

ARTICLE II, SECTION 8 (FLORIDA
CONSTITUTION) and
FLORIDA CODE OF ETHICS FOR
OFFICERS AND EMPLOYEES

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January 27, 2023

NEW LOBBYING AMENDMENTS: OVERVIEW

- Article II, Section 8 of Florida Constitution amended in 2018 to include new standards on lobbying while in office or after separation from public position
- Rules took effect on January 1, 2023
- Florida Legislature enacted implementing legislation in 2022 to include penalties and definitions
- Elected municipal officials covered by these rules
- Florida Commission on Ethics authorized to interpret and enforce these rules

TEXT OF AMENDMENTS

- While in office: A public officer shall not lobby for compensation on issues of policy, appropriations or procurement before the federal government, the legislature, any state government body, or any subdivision of the state, during his or her term in office.

- Vacating office: A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement for a period of 6 years after vacation of public office.

GENERAL LOBBYING RULES -- STATE

- Registration is required of everyone who contracts for compensation or is employed for the purpose of lobbying for whom government affairs constitutes a principal responsibility of their employment.
- Legislative context – seeking the goodwill of a legislator or staff member, any attempt to influence legislative action.
- Executive branch lobbying is limited to lobbying on decisions in the area of policy or procurement.

DEFINITION OF TERMS: STATE LOBBYING

- "Policy" means a plan or course of action which is applicable to a class of persons, proceedings, or other matters, and which is designed to influence or determine the subsequent decisions and actions of an agency
- The term does not include the adjudication or determination of any rights, duties, or obligations of a person made on a case-by-case basis, such as would be involved in the issuance or denial of a license, permit, or certification or in a disciplinary action or investigation involving a person.
- "Procurement" means the purchase or acquisition of any property, interest in property, or services by an agency.

LOBBYING EXCEPTIONS: STATE

1. Responding to a request for information
2. Appearing in response to a legislative subpoena
3. Providing advice or services to the Legislature under a contract that uses public funds
4. Representing a client in a disciplinary matter
5. A judicial officer or other state officer acting in one's official capacity
6. Appearing as witness to provide information at the written request of the chair of a legislative meeting

LOBBYING EXCEPTIONS: CONTINUED

- Executive branch lobbying exceptions include:
 1. A person representing a client in a judicial proceeding or formal proceeding under the APA
 2. An employee of an executive branch agency or legislative or judicial branch entity acting in the normal scope of duties
 3. A confidential informant providing confidential information for law enforcement purposes
 4. A person lobbying on a procurement in the lowest cost category under state procurement law

IMPLEMENTING STATUTE: LOCAL LOBBYING

- Statute specifically defines administrative action as a category of decisions exempt from lobbying
- Administrative decisions at the local level are defined as follows:
 1. Any action or decision on a license, permit, waiver of regulation, development order or development agreement
 2. Any quasi-judicial proceeding under s. 286.0155(2)
 3. Any decision subject to judicial review
 4. Any other administrative procedure, except on a procurement issue

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 affecting 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: 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.

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

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?

- Writing a letter of recommendation on County stationery to help my son's friend get a job
- Using a city-issued credit card to purchase gas for a family vacation
- Using title as city commissioner as part of one's LinkedIn profile
- Mentioning position when stopped by a police officer for a traffic infraction
- Having a business card paid for by city which also identifies official as a general contractor
- Receiving a discount on landscaping from City's landscape contractor

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.

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 elected¹⁷ official in his/her private capacity from transacting business with one's agency.

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.

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.

DUAL EMPLOYMENT: FS 112.3125

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.

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.

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

FINANCIAL DISCLOSURE

- Elected officials are required to file state Form 1 by July 1st, for prior year financial activities. Fines start accruing on September 1st.
- 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!