

ETHICS COMPLIANCE AND OVERSIGHT OFFICE

CITY OF JACKSONVILLE



CARLA MILLER

DIRECTOR

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June 12, 2017

City of Jacksonville, Florida

ETHICS TRAINING

AGENDA

Time	Topic	Presenter(s)
8:30 a.m. - 9:00 a.m.	Continental Breakfast	
9:00 a.m. - 9:10 a.m.	Welcoming Remarks/Overview	Jason Gabriel, General Counsel Lori Boyer, City Council President Carla Miller, Ethics Director
9:10 a.m. - 11:00 a.m.	Government Ethics	Virindia Doss, Executive Director, Florida Commission on Ethics Carla Miller, Ethics Director
11:00 a.m. - 11:20 a.m.	Wrap Up/Questions	

FORM 1**STATEMENT OF
FINANCIAL INTERESTS****2016**Please print or type your name, mailing
address, agency name, and position below:**FOR OFFICE USE ONLY:**

LAST NAME -- FIRST NAME -- MIDDLE NAME :

MAILING ADDRESS :

CITY :

ZIP :

COUNTY :

NAME OF AGENCY :

NAME OF OFFICE OR POSITION HELD OR SOUGHT :

You are not limited to the space on the lines on this form. Attach additional sheets, if necessary.

CHECK ONLY IF ☐ CANDIDATE OR ☐ NEW EMPLOYEE OR APPOINTEE****** BOTH PARTS OF THIS SECTION MUST BE COMPLETED ********DISCLOSURE PERIOD:**

THIS STATEMENT REFLECTS YOUR FINANCIAL INTERESTS FOR THE PRECEDING TAX YEAR, WHETHER BASED ON A CALENDAR YEAR OR ON A FISCAL YEAR. PLEASE STATE BELOW WHETHER THIS STATEMENT IS FOR THE PRECEDING TAX YEAR ENDING EITHER (must check one):

☐ DECEMBER 31, 2016 OR ☐ SPECIFY TAX YEAR IF OTHER THAN THE CALENDAR YEAR: _____**MANNER OF CALCULATING REPORTABLE INTERESTS:**

FILERS HAVE THE OPTION OF USING REPORTING THRESHOLDS THAT ARE ABSOLUTE DOLLAR VALUES, WHICH REQUIRES FEWER CALCULATIONS, OR USING COMPARATIVE THRESHOLDS, WHICH ARE USUALLY BASED ON PERCENTAGE VALUES (see instructions for further details). CHECK THE ONE YOU ARE USING (must check one):

☐ COMPARATIVE (PERCENTAGE) THRESHOLDS OR ☐ DOLLAR VALUE THRESHOLDS**PART A -- PRIMARY SOURCES OF INCOME** [Major sources of income to the reporting person - See instructions]
(If you have nothing to report, write "none" or "n/a")

NAME OF SOURCE OF INCOME	SOURCE'S ADDRESS	DESCRIPTION OF THE SOURCE'S PRINCIPAL BUSINESS ACTIVITY

PART B -- SECONDARY SOURCES OF INCOME[Major customers, clients, and other sources of income to businesses owned by the reporting person - See instructions]
(If you have nothing to report, write "none" or "n/a")

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART C -- REAL PROPERTY [Land, buildings owned by the reporting person - See instructions]
(If you have nothing to report, write "none" or "n/a")**FILING INSTRUCTIONS** for when
and where to file this form are
located at the bottom of page 2.**INSTRUCTIONS** on who must file
this form and how to fill it out
begin on page 3.

PART D — INTANGIBLE PERSONAL PROPERTY [Stocks, bonds, certificates of deposit, etc. - See instructions]

(If you have nothing to report, write "none" or "n/a")

TYPE OF INTANGIBLE	BUSINESS ENTITY TO WHICH THE PROPERTY RELATES

PART E — LIABILITIES [Major debts - See instructions]

(If you have nothing to report, write "none" or "n/a")

NAME OF CREDITOR	ADDRESS OF CREDITOR

PART F — INTERESTS IN SPECIFIED BUSINESSES [Ownership or positions in certain types of businesses - See instructions]

(If you have nothing to report, write "none" or "n/a")

	BUSINESS ENTITY # 1	BUSINESS ENTITY # 2
NAME OF BUSINESS ENTITY		
ADDRESS OF BUSINESS ENTITY		
PRINCIPAL BUSINESS ACTIVITY		
POSITION HELD WITH ENTITY		
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS		
NATURE OF MY OWNERSHIP INTEREST		

PART G — TRAINING

For elected municipal officers required to complete annual ethics training pursuant to section 112.3142, F.S.

☐ I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.
IF ANY OF PARTS A THROUGH G ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐**SIGNATURE OF FILER:**

Signature: _____

Date Signed: _____

CPA or ATTORNEY SIGNATURE ONLY

If a certified public accountant licensed under Chapter 473, or attorney in good standing with the Florida Bar prepared this form for you, he or she must complete the following statement:

I, _____, prepared the CE Form 1 in accordance with Section 112.3145, Florida Statutes, and the instructions to the form. Upon my reasonable knowledge and belief, the disclosure herein is true and correct.

CPA/Attorney Signature: _____

Date Signed: _____

FILING INSTRUCTIONS:**WHAT TO FILE:**After completing all parts of this form, including signing and dating it, send back only the first sheet (pages 1 and 2) for filing.

If you have nothing to report in a particular section, write "none" or "n/a" in that section(s).

NOTE:**MULTIPLE FILING UNNECESSARY:**

A candidate who files a Form 1 with a qualifying officer is not required to file with the Commission or Supervisor of Elections.

Facsimiles will not be accepted.**WHERE TO FILE:**

If you were mailed the form by the Commission on Ethics or a County Supervisor of Elections for your annual disclosure filing, return the form to that location.

Local officers/employees file with the Supervisor of Elections of the county in which they permanently reside. (If you do not permanently reside in Florida, file with the Supervisor of the county where your agency has its headquarters.)**State officers or specified state employees** file with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709; physical address: 325 John Knox Road, Building E, Suite 200, Tallahassee, FL 32303.**Candidates** file this form together with their qualifying papers.

To determine what category your position falls under, see page 3 of Instructions.

WHEN TO FILE:**Initially**, each local officer/employee, state officer, and specified state employee must file **within 30 days** of the date of his or her appointment or of the beginning of employment. Appointees who must be confirmed by the Senate must file prior to confirmation, even if that is less than 30 days from the date of their appointment. **Candidates** must file at the same time they file their qualifying papers.**Thereafter**, file by July 1 following each calendar year in which they hold their positions.**Finally**, file a final disclosure form (Form 1F) within 60 days of leaving office or employment. Filing a CE Form 1F (Final Statement of Financial Interests) does **not** relieve the filer of filing a CE Form 1 if the filer was in his or her position on December 31, 2016.

FORM 6**FULL AND PUBLIC DISCLOSURE
OF FINANCIAL INTERESTS****2016**Please print or type your name, mailing
address, agency name, and position below:**FOR OFFICE USE ONLY:**

LAST NAME — FIRST NAME — MIDDLE NAME:

MAILING ADDRESS:

CITY:

ZIP:

COUNTY:

NAME OF AGENCY:

NAME OF OFFICE OR POSITION HELD OR SOUGHT:

CHECK IF THIS IS A FILING BY A CANDIDATE ☐**PART A — NET WORTH**

Please enter the value of your net worth as of December 31, 2016 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of _____, 20 ____ was \$ _____.

PART B -- ASSETS**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use, whether owned or leased.

The aggregate value of my household goods and personal effects (described above) is \$ _____.

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required - see instructions p.4)

VALUE OF ASSET

PART C -- LIABILITIES**LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):**

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

PART D -- INCOME

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2016 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.



I elect to file a copy of my 2016 federal income tax return and all W2's, schedules, and attachments.

[If you check this box and attach a copy of your 2016 tax return, you need not complete the remainder of Part D.]

PRIMARY SOURCES OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person--see instructions on page 5]:

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART E -- INTERESTS IN SPECIFIED BUSINESSES [Instructions on page 6]

	BUSINESS ENTITY # 1	BUSINESS ENTITY # 2	BUSINESS ENTITY # 3
NAME OF BUSINESS ENTITY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

PART F - TRAINING

For officers required to complete annual ethics training pursuant to section 112.3142, F.S.



I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of

_____, 20 ____ by _____

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE _____

If a certified public accountant licensed under Chapter 473, or attorney in good standing with the Florida Bar prepared this form for you, he or she must complete the following statement:

I, _____, prepared the CE Form 6 in accordance with Art. II, Sec. 8, Florida Constitution, Section 112.3144, Florida Statutes, and the instructions to the form. Upon my reasonable knowledge and belief, the disclosure herein is true and correct.

Signature _____

Date _____

Preparation of this form by a CPA or attorney does not relieve the filer of the responsibility to sign the form under oath.

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐

**An Abbreviated Outline of Ethics Laws
Applicable to Local Officers and Employees**

Prepared for:

Jacksonville Annual Ethics Training

June 12, 2017

Virlindia Doss

Executive Director, Florida Commission on Ethics

Introduction

Thank you for having this training, and for inviting me to speak. Ethics training, in addition to being mandatory for some public officers, is a vital part of any government entity's efforts to educate its public servants and maintain the confidence of the citizens it serves.

This outline is for *local* public officers and employees, and is, as the title suggests, abbreviated. It doesn't cover all the ethics laws, and it doesn't cover every nuance of the laws it addresses. It's intended to give you some basic information about several subject areas, and to point you in the right direction if you have a question.

There are two excellent resources available to those of you who have further questions:

The first is our website: **www.ethics.state.fl.us**. On this site you can view Part III of Chapter 112—The Code of Ethics for Public Officers and Employees, see all our Commission opinions and administrative rules, and get any forms you need. In addition, there are free training segments and links to training you can purchase.

The second great resource is our staff. Our office has helpful and well-informed people available every day to help you work through your ethics question. Please avail yourself of this valuable resource, and don't risk being wrong about doing the right thing. Our phone number is: **(850) 488-7864**.

I hope you find this training helpful, and I thank you again for the opportunity!

Virlindia Doss

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Misuse of Position: 112.313(6), F.S.

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

Public officers and employees, and local government attorneys, are prohibited from corruptly using or attempting to use their position or the resources thereof, for their own or someone else's private benefit. The prohibition also applies to chief administrative officers of political subdivisions who serve via contract. Sec. 112.3136, F.S.

"Corruptly" means done with a wrongful intent and for the purpose of obtaining a benefit resulting from some act or omission which is inconsistent with the proper performance of the official's public duties. Sec. 112.312(9), F.S.

Mismanagement, "waste in government," and negligent acts are not sufficient; there must be intentional conduct to benefit oneself or another. Some examples where the Commission has found a misuse of position include:

- Conduct which might be generally referred to as sexual harassment. In re Larry Hawkins, 18 FALR 2078 (Comm'n. on Ethics, 1995).

- Threats by a city commissioner to terminate an employee over a private dispute. Complaint No. 04-057, In re Diane Obremski.

- Threats by a city commissioner that his actions toward a police department would be affected if his son's speeding ticket was not reduced. In re Jimmy Whaley, 20 FALR 2263 (Comm'n. on Ethics, 1997).

Nepotism: Section 112.3135, F.S.

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.

This law prohibits officials from appointing, employing, or promoting their relatives, or advocating for their appointment, employment, or promotion. It applies to cities and counties, but not to school districts. However, the Florida K-20 Education Code prohibits a district school board member from employing or appointing a "relative" (as defined in sec. 112.3135) to work under the direct supervision of the member. Sec. 1012.23(2), F.S.

"Relative," means parents, children, siblings, spouses, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-parents, step-children, stepbrother, stepsister, half-brother, or half-sister. "Relative" does not include:

- One's mother's sister's husband. (Not one's "uncle" under the anti-nepotism law.) CEO 99-5;
- One's wife's brother's wife. (Not one's "sister-in-law.") CEO 96-6;
- A paramour. CEO 02-3; and,
- The daughter of a former spouse. (Not one's "stepdaughter.") CEO 14-09.

The prohibition applies to unpaid as well as paid positions (CEO 95-12, CEO 13-1) and to reappointments (CEO 95-12, CEO 09-15).

A relative of a board member cannot be appointed by the board, *even if the related board member does not participate*. CEO 09-15.

The receipt of delegated authority to hire, promote, or advance will bring an official under the statute in regard to his relatives; but once vested with that authority, an official cannot avoid the statute by attempting to delegate the authority to someone else.

There are exceptions in the statute for:

- Appointments to boards in municipalities with a population of less than 35,000, as long as the board does not have land-planning or zoning responsibilities; and,
- Volunteers who provide emergency medical, firefighting, or police services, even if they receive reimbursements for the costs of training or payment for incidental expenses relating to the services they provide.

The law does not prohibit officials from working together, and does not prohibit an official from supervising, disciplining, or terminating a relative. CEO 94-6. When people who are already working together become relatives (such as by getting married) the law does not demand that one of them quit. However, the employee cannot be advanced or promoted. CEO 91-27.

Gifts and Things of Value: Sections 112.31485, 112.313(2), 112.313(4), and 112.3148, F.S.

Section 112.31485, F.S.: Gifts From Political Committees

(1)(a) For purposes of this section, the term "gift" means any purchase, payment, distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106.

(b) For purposes of this section, the term "immediate family" means any parent, spouse, child, or sibling.

(2)(a) A reporting individual or procurement employee or a member of his or her immediate family is prohibited from soliciting or knowingly accepting, directly or indirectly, any gift from a political committee.

(b) A political committee is prohibited from giving, directly or indirectly, any gift to a reporting individual or procurement employee or a member of his or her immediate family.

This section applies to all reporting individuals; meaning those persons required to file financial disclosure. (It also applies to procurement employees, but those are state-level employees.) It prohibits such individuals, or their parents, children, spouses, or siblings, from soliciting or accepting anything of value from a political committee. The one exception is if the thing of value is "primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106."

Section 112.313(2), F.S.: Solicitation or Acceptance of Gifts

No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

Applies to all public officers and employees, local government attorneys, "private" charter school board members (sec. 1002.33(26)(a), F.S.), "privatized" chief administrative officers of political subdivisions (sec. 112.3136, F.S.), and candidates for nomination or election. These persons are prohibited from soliciting "anything of value" with the understanding their official actions would be influenced.

"Things of value" under this provision include, but are not limited to, gifts, loans, rewards, promises of future employment, favors, and services.

Section 112.313(4), F.S.: Unauthorized Compensation

No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it

was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Applies to public officers and employees, local government attorneys, "privatized" chief administrative officers of political subdivisions, and their spouses and minor children. This section prohibits these individuals from accepting any "thing of value" when the official knows, or should know, that it is being given in an effort to influence.

Factors that may be relevant in determining whether the official "should know" that the gift is being given for influence include:

- The size or value of the gift or other thing of value. CEO 80-60;
- Whether the official knows the identity of the donor. CEO 09-21;
- The proximity in time to a vote or other action by the official. In re Winston "Bud" Gardner, 15 FALR 2595 (Comm'n. on Ethics, 1993); and,
- The proportionality of the gift to the relationship between the donor and recipient. In re Bob Goin, 17 FALR 2663 (Comm'n. on Ethics, 1995), reversed on other grounds, Goin v. Commission on Ethics, 658 So. 2d 1151 (Fla. 1st DCA 1995).

Section 112.3148, F.S.: Gift Acceptance and Reporting

This law and its subsections apply only to reporting individuals (persons required to file financial disclosure) and procurement employees. (Procurement employees are state-level officials.)

Sec. 112.3148(1), F.S.: Gifts from Relatives

The provisions of this section do not apply to gifts solicited or accepted by a reporting individual or procurement employee from a relative.

Gifts from relatives are permitted and do not have to be reported. *But*, it is possible that a gift from a relative could violate some other law, such as sec. 112.313(2) or sec. 112.313(4).

The definition of "relative" for purposes of this law is *very* broad, and includes fiancées and persons living in an official's household, but not friends, boyfriends, or girlfriends. Sec. 112-312(21), F.S.

Sec. 112.3148(3), F.S.: Prohibition on Solicitation of Gifts

A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

This law prohibits reporting individuals from soliciting *any* gift, of *any* value from:

- Lobbyists, who are defined in sec. 112.3148(2)(b)1 as persons who, for compensation, seek, or sought during the preceding 12 months, to influence the governmental decisionmaking of the reporting individual or his agency;
- The partner, firm, principal or employer of a lobbyist; and,
- Vendors, meaning those doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

Sec. 112.3148(4), F.S.: Prohibition on Acceptance of Gifts

A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

This law prohibits reporting individuals from accepting, *directly or indirectly*, a gift they know or believe to be worth more than \$100 from:

- Lobbyists, who are defined in 112.3148(2)(b)1 as persons who, for compensation, seek, or sought during the preceding 12 months, to influence the governmental decisionmaking of the reporting individual or his agency;
- The partner, firm, principal or employer of a lobbyist; and,
- Vendors, meaning those doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

What's an indirect gift? Indirect gifts include situations:

- Where the gift is given to someone other than the official, but it's given with the intent to benefit the official. CEO 06-27; and,
- Where the gift is passed through the hands of a third party to evade the prohibition.

Rule 34-13.310, Florida Administrative Code, lists a number of factors the Commission will consider in determining whether an indirect gift was received.

Sec. 112.3148(8): Reporting

Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less.

Reporting individuals who receive a gift worth more than \$100 from a person who is not a relative, and who is not prohibited from giving that gift, must report the gift on a form (Form 9) filed with the Commission on Ethics no later than the end of the quarter following the quarter in which they receive the gift.

General Considerations for Section 112.3148

Is it a Gift?

What's a gift? In analyzing a question under any of the subsections in this statute, the definition of "gift" is important.

"Gift" is defined in sec. 112.312(12), F.S., to mean anything for which equal or greater consideration is not given within 90 days. The statute goes on to specifically list, among other things:

- Real property and the use thereof;
- Tangible or intangible personal property and the use thereof;
- Preferential rates or terms that are below the customary rate and not either: a) a government rate available to all other similarly situated government officials, or, b) a rate which is available to similarly situated members of the public;
- Forgiveness of a debt;
- Transportation, other than that provided by one's own agency in relation to officially approved governmental business;
- Food or beverage;
- Membership dues;
- Entrance fees, admission fees, or tickets;
- Plants, flowers, or floral arrangements; and,
- Services provided by persons who normally charge a fee for their services pursuant to a professional license or certificate.

Sec. 112.312(12) also gives some examples of what is *not* a gift. These include:

- Salary, benefits, and other things associated primarily with the official's private employment, business, or service as an officer or director of a corporation or organization;
- Contributions reported pursuant to chapter 106, or federal election law;
- An honorarium or an expense related to an honorarium event;
- Awards or plaques given in recognition of the official's public, civic, charitable, or professional service;
- Gifts given by a state, regional, or national organization which promotes the exchange of ideas between governmental officials, and whose membership is primarily composed of public officials or staff, given to members of that organization or officials of a governmental agency that is a member of that organization.

What's it Worth?: Valuation Considerations in Sec. 112.3148(7), F.S.

When analyzing whether a gift can be accepted, and if so, whether it must be reported, the \$100 threshold becomes important. Sec. 112.3148(7) offers guidance on placing a value on gifts:

- Transportation provided in a private conveyance is given the same value as transportation provided in a comparable commercial conveyance;
- Lodging provided on consecutive days is a single gift, and lodging in a private residence is valued at the state per diem rate less the state meal allowance rate. Under current law, that calculates to \$44. $(\$80 - (\$6 + \$11 + \$19) = \$44)$;
- Entrance or admission fees or tickets are given the face value of the ticket or fee, or the daily or per event cost, whichever is *greater*;
- If none of the more specific methods of valuation in the statute apply, the value of the gift is the cost to the donor, less taxes and gratuities.

Any payment by the official to the donor of the gift within 90 days is subtracted from the gift's value. Sec. 112.3148(8). This means that officials have 90 days from receipt of the gift to make payment to the donor to reduce the value of the gift to \$100 or less.

Commission Rule 34-13.500 elaborates on valuation issues, and provides some examples.

Honoraria: Section 112.3149, F.S.

This law and its subsections apply only to reporting individuals (persons required to file financial disclosure) and procurement employees. (Procurement employees are state-level officials.) Many other concepts are similar to those in the gifts law, as well.

The term "honorarium" means compensation for a speech or oral presentation. It does *not* include payment or provision of *actual and reasonable* transportation, lodging, and food and beverage expenses related to an honorarium event, including any registration fee, for a reporting individual and spouse. This can be important, because it means reporting individuals can solicit and accept these expenses from certain persons or entities, even though they would be prohibited from accepting an honorarium from those same persons or entities.

Section 112.3149(2) and (3), F.S.: Solicitation and Acceptance of Honoraria

(2) A reporting individual or procurement employee is prohibited from soliciting an honorarium which is related to the reporting individual's or procurement employee's public office or duties.

(3) A reporting individual or procurement employee is prohibited from knowingly accepting an honorarium from a political committee, as defined in s. 106.011, from a vendor doing business with the reporting individual's or procurement employee's agency, from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or from the employer, principal, partner, or firm of such a lobbyist.

Reporting individuals are prohibited from soliciting an honorarium for a speech related to their public responsibilities. Section 112.3149(2), F.S. They are also prohibited from accepting an honorarium from a political committee, vendor, lobbyist, or employer, principal, partner, or firm of a lobbyist. Section 112.3149(3), F.S.

Two things to note:

- There's no prohibition on soliciting or accepting reasonable transportation, lodging, and food and beverage expenses related to an honorarium event, including any event or meeting registration fee from anyone, *except that*,

- Sec. 112.3185 contains a separate prohibition against political committees giving anything of value not "primarily related to" contributions, expenditures, or other political activities authorized under ch. 106.

Sections 112.3149(4), (5), and (6), F.S.: Reporting

(4) A political committee, as defined in s. 106.011, a vendor doing business with the reporting individual's or procurement employee's agency, a lobbyist who lobbies a reporting individual's or procurement employee's agency, or the employer, principal, partner, or firm of such a lobbyist is prohibited from giving an honorarium to a reporting individual or procurement employee.

(5) A person who is prohibited by subsection (4) from paying an honorarium to a reporting individual or procurement employee, but who provides a reporting individual or procurement employee, or a reporting individual or procurement employee and his or her spouse, with expenses related to an honorarium event, shall provide to the reporting individual or procurement employee, no later than 60 days after the honorarium event, a statement listing the name and address of the person providing the expenses, a description of the expenses provided each day, and the total value of the expenses provided for the honorarium event.

(6) A reporting individual or procurement employee who receives payment or provision of expenses related to any honorarium event from a person who is prohibited by subsection (4) from paying an honorarium to a reporting individual or procurement employee shall publicly disclose on an annual statement the name, address, and affiliation of the person paying or providing the expenses; the amount of the honorarium expenses; the date of the honorarium event; a description of the expenses paid or provided on each day of the honorarium event; and the total value of the expenses provided to the reporting individual or procurement employee in connection with the honorarium event. The annual statement of honorarium expenses shall be filed by July 1 of each year for those expenses received during the previous calendar year. The reporting individual or procurement employee shall attach to the annual statement a copy of each statement received by him or her in accordance with subsection (5) regarding honorarium expenses paid or provided during the calendar year for which the annual statement is filed. The attached statement shall become a public record upon the filing of the annual report. The annual statement of a reporting individual shall be filed with the financial disclosure statement required by either s. 8, Art. II of the State Constitution or s. 112.3145, as applicable to the reporting individual. The annual statement of a procurement employee shall be filed with the Commission on Ethics. The statement filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the statement shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

When a political committee, vendor, lobbyist, or employer, principal, partner, or firm of a lobbyist pays or reimburses a reporting individual's honorarium-event-related expenses, they must also, within 60 days of the event, provide him with a statement listing the name and address of the person paying the expenses, a description of the expenses provided each day, and the total value of the expenses provided. Section 112.3149(5), F.S.

When a reporting individual receives honorarium-event-related expenses from a political committee, vendor, lobbyist, or employer, principal, partner, or firm of a lobbyist, the reporting individual must report those expenses. This is done by filing an annual statement of honorarium expenses (Form 10) by July 1, with one's financial disclosure statement. If the person or entity has provided the required statement of expenses described above, that should be attached. Sec. 112.3149(6), F.S. Note:

-Failure of the person paying the honorarium-event-related expenses to give the official a statement of the expenses does not relieve the official of the responsibility to file the Form 10;

-There is no grace period; and,

-There is no dollar threshold.

Conflicts of Interest: Sections 112.313(3) and (7), F.S.

Section 112.313(3), F.S.

No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.

First part:

Public employees acting as purchasing agents, and public officers acting in an official capacity, cannot buy or rent land, goods, or services from a company in which they, their spouse, or their child are an officer, partner, director, or proprietor. They're also prohibited from buying or renting land, goods, or services from a company in which they, their spouse, or their child (or any combination thereof) have a material interest.

- "Material interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of a business entity. Sec. 112.312(15), F.S.

- "Acting in an official capacity" includes when a board of which the official is a member (e.g., a county commission) acts collegially to purchase, rent, or lease, *regardless of whether the official abstains*. CEO 90-24, CEO 10-4.

Second part:

Officials are also prohibited from acting in a *private* capacity to rent or sell realty, goods, or services to the political subdivision they serve or any agency of that political subdivision.

- An "agency of a political subdivision" includes agencies of a county headed by Constitutional officers elected separately from the county commission (e.g., sheriff, clerk of court, etc.). CEO 12-13.

- "Acting in a private capacity" includes situations where the official is personally involved with the transaction (CEO 81-50, CEO 94-3, CEO 12-13), as well as where he is an officer or director, or owns more than a 5% interest in a business that is selling to the agency or political subdivision. CEO 81-2; CEO 09-1.

Exceptions include:

- Contracts entered into prior to qualification for elective office, appointment to public office, or beginning public employment. CEO 96-30; CEO 09-1. Changes in contracts after a person

assumes a public position are deemed to be new contracts not subject to the exemption (CEO 85-40 and CEO 84-43), *unless* the renewals are completely nondiscretionary (CEO 82-10) or the original agreement expressly provides for renewal for a specified period and the provisions of the contract under the renewal are the same as the provisions of the original agreement. CEO 85-40. Also, see CEO 02-14, CEO 07-1, CEO 08-8 (Question 1), and CEO 09-1;

-Advisory board members may receive a waiver in a particular instance by the appointing authority, if made in a public meeting after a written disclosure is made on Commission Form 4A. Sec. 112.313(12), F.S.;

-Contracts awarded through sealed, competitive bids, as long as the official files a written disclosure (on Commission Form 3A) prior to or at the time the bid is submitted, and does not participate in the process. Sec. 112.313(12)(b), F.S.;

-Emergency purchases, but only when made "in order to protect the health, safety, or welfare" of the citizens. Sec. 112.313(12)(d), F.S.;

-"Sole source" purchases, where the official's business is the only source of supply within the political subdivision, as long as disclosure (on Commission Form 4A) is made prior to the transaction. Sec. 112.313(12)(e), F.S.; and,

-Transactions not exceeding \$500 in the aggregate in a calendar year. Sec. 112.313(12)(f), F.S.

Note that Sec. 1001.42(12)(i), F.S.—a provision of the Florida K-20 Education Code outside the Code of Ethics and not administered by the Commission on Ethics—prohibits school board members and school superintendents from having certain interests regarding contracts for materials, supplies, or services. AGO 06-50.

Section 112.313(7), F.S.

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 or she 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 subdivision 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 or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

First part:

Public officers and employees are prohibited from working for, or having any contractual relationship with, any business or agency that does business with their own agency. They are also prohibited from working for, or having any contractual relationship with, any business or agency that is regulated by their agency.

The Commission has looked to the substantive law of contract to determine whether a "contractual relationship" exists, and has found these relationships to be contractual in nature:

- Sales of goods or realty;
- Provision of services for compensation;
- Ownership of shares of stock. CEO 99-13;
- Holding of stock options. CEO 05-18, note 8;
- The "hanging" of a real estate sales associate's license with a broker. CEO 12-15;
- Services provided under professional licensure. CEO 95-28, CEO 08-7, CEO 08-8, CEO 11-6; and,
- Membership in a voluntary association (CEO 06-12, CEO 08-7, Question 2). Although membership in an association may be contractual, Commission opinions indicate that mere membership will not usually create a conflict, while service as an officer or director often will. CEO 08-7; CEO 08-22, 06-12.

The Commission has found the following are not contractual relationships:

- Marriage. CEO 90-77;
- The holding of a public office (e.g., a county/city commission seat). CEO 92-39; and,
- Uncompensated service (CEO 06-26) even if travel and lodging expenses are received (CEO 93-23). However, the absence of compensation may not be dispositive if the contractual relationship is by virtue of, for example, the "hanging" of a license, services provided under professional licensure, or membership in a voluntary organization.

In determining whether an official is involved with a company or agency doing business with or regulated by his own agency, it's important to know what his "agency" is. Typically, it's the lowest departmental unit within which a public officer or employee's influence might reasonably be considered to extend. CEO 93-31 and CEO 99-7. So, for example, the Commission has found:

- A city planning board is a separate agency from the city commission. CEO 01-16; CEO 11-6;
- A public school teacher's or principal's agency is his school, not the whole of the school district. CEO 04-17, CEO 10-15;
- A school board member's agency was the entire school district. CEO 14-21; CEO 14-27;
- The agency of a city councilman is the city council. CEO 08-1; and,
- The agency of a county commissioner was the county commission. CEO 12-13.

In cases where the person is a member of an advisory board, his agency will usually be the unit of government the board is advising. For example, in CEO 99-2, the Commission found that the agency of the North Lauderdale Charter School Advisory Board—created by the City Council to advise it on matters related to the City's charter school—was the City Council.

Second part:

Public officers and employees are also prohibited from having *any* employment or contractual relationship that will create a continuing or frequently recurring conflict between their private interests and the performance of their public duties, or that would impede the full and faithful discharge of their public duties.

A conflict of interest is a situation in which regard for a private interest tends to lead to disregard of a public duty or interest. Sec. 112.312(8), F.S. This section requires a comparison of the official's private interests as against his public responsibilities, to see whether the two may overlap. See, Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982). Some examples of this kind of conflict would be:

- A city mayor contracting to promote charter schools with a subsidiary of a design-build firm contracting with the city to build its charter schools and other capital projects. CEO 01-9;
- A district school board member being employed as an assistant principal at a charter school sponsored by the school board. CEO 06-23;
- A county commissioner being employed by the same county's sheriff's office. CEO 12-12;
- A police officer conducting surveillance in unfaithful spouse and employee theft cases. CEO 13-16; and,
- A police chief employed as a risk manager for a beachfront hotel and bar in his jurisdiction. In re Phillip Lee Sullivan, Complaint No. 94-71.

Both Section 112.313(3) and 112.313(7) are designed to foreclose the *potential* that an official may be tempted to ignore his public responsibilities in favor of his private interests. No actual misuse of position or wrongful intent is required to find a violation of these provisions.

Exemptions:

Certain exemptions will negate a violation of the first part of sec. 112.313(7), though not usually the second part (where the circumstances indicate an actual conflict). The exemptions include:

- The law does not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice is required or permitted by law or ordinance. Sec. 112.313(7)(b), F.S.;
- Where an elected public officer is employed by a 501(c) tax-exempt organization that contracts with the officer's agency, as long as the officer's employment is not compensated as a result of the contract, he does not participate in the agency's decision to contract, and he abstains from voting on matters involving his employer and otherwise follows the voting conflicts law. Sec. 112.313(15), CEO 97-05, CEO 01-4, CEO 07-11, CEO 10-16; and,
- Where the contract was entered into prior to qualification for elective office, appointment to public office, or beginning public employment. CEO 96-30; CEO 09-1. Changes in contracts after a person assumes a public position are deemed to be new contracts not subject to the exemption (CEO 85-40 and CEO 84-43), unless the renewals are completely nondiscretionary

(CEO 82-10) or the original agreement expressly provides for renewal for a specified period and the provisions of the contract under the renewal are the same as the provisions of the original agreement. CEO 85-40. Also, see CEO 02-14, CEO 07-1, CEO 08-8 (Question 1), and CEO 09-1.

-Where an advisory board member receives a waiver in a particular instance by the appointing authority, made in a public meeting after a written disclosure is made on Commission Form 4A. Sec. 112.313(12), F.S.;

-Contracts awarded through sealed, competitive bids, as long as the official files a written disclosure (on Commission Form 3A) prior to or at the time the bid is submitted, and does not participate in the process. Sec. 112.313(12)(b), F.S.;

-Emergency purchases, but only when made "in order to protect the health, safety, or welfare" of the citizens. Sec. 112.313(12)(d), F.S.;

-"Sole source" purchases, where the official's business is the only source of supply within the political subdivision, as long as disclosure is made (on Commission Form 4A) prior to the transaction. Sec. 112.313(12)(e), F.S.;

-Transactions not exceeding \$500 in the aggregate in a calendar year. Sec. 112.313(12)(f), F.S.; and,

-When a public officer or employee privately purchases goods or services from a business entity which is doing business with his agency, the transaction is exempted from 112.313(7) if the purchase is "at a price and upon terms available to similarly situated members of the general public." Sec. 112.313(12)(i), F.S.

Voting Conflicts: Section 112.3143, Florida Statutes

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

This law prohibits local officials from voting when they have a voting conflict of interest. A voting conflict exists when the measure being voted on works to the official's own special private gain or loss, or the special private gain or loss of:

- A relative;
- A principal by whom the official is retained, *other than an agency*;
- The parent organization or subsidiary of a corporate principal by which the official is retained;
- or,
- a business associate.

When a voting conflict exists, local officials must abstain, declare the conflict, and file a memorandum describing the conflict (Form 8B) with the person responsible for taking the minutes.

Local officials who are appointed have an additional restriction: they cannot *participate* in the matter—meaning attempt to influence the decision—unless they disclose their conflict before they participate.

The term "relative," means parents, children, spouses, siblings and father-in-law, mother-in-law, son-in-law, or daughter-in-law. Sec. 112.3143(1)(c), F.S.

A principal includes an employer or client. Sec. 112.3143(1)(a), F.S.

A "business associate" is a person or entity engaged in a business enterprise with the official as a partner, joint venturer, co-owner of property, or corporate shareholder in a private corporation. Sec. 112.312(4), F.S.

Many votes will result in gain or loss to the officials voting on them, but only "special private" gain or loss creates a voting conflict. Pursuant to sec. 112.3143(1)(d), in deciding whether "special private gain or loss" exists, the Commission will look at a number of factors, including:

- The size of the class affected by the vote and the degree to which the interests of all members of the class are affected by the vote.

Is this something that affects the whole community? Or just a few people?

- The nature of the interests involved.

What is at stake for the official?

- The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

Does the official stand to gain or lose disproportionately from others affected by the vote?

- The degree to which there is uncertainty at the time of the vote as to whether there would be any benefit or harm to the official.

Is this vote going to have an immediate impact on the official, his relative, employer, etc.? Or are there a number of other things that would have to take place first? If so, what are they?

Exceptions

- When the official's principal is an agency, the official can vote on something that benefits the agency and is not required to make any disclosure. CEO 86-86.

- CRA Commissioners and officers of independent special tax districts elected on a one-acre, one-vote basis, are not prohibited from voting. Sec. 112.3143(3)(b). The Commission has said that CRA members are nonetheless required to declare their conflict and file a conflict memorandum. Note also Sec. 163.367(2), F.S., a provision outside the Code of Ethics, which independently requires certain disclosures by CRA officials, commissioners, and employees.

Post-officeholding and Post-employment Restrictions: Sections 112.313(13) and (14), F.S.

Section 112.313(13), F.S.: Employees

The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

This section allows counties and municipalities to adopt by ordinance, and school and special districts to adopt by resolution, prohibitions on representing clients before them for two years after leaving employment.

Section 112.313(14), F.S.: Elected Officers

A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

- (a) The "government body or agency" of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.
- (b) The "government body or agency" of any other county elected officer is the office or department headed by that officer, including all subordinate employees.
- (c) The "government body or agency" of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
- (d) The "government body or agency" of an elected special district officer is the special district.
- (e) The "government body or agency" of an elected school district officer is the school district.

Persons who have been elected to any county, municipal, school district, or special district office are prohibited by from representing another person or entity for compensation before the government body or agency of which they were an officer for two years after leaving office. For the statute to apply, one must have been *elected* to office, not merely appointed to an elective office. CEO 09-16.

"Representation" is broadly defined in sec. 112.312(22), F.S., and includes mere physical attendance at a county commission meeting or workshop, even if the former county commissioner does not directly

address the commission. CEO 06-22. In CEO 16-15, the Commission advised a former county commissioner that the prohibition extended to her representation of clients before other boards upon which county commissioners served.

In CEO 07-6, the Commission found a former county commissioner was not prohibited from merely attending, in behalf of a client for compensation, gatherings which were not regular meetings of the county commission and which were not advertised or noticed under the Sunshine Law. However, the former county commissioner was prohibited from making comments in behalf of a client at such a gathering if a county commissioner or one or more enumerated county employees is present. CEO 07-6.