

*from mary alford
12/14/17 WAB mtg*



2017 State-Required Code of Ethics, Sunshine Law and Public Records Training

**December 14, 2017
County Administration Building, Room 209**



**ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS**
Jack Durrance Auditorium, Room 209
Second Floor
12 SE 1st Street

**Special BoCC Meeting – Code of Ethics Training for Public Officers
December 14, 2017, 1:00 p.m.**

Call to Order (1:00 p.m.)

Adoption of Agenda

Items for Discussion

Presentations


1. State-Required Ethics Training for Public Officers

Amount: n/a

Recommended Action: The County Attorney's Office will present Code of Ethics for Public Officers and Employee Training.


Commission General and Informal Discussion

Adjourn



**MISUSE OF POSITION,
INSIDE INFO &
NEPOTISM**

PRESENTED BY:
Dave Forziano,
Senior Assistant
County Attorney




WHY ETHICS TRAINING?

Public Office is a Public Trust
- s. 8, Art II, Florida Constitution

Public Officers and Employees are agents of the people and hold their positions for the benefit of the people
- s. 112.311(6), F.S. Code of Ethics for Public Officers and Employees

It is essential to the proper conduct and operation of government that public officials be independent and impartial
- s. 112.311(1), F.S. Code of Ethics for Public Officers and Employees



MISUSE OF POSITION
FLORIDA STATUTE §112.313(6)

POTENTIAL PENALTIES:

- Impeachment or removal/suspension from office
- Termination/suspension of employment without pay
- Demotion/Reduction in Salary
- Forfeiture of up to 1/3 of annual salary
- Civil penalty up to \$10,000
- Restitution
- Public censure and reprimand

- s. 112.317, F.S.

GONZALEZ GUILTY OF CORRUPTION
Former Miami commish formerly entered guilty plea Monday



Source: NBC Miami

"Prosecutors claim Gonzalez used his commission seat to land his daughter a 'ghost job' at a construction company that did work for the city. His daughter, Michelle Gonzalez, allegedly received nearly \$50,000 in just under two years from the Delant Construction Company, yet never did any work for them."

EX-ST. JOHNS COMMISSIONER TOM MANUEL SENTENCED TO 21 MONTHS



Source: The Florida Times Union

"[Manuel] received \$60,000 to support a deal for the county to buy land at Interstate 95 and County Road 210 owned by the Falcone Group, a real estate investment business.


"At the time, Manuel boasted he had power and connections to help or hurt the company across Northeast Florida."

MISUSE OF POSITION


FLORIDA STATUTE §112.313(6)

Misuse of Public Position:


No public officer, employee of an agency, or local government attorney shall corruptly 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.

 **MISUSE OF POSITION**
TO WHOM DOES THIS APPLY?


Public Officer - any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

 **MISUSE OF POSITION**
TO WHOM DOES THIS APPLY?


Employee – of any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative...any public school; or any special district...

 **MISUSE OF POSITION**
TO WHOM DOES THIS APPLY?


Local Government Attorneys – any individual who routinely serves as the attorney for a unit of local government

 **MISUSE OF POSITION**
 FLORIDA STATUTE §112.313(6)
Do these Facts Constitute Misuse of Public Position?


- In 2006 a State Senator demanded to be let past a barricade blocking a street that led to a parking lot at a college football game.
- The Senator has a parking pass for the lot and the pass said to use the street to access the parking lot, but it was barricaded
- Told the Deputy that he was a state senator
- Told the Deputy that he "really didn't know who he was messing with"
- Told the Deputy "I will have your job"
- Demanded to see the Deputy's supervisor, who relented

 **MISUSE OF POSITION**
 FLORIDA STATUTE §112.313(6)
Do these Facts Constitute Misuse of Public Position?
 ELEMENTS

1. Public Officer, Employee or Local Gov'n't Atty?
2. Used or attempt to use public position, property or resources?
3. To secure special privilege, benefit or exemption for self or others?
4. Corrupt intent?

 **MISUSE OF POSITION**
 FLORIDA STATUTE §112.313(6)
Gary Siplin, now former State Senator


- Deputy filed an ethics complaint with the Commission on Ethics (CoE)
- The CoE determined that the Senator Misused his Public Office and recommended the following to the Senate:
 - Censure
 - Public Reprimand; and
 - Ordered to take Ethics Code training




MISUSE OF OFFICE
FLORIDA STATUTE §112.313(6)

OTHER EXAMPLES

- Use of P-Card for Personal Items
- Using staff time for reelection campaign
- Working on private endeavors on jurisdiction's time




INSIDE INFO



INSIDE INFORMATION
FLORIDA STATUTE §112.313(8)

ELEMENTS

1. Current or former public officer, employee or local government attorney
2. May not disclosure or use of info
 - Not available to general public; and
 - Gained through his or her position
2. Gain or benefit for self, other person or business entity




INSIDE INFORMATION


FLORIDA STATUTE §112.313(8)

POTENTIAL PENALTIES:

- Impeachment or dismissal/suspension from employment
- Removal/suspension from office
- Public censure and reprimand
- Forfeiture of % of salary
- Civil penalty not to exceed \$10,000
- Restitution
- Demotion
- Reduction in salary level



NEPOTISM




NEPOTISM

FLORIDA STATUTE §112.3135


Part I:

s.112.2135(1)(a), 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. ...



NEPOTISM
ELEMENTS OF NEPOTISM
WHAT IS PROHIBITED?


*It is also prohibited for the relative to be appointed, employed, promoted or advanced by the collegial body on which the public officer is a member



NEPOTISM
FLORIDA STATUTE §112.3135

EXAMPLES OF PROHIBITED NEPOTISM

1. County Manager hires his stepson
2. County Commissioner advocates that the County Manager hire the Commissioner's son
3. The County Commission employs one of the Board member's relatives to be the County Attorney
 - a. Prohibited - even if the Board member abstains



NEPOTISM
FLORIDA STATUTE §112.3135

EXAMPLES OF PROHIBITED NEPOTISM

4. Evaluation Committee comprised of county employees recommends to the County Manager that the County Manager hire the relative of a member of the evaluation committee
5. Evaluation Committee comprised of county employees recommends that the BOCC appoint a relative of a member of the committee to an advisory board



**MISUSE OF OFFICE,
INSIDE INFO &
NEPOTISM**

- 1. Ethics laws are not always intuitive.
- 2. Keep private separate from public.
- 3. Never use public position for special benefit.
- 4. When in doubt, ask your attorney first!
- 5. Or Seek opinion from Commission on Ethics



THE END

Types of Gift Laws

- Quid Pro Quo
- Gifts from Vendors & Lobbyist
- Gifts from Political Committees
- Gifts from Government Entity or Direct Support Organization

Quid Pro Quo

Solicitation or Acceptance of Gifts
s.112.313(2), Florida Statutes

Unauthorized Compensation
s. 112.313(4), Florida Statutes

Quid Pro Quo

Solicitation or Acceptance of Gifts
s.112.313(2), Florida Statutes

Absolute PROHIBITION against:
soliciting or accepting ANYTHING of value based on the understanding that it will influence the vote, official action or judgement of the recipient

Quid Pro Quo

Unauthorized Compensations
s.112.313(4), Florida Statutes

Who Does this Apply to:

- public officers
- employee of an agency
- local government attorney
- spouses and minor children

Quid Pro Quo

Unauthorized Compensations
s.112.313(4), Florida Statutes

What Constitutes a Prohibited Gift?

- Anything of value

- Recipient must know or should have known with the exercise of reasonable care that the gift was intended to influence

Quid Pro Quo

Penalties:

- Impeachment/removal/suspension from office
- Termination/suspension of employment w/o pay
- Demotion/Reduction in Salary
- Forfeiture of up to 1/3 of annual salary
- Civil penalty up to \$10,000
- Restitution
- Public censure and reprimand

Gifts from Vendors & Lobbyist


Prohibition Against Soliciting Gifts
s.112.3148(3), Florida Statutes

What Constitutes a Prohibited Conduct?

- soliciting ANY gift
- from a vendor or lobbyist
- for:
 - your personal benefit
 - benefit of another RI or PE, or
 - member of your immediate family


Gifts from Vendors & Lobbyist

Question: Can a reporting individual or procurement employee ask a vendor for a donut?

Answer: ? 

Gifts from Vendors & Lobbyist


Question: Can a reporting individual or procurement employee ask a vendor for a donut?

Answer: No. 

Gifts from Vendors & Lobbyist

Question: Can a reporting individual or procurement employee accept a \$75 steak dinner from vendor?


Answer: ?



Gifts from Vendors & Lobbyist

Question: Can a reporting individual or procurement employee accept a \$75 steak dinner from vendor?

Answer: Yes



Gifts from Political Committees

Prohibition Against Soliciting or Accepting Gifts

s.112.31485, Florida Statutes

Gifts from Political Committees

Prohibition Against Soliciting or Accepting Gifts
 s.112.31485, Florida Statutes

What Constitutes a Prohibited Gift?

- Anything of Value (cash, loan, etc)
- from a Political Committee
- Excludes: contributions, expenditures, or other political activities authorized under Chapter 106, Florida Statutes

Gifts from Government Entity or Direct Support Organization

Gift from Gov' Entity or Direct Support Organization
 s.112.3148(6), Florida Statutes

Gifts from Government Entity or Direct Support Organization

Gifts from Gov' Entity and DSO
 s.112.3148(6), Florida Statutes

Authorized:

gifts, either directly or indirectly, having a value in excess of \$100 are authorized to any reporting individual or procurement employee if a public purpose can be shown

Exceptions to the "Gift Law"

Gifts from a Relative:

father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer, or roommate.

Exceptions to the "Gift Law"

Gift does not include:

- Salary, benefits, commissions, etc associated with the donee's employment
- Contributions or expenditures reported pursuant to Chapter 106 (campaign financing)
- Honorarium
- Award or plaque for recognition of service
- Other examples

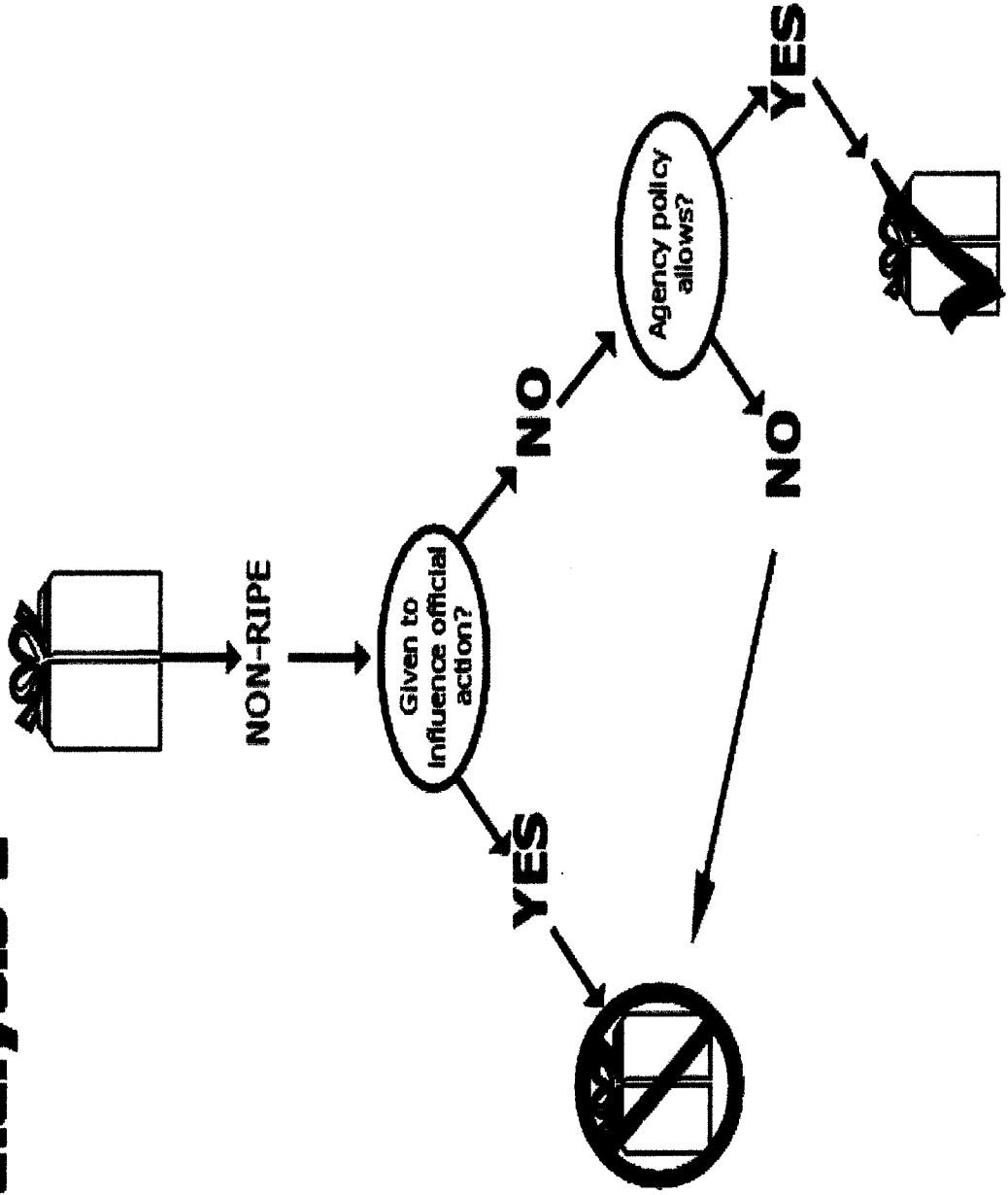
The "Gift Law"

Reporting of Gifts:

- Quarterly: Reporting Individuals and Procurement Employees must report ALL gifts over \$100, unless from relative
- Annually: Reporting Individuals and Procurement Employees must report gifts over \$100 from a Government Entity or DSO

Can I take it? I'm NOT a Reporting Individual or State Procurement Employee.

Analysis 1



Honorarium

RIPE may NOT solicit an honorarium if topic is related to office or duties

RIPE may NOT accept honorarium from lobbyist, political committee or vendor

But can accept expenses:

- Transportation and lodging
- Event registration fees
- Food and beverage

Financial Disclosure

Who must file a disclosure form?

- Constitutional Officers
- City and County Commissioners
- Candidates for Office
- Certain Government Staff
- Officials after leaving office
- Some members of government boards

How much disclosure?

"Limited" Disclosure: Form 1

- City Commissioners and candidates
- Certain government staff
- Officials after leaving office
- Some members of government boards

When to File?

If Full Disclosure

- At time of qualifying; and
- Annually by July 1
- Within 60 days of leaving office


When to File?

If Limited Disclosure

- Within 30 days of employment
- Within 60 days of leaving employment
- Annually by July 1
- For candidates: when filing qualifying papers

**Post-Officeholding
Restrictions, the Ethics
Complaint Process, the
Sunshine Law and the
Sunshine Amendment**

*Bob Swain
Senior Assistant County Attorney*



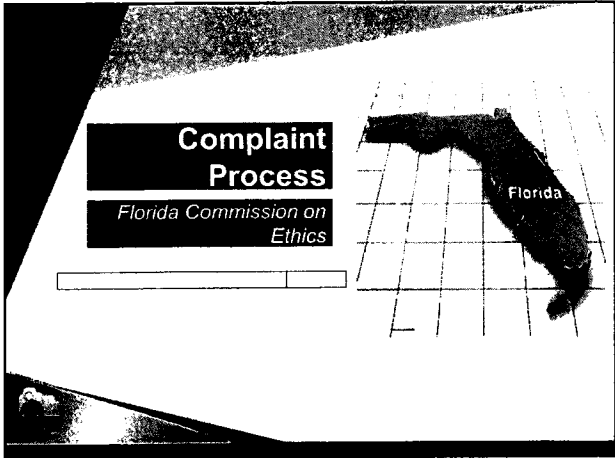
**Post-Officeholding
Restrictions**

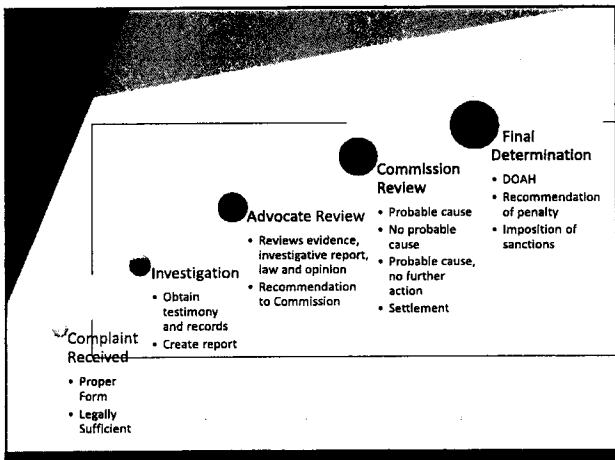
Revolving Door Controls

Lobbying by Former Local Officers

§112.313(14), F.S.

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.






Penalties

	Current	Candidate	Former
Ballot Disqualification		✓	
Impeachment	✓		
Public Censure	✓	✓	✓
Reprimand	✓	✓	✓
Removal	✓		
Suspension	✓		
Demotion	✓		
Reduction in Salary	✓		
Forfeiture of Salary	✓		
Fine ≤ \$10,000	✓	✓	✓
Restitution	✓		✓
3x value of gift	✓	✓	✓

Under the Magnifying Glass



[T]ransparency is not up to the whim or grace of public officials. Instead, it is an enforceable right of the people...transparency promotes accountability, aids the search for truth, and fosters consistency and fairness in governmental decision making."

Introduction, Government in the Sunshine Manual 2017

The Basics

- Meetings of public boards or commissions must be open to the public.
- Reasonable notice of meetings must be provided.
- Meeting minutes must be taken, recorded promptly and open to public inspection.
- Public has reasonable opportunity to be heard before official action on a proposition.

What is a meeting?

A gathering of two or more members of the same board or commission discussing some matter on which foreseeable action will be taken by that board or commission.

Exemptions

- Litigation a.k.a. Shade Meeting (§286.011(8))
- Security (§281.301(1))
- Competitive Solicitation (§286.0113(2))
- Collective Bargaining (§447.605(1))
- Risk Management (§768.28(16))

What are the requirements?

- Reasonable notice
 - Opportunity to attend
 - No agenda required
- Reasonable location
 - Lunch meetings
 - No barriers: Physical (ADA), Psychological, Discriminatory
 - Size of facility
- May not exclude members of the public
- Must allow cameras and tape recorders
- Minutes should denote actions taken and significant discussions

What happened in Hampton?

Finding No. 30: City Council Meeting Notices and Minutes

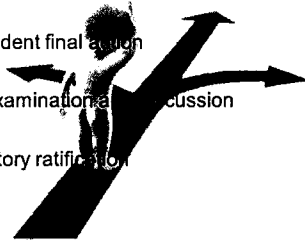
During the period October 2009 through March 2013, the City Council held 49 meetings, generally comprised of one required regular meeting on the second Tuesday of each month, and occasional special meetings. Regular meetings were not noticed and City had no records of special meeting notices. Meeting minutes were generally not signed and did not include a date of approval. Minutes were not found for seven City Council meetings. Four regular council meetings were not held and the minutes did not reflect the reason.

Recommendation: The City should ensure that all City Council meetings are reasonably noticed, held, and the meeting minutes are timely recorded, appropriately signed and approved, and retained in the City's records for public inspection.

Which path do I take?

Remedial Measures

- Independent final action
- Full reexamination and discussion
- Perfunctory ratification



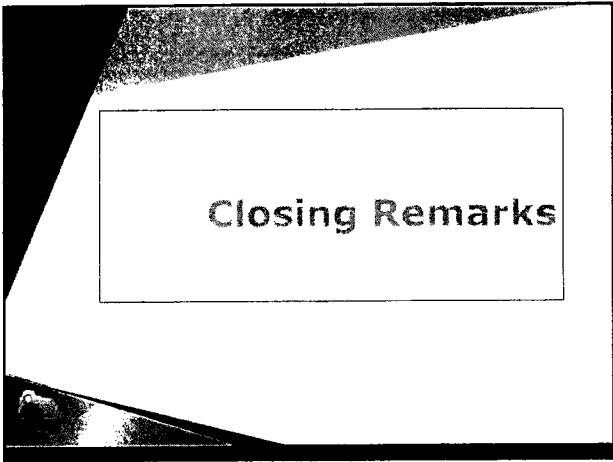
Failure to Follow

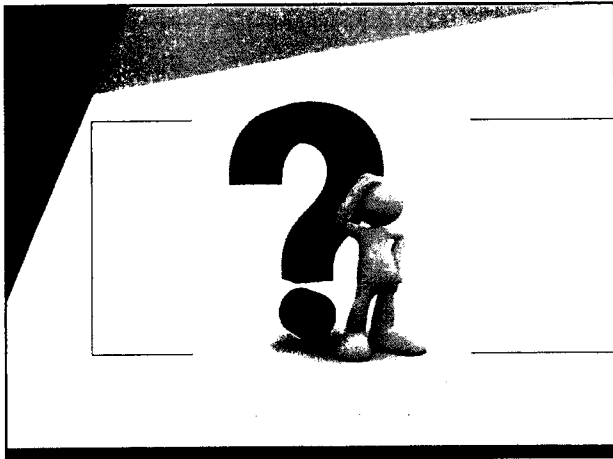
- Noncriminal Penalties
- Second Degree Misdemeanor
- Suspension or Removal
- Assessment of Attorney's Fees
- Injunction

Any action or decision is VOID AB INITIO

Florida Sunshine Amendmant

- Article II, Section 8(e), Florida Constitution
- Ethics in government.—**A public office is a public trust.** The people shall have the right to secure and sustain that trust against abuse. To assure this right:
 - (a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees **shall file full and public disclosure of their financial interests.**





Commission on Ethics Disclosure


- In the 1970s and 1970s Commission Redefined Administrative procedures to include the following:
 - The creation of the Florida Code of Ethics
 - The creation of the Sunshine Amendment
 - The creation of the Florida Code of Ethics
 - The creation of the Florida Code of Ethics
 - The creation of the Florida Code of Ethics

Commission on Ethics Penalties

- Non-Criminal Penalties for Violation of the Sunshine Amendment and the Code of Ethics**
 - Impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift from a political committee.
- Felony Convictions Forfeiture of Retirement Benefits** Public officers and employees are subject to forfeiture of all rights and benefits under the retirement system to which they belong if convicted of certain offenses. The offenses include embezzlement or theft of public funds; bribery; felonies specified in Chapter 838, Florida Statutes; impeachable offenses; and felonies committed with intent to defame the public or their public agency. [Sec. 112.3173, Fla. Stat.]


RECAP ETHICS LAWS
Part III of Chapter 112 Florida Statutes

- PROHIBITED ACTIONS OR CONDUCT**
 - Solicitation or Acceptance of Gifts
 - Unauthorized Compensation
 - Misuse of Public Position
 - Disclosure or Use of Certain Information
 - Solicitation or Acceptance of Honoraria




**VOTING
CONFLICTS OF INTEREST**
Section 112.3143(3), Florida Statutes

- No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would cause to her or her spouse pecuniary gain or loss, or
- Causes would cause to the special person gain or loss of any principal by whom he or she is retained, of the parent corporation or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate.
- The officer must publicly announce the nature of his or her interest before the vote and must file a memorandum of voting conflict on Commission Form 8B with the opposing presiding officers within 15 days after the vote commencing the issue of his or her interest in the matter.

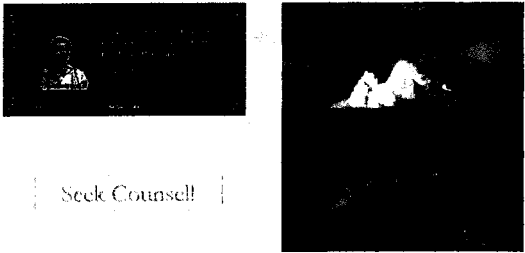


**How Are Ethics
Opinions Promulgated?**




- Start at 4:00 Min --- 46:00 min
- 54:00 Min --- 56:00 Min
- 1:31 Min --- 1:33 Min
- 1:44 Min --- 1:47 Min






Seek Counsell



Hypothetical I Conflict of Interest

- Issue:** Whether a prohibited conflict of interest is created if a County Commissioner were to be employed by a business that sells vehicle parts to the County.
- Background:**
 - A candidate for a seat on a County Commission and employed with a local parts retail store.
 - The store is owned by the grandfather. As-needed basis, without contracts.
 - Payment through the County Commission. Two other stores in the County with limited inventories. Only store that sells the products which the County requires.



Answer Hypothetical I Conflict of Interest

- A prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, by a County Commissioner's employment with a business that sells vehicle parts to the County.
- Exception sole source within the County of certain products, conflict, as to those products, would be negated Section 112.313(12)(e), Florida Statutes.
- Voting conflicts regarding measures affecting his interest or the interests of his business.



Answer Hypothetical III Conflict Interest

- Section 112.313(7)(a) does not prohibit the commissioners from having an ownership interest in the company, per se. The statute will not be triggered if the company solicits advertising from sources other than city vendors, however
- In part, Section 112.313(7)(a) "constantly or frequently recurring" conflict of interest or that will "impede the full and faithful discharge" of her public duties.
- Question thus becomes whether the relationship with the company could tempt a compromise of duties as city commissioners were the company to begin soliciting revenue from city vendors

THE ETHICS LAWS Collateral Prohibitions

- Misuse of Public Position Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others. [Sec. 112.313(6), Fla. Stat.]
- Disclosure or Use of Certain Information Public officers and employees and local government attorneys are prohibited from disclosing or using information not available to the public and obtained by reason of their public position, for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]



Law Change Voting Conflicts

- Under current law, local elected officials can participate in the discussion of a measure at which they have a conflict, without revealing the existence of that conflict until the vote is actually taken. This means the official can make every effort to persuade his or her colleagues without telling them (and the public) about the conflict. Appointed officials, in contrast, must declare their conflict before participating in the discussion of the measure. The Commission believes this restriction should apply equally to elected officers.
- The Commission also believes the voting conflict standard for appointed (but not elected) state officials should be changed to mirror the standard for appointed local officials. This would mean appointed state officials would be required to abstain from voting on matters which would inure to the special private gain or loss of a relative, principal, or business associate, something they are not currently required to do.

