler served as Building and Zoning Director and had the same responsibilities as he did when he was titled Chief Building Inspector. From 1984 to 1986, Seiler was the chief administrative employee of the County. Thus, for the years 1976, 1980, 1983, 1984, and 1985, Seiler was a local officer within the definition of Section 112.3145(1)(a), Florida Statutes.

48. In 1976, 1980, 1983, 1984, and 1985, Seiler's gross income from the Block Exams exceeded 5 percent of his gross income and Seiler failed to disclose the Block Exam income on his financial disclosure filing for those years. Seiler violated Section 112.3145 (3), Florida Statutes.

49. Section 112.313(7), Florida Statutes, provides:

> (a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee, excluding those

> organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county or other political sub-division of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

50. In order to establish a violation of the second clause of Section 112.313(7)(a), Florida Statutes, the following elements must be proven:

> 1. The Respondent must have been a public officer or employee.
> 2. The Respondent must have held employment or a contractual relationship that will:
> (a) create a continuing or frequently recurring conflict between the Respondent's private interests and the performance of the Respondent's public duties; or
> (b) impede the full and faithful discharge of Respondent's public duties.

51. Seiler was a public employee. He was part owner of Bellview and therefore had a contractual relationship with that company. See CEO 86-36. Seiler's relationship with Bellview did impede the full and faithful discharge of his public duties as County Administrator. As a County Administrator it was his duty to look out for the interests of the County; however his private business interests would call for him to do whatever he could to enchance his chances of getting business for Bellview. Thus, Seiler's relationship with Bellview could "tempt dishonor" when it came to dealing with situations as County Administrator which involved projects on which Bellview was working or seeking to work. See Zerweck v. State Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982). The evidence did establish that his relationship with Bellview did impede the full and faithful discharge of his duties as County Administrator when he advocated for the variance for DECCA. The Advocate has established by a preponderance of the evidence that Seiler violated Section 112.313(7).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order and Public Report be entered finding that Respondent, Walton Neeham Seiler, violated Section 112.313(6), Florida Statutes in both instances alleged and violated Section 112.3145 and 112.313(7)(a), Florida Statutes. I further recommend that a civil penalty of $2000 be recommended for each violation of Section 112.313(6) for a total of $4,000, that a civil

penalty of $500 be recommended for the violation of Section 112.3145, that a civil penalty of $1000 be recommended for the violation of Section 112.313(7), and that a public censure and reprimand be recommended for each violation.

DONE AND ENTERED this 2nd day of March, 1995, in Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of March, 1995.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 94-1511EC

To comply with the requirements of Section 120.59(2), Florida Statutes (1993), the following rulings are made on the parties' proposed findings of fact:

Advocate's Proposed Findings of Fact.

1. Paragraphs 1-5: Accepted in substance.
2. Paragraph 6: This paragraph does not contain a complete sentence; thus, it is impossible to address it.
3. Paragraphs 7-8: Accepted in substance.
4. Paragraph 9: Rejected as not supported by nonhearsay evidence that the employees other than Seiler answered questions. The remainder of the paragraph is accepted in substance.
5. Paragraphs 10-17: Accepted in substance.
6. Paragraph 18a: Except as to the net amount, the paragraph is accepted in substance. The net amount listed is not supported by the greater weight of the evidence.
7. Paragraph 18b: Except as to the number of times the test was given, the remainder of the paragraph is rejected as not supported by the greater weight of the evidence.
8. Paragraph 18c: Except as to the number of times the test was given, the remainder of the paragraph is rejected as not supported by the greater weight of the evidence.
9. Paragraph 18d: Except as to the net amount, the paragraph is accepted in substance. The net amount listed is not supported by the greater weight of the evidence.
10. Paragraph 18e: Except as to the net amount, the

paragraph is accepted in substance. The net amount listed is not supported by the greater weight of the evidence.

11. Paragraph 18f: Except for the number of times the exam was given, the remainder of the paragraph is rejected as not supported by the greater weight of the evidence.
12. Paragraph 18g: Except for the net amount the paragraph is accepted in substance. The net amount is not supported by the greater weight of the evidence.
13. Paragraph 18h: Except for the net amount the paragraph is accepted in substance. The net amount is not supported by the greater weight of the evidence.
14. Paragraph 18i: Except for the net amount the paragraph is accepted in substance. The net amount is not supported by the greater weight of the evidence.
15. Paragraph 18j: Except for the net amount, the number of exams ordered, and the gross amount collected, the paragraph is accepted in substance. The remainder is rejected as not supported by the greater weight of the evidence.
16. Paragraph 18k: Except for the net amount, the paragraph is accepted in substance. The net amount is not supported by the greater weight of the evidence.
17. Paragraph 18l: Except for the net amount, the paragraph is accepted in substance. The net amount is not supported by the greater weight of the evidence.
18. Paragraph 19. The first sentence is rejected as not supported by the greater weight of the evidence. The remainder is rejected as subordinate to the facts actually found.
19. Paragraphs 20–22: Accepted in substance.
20. Paragraph 24: Rejected as subordinate to the facts actually found.
21. Paragraphs 25–28: Accepted in substance.
22. Paragraph 29: Rejected as constituting argument.
23. Paragraphs 30–35: Accepted:
24. Paragraph 36: The last sentence is rejected as unnecessary. The remainder of the paragraph is accepted.
25. Paragraphs 37–38: Accepted.
26. Paragraphs 39–40: Rejected as unnecessary.
27. Paragraph 41: Accepted in substance.
28. Paragraph 42: The first sentence is accepted in substance. The remainder of the paragraph is rejected as constituting argument.
29. Paragraph 43: Rejected as unnecessary.
30. Paragraphs 44–49: Accepted in substance.
34. Paragraph 50: Rejected as unnecessary.
35. Paragraph 51: Accepted in substance.
36. Paragraph 52: Rejected as unnecessary.
37. Paragraph 53: Accepted in substance.
38. Paragraph 54: The first sentence is accepted in substance. The remainder is rejected as constituting argument.
39. Paragraphs 55–56: Rejected as subordinate to the facts actually found.

40. Paragraphs 57–58: Accepted in substance.
41. Paragraph 59: The last sentence is rejected as constituting argument. The sentence concerning Commissioner Abshire is rejected as not supported by the greater weight of the evidence to the extent that Abshire did know that Seiler did have some relationship with Bellview. However, Abshire did not know that Bellview was bidding for a contract with DECCA on the Oak Run Project.
42. Paragraphs 60–64: Rejected as constituting argument.

Respondent's Proposed Findings of Fact.

Section 1

1. Paragraph 1: Accepted in substance.
2. Paragraph 2: As to the first full sentence, it isrejected that the County was giving the exams. It is accepted that the County did collect the $100 fee and send it to Block. The second sentence is accepted in substance to the extent that the County employees were performing the work described in Paragraph 3 of the Findings of Fact in this Recommended Order. The third sentence is accepted in substance.
3. Paragraph 3: The first sentence is rejected as not supported by the greater weight of the evidence. The second sentence is not supported by the evidence presented.
4. Paragraph 4: Rejected as constituting argument.
5. Paragraph 5: Accepted in substance.
6. Paragraph 6: The first sentence is rejected as constituting argument. The remainder is subordinate to the facts actually found.
7. Paragraph 7: Accepted in substance.
8. Paragraph 8: Rejected as subordinate to the facts actually found.
9. Paragraphs 9–10: Rejected as constituting argument.
10. Paragraph 11: The first sentence is accepted in substance but rejected to the extent that it implies that Seiler did not make a profit. The second sentence is rejected as subordinate to the facts actually found.
11. Paragraph 12: Rejected as constituting argument.

Section 2

1. Paragraph 1: The first full sentence is accepted. The second sentence is rejected as not supported by competent substantial evidence. The second sentence is rejected as not supported by the greater weight of the evidence. The last sentence is rejected as constituting argument.

Section 3

1. Paragraphs 1–4: Rejected as subordinate to the facts actually found.
2. Paragraph 5: Rejected as constituting argument.

Section 4

1. Paragraph 1: The first full sentence and the second sentence are rejected as constituting argument. The third sentence is rejected as Mr. Sheffield's testimony was not credible. The remainder is is rejected as subordinate to the facts actually found.

2. Paragraphs 2–4: Rejected as constituting argument.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.