

## CORRECTIVE 1



**MEMORANDUM** 

Office of the City Attorney

Phone: 334-5011/Fax 334-2229

**Box 46** 

TO:

PEGEEN HANRAHAN, Mayor

DATE: AUGUST 9, 2004

FROM:

CITY ATTORNEY

**SUBJECT:** 

FLORIDA CODE OF ETHICS OPINION

## Question

You have asked whether a Florida Code of Ethics prohibition occurs when the City Commission approves a contract with an engineering firm that employs your spouse. In this particular instance the contract would be the City's fourth (of fifth) extension to the existing agreement for civil engineering services by and between the City and Brown & Cullen, Inc. You commenced your term as Mayor in May 2004, and the contract has been in effect for several years prior to your taking office. Your spouse is an employee of the firm and not a partner in the firm.

## **Brief Answer:**

No code of ethics prohibition exists in this scenario.

## Analysis:

There are two subsections in the Code of Ethics for Public Officers and Employees that specifically address conflicts of interest arising out of the interests of the spouse of a local officer. They are Sections 112.313(3) and 112.313(4), Florida Statutes.

Subsection 112.313(3), F.S., DOING BUSINESS WITH ONE'S AGENCY, provides that: "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. The foregoing shall not apply to district offices maintained by legislators

Corrective memo is issued for the purpose of correcting an error in the name of the firm who employs your spouse.



when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment."

The second subsection addressing the interest of a spouse is found at subsection 112.313(4), F.S., UNAUTHORIZED COMPENSATION, which provides that: "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."

There is clearly no subsection 112.313(4), F.S., issue in the matter at hand. The original contract between the City and Brown & Cullen, Inc. is dated November 27, 2000 (allowing for five one year extensions) so pre-dates your marriage to your husband as well as the date of your successful election. Neither does there appear to be a subsection 112.313(3), Florida Statutes, issue involved. This is due in part to two reasons – First, the original agreement was entered into prior to your qualification for office. The proposed extension is the fourth of five envisioned by the original contract which dates back to the year 2000. Secondly, the Commission on Ethics has previously found that where the spouse is a salaried employee (rather than partner or shareholder) this prohibition does not apply because the spouse does not have the required material interest in the firm (81-17, CEO).

This opinion is advisory. You may contact the Florida Commission on Ethics directly for a more formal opinion or we can assist you in this effort. Their telephone number is 850-488-7864.

- THIS CUBUCO CONFLIC APPLY (NO CONFLIC EVEN IF THIS
- A "MEW" CONTRACT  RETWEEN THE
CRA AND BROWN + CULLEN