

Ethical Considerations for Special Districts

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One of the ways in which the Florida Constitution and legislature attempted to guarantee confidence in our State's government is through the creation of ethical standards for public officials. In 1968, the Florida Constitution was revised to include a code of ethics upon all state employees and non-judicial officers. Those revisions provided that a conflict between public duty and private interests would be prohibited under Florida law. In 1976, an additional constitutional amendment resulted in the adoption of the "Sunshine Amendment." The Sunshine Amendment imposed standards of ethical conduct and created disclosure requirements upon public officers and employees. The Amendment also created an independent commission that investigates complaints relating to breaches of public trust by public officers and employees. The independent commission became the Florida Commission on Ethics.

Florida's ethics laws for public officers and employees are found in Article II, section 8 of the Florida Constitution and Chapter 112 of the Florida Statutes. Part III of Chapter 112, known as the "Code of Ethics for Public Officers and Employees", was enacted to promote public interest, maintain people's respect for government, and ensure that public officials serve the public interest. One of the fundamental principles of the Code is that public officials shall not use their office for private gain.

The Code of Ethics applies generally **to all public officers and employees at the State, regional, and local levels, including members of an advisory body.** The Code applies to all "agencies" which includes any State, regional, county, local, or municipal government entity of the State; any department, division, bureau, commission, authority, or political subdivision of the State; or any public school, community college, or State University" to Florida's ethics laws. *See, Fla. Stat. § 112.312(2).* Special district officers and employees are bound by the Code of Ethics.

The Florida Commission on Ethics is responsible for investigating and issuing public reports on complaints of breaches of the public trust by public officers and employees. The Commission is composed of nine-members. Five members are appointed by the Governor, two members are appointed by the Speaker of the House, and two members are appointed by the President of the Senate. No members of the Commission are allowed to hold public employment. All Commission members serve two year terms and may not serve more than two successive terms.

Generally, the Florida Code of Ethics fall into two broad categories: 1) those prohibiting certain actions or conduct by public officers and employees, and 2) those that require that certain disclosures be made to the public by public officers and employees. The following shall serve as a description of the prohibited acts and disclosure requirements under the Ethics Code.

I. PROHIBITED ACTIONS OR CONDUCTS BY PUBLIC EMPLOYEES AND OFFICERS

Unless otherwise noted, each of the following prohibitions applies to special district officials and employees.

a. Solicitation and/or Acceptance of Gifts (Fla. Stat. § 112.313(2)).

Public officers, employees, local government attorneys, and candidates are prohibited from soliciting or accepting anything of value in exchange for an understanding that their vote, official action, or judgment will be influenced by the gift. *See*, Fla. Stat. § 112.313(2). The definition of “gift” in the Code is expansive. “Gifts” include real property; the use of real property; personal property and its use; a preferential rate on a debt, loan, good or service; forgiveness of an indebtedness; transportation other than that provided in relation to officially approved governmental business, lodging, or parking; food or beverage; membership dues; entrance or admission fees; plants, flowers, or floral arrangements; personal services and any service having an attributable value. *See*, Fla. Stat. § 112.312(12)(a).

b. Unauthorized Compensation (Fla. Stat. § 112.313(4)).

Public officers, employees, local government attorneys, and their respective spouses and minor children are prohibited from accepting any compensation, payment, or things of value when they know, or should know, that the gift is given for the purpose of influencing a vote or other official action. *See*, Fla. Stat. § 112.313(4).

c. Misuse of the Official Position (Fla. Stat. § 112.313(6)).

Public officers, employees, and local government attorneys are prohibited from “corruptly” using or attempting to use their official position, property or resource within trust, to obtain a special privilege for themselves or others. “Corruptly” is an act or omission done with wrongful intent for purpose of obtaining an improper benefit inconsistent with public duties. *See*, Fla. Stat. § 112.312(9).

d. Disclosure or Use of Information (Fla. Stat. § 112.313(8)).

Public officers, employees, and local government attorneys are prohibited from disclosing or using information that is not available to members of the general public and that was obtained as a result of their official position for personal gain or benefit, or for the benefit of others. *See*, Fla. Stat. § 112.313(8).

e. Nepotism (Fla. Stat. § 112.3135(2)(a)).

Public officials within special districts are generally prohibited from appointing, promoting, or advancing “relatives” within the agency. *See*, Fla. Stat. § 112.3135(2)(a). “Relatives” include an individual related to a public officer as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. *See*, Fla. Stat. § 112.3135(1)(d). However, the prohibition does not apply to relatives serving in a volunteer capacity who provide emergency medical, fire fighting or police services. Volunteers can seek reimbursement for costs or training, and payment for incidental expenses. *See*, Fla. Stat. § 112.3135(2)(a).

f. Conducting Business with the Special District (Fla. Stat. § 112.313(3)).

Public officials and employees are prohibited from doing business with their own agency. *See*, Fla. Stat. § 112.313(3). A public officer or employee cannot directly or indirectly purchase, rent, or lease any realty, goods or services from a business entity in which the officer, employer, spouse, or child has a material interest. *See*, Fla. Stat. § 112.313(3). The prohibition includes acting as an “agent” for the purchase, rental, or lease of any realty, goods, or services for the agency from a business entity in which the employee or public officer, or their spouse, or their child has a material interest. *See*, Fla. Stat § 112.313(3). Special taxing districts are not exempt from this provision.

g. Conflicting Employment and Contractual Relationships (Fla. Stat. § 112.313(7)).

Generally, public officers and employees are prohibited from holding any employment or contract with any business entity or agency, regulated by or doing business with his/her public agency. Additionally, public officers or employees are prohibited from holding any employment or having a contractual relationship which poses a frequently recurring conflict between private interest and public duties or impedes full and faithful discharge of public duties. *See*, Fla. Stat. § 112.313(7). Special taxing districts and water control districts have been

partially exempted from this provision as long as the conflict does not frustrate the “intent” of the provision. *See*, Fla. Stat. § 112.313(7)(a)(1).

h. Employees Holding Office (Fla. Stat. § 112.313(10)).

Public employees are prohibited from being a member of the governing body that serves as his/her employer. *See*, Fla. Stat. § 112.313(10).

i. Board Membership on a Professional and/or Occupational Licensing Board. Fla. Stat. § 112.313(11).

Officers, directors or administrators with state, county or regional professional or occupational organization or associations are prohibited from serving as a member of a state examining or licensing board for the profession or occupation. *See*, Fla. Stat. § 112.313(11).

j. Local Government Attorneys (Fla. Stat. § 112.313(16)).

Local government attorneys that routinely represent special districts are prohibited from representing individuals and/or entities before the same special district that they represent. *See*, Fla. Stat. § 112.313(16). The prohibition on representation of individuals and/or entities before the special district extends to attorneys within the same law firm. *See*, Fla. Stat. § 112.313(16).

k. Voting Conflicts (Fla. Stat. § 112.3143).

Special district public officials are prohibited from voting or participating in any matter which would benefit their private interests. *See*, Fla. Stat. § 112.3143(2). They are prohibited from voting on any measure that would:

- i. inure to his/her special private gain or loss;
- ii. which the officer knows would inure to the special private gain or loss of a principal by whom he/she is retained;
- iii. which would inure to the special private gain or loss of the parent organization or subsidiary of a corporate principal by which he/she is employed; or
- iv. which would inure to the special private gain or loss of a relative, or of a business associate of the public officer.

See, Fla. Stat. § 112.3143.

In the event one of the above listed conflicts occur the officer must publicly announce before the vote is taken the nature of his/her interest in the matter from which he/she is abstaining from voting and must then file a Memorandum of Voting Conflict form after the vote. *See*, Fla. Stat. § 112.3143. Alternatively, if a conflict becomes known after the vote has been cast, the officer must orally announce the conflict at the next meeting after the conflict is discovered and file the written Memorandum of Voting Conflict form within fifteen (15) days of the oral disclosure. *See*, Fla. Stat. § 112.3143(4)(b). The Memorandum of Voting Conflict form is available on the Florida Commission on Ethics website at www.ethics.state.fl.us. *See*, Fla. Stat. § 112.3143.

II. DISCLOSURE REQUIREMENTS

a. Filing of Financial Disclosures (Fla. Stat. § 112.3145)

In order to avoid conflicts that may occur when circumstances require public officials to make decisions affecting their own personal financial interests, certain public officers and employees and candidates for public office are required to publicly disclose their financial interests. Not all public officials and candidates are required to file the same disclosure forms. Accordingly, special district officials and candidates running for positions in special district need to be mindful of which forms they are responsible for submitting and the appropriate location for filing such forms. All financial disclosure forms are available on the Florida Commission on Ethics website at: <http://www.ethics.state.fl.us/> .

Elected and appointed special district officials are included in the definition of “local officers” that are obligated under Fla. Stat. § 112.3145(1) to file a Statement of Financial Interest form (Form 1) with either the Commission on Ethics or the Supervisor of Elections. Chief administrative officers of political subdivisions, fire chiefs, and purchasing agents with authority to make purchases exceeding \$15,000 for a political subdivision are also required to file this financial disclosure form. This form requires disclosure of primary and secondary sources of income, real and intangible personal property, liabilities and interests in specified businesses. A separate financial disclosure form is required to be executed and submitted to the Commission on Ethics within 60 days after leaving office or employment.

All gifts received by special district officials which the official believes to be in excess of \$100 must be disclosed by submitting a Quarterly Gift Disclosure form (Form 9) to the Florida Commission on Ethics. The Quarterly Gift Disclosure form should be filed on the last date of any calendar quarter following the calendar quarter in which the gift was received. The definition of “gift” under the Ethics Code is comprehensive and should be referred to if in doubt of its

applicability. *See*, Fla. Stat. § 112.312(12)(a). Special district officials also are obligated to complete a separate form (Form 10) relating to any gifts valued over \$100 that they receive from the special district in which they are an officer or other government agencies, from direct-support organizations, or for payments or gifts they receive in exchange for appearances at events or as a honorarium. *See*, Fla. Stat. §§ 112.3148, 112.3149. If no gifts valued over \$100 were received during the year, then no gift disclosure forms need to be submitted to the Commission on Ethics.

b. Disclosure Submissions to Ethics Commission are Public Records

It is important for special district elected officials and officers appreciate that once the disclosure forms are submitted to the Supervisor of Elections or Commission on Ethics, the forms are a public record of the special districts and are subject to Chapter 119, Florida Statutes. Special district officials should provide a copy of their submitted disclosure forms to the special district's records custodian as a matter of course to avoid any unnecessary violations of the Sunshine Law. A special district cannot refuse to allow access to the financial disclosure forms on the basis that the records are also maintained by the Supervisor of Elections or Commission on Ethics. *See*, AGO 86-69; *Wallace v. Guzman*, 687 So. 1351 (Fla. 3d DCA 1997); *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976). For example, if a public records request is received by a special district requesting disclosure forms submitted by special district officials, the special district is obligated under Chapter 119, Florida Statutes, to produce this documentation. If an action is initiated against a special district to enforce a district's obligation to permit the inspection or copying of a record under Chapter 119, Florida Statutes, and the district's withholding of the record is deemed "unlawful," the special district may be forced to pay the requesting party's costs and attorneys fees for enforcement of the public records law. *See*, Fla. Stat. § 119.12.

c. Conflict of Interest Disclosure

As mentioned above, if an officer of the special district is aware or becomes aware of a conflict of interest that he/she will be taking on a matter, a Memorandum of Voting Conflict must be submitted to the person in the special district responsible for recording the minutes of all public meetings. If the conflict is known to the office before a vote is taken, the officer is required to publicly announce before the vote the nature of his/her interest in the matter, must abstain from voting and must submit a Memorandum of Voting Conflict form after the vote. *See*, Fla. Stat. § 112.3143. A copy of the memorandum should be submitted to the person responsible for recording the minutes of the meeting for incorporation into the minutes of the meeting. The form does not need to be

submitted to the Florida Commission on Ethics. Alternatively, if the conflict becomes known after a vote was cast, the officer must disclose the conflict orally at the next meeting after the conflict is discovered and file a written memorandum within fifteen (15) days of the oral disclosure. *See*, Fla. Stat. § 112.3143(4)(b). The Memorandum of Voting Conflict form can be found on the Florida Commission on Ethics' website at www.ethics.state.fl.us.

III. CONSEQUENCES OF VIOLATION

a. Ethics Complaints

Public officers and employees, including those of special districts, may be the subject of an ethics complaint for violations of the Chapter 112, Florida Statutes and Section 8, Article II of the Florida Constitution. The Commission on Ethics is charged with receiving, investigating, and conducting hearings on violations set forth in complaints. *See*, Fla. Stat. § 112.322. An ethics complaint can be brought against any elected official by an individual who submits a sworn complaint. It cannot be brought by an association or group. The filing of an Ethics Complaint is governed by Fla. Stat. §§ 112.322, 112.3231, 112.324 and Rule 28-106.104, Florida Administrative Code ("F.A.C."). Complaints alleging ethics code violations must be brought against public officials within 5 years of the alleged violation or breach of the public trust. *See*, Fla. Stat. 112.3231(1).

The filing of an ethics complaint subjects the public official to an administrative review by the Ethics Commission. The process for the Ethic Commissions' review, investigation and hearings on the complaints is governed by Fla. Stat. § 112.322 and Rule 34-15.001, *et seq*, F.A.C. If a complaint is deemed legally sufficient by the Ethics Commission then, a preliminary investigation will be undertaken by the investigative staff of the Commission. If the Commission staff finds there is probable cause for the complaint, then the complaint becomes a public record and the Commission decides whether the law was actually violated and, if so, whether a penalty should be recommended. The accused public official can request a public hearing, where evidence is presented. Public hearings may be conducted by the full Ethics Commission, by a single Commission member, or by the Division of Administrative Hearings. *See*, Rule 34-15.010, F.A.C. At the completion of the public hearing, the presiding hearing officer issues a recommended order to the Ethics Commission. *See*, Rule 34-15.024, F.A.C. The Chair of the Ethics Commission considers the recommended order and is limited to evidence presented at the public hearing before entering a final order. *See*, Rule 34-15.025, F.A.C. The Commission's final order is then made available to all the parties involved in the proceeding and the public. In any proceeding in which the Commission finds a violation of Chapter 112, Florida Statutes or section 8, Article II of the Florida Constitution and

recommends a civil penalty or restitution penalty, the Attorney General is obligated to bring a civil action against that individual to recover such penalty. *See*, Fla. Stat. § 112.317(2).

b. Penalties

There are no criminal penalties for violations of the Code of Ethics. Nevertheless, civil penalties can be imposed and may include impeachment, removal or suspension from office or employment, public censure, reprimand, demotion, reduction in salary level, forfeiture of up to one third of the official's salary for 12 months, restitution of any financial benefit received, or a civil penalty up to \$10,000. *See*, Fla. Stat. § 112.317(1)(a).

Additionally, felonies and other specified offenses can subject public officers and employees to forfeiture of all rights and benefits under the retirement system to which they belong if they are convicted of the offenses prior to their retirement. *See*, Fla. Stat. § 112.3173(3). Offenses that can subject a public officer or employee to this extreme penalty include embezzlement or theft of public funds; bribery; felonies specified in Chapter 838, Florida Statutes; impeachable offenses; and felonies committed with the intent to defraud the public or their public agency. *See*, Fla. Stat. § 112.3173.

IV. AVOIDING CODE OF ETHICS VIOLATIONS

a. Online Training

The Florida Commission on Ethics provides an online workshop covering the Code of Ethics, Sunshine Law, and Public Records Act, that is available free of charge to all elected officials and to those appointed to hold elective office. Information regarding these online workshops can be obtained from the Ethic Commissions' website at: www.ethics.state.fl.us

b. Advisory Opinions

Any public officer, candidate, or public employee in Florida who is in doubt about the applicability of the standards of conduct or disclosure laws to himself or herself may request an advisory opinion from the Commission on Ethics. *See*, Fla. Stat. § 112.322(3)(a). The opinions from the Commission are binding upon the party seeking the opinion. *See*, Fla. Stat. § 112.322(3)(b). To the extent advisory opinions are sought from the Commission, public officers and employees can request the Commission withhold disclosure of their name.

c. Recent Advisory Opinions of Interest

The Commission on Ethics has published only a few opinions from 2007 to the present relating specifically to special district officials or employees. The majority of the opinions from the Commission on Ethics were issued to other local governments and agency officials. These opinions should be reviewed as guidance on what the Commission on Ethics considers a “conflict”. It should be noted that each opinion is fact specific.

2007 OPINIONS

i. CEO 07-11 --April 25, 2007 -- CONFLICT OF INTEREST

Advisory opinion was requested by an elected School Board Member, where the Board Member was employed by a nonprofit, tax-exempt foundation cooperating with the school district to provide education enhancement programs. The school district would not be purchasing services from the nonprofit nor would the nonprofit be selling services to the school district. An exemption in Section 112.313(7)(a) applied and allowed such employment provided the School Board Member did not participate in the school district’s decisions to contract with or enter into a business relationship with the nonprofit and the School Board Member abstained from voting on any matter which may come before the school district involving the nonprofit.

ii. CEO 07-18 -- August 1, 2007 -- CONFLICT OF INTEREST

The Commission received an inquiry regarding whether a prohibited conflict of interest would be created if a Hospital District Board Member acted as a real estate agent for and received a sale commission on a home purchased by an employee of the district’s medical center. Under the circumstances presented, the Commission found that the Board member's real estate work and receipt of a commission in that profession would not violate the “Conflicting Employment or Contractual Relationship” prohibition set forth in Florida Statutes § 112.313(7)(a). The Board Member’s representation of a team member, physician or other employees of the hospital was not a conflict when the board member engaged in unsolicited sales relationships with the employees of the governmental entity. The realtor/Board Member’s representation of the individual employees was not considered a prohibited conflict because it was not a business entity doing business with the District or its medical center.

iii. **CEO 07-19 -- August 1, 2007 -- POST-OFFICE HOLDING RESTRICTIONS**

Subsequent to the Housing Authority's vote to approve a \$200 million affordable housing development, a member of the housing authority board was approached by representatives of the development group regarding her interest in working for them. The member of a local housing authority inquired into whether she was prohibited by the Code of Ethics from accepting an offer of employment and resigning from her position on the Housing Authority. The Commission found that the Code of Ethics did not prohibit her from accepting the position with the developer following her resignation from the office. The only applicable post office-holding prohibition is set forth in Florida Statutes §112.313(13), which permits governing bodies to enact, by ordinance or resolution, employment restrictions for a period of two years. In the absence of an ordinance or resolution, there are no post office-holding employment restrictions applicable to appointed officers in those units of government. There was no information submitted to the Commission regarding this Housing Authority's enactment of an employment restriction.

iv. **CEO 07-23 -- September 12, 2007 -- DOING BUSINESS WITH ONE'S AGENCY; CONFLICT OF INTEREST**

The Commission obtained an inquiry from a City Commissioner running an office supply business that was selling goods to the City under a "piggy-back" purchasing agreement with another governmental entity. The purchases made by the City were under the same terms of a contract awarded to her company by another city under a sealed, competitive bid. Florida Statutes § 112.313(3) prohibits the City Commissioner from acting in an official capacity to purchase office supplies from her business as well as from acting in her private capacity to sell supplies to the City. Florida Statutes § 112.313(7)(a) prohibits the City Commissioner from having a contractual relationship with a business entity doing business with the City, and prohibits continuing or frequently recurring conflicts between private interests and the performance of public duties. Both provisions would be violated were the City Commissioner's office supply business to sell goods to the City, unless an exemption was applicable. Here, the Ethics Commission found that the exemption for competitively bid transactions was applicable since the contracts had been awarded under a competitive bid with another agency. The Ethics Commission found that purchases off of another government agency would not create a continuing or frequently recurring conflict. The Ethics Commission recommended that the City Commissioner file the necessary Ethics Form prior to or at the first time her business received a purchase order from the

City that piggy-backed off an existing, competitively bid contract with another governmental entity.

2008 OPINIONS

v. CEO 08-5 -- March 5, 2008 -- CONFLICT OF INTEREST/DOING BUSINESS WITH ONE'S OWN AGENCY

An employee of a shipping agent wrote to the Commission to inquiring into whether his service on the Port Authority board was in conflict with his employment with a shipping agent operating at the Port. The Commission on Ethics concluded this was a prohibited conflict. The interests of his employer would be regulated by the Port Authority, and a conflict of would exist because of his simultaneous private/public interests. A conflict occurs when holding two positions would create a continuing or frequently recurring conflict between private interests (or those of a private employer) and the performance of public duties.

vi. CEO 08-6 -- March 5, 2008 -- CONFLICT OF INTEREST/DOING BUSINESS WITH ACONTRACTED AGENCY

A member of a City Commission who was an employee of the Sheriff's Department inquired as to whether there was a conflict in the Sheriff's Department providing law enforcement services to the City under a contract entered into before the Commissioner was appointed to the City Commission. The Commission on Ethics found that a conflict did not exist. The commissioner was employed by the Sheriff's Department under an Interlocal Agreement entered into and amended before the Commissioner took office. The existing agreement was grandfathered. Further, the Commission found that a renewed/extended contract or even a new law enforcement services agreement between the City and the Sheriff's Department would not constitute "doing business" between the two public agencies, so long as the member's employment with the sheriff's department was not connected or related to the sheriff's delivery of law enforcement services to the City under the agreement. The Commission stated further that intergovernmental agreements rarely constitute "doing business," because the purpose of the Code of Ethics is to prevent private gain at public expense, not to prevent dealing between governments for the delivery of services.

vii. **CEO 08-8 -- April 23, 2008 -- CONFLICT OF INTEREST/DOING BUSINESS IN COUNTY**

A local engineer was a candidate for election to the County Commission. He also worked at an architectural company which was part of a design/build team that contracted with the County. He inquired as to whether or not a conflict of interest would occur if he was successful and took office as a Commissioner when his architectural firm had a current contract previously entered into with the County. The Ethics Commission considered the contract between the County and the firm "grandfathered," not prohibitive, under Sections 112.313(3) and 112.313(7)(a), Florida Statutes. Grandfathering would cease after the engineer/candidate took office if a new contract was entered into after he took office, or if the existing contract was extended or renewed. The firm's hiring by the County after he took office would create a prohibited conflict because he would hold employment or a contractual relationship with a business entity (the firm) which, by virtue of the hiring/contract, would be doing business with his public agency.

See similar opinions at CEO 08-10 -- April 23, 2008 and CEO 08-14--July 30, 2008.

viii. **CEO 08-11 -- June 11, 2008 -- VOTING CONFLICT**

A City Councilmember asked if a voting conflict existed under Section 112.3143(3)(a), Florida Statutes, regarding City Council measures affecting clients of an attorney against whom a City Councilmember made a criminal complaint. The year prior, the attorney representing a developer came before the Council and introduced documents into the record that included confidential, personal information pertaining to the Councilmember and family. The Councilmember made a formal complaint to the Sheriff along with a request that an investigation occur to determine whether to criminally charge the attorney for her actions regarding introduction of the confidential documents at a public meeting. The attorney frequently appeared before the City Council on behalf of various clients and the Councilmember was concerned that the attorney could allege that the Councilmember had a personal bias against the attorney and her clients' interests. The Ethics Commission found that a voting conflict did not exist under Section 112.3143(3)(a), Florida Statutes. Neither the attorney nor her clients (the persons or entities affected by the measures) would have a relationship to the Councilmember enumerated under Section 112.3143(3)(a), and the Councilmember's economic, financial, or similar interests would not be affected.

ix. CEO 08-22 -- September 10, 2008 -- CONFLICT OF INTEREST, VOTING CONFLICT OF INTEREST/COMMISSIONER ALSO A VOLUNTEER FIRE FIGHTER, AND VOTING ON FIRE SERVICES ISSUES

The Commission found that no conflict of interest would be created under Section 112.313(7), Florida Statutes, when a Town Commission member who also served as an uncompensated member of a volunteer fire department contracting with the Town. Nor would any voting conflict exist where the member, in addition to being uncompensated, was not an officer or director of the department, and the measure being voted on would not inure to his own special private gain or loss.

x. CEO 08-24 - October 22, 2008 -- VOTING CONFLICT/CITY COUNCIL MEMBER APPLICANT FOR MAYORAL APPOINTMENT VOTING ON APPOINTMENT

A member of a City Council asked if a voting conflict of interest would be created where a member of the City Council would vote to appoint a person as the City's mayor where the member is an applicant. The City Council is an eight-member governing body consisting of seven Council members and a Mayor, all elected at large. The Commission found that no voting conflict would be created under Section 112.3143(3)(a), Florida Statutes. Although the vote would affect the public interest of the City (a public entity), any gain or loss to the member would not be prohibited because of Section 112.313(5), Florida Statutes. One of the essential requirements of the voting conflicts law is the presence vote which results in a gain or loss that affects one's purely private interests. The statute does not address situations where a vote/measure directly impacts the government.

See similar opinion at CEO 08-25 - October 22, 2008.

xi. CEO 08-28 -December 10, 2008 -- CONFLICT OF INTEREST

A County employee asked if a prohibited conflict of interest existed because he was a county parks and recreation employee and was also employed by a nonprofit organization. That nonprofit organization had a cooperative arrangement with the County. The employee indicated that he did not work more than forty hours per week for both part-time jobs combined, that he had no other jobs, that he disclosed the two employments to each entity in the beginning. The Ethics Commission found that no prohibited conflict of interest under Section 112.313(7)(a),

Florida Statutes, existed. The Ethic Commission's finding was based on their application of Section 112.316, Florida Statutes, which negates a mechanical or literal reading of the first part of Section 112.313(7)(a) in situations in which a public employee or a public officer had no public duties or public responsibility he or she would be tempted to compromise in order to benefit himself or herself or his or her secondary/additional employer.

xii. **CEO 08-29 - December 10, 2008 -- GIFT ACCEPTANCE AND REPORTING--CITY COMMISSIONER APPEARING IN PUBLIC SERVICE ANNOUNCEMENTS**

A City Commissioner asked if his appearance in public service announcements promoting a beach anti-littering campaign would constitute a prohibited gift to him under Section 112.3148, Florida Statutes, where the announcements were paid for by local hotels and showed in a local movie theatre. The Ethics Commission answered this question in two parts. The Ethics Commission acknowledged that an appearance by a City Commissioner in a public service announcement would constitute a "gift" under Section 112.3148, Florida Statutes. The Commission further expanded on this to state that if the hotel or the theatre company was a principal of a lobbyist and if the value of the gift exceeded \$100, the Commissioner's appearance would constitute a gift. However, if the entities were not the principals of lobbyists, the Commissioner's appearance would be considered a non-prohibited gift, and cautioned that if the value of the non-prohibited gift exceeded \$100, the Commissioner was required to report it.

2009 OPINION

xiii. **CEO 09-03 - January 28, 2009 -- CONFLICT OF INTEREST**

A request was considered by the Commission regarding whether a Lieutenant in a City's Fire Department had a prohibited conflict of interest arising out of his partial ownership in a company that provides training to fire service and health care personnel that City Fire Department personnel are eligible to take as training classes and then request reimbursement from the City. The Commission found that the Lieutenant did not have prohibited conflict of interest in this instance between his private company interests and his public duty because none of the Lieutenant's company's students were Fire Department personnel subject to his evaluation or recommendation responsibility. Interestingly, the Commission also found that the Lieutenant's classes were also not

prohibited under the restriction regarding doing business with one's agency. The Commission found that the City's governing board entered into a collective bargaining agreement that permitted the City to reimburse course-takers their registration fee years for certain training, and assumed that obligation years before the Lieutenant was ever promoted to his current position. Further, the Ethics Commission found that even if the Lieutenant was acting in a private capacity selling his company's services to the City, Florida Statutes § 112.316 allows employees of a city or other political subdivision from accepting other "employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved."

IV. CONCLUSION

It is important for special district officials and employees to understand that once you become elected or appointed to a position within a special district you assume all the obligations and responsibilities under Florida's Code of Ethics to protect the public trust. Ignorance of the Ethics Code will not be a useful or successful defense in an investigation by the Ethics Commission. It behooves all officials and officers to avoid the potential for Ethics Code violations by carefully considering and differentiating individual interests from public duty. If in doubt as to whether you have a conflict, you should consult the special district's legal counsel, contact the Florida Ethics Commission for advice, or seek an advisory opinion from the Ethics Commission before taking any questionable action.