

CODE OF ETHICS FOR PUBLIC  
OFFICERS AND EMPLOYEES – FS 112,  
PART III

ROBERT MEYERS, Esq.  
Weiss Serota Helfman Cole & Bierman  
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# DISPROPORTIONATE BENEFITS: ARTICLE II, SECTION 8(g)(2)

- Prohibits public officials from abusing one's public position in order to obtain a disproportionate benefit for the official, the official's family, an employer, business in which official has a contract or entity in which official owns an interest or serves as an officer, partner or director.
- Combines the elements of misuse of position and voting conflicts.

# DISPROPORTIONATE BENEFITS

## ARTICLE II, SECTION 8

- CEO 21-2: Elected official who voted on a retirement compensation resolution wherein he would be eligible to receive a lump-sum payment along with other elected officials and senior management employees did not create a disproportionate benefit for the official.

# VOTING CONFLICTS– FS 112.3143

Elected officials must abstain from voting on state law if conflict of interest exists. Voting conflicts are evaluated whether the official realizes a special private gain or loss.

- Special private gain or loss defined as an economic benefit or harm that would inure to an official, a relative, business associate or principal.
- Special gain or loss occurs if an elected official is uniquely affected by the action of the official's board or where the elected official is part of a small class of individuals likely to be impacted by action taken by the official's government.
- Generally, if the elected official makes up 1% or more of the class, the elected official has a voting conflict

# VOTING CONFLICTS: GAIN OR LOSS

- Gain or loss:
  - 1) An elected official would have a voting conflict under state law even if the action taken by the official could be detrimental, it's not simply realizing a gain;
  - 2) The benefit or loss must be economic or financial in nature. If it can't be monetized, then a prohibited voting conflict does not exist
  - 3) An economic gain/loss considered too remote or speculative does not constitute a voting conflict. This analysis is done on a case-by-case basis and there is no bright-line test

# VOTING CONFLICTS: OTHER CONSIDERATIONS

- Identify the type of action to be taken – quasi-judicial (zoning) or legislative
- Consider the scope of the impact
- Establish a zone of impact -- the number of parties falling inside/outside the zone and their interest
- Measure the economic benefit or loss – assuming it tangible and measurable

# Voting Conflicts: Process

- Prior to the vote, official must state the nature of the conflict, abstain from voting and file a memorandum disclosing the conflict within 15 days. Official may participate in the discussion.
- If official is absent from the meeting, official does not have to file. If official only sits out the item involving the voting conflict, he/she must file the form.
- No legal duty to abstain due to an appearance of a conflict or a perceived bias.

# FACTS PATTERNS: VOTING CONFLICTS

- Elected official is a general contractor in a small town and his company is involved in the renovation and construction of single family homes. A large percentage of the official's business is doing in town. His work as a general contractor preceded his election to the Town Commission. The Town is considering an amendment to its Zoning Code to increase lot sizes of single family home parcels. The item is currently at the discussion phase. Is the elected official allowed to participate in this discussion at this stage? If the Town Attorney is directed to draft an ordinance to amend the Code, can the official participate in, and vote on, the ordinance?

# FACT PATTERNS: VOTING CONFLICTS

- A City is considering adopting an Ordinance establishing short-term vacation rental registration program. One of the Councilmembers is a realtor in the City and owns a short-term vacation rental property. There are a few thousand vacation rental properties (homes and condominiums) available for rent in the City.

Is the Councilmember prohibited from voting on this item?

# FACT PATTERNS: VOTING CONFLICTS

- City Commission is considering a Rezoning Ordinance for a proposed development as well as development application. The Applicant is represented by an attorney, is the father-in-law of one of the City Commissioners, and will make a presentation to the City Commission on behalf of his client (the Applicant).

Does the Commissioner have a voting conflict due to the fact his father-in-law is representing the Applicant ?

# FACT PATTERNS: VOTING CONFLICTS

- A County Commissioner is the vice president and share holder of a development company which is developing a large project within the County. A proposed impact fee ordinance is before the County.

May the County Commissioner vote on the impact fee ordinance?

# Fact Patterns: Voting Conflicts

- An elected official owns a business and retains a consultant to design a website for the business. Business needs a variance.
- Does this create a voting conflict?

# VOTING CONFLICTS: FS 286.012

- Under FS 286.012, elected officials **may** also abstain from voting:
  - if there is an **appearance** of a voting conflict or
  - when hearing a quasi-judicial matter, the official has a **bias** or prejudice which make the official incapable of objectively evaluating the matter. No clear-cut rules on what constitutes a bias or an appearance of a voting conflict. A third party cannot compel an official to recuse himself/herself due to a bias or an appearance of a conflict.

# MISUSE OF POSITION: FS

## 112.313(6)

- Public officer shall not corruptly use or attempt to use his/her official position to secure special privileges or benefits for self or others.
- Wrongful intent is required – an “honest” mistake where there is no corrupt intent does not establish a violation.

# MISUSE OF POSITION: CAMPAIGN ACTIVITIES

- Elected official wishes to wear City t-shirt (with title) while campaigning for re-election.
- City seal is visible in a photograph taken as part of an elected official's public duties, and official now wishes to use the photograph as a piece of campaign literature for re-election.

# FACT PATTERNS: MISUSE OF POSITION?

- Elected official is considering writing a letter to an adoption agency on City letterhead with his title in support of a couple seeking to adopt a child. According to the Commissioner, the couple are pillars in the community and are actively involved in charitable work in the City.
- Can he write the letter?

# FACT PATTERN: MISUSE OF POSITION?

- An elected official is an accomplished author who has recently produced his first “coffee table book.” The elected official wishes to market the book in the City using paid newspaper ads and a Chamber of Commerce email blast (the official is a Chamber member). The official's marketing materials will not identify him as City Councilmember. The reason he is marketing the book in his City is because the book contains many color photographs taken at various locations within the City.

Are there any issues with the Councilmember marketing his book in the manner described above?

# FACT PATTERNS: MISUSE OF POSITION?

- City commissioner carried on an email conversation with a constituent related to their shared profession of nursing. The exchange initially took place on the commissioner's campaign email (she was a candidate for Mayor) and as the conversation continued, the commissioner switched to her City email after being elected.
- Commissioner then emailed this constituent **from her city email** asking her if her campaign could place a yard sign on her property.
- Was she right to do that? Ethics Commission found it was an inadvertent violation.

# FACT PATTERNS: MISUSE OF POSITION

- An incumbent official is seeking re-election and sends out a newsletter (regular mail and electronically) to those residing in the district informing residents of her accomplishments during the official's term in office.
- Is that ok?

# DOING BUSINESS WITH AGENCY: FS

## 112.313(3)

- No public officer acting in one's official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services from the official's agency or any entity where spouse or child is an officer, partner, director or otherwise have a material interest.
- Section also prohibits an elected official in his/her private capacity from transacting business with one's agency.

# FACT PATTERNS: DOING BUSINESS WITH AGENCY

- City has a Youth Ambassador Program. The City's Community Advisory Board selects five students from the applicant pool to serve as Youth Ambassadors. The City Commission does not play a role in the selection and oversight of the Program. Those selected will receive a \$2,500 scholarship from the City. Mayor's daughter wishes to apply to the program.

Can the Mayor's daughter apply? If selected by the Advisory Board, can she accept the scholarship?

# DOING BUSINESS WITH AGENCY

- An elected official in his spare time is a member of a band. The band has a fairly significant following and mostly performs locally. The City has approached the band to perform at a City event. The band's fee for its performance will be \$1,500.

Can the band enter into a contract with the City and play at the City-sponsored event?

# CONFLICTING EMPLOYMENT: FS 112.313(7)

- No public officer shall hold any employment or contractual relationship with any business entity doing business with an agency of which he/she is an officer.
- Nor shall a public officer hold an employment or contractual relationship that will create a frequently recurring conflict between one's private interest and one's public duties.

# FACT PATTERN: CONFLICTING EMPLOYMENT

- Newly-appointed elected official is a named partner in an accounting firm which has a contract with the City to provide audit services. The contract was entered into before the official was appointed to fill a vacancy on the Commission.
- Must the contract be terminated with the City?  
Can the contract be renewed?

# DUAL EMPLOYMENT: FS 112.3125

State standard:

- Prohibits elected officials from accepting employment with state or political subdivisions being offered for the purpose of gaining influence based on person's status as elected official or candidate.
- Provides criteria that must be met for employment to be accepted:
  - position already in existence or was created by employer without knowledge that elected official was interested in position
  - was publicly advertised
  - official was subjected to same application and hiring process as others
  - official meets or exceeds required qualifications

# DUAL EMPLOYMENT



Continued employment: A current elected official or a candidate may continue public sector employment as long as any promotion, advancement, additional compensation or any of value connected to the employment is not given as a result of elected position.

# CONTRACTUAL RELATIONSHIPS WITH YOUR AGENCY: FS 112.313(7)

- No official shall enter into a contract with the official's government
- Exemptions include:
  - a sealed competitive process without participate and the official discloses relationship with bidder before bid is submitted; emergency contracts; sole source contract; \$500 or less for calendar year
- How to interpret (FS 112.316): Not the intention of the law to prevent an elected official from accepting other employment or following any pursuit which does not interfere with full and faithful discharge of public duties.

# FACT PATTERNS: DOING BUSINESS WITH AGENCY

- A City official is a karate instructor, performing private instruction at the residences of his students and at a local mosque. The students pay tuition for the official's instruction. The City has programs whereby clubs and groups can use space in the City to host their gathers. The City enters into a contract with the instructor and receives a percentage of the fees collected by the instructor. The elected official wishes to enter into a contract with the City for usage of the City recreation center to host karate classes.

Is the official permitted to enter into this agreement with the City?

## DISCLOSURE/USE OF INFORMATION: FS 112.313(8)

- Public official may not disclose or use information unavailable to the general public and gained by reason of official position for personal benefit or gain by official, other person or person business entity. Would this provision apply to communications by elected official to others related to collective bargaining executive sessions?

## STATE GIFTS: FS 112.3148, 112.313(2)

- Officials not permitted to solicit or accept anything of value based upon any understanding that the action taken would be influenced thereby.
- Soliciting gifts in official capacity for nonprofits when no compensation inures to official or relatives and connection to the community is acceptable.
- The threshold for reporting gifts is \$100, but there is no cap in most cases – it is more of a reporting statute. Multiple gifts worth less than \$100 but totaling more than \$100 have to be reported if from same donor within a quarter.
- Valuation or calculation of a gift not always as easy as it sounds.
- Rules are tighter under Broward County ethics: see below.

# EXCEPTIONS TO GIFT RULES

- Many exceptions to the gift rule, including gifts from others primarily associated with official's private employment; gifts in recognition of one's public service; adequate consideration given within 90 days.
- Reporting individuals (elected officials) are prohibited from accepting a gift from a vendor doing business with the reporting individual's agency in excess of \$100; also applies to a principal of a lobbyist and a lobbyist.

# GIFT CONSIDERATIONS

- Political contributions
- Gifts from relatives and members of household, dependents
- Awards for professional or civic achievement
- Materials such as books, periodicals
- Gifts solicited or accepted in the performance of official duties for use solely by the municipality for a public purpose
- Public advertised offers for goods or services under the same terms as general public
- Inheritance

# FACT PATTERNS: GIFTS

- An elected official desires to install a pool and outdoor kitchen in his backyard. The pool contractor is a City resident and a plaintiff in a lawsuit against the City, along with more than 100 other plaintiffs . The contractor also sits on the City's Parks and Recreation Board (appointed by another Commissioner).

May the elected official enter into a contract with the contractor for the construction of a pool and outdoor kitchen?

# FACT PATTERNS: GIFTS

- A City Commissioner is a board member of the Community Association Institute (“CAI”) and the organization wishes to pay the costs associated with the her attendance at an annual conference. The Commissioner’s affiliation with this organization predated her election and is related to her activities in the community association field.

Has the Commissioner received a reportable gift if CAI covers her costs for this conference?

# FACT PATTERNS: GIFTS

- A local business is purchasing a “City Officials” table of ten at a cost of \$5,000 as part of a United Way dinner honoring a luminary in the community.

Can the City’s elected officials attend this dinner? If so, have they received a reportable gift? If the business purchasing the table is likely to have an item before the City Commission in the near future, does this change your opinion?

# FACT PATTERNS: GIFTS

- Elected official is a lawyer and history buff and received an award from the Florida Historical Society. He is invited to attend the conference where the award will be presented and offered a \$200 stipend to facilitate his attendance at Awards Luncheon. The award is for an article he wrote as a lawyer about a former Supreme Court Justice.

Can he accept the stipend? Does he have to report it as a gift?

# FACT PATTERNS: GIFTS

- Elected official is an attorney who is given the use of a client's condominium in South Beach , Colorado at no cost during ArtBasel for successfully defending the client in a legal matter. The attorney has represented the clients for many years, long before he was elected.
- What if he is a new client, post-dating the official's election?

# FINANCIAL DISCLOSURE

- Elected officials are required to file state Form 1 by July 1<sup>st</sup>, for prior year financial activities. Fines start accruing on September 1<sup>st</sup>.
- Must select comparative (percentage) or dollar threshold.
- Not required to identify value of assets or liability or salary/wages from private employment.
- Forms are not audited but are examined if ethics complaint is filed.

# FINANCIAL DISCLOSURE

- Authorizes an attorney or CPA to prepare the form and must sign the form indicating the information is true and correct. Ethics Commission will have to determine whether information was properly disclosed to preparer.
- May amend the form based on a complaint, as long as amended form is filed by September 1st

# Q & A

- Thank you!