



ETHICAL CONSIDERATIONS FOR SPECIAL DISTRICT PUBLIC OFFICIALS

By: Maggie D. Mooney-Portale, Esq.



LEWIS
LONGMAN &
WALKER | P.A.

ATTORNEYS AT LAW

RIPPED FROM THE HEADLINES

Gonzalez Pleads Guilty, Resigns Commission Seat

... “Gonzalez admitted to using his influence to get his daughter a ‘ghost position’ with the Delant Construction Company, which had a contract with the city; she was paid \$500 per week but never did any work...”

Source: (December 15, 2005).

http://www.ci.miami.fl.us/cms/mayor/116_4021.asp



Gonzalez was charged with a misdemeanor count of exploitation of public position.



“Ex-St. Johns Commissioner Tom Manuel sentenced to 21 months”

He is convicted on charges of demanding bribe money from a developer

Source: The Times-Union (January 29, 2010)

“Mary McCarty resigns from Palm Beach County Commission, expects to face 5-year term”

Source: Palm Beach Post
(January 8, 2009)



- Mary McCarty plead guilty to depriving the public of her honest services, and was sentenced on June 4, 2009, to serve a prison term of 42 months, to be followed by 3 yrs of supervised release, and she must pay a fine of \$100,000. Her husband was also sentenced to a prison terms of 8 months. Together, she and her husband forfeited \$272,000 to the US Government.

“Former Broward School Board member gets 3 years, 1 month in prison”

Beverly Gallagher pleaded guilty in March to a bribery charge

Source: Sun Sentinel (June 2, 2010)

Former Broward School Board member Beverly Gallagher was sentenced to a little more than three years in prison on a corruption charge in federal court in Ft. Lauderdale. Gallagher, 51, of Pembroke Pines, pleaded guilty in March to a single count of bribery. She admitted that she accepted a total of \$12,500 in illegal payments for misusing her position as an elected official.





A Different type of Ethics Violation.....

Source: (July 23, 2007) www.babble.com/.../lg_woods_ap-01.jpg



Florida's Code of Ethics



- A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.
 - *Art. II, Sec. 8, Fla. Const.*
- Found in Article II, Section 8 of the Florida Constitution and Chapter 112 (Part III), Florida Statutes.
- Florida's Code of Ethics applies to all public officers and employees, at the State, regional, and local levels, including members of an advisory board.
- The Code of Ethics applies to special districts, with very limited exceptions.

Florida's Ethics Laws



The Code of Ethics consists of two types of provisions:

- 1) those that prohibit certain actions; and
- 2) those that require certain disclosures be made to the public.

Prohibited Actions Or Conduct



1. Don't use public office for private gain or benefit.

- Public Officers and Employees must be independent, impartial, and cannot use public office for private gain.
 - *See, Article 2, § 8(1)(c) and Florida Constitution*
 - *See, Part III, Chapter 112, Florida Statutes*
 - Ray Samson example

Prohibited Actions Or Conduct



2. Don't accept or solicit gifts for a vote.

- *See, Florida Statutes § 112.313(2)*
- Applies to all public officers, candidates for public office, employees, and local government attorneys.
- “Gifts” include goods or services with an attributable value (i.e., lodging, food and beverage, admission fees, etc.), loans or loan forgiveness, rewards, promises of future employment.
- Former County Commissioners Mary McCarty and Tom Manual examples

Prohibited Actions Or Conduct



3. Don't permit spouse or children to accept or solicit gifts or compensation for a vote.

- *See, Florida Statutes § 112.313(4)*
- They can not accept anything of value when they know or should know that the item is given for purposes of influencing vote.
- Former Miami City Commissioner Angel Gonzalez example
- *CEO 09-21 (Dec. 9, 2009)* – Permitting Gift Acceptance in a limited circumstance

Prohibited Actions Or Conduct



4. Don't disclose or use information not available to the general public that was obtained because of your official position.

- *See, Florida Statutes § 112.313(8)*

Prohibited Actions Or Conduct



5. Don't employ, appoint, promote or advance relatives into a position in the District.

- *See, Florida Statutes § 112.3135(2)(a)*
- “Relatives” include father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, in-laws, steps, and half-brother or half-sister.
- Does not apply to volunteers.
- *See, CEO 09-15 (Jul. 29, 2009)*

Prohibited Actions Or Conduct



6. Don't do business with the Special District.

- *See, Florida Statutes § 112.313(3)*
- Cannot directly or indirectly purchase, rent, or lease any realty, goods or services from a business entity in which the officer, employer, or spouse, or child has a material interest.
- Cannot act as an “agent” for a business entity when a material interest exists.
- Special districts are not exempt from this provision.
- *See, CEO 09-20 (Dec. 9, 2009); and CEO 10-3 (Mar. 3, 2010)*

Prohibited Actions Or Conduct



CAUTION: Employment and Contractual Relationship Conflicts

- Generally, public officer 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. *See, Fla. Stat. § 112.313(7).*

Examples:

- *CEO 08-06 (Ma. 5, 2008)*
- *CEO 09-03 (Jan. 28, 2009)*
- *CEO 09-20 (Dec. 9, 2009)*
- Special Districts are partially exempted from this provision as long as the conflict does not frustrate “intent” of provision. *See, Fla. Stat. § 112.313(7)(a)(1).*

Prohibited Actions Or Conduct



7. Don't appear before the special district governing board you served on for compensation for 2 years unless you have confirmed post-office restriction policy.

- *See, Florida Statutes § 112.313(4)*
- You may appear if employed by another agency of state government. *See, Fla. Stat § 112.313(4).*
- *See, CEO 09-11 (Jun. 17, 2009); But see, CEO 009-16 (Sep. 16, 2009)* (making a distinction between elected and appointed positions).

Prohibited Actions Or Conduct



8. Don't vote on measures that would benefit your private gain or loss, or the private gain of an employer, relative, or relative's employer.

- ***Examples:***
 - *CEO 10-5 (Mar. 3, 2010)*
 - *CEO 10-6 (Apr. 21, 2010)*

Disclosure Requirement



- Florida's Ethics Code contains disclosure requirements , the purpose of which is to remind officials to put the public interest above personal consideration.
- There are multiple forms that are available on the Commission on Ethics website for financial disclosures and voting conflicts.
- Disclosure forms are public records and subject to Sunshine Law (Chapter 119, Florida Statutes).

Disclosure Requirement

Form 1 – Statement of Financial Interests



- Sets forth: sources of income, real estate owned, intangible personal property owned, liabilities greater than net worth or \$10,000 (depending on the calculation threshold), and interests in specified businesses. But no dollar values are required to be listed.
- Must be filed by all special district local officers and specified employees even if no financial interests exist that require disclosure
- File this form with the Supervisor of Elections in the county in which you reside
- Must be filed: within 30 days of the appointment or date of employment, or by July 1 every year
- If you fail to file Form 1 you will be subject to automatic fines of \$25 for each late day, up to a cap of \$1,500.

Disclosure Requirement

Form 1F – Final Statement of Financial Interests (Post Office Filing Requirement)



- All special district local officers and employees must file Form 1, must also file Form 1F.
- This is filed within 60 days of leaving their public office or employment position.

Disclosure Requirement

Form 3A – Interest in Competitive Bid for Public Business



- There are limited exemptions to doing business with special district and entering into a conflicting employment or contractual relationship when the business is awarded a contract under a sealed competitive bid, there has been no influence by the official on bid negotiations and disclosure is made before or at the time of bid of the interest and nature of business
- To be filed when you or a relative are doing business, entering into a conflicting employment, or contractual relationship with a special district
- Must be filed with the Supervisor of Elections before or at the time of the bid submission by special district local officers and employees that need to disclose competitive bidding interests

Disclosure Requirement

Form 8B

Memorandum of Voting Conflict for Other Local Public Officers



- Must be filed by a special district local officer when they abstain from voting on measures that:
 - Inures to his or her special private gain or loss.
 - Inures to the special gain or loss of a principal by whom he or she is retained.
 - Could result in special private gain or loss to a relative.
 - Could result in special private gain or loss to a business associate. [However, special district local officers of community redevelopment agencies and special district local officers of independent special districts elected on a one-acre, one-vote basis, are not prohibited from voting in that capacity.]
- This form is filed with the person responsible for recording the minutes of your District's public meeting

Disclosure Requirement

Form 9 – Quarterly Gift Disclosure



- Must be filed by special district local officers receiving any gift worth more than \$100 from someone who is not a relative or a lobbyist (including the partner, firm, or principal) of the special district.
- This form does not need to be filed if no such gift was received during the calendar quarter.
- The form must be notarized and filed with the Commission on Ethics by the last day of the calendar quarter.

Penalties for Violations of the Ethics Code

(Florida Statutes § 112.317)



- Removal/suspension from office
- Impeachment
- Public censure, reprimand, demotion or salary reduction
- Restitution of any pecuniary benefits received due to the violation
- Civil penalty of up to \$10,000

Honest Services Fraud (18 USC § 1346)



- Honest Services fraud is the crime of defrauding citizens of the “intangible right of honest services.”
- Increasing the federal government is using honest services fraud to prosecute state and local public officials for improper conduct.
- There is not a definition of “Honest Services Fraud” in the statute, its meaning has been left to the Courts.
- According to a Department of Justice report, there were 794 federal public corruption convictions in Florida from 1999 to 2008.

Source: U.S. Dep’t of Justice Report to Congress on the Activities and operations of the Public integrity Section for 2008 58-59 (2008).

Honest Services Fraud (18 USC § 1346)



- To support conviction for Honest Services Fraud, the government must prove beyond a reasonable doubt:
 1. A defendant's knowing and willful participation in a scheme or artifice to defraud;
 2. With the specific intent to defraud;
 3. Regarding material information; and
 4. The use of mails or interstate wire communication if furtherance of the scheme.

Honest Services Fraud (18 USC § 1346)



- There is currently a division amongst the federal circuit courts regarding whether proof of an independent federal, state or local law is required to support a conviction of honest services fraud.
- In the 11th Circuit, public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest, such that if the official makes his or her decisions based on personal interest, the official has defrauded the public of honest services. *United States v. deVegter*, 198 F. 3d 1324, 1328 (11th Cir. 1999).

The Slow News Day Test: Would you want to have your actions reported on the front page of your local newspaper for all of your friends and family to see?

If the answer is NO, then whatever action you are thinking about doing is maybe unethical and you need to seek advise before taking action.

DON'T LET THIS BE YOU!



QUESTIONS OR COMMENTS



THANK YOU