# Legislative Conduct

**Section 1 - Opinions and Interpretations by the House of Representatives Committees on Ethics**

**Section 2 - Advisory Opinions of the Commission on Ethics Relating to Members of the Legislature of the State of Florida**

**Section 3 - Advisory Opinions of the House of Representatives General Counsels**

**Section 4 - Advisory Opinions by the General Counsel of the Office of Legislative Services Regarding Lobbyist Registration**

Compiled under the direction of
**John B. Phelps**
*Clerk of the House*


## Florida House of Representatives

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## BY WAY OF EXPLANATION —

Section 1 includes “opinions” of the House Committees on Ethics (or their equivalent) and “interpretations” by their chairmen. “Opinions” are those in which the members of the Committee participated. Rule 156 requires these to be published in the *Journal*. “Interpretations by Chairmen” are those issued upon the responsibility of the Chairman. Usually, these cover situations which can be answered without recourse to the Committee. “Interpretations by Chairmen” are not published in the *Journal* but are compiled and published by the Clerk of the House for the information and guidance of House Members and staff.

Creation in 1974 of the Commission on Ethics has resulted in certain questions being referred to the Commission which otherwise would be considered by the House Committee. For that reason, “Advisory Opinions of the Commission” relating to legislators are included in this compilation in Section 2.

Section 3 includes a compilation of opinions rendered by House counsel under Chs. 112.3148(10) and 112.3149(8) of the Florida Statutes, and Rule 36. This section provides that, “A member of the House, when in doubt about the applicability and interpretation of these Rules in a particular context, may communicate the facts of the situation to the House general counsel for an advisory opinion. The general counsel shall issue the opinion within 10 days after receiving the request. The advisory opinion may be relied upon by the Member requesting the opinion.”

Section 4 includes the opinions of the general counsel to the Joint Legislative Management Committee regarding Lobbyist registration. Joint Rule 1.5 provides that, “A person may request in writing an informal opinion from the general counsel of the Joint Legislative Management Committee as to the application of the rule (Joint Rule One) to a specific situation. The general counsel shall issue the opinion within 10 days after receiving the request. The informal opinion may be relied upon by the person who requested the informal opinion.”

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## OPINION 1

MEMBER—STANDARDS AND CONDUCT

The Committee on Standards & Conduct met July 1, 1967 to consider an alleged violation of standards and conduct on the part of a House member. The alleged violation was charged in a public radio broadcast over a Tallahassee radio station on June 27, 1967.

The House member alleged to be involved appeared voluntarily before the Committee.

It is the opinion of the Committee that no violation of any rule occurred.

It is also the opinion of the Committee that the broadcast created an inference of some misconduct. It is the further opinion of the Committee that the allegation should not have been made without first checking the facts or presenting the allegation for proper investigation to the Committee prior to the broadcast.

John J. Savage
Chairman

*(Journal, House of Representatives, 1967, July 10, page1867)*

## OPINION 2

ATTORNEY-LEGISLATOR—DISCLOSURE

Chapter 67-469, Florida Statutes provides in its Declaration of Policy:

> . . . no member of the legislature . . . shall have any interest financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity . . . *which is in substantial conflict with the proper discharge of his duties in the public interest* . . . It is the intent of the legislature that this code shall serve . . . as a *guide* for official conduct of the State's public servants . . .

Four questions have been posed:

1. Does Subsection (2) of Section 3, Chapter 67-469, Acts of 1967, require you as an attorney and a legislator to disclose to the Secretary of State clients who are regulated by a State agency due to the fact that you are considered their "agent" under the Act?
2. If you are classified as such an agent, would this classification extend to the representation of clients by the firm when you have little or no contact with these clients?
3. If such a classification is valid would it extend to the representation of clients on a "single matter" basis?
4. Would the disclosure provisions extend to the representation of a governmental entity?

The Committee should first comment that the only authority for Advisory Opinions by the Attorney General is found in Section 5 of the Act (Chapter 67-469) which pertains only to officers or employees of the State, and not to legislators.

It is the opinion of the sub-committee that question number one should be read as though it stated correctly the words of the statute (Chapter 67-469) which are " . . . subject to the regulation of . . .", rather than as stated: " . . . regulated by . . ." The committee feels that there is a substantial difference in view of the fact that, in a sense, all corporations and most businesses are in some way "regulated by" the State. If this latter wordage had been the intent of the legislature, there would have been no purpose in using the other denotation. *Bouvier's Law Dictionary* defines "regulate" as: "To adjust by rule, method, or established mode; to direct by rule or restriction."

The Committee interprets this section as having application only to those cases where there is involved an actual problem of the regulation of the business of the client by the state agency which is charged with regulatory powers over the particular business, and the interest of the legislator in

representing his client is in substantial conflict with the proper discharge of his duties in the public interest.

For example: If a legislator was the attorney (or agent) of a retail liquor sales corporation and represented that corporation only for the purpose of collecting delinquent accounts from defaulting customers he would not be required to register under Section 2. If, however, he represented the said corporation in seeking an amendment of the regulations pertaining to the operation of its business, he would have to register.

It is therefore the opinion of the Committee that an attorney-legislator would be required to disclose to the Secretary of State only those clients who are being represented in connection with the regulations of the State agency, and there appears to be a substantial conflict with the proper discharge of the legislator-attorney's duties in the public interest.

To answer question number two, the Committee would state that the representation by the firm should meet the same criteria as are set forth in the answer to question number one to require disclosure. In other words, if the individual legislator-attorney should disclose, it makes no difference that the client is represented by the firm or the particular work is done by some other member of the firm.

To answer question number three, the Committee would state that there should be no difference between single transactions and multiple transactions.

In answer to question number four, the Committee can find no provision of Chapter 67-469 which would require disclosure to the Secretary of State of representation of governmental entities by a lawyer-legislator. The phrase "or other *business* entity" (our emphasis) of Subsection (2), Section 3, in our opinion clearly indicates that the subsection is concerned only with commercial or business enterprises as opposed to public bodies.

John J. Savage
Chairman

*(Journal, House of Representatives, 1967, December 27, page 27)*

**OPINION 3**

ATTORNEY-LEGISLATOR AS CORPORATION DIRECTOR

If a legislator-attorney is a director of a corporation, which is subject to the regulation of, or which has substantial business commitments from any State agency, but is such a director only because of the mechanical process of corporate formation and function, without any real substantial interest in the business of the corporation, he is not required to make a disclosure under Section 3(2) of Chapter 67-469, Florida Statutes. This opinion should be construed in the light of the Committee's previous opinion on the legislator-attorney situation.

John J. Savage
Chairman

*(Journal, House of Representatives, 1967, December 27, page 27)*

**OPINION 4**

(DELETED AS OBSOLETE)

**OPINION 5**

LOBBYIST REGISTRATION—REQUIREMENT

Rule Thirteen (13) of the Florida House of Representatives requires all persons except members of the Florida legislature or duly authorized aides, who seek to encourage the passage, defeat or modification of any legislation in the House or before its committees to register with the Clerk of the House.

Rule Thirteen (13) further provides that any person who merely appears before a Committee of the House in his individual capacity without compensation or reimbursement, to express support of or opposition to any legislation, and who shall so declare to the Representatives or Committee with whom he discusses any proposed legislation, shall not be required to register as a lobbyist.

The question presented to the Committee is whether a person who appears before a House Committee or expresses support or opposition to any legislation to any Representatives on behalf of his employer or on behalf of any business, firm or organization by whom he is employed or for any company of which he is a director shall be required to register as a lobbyist.

It is the opinion of the Committee that all persons shall be required to register as lobbyists except those appearing in an individual capacity as provided by the Rule. Persons who appear before any House Committee or express support or opposition to any legislation to any Representatives on behalf of any business, firm, or organization by which they are employed or of which they are directors, are required to register as lobbyists.

John J. Savage
Chairman

*(Journal, House of Representatives, 1967, December 27, page 28)*

**OPINION 6**

MEMBERS—ALLEGATIONS OF MISCONDUCT

It appearing that certain allegations concerning misconduct and alleged vote selling on the part of members of the Florida Legislature received wide publicity in the news media of the State of Florida as a result of statements made by William Murfin and others in November of 1967, and it further appearing that a joint meeting of the House Committee on Standards and Conduct and the Senate Committee on Ethics was held in the State Capitol Building, on December 4th and December 5th, 1967 to consider the allegations and it further appearing that testimony was received from witnesses concerning the allegations and that the statements of the witnesses and statements of members of the Legislature were transcribed for a record, and it further appearing that the transcripts of the said testimony were submitted to the States Attorneys of Leon, Alachua and Duval Counties, and it now appearing that communications have been received from the respective States Attorneys mentioned above that the transcripts were reviewed or witnesses were subpoenaed and gave testimony or that the matter was submitted to a grand jury and no evidence was found of misconduct or bribery on the part of any member of the Legislature; therefore it is the opinion of the committee that the allegations made of vote selling or misconduct were not sustained by any evidence; that the proper prosecutive officials to whom transcripts of the hearings of December 4th and December 5th, 1967 were submitted, found the evidence insufficient to sustain any charges of bribery; that no further action be taken by the House Committee on Standards and Conduct in this matter; that

copies of the transcript and other pertinent documents be filed for record purposes as part of the committee's records.

John J. Savage
Chairman

*(Journal, House of Representatives, 1968, Interim, March 28, page 208)*

**OPINION 7**

REPRESENTATIVE BERNIE C. PAPY, JR.

By letter dated April 16, 1968, Representative Bernie Papy requested an advisory opinion from the Committee on Standards and Conduct under House Rule 5.12. The request concerned the standard of public duty on the part of Representative Papy relative to his business transaction in the Key West, Florida, area involving dredging of submerged lands. The request was confirmed by Representative Papy orally to the Committee Chairman and on June 24, 1968, to a quorum of the full Committee.

In response to the request, the Committee conducted an investigation into the matter which terminated with a public hearing in Tallahassee, Florida, on June 24, 1968. Representative Papy appeared in person before the Committee.

On the basis of oral and documentary evidence presented to the Committee the following Finding of Facts is made by the Committee:

1. That Monroe County, Florida, is exempt by a special law from the general laws of Florida relating to dredging of submerged lands.
2. That on July 23, 1964, Bernie Papy and Norman Wood entered into a written agreement with Charley Toppino and Sons, Inc., whereby Toppino agreed to pay to Papy and Wood Four (4¢) Cents per cubic yard for rock removed by Toppino from a thirteen (13) acre tract of bay bottom land owned by Papy and Wood, northwest of Stock Island, Key West, Florida.
3. That on December 8, 1964, the U. S. Corps of Engineers, Department of the Army, issued a permit to Bernie C. Papy, Jr., to dredge and fill between his property on Stock Island and the northeast end of Sigsbee Park in Monroe County, Florida, the dredged material to be deposited on upland and submerged property on Stock Island owned by Bernie C. Papy, Jr.; the purpose of the permit was to remove approximately 370,000 cubic yards of fill from a channel to be dredged approximately five hundred feet (500') wide to a depth of eight feet (8') below mean low water mark.
4. That subsequent to the date of the permit Bernie Papy, Jr., made proper application to purchase contiguous submerged land from the State, said land adjoining that owned by him and said land also being involved in the dredging operation. The application was permitted to lapse. Subsequently the application was renewed but not acted upon by the Trustees of the Internal Improvement Fund because of the controversy over alleged unauthorized dredging by Mr. Papy of State owned lands.
5. That the dredging operation resulted in the payment of Forty Thousand ($40,000.00) Dollars to Mr. Papy and Mr. Wood in equal shares by Charley Toppino and Sons for one million (1,000,000) cubic yards of fill at Four (4¢) Cents per cubic yard.
6. That modification of the original dredging permit was requested by Mr. Papy on March 13, 1965, which was granted to the extent of allowing deposit of fill in other than areas designated in the original permit. Additional modification of the permit was requested by Mr. Papy August 29, 1966, and again on January 27, 1967, requesting permission to dredge to a depth of thirty-five (35') feet. This modification is pending before the U. S. Corps of Engineers awaiting some decision by the Trustees of the Internal Improvement Fund in this controversy.

7. That the dredging operation herein did exceed the authorization granted to Mr. Papy by the permit of the U. S. Corps of Engineers.

8. That fill was removed from submerged lands owned by the State of Florida by the dredging operation and a mining operation conducted contrary to the authorization granted.

9. That the removal and sale of fill created an apparent civil liability on the part of Mr. Papy to the State of Florida. The amount of liability is under negotiation by Mr. Papy with the Attorney General's Office of Florida. Civil liability is the remedy provided by the laws of Florida in this matter.

10. That the dredging operation and civil liability of Mr. Papy to the State of Florida occurred prior to the adoption of that portion of House Rule 5 and Chapter 67-469 of the laws of Florida relating to the standards of conduct for legislators and State employees.

11. There was no evidence presented to the Committee that Representative Papy sought or obtained favored treatment by the Trustees of the Internal Improvement Fund or the Corps of Engineers of the U. S. Army.

Since Representative Papy has requested an opinion about the applicability and interpretation of the Rules of the House in the context of his duties as a legislator and his participation in the dredging operation mentioned herein, it is the opinion of the Committee that while there was no direct violation of the House's Rules by Representative Papy, he should have, as a legislator, exercised greater care and diligence in the conduct of the dredging operation herein since legislative office is a trust to be performed in the public interest.

It is the further opinion of the Committee that Representative Papy should include in his sworn statement of disclosure, now on file with the Secretary of State, his interest in any application for purchase of State owned lands from the Trustees of the Internal Improvement Fund.

Subcommittee Report, as amended by adding Finding No. 11, was adopted by the Committee on motion of Representative Wells.

John J. Savage
Chairman

*(Journal, House of Representatives, 1968, July 3, page 106)*

**OPINION 8**

LOBBYIST REGISTRATION—STATE EMPLOYEES

The matter of registration of State employees as lobbyists was discussed at a called meeting of the Committee on Standards and Conduct on March 3, 1969, in Tallahassee.

It was the unanimous opinion of the Committee that all persons who seek to promote, modify or defeat legislation should register as lobbyists, including employees of the State Government. The only valid exception to the application of the Rules of the House in this respect is that those persons who are asked to appear before a Committee of the House by the Committee would not be required to register as a lobbyist. It was felt by the Committee that the members of the legislature are entitled to know the names of any State employees who are engaged in lobbying under the Rules of the House.

John J. Savage
Chairman

*(Journal, House of Representatives, 1969, May 1, page 305)*

**OPINION 9**

ATTORNEY-LEGISLATOR—FILING OF CLAIMS BILL

The question presented to the Committee was whether a legislator would be in conflict with his duties when he filed a claims bill when he or his partner would receive a fee from the claimant.

Chapter 67-469, Florida Statutes provides in its Declaration of Policy: " . . . no member of the legislature. . . shall have any interest financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity . . . which is in substantial conflict with the proper discharge of his duties in the public interest . . ."

Under Rule 5.9—A Member of the House of Representatives shall not directly or indirectly receive or appear to receive any compensation for any service rendered or to be rendered by him or others where such activity is in conflict with his duty as a Member of the House of Representatives.

It is the opinion of the Committee that it is a conflict of interest for a member, his law partner or his law firm to receive a fee or to participate in sharing any fee derived from claimant cases.

The Committee believes that the test is whether or not the legislator or his law partner or his law firm would receive a fee and that if a fee is to be received by a legislator, his law partner or his law firm it would be improper for the legislator to file a claims bill.

John J. Savage
Chairman

*(Journal, House of Representatives, 1969, May 2, page 317)*

**OPINION 10**

ATTORNEY-LEGISLATOR—DISCLOSURE OF CLIENT'S NAME

The question presented to the Committee is whether or not a Member of the House of Representatives would have a conflict of interest if the corporation in which he is an officer was employed by the State Racing Commission to perform certain services for the Commission.

It is the opinion of the Committee, Chapter 67-469, Florida Statutes that the legislator as an officer of a corporation is required to disclose to the Secretary of State the name of the client represented, in this case, State Racing Commission and the legislator's position in his corporation.

This question was answered in part by Opinion No. 2 published in the Journal of the House of Representatives—December 27, 1967.

This opinion relates only to the facts presented to the Committee in this particular case.

John J. Savage
Chairman

*(Journal, House of Representatives, 1969, May 2, page 318)*

**OPINION 11**

ATTORNEY-LEGISLATOR—DISCLOSURE OF CLIENT'S NAME

The question presented to the Committee is whether or not it is a conflict of interest for a lawyer-legislator to represent an insurance company subject to regulation by the Commissioner of Insurance of the State of Florida, in proceedings before an out-of-state insurance department or commissioner.

It is the opinion of the Committee that although there is no conflict of interest in representation by a lawyer-legislator of a state regulated insurance company before an out-of-state insurance commission, the fact that the insurance company represented was also involved in proceedings before the Insurance Commissioner of Florida presented a question of conflict of interest under Chapter 67-469, Florida Statutes. Disclosure of such representation is required to be made by the lawyer-legislator with the Secretary of State as provided by statute.

This opinion relates only to the facts presented to the committee in this particular case.

John J. Savage
Chairman

*(Journal, House of Representatives, 1969, May 2, page 318)*

**OPINION 12**

CONFLICT OF INTEREST
ATTORNEY-LEGISLATOR REPRESENTING INSURANCE COMPANIES SERVING ON INSURANCE COMMITTEE OF HOUSE—REPRESENTATIVE CAREY MATTHEWS

The Committee on Standards and Conduct was requested by Representative Carey Matthews to render an advisory opinion concerning a possible conflict of interest on his part arising out of the representation by himself and his law firm of several insurance companies, including State Fire and Casualty Co., in claim litigation work, his former employment as general counsel and Vice President of the State Fire and Casualty Co., in 1967-68 (State Fire and Casualty Co. placed in receivership 1969 and its affairs now being administered by the State Insurance Commissioner) and his duties as a member of the House of Representatives, serving as Chairman of the House Insurance Committee since November, 1968.

The opinion was particularly requested because of the financial failure of the State Fire and Casualty Co. in 1969, and the state-wide publicity given in the news media of the employment by the Company of Representative Matthews during 1967-69, a period of financial difficulties on the part of the Company.

While this opinion deals solely with the question of conflict of interest raised by the facts in Representative Matthews' case, it also considers the vexatious question of conflict of interest generally with respect to the duties of a lawyer legislator. The question is not new. It has been considered by this committee rendering advisory opinions in the ethical field on previous occasions. The opinions have been published in the Journal of the House.

THE FACTS

The facts in this matter appear to be undisputed. The Committee had two public hearings in July and August, 1969, reviewed extensive testimony of witnesses who appeared before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary of the United States Senate (testimony made available by counsel for the Subcommittee), examined various records produced for the Committee and heard testimony from Representative Matthews and others.

Representative Matthews, practicing attorney and member of the Florida Bar, was first elected to the Florida House of Representatives in 1960. He served on various committees of the House but not the Insurance Committee. In November, 1968, at the organizational session of the legislature he was appointed by the Speaker to be Chairman of the Insurance Committee, which position he now occupies. Representative Matthews is and has been a member of a law firm in Miami, Florida, which does accident litigation work for several insurance companies. In October or November, 1967, he was employed by a Mr. Mort Zimmerman (upon recommendation of Attorney Howard J. Marsh of Dallas, Texas), President of Capital Bancshares Corporation, to represent Capital Bancshares to work out the documentation in connection with Capital Bancshares taking over control of State Fire and Casualty Co. On December 15, 1967, with Capital Bancshares now in control of the State Fire and Casualty Co., Representative Matthews became Vice President and General Counsel of State

Fire and Casualty Co., salary $20,000 annually. (The salary was paid into Representative Matthews' law firm as income of the firm).

In compliance with the Standards and Conduct Law (Chapter 67-469, Florida Laws) Representative Matthews filed his sworn statement with the Florida Secretary of State, January 9, 1968. This statement disclosed that he was Vice President, Director and General Counsel of the State Fire and Casualty Co. Representative Matthews held the foregoing status with State Fire and Casualty Co. until July 23, 1968. On September 17, 1968, Representative Matthews filed a sworn statement with the Secretary of State which stated that on July 23, 1968, he resigned as an officer, Director and General Counsel of State Fire and Casualty Co., and he had no stock interest in said corporation.

On April 8, 1969, Representative Matthews submitted a letter to the Chairman of the House Committee on Standards and Conduct which letter stated that "as a member of the Insurance Committee and its Chairman, I think it necessary to advise that my law firm, which specializes in trial litigation, currently does accident claim defense work in the Miami area, for three casualty insurance companies and has for several years. We also represent approximately seventy-five plaintiffs in accident claim suits against defendants and their insurance companies. Not one of these persons, or corporations, has ever given me their views on any pending legislation. If they do, I feel I should then necessarily choose to either discharge them as clients or ask to be excused from voting on the bill in question. If they do, I shall also advise your committee at once. If your interpretation differs in this conviction from mine as outlined above, and you feel that I should not serve on this committee please advise. (signed Carey Matthews, Representative, Dade County)"

Subsequently, on April 28, 1969, Representative Matthews by letter filed with the Secretary of State, advised that under the provisions of Chapter 112, Florida Statutes, he wished to file the letter stating that the law firm of which he was a member was one of the firms in the Miami area doing accident litigation defense for Hartford Fire and Casualty Co., State Fire and Casualty Co., and Continental Insurance Group; that he was uncertain as to the necessity for filing the information but felt that full disclosure was the intent of the statute and the public had the right to know such information.

The evidence presented to the Committee indicated that State Fire and Casualty Co. was in financial difficulties prior to the time Capital Bancshares took over control of the Company. The State Insurance Commissioner was not satisfied with the ownership of State Fire and its operations. There is some dispute as to whether the acquisition of the Company by Capital Bancshares met with the approval of the Insurance Commissioner. In any event, financial difficulties continued to mount and the Insurance Commissioner indicated that Capital Bancshares should relinquish control. Capital of Capital Bancshares was withdrawn. The new controlling interest of the Company proved to be unsatisfactory and State Fire and Casualty then was administered by the Insurance Commissioner. During the takeover of the State Fire after withdrawal of Capital Bancshares, Representative Matthews acted as an escrow agent in holding several types of securities which he administered according to direction of the principals involved.

Out of the mass of evidence reviewed by the Committee, four pertinent facts emerged for consideration. (1) Did Representative Matthews have a conflict of interest as a legislator when he was an official of the State Fire and Casualty Co.? (2) Was the action of Representative Matthews in requesting, as an officer of the Company in 1968, the Insurance Commissioner of Florida to intercede for the Company with the Insurance Commissioner in New York, a conflict of interest? (3) Was representation by Representative Matthews and his law firm of State Fire and Casualty Co. (and other insurance companies) a conflict of interest with his duties as a member of the legislature and Chairman of the House Insurance Committee? (4) Was the collection of legal fees from the State Fire and Casualty, and is the continued collection of legal fees by Representative Matthews from other insurance companies, a conflict of interest?

The Committee considered each of the foregoing points and is of the following opinion:

1. Conflict of interest of Representative Matthews as an officer of a business regulated by the State

Representative Matthews served as Vice President, Director and General Counsel of State Fire and Casualty from December 15, 1967, to July 23, 1968. During that period he was a member of the House of Representatives but did not serve on the Insurance Committee. It is general knowledge

that other members of the legislature served in similar capacities for other companies, that is, directors, officers, or owning controlling interests in businesses regulated by the State.

Chapter 67-469, Florida Law, enacted by the 1967 legislature provides that if a legislator is an officer, director, agent or member of, or owns a controlling interest in any firm or corporation or other business entity. . . which is subject to the regulation of . . . any state agency he shall file a sworn statement with the Secretary of State disclosing such interest.

The Committee has previously considered this question (Opinion #2 published in House Journal of December 27, 1967) as it relates to lawyer-legislators. The Committee interpreted this section as having application only to those cases where there is involved an actual problem of the regulation of the business of the client by the State agency which is charged with regulatory powers over the particular business and the interest of the legislator in representing his client is in substantial conflict with the proper discharge of his duties in the public interest. The Committee decided that an attorney-legislator would be required to disclose to the Secretary of State only those clients who are being represented in connection with the regulations of a State agency and there appears to be a substantial conflict with the proper discharge of the legislator-attorney's duties in the public interest.

The evidence clearly shows that Representative Matthews was required to register with the Secretary of State both as an officer of a regulated business and as counsel for a regulated business since his representation contemplated action pertaining to regulations. However, the record is amply clear that Representative Matthews did register his connections as required by law and fulfilled his obligation. In addition, he subsequently registered his termination of his connection with the regulated company when this termination occurred.

2. Letter to Insurance Commission of May 17, 1968

A question was posed to the Committee by testimony that State Fire and Casualty Company, which was doing business in New York State, was ordered, in May of 1968, by the Superintendent of Insurance in that State, to cease any further business in New York. The Insurance Department of New York notified all New York agents to advise their insureds that the New York Department felt the Company was unsound.

Subsequently, on May 17, 1968, the State Fire and Casualty Company addressed a letter to Insurance Commissioner Broward Williams requesting him to write the New York Commissioner prior to May 27, 1968, pointing out that the Company ceased business in New York, April 1, 1968; that a current statement showed the Company to be solvent; that a Florida Insurance Department official was closely advised at all times of the financial condition of the Company; that the Company was being currently examined; that the Company was in good standing with the Florida Department; and that a letter from Mr. Williams would be of service to the policy holders of the Company by saving the Company $250,000, which would have to be returned in the event of mass cancellations.

The foregoing letter was on Company stationery and signed by Benjamin Dobson, President, and Carey Matthews, Vice President and General Counsel.

The Insurance Commissioner of Florida, in response thereto, did write the Superintendent of Insurance of New York a letter on May 23, 1968, stating in substance the points suggested in the Company letter of May 17, 1969.

The question posed to the Committee then was: Was this a conflict of interest on the part of Representative Matthews, using his position as a legislator to secure an advantage for his company or himself contrary to the rules of the House or the provisions of Chapter 67-469, Florida Law?

The Committee is of the opinion, after examining the evidence, that Representative Matthews was acting in his capacity as a company official and not as a legislator in asking the Florida Insurance Commissioner to intercede in New York. While it is difficult to separate the identity of a legislator as such from his identity as a businessman or attorney, the evidence did not indicate that Representative Matthews was acting in his capacity as a legislator. He had previously disclosed his business interest. There was no evidence that he used his position as legislator to secure any advantage to himself or his company.

3. Is Representative Matthews' legal representation of State Fire and Casualty Company a conflict of interest as Chairman of the House Insurance Committee?

This question would probably not have arisen had not State Fire and Casualty Company become involved in financial problems resulting finally in the Company affairs being administered by the Insurance Commissioner.

The basic question, of course, is not solely the question of representation of State Fire and Casualty Company but of representation of any insurance company by a member of the House of Representatives. Is such representation a conflict of interest? Does chairmanship of the Insurance Committee add an additional factor to the "conflict" situation?

The Speaker of the House has sole authority to appoint members to the various committees and to appoint chairmen of the committees (House Rule 6.1, duties of Speaker). This Committee has no jurisdiction to examine any committee appointments in the absence of a showing of misconduct or disorderly conduct on the part of a member. The record does not disclose anything other than that Representative Matthews and his law firm represented State Fire and Casualty Company and two other insurance companies in trial litigation. Representative Matthews advised the Committee of this representation and subsequently filed a letter with the Secretary of State setting out his representation of insurance companies.

While chairmanship of a committee does carry with it some prerogatives such as setting an agenda, directing the course of debate, directing staff members and the like, the committee chairman can cast only one vote on any issue. This Committee is of the opinion that chairmanship of a committee does not add any additional factor to the conflict of interest. If there is a conflict of interest on the part of a representative, it is not in any degree lessened by his *not* being a committee chairman, or added to by his being a chairman of a committee.

In connection with representation of the State Fire and Casualty Company, Representative Matthews made available to the Committee all of the files of his law firm relating to the work done for the Company. There was testimony that the fees received by the firm were compatible with fees charged by other firms in the same area for the same type of work. There was no evidence that Representative Matthews used his position as a legislator to obtain excess fees from the Company or to obtain any special advantage for the Company.

This Committee, in its Opinion #2 (Ibid) has stated that an attorney-legislator would be required to disclose to the Secretary of State only those clients who are being represented in connection with the regulation of the State agency . . .

This Committee is of the opinion that Representative Matthews, under the rules of the House and State law, was not required to register the names of his clients with the Secretary of State since the clients were being represented in trial litigation only, subsequent to November, 1968, and not in connection with State regulations. However, Representative Matthews, because of his position as Insurance Committee Chairman, and in his desire to comply with the spirit of the disclosure provision of the State law did register the names of his insurance company clients.

The Committee is of the opinion that such disclosure, while not necessary, is in keeping with the spirit of the conflict of interest laws of this State in view of Representative Matthews' committee assignment.

4. Is representation of insurance companies and collection of legal fees by a lawyer-legislator a conflict of interest with his duties as a legislator?

In order to answer this question this Committee felt it was necessary to review the full spectrum of employment by legislators as it relates to conflict of interest. Insurance companies are only one segment of industry in this state. For example, is a banker in conflict with his duties as a legislator when he serves on a banking committee? Is an insurance agent in conflict while serving on an insurance committee? Can a farmer avoid conflict as a member of an agriculture committee? Shall a school teacher be permitted to serve on an education committee? Can an attorney serve on a judiciary committee? And, to carry the idea to an extreme, can an alumnus of a State university serve on a Higher Education Committee? There are as many situations present as there are members of the legislature.

In addition to committee assignments, the same question arises when members vote on legislation affecting areas of their interest or employment. For example, does a physician-member have a conflict in either serving on a committee or voting when an "abortion" bill is considered, or when appropriations for medical assistance to needy citizens is being considered?

Prior to 1967 the legislature met the problem of conflict with the adoption of Rule 5.1 (still in effect) which provides that no member shall be permitted to vote on any question immediately concerning his private rights as distinct from the public interest.

In 1967 the legislature set up guidelines concerning conflicts by adopting Rule 5.10 and enacting Chapter 67-469 Florida Laws. Rule 5.10 provides that a representative prior to taking any action or voting upon any measure in which he has a personal, private or professional interest which inures to his special private gain or the special gain of any principal by whom he is retained shall disclose the nature of his interest as a public record in a memorandum filed with the Clerk of the House and published in the Journal of the House. Upon disclosure, such member may disqualify himself from voting on a measure in which he has a conflict of interest. Chapter 67-479 also provides certain disclosure.

The thrust of the rule and the law is disclosure of interest. There are prohibitions expressed . . . no legislator . . . shall use his official position to secure special privileges for himself or others.

Thus a legislator should not introduce or vote for a claims bill when he or his law firm would receive a fee. No legislator is allowed to receive a fee or anything of value for introducing, sponsoring, or lobbying on behalf of any legislation. No legislator is permitted to receive a fee or anything of value for opposing any legislation.

Many times individual legislators have expressed doubts as to whether or not they should vote on a certain bill. The criteria is whether or not there would be a *special* private gain to the legislator or his principal. Voting on legislation affecting a class to which a legislator belongs cannot be an excuse to abstain from voting even though motivated by the sincerest of motives and a desire to avoid a conflict.

The primary duty of a legislator is to vote. His constituency is entitled to this service and can demand a vote, regardless of the occupation of the legislator. Thus, disclosure of interest should answer the question of conflict with only a few obvious exceptions.

Every member of the legislature has conflicts when he votes on appropriations or on taxation since he is a taxpayer. Legislators with children in school or college have conflicts when voting on education bills. These are conflicts which the public assumes will be met by the objectivity of the legislator and yet it appears that some citizens equate conflict only with the occupation or livelihood of the legislator and somehow think that the objectivity of the legislator will cease when his business interest is affected.

A lawyer-legislator representing an insurance company seems to some to have an unavoidable conflict, especially if he is a member of an insurance committee. And, yet, does he have any greater conflict than a lawyer-legislator who generally represents the plaintiffs or claimants against insurance companies?

Conflict of interest is particularly vexatious when considering the role of the lawyer-legislator because attorneys in the legislature represent so many economic interests. This is true whether the individual attorney represents an interest or his law firm represents an interest. It is a well settled principle that all members of a law firm are agents of the other members and that representation of an interest by the firm applies to all members of the firm.

In considering the matter of a lawyer-legislator the Committee is cognizant that all attorneys (and other professions) are bound by a code of ethics of their own profession.

In this connection and to illustrate two points regarding conflict of interest by lawyer-legislators the Committee has reviewed an opinion by the Ethics Committee of the Florida Bar Association (Opinion 67-5 and 67-5 Supplemental of the Ethics Committee).

The bar opinion stated that a partner or associate of a member of the legislature would violate Canon 6 by engaging in lobbying activities. The Canon would apply even though the lawyer-legislator would not participate in the lobbying fee and even though he disqualified himself in voting on proposals to the client for whom the lobbying service was rendered.

In the supplemental opinion it was stated that disqualification to vote on an issue was not a solution to the problem. "*There are many occasions in legislative matters on which the lack of a vote is as important, or, indeed, more important than a vote for or against a particular proposition.*" The opinion also stated . . . intentional disqualification of a legislator under most circumstances is a positive disservice to his constituents.

This is affirmation of the criteria of a responsible ethics organization that a legislator must vote except on rare occasions, i.e., where there may be a personal profit to the legislator.

So far, we have discussed only economic conflicts. There are other intangible conflicts of interest. For example, there are those in the legislature who are opposed to any type of gambling, legal or otherwise, who consistently vote against pari-mutuel legislation. There is the intangible

interest that is sometimes glibly characterized as a “liberal” or “conservative” interest and affects many votes of a legislator. Thus, can it be said that only economics dictates a conflict of interest?

It appears then that questions of conflict are many and vexatious and that the circumstances of individual situations need be examined separately keeping in mind the duty of a legislator to vote and not to profit personally by his vote.

This Committee is also mindful of the inalienable right of the people to choose their own representatives. Qualifications of a legislator are set out in the Constitution.

In 1787 during the debates on the national Constitution it was proposed that “The Legislature of the United States shall have the authority to establish such uniform qualifications of the members of each house with regard to property, as to the said Legislature shall seem expedient.” James Madison said the proposal would vest “an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Government and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well as by limiting the number capable of being elected, as the number authorized to elect . . . Qualifications founded on artificial distinctions may be devised by the stronger in order to keep out partisans of a (weaker) faction.”

The proposal was defeated.

Alexander Hamilton emphasized “The true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed.”

There were others at the 1787 Convention who expressed the same idea. Robert Livingston endorsed the principle “The people are the best judges of who ought to represent them. To dictate and control them, to tell them whom they shall not elect is to abridge their natural right.”

The Supreme Court of the United States (Adam Clayton Powell, Jr., et al, Petitioners v. John W. McCormack, et al, 37LW4549) concluded that Article I, #5 of the Constitution is at most a “textually demonstrable commitment” to Congress to judge only the qualifications expressly set forth in the Constitution.

This Committee believes that any legislature must tread warily in matters of conflict of interest so that the will of an electorate shall not be thwarted. The legislature of Florida has expressed itself that disclosure of interest of a legislator is in the interest of the people in choosing a representative and that once disclosure is made, the people have the right to judge their representative.

It is concluded that mere representation of an insurance company is not such a conflict as would disqualify Representative Matthews from service on the Insurance Committee.

Within the framework of disclosure this Committee believes the law can be strengthened and should be. Other than disclosure this Committee also believes there are permissible prohibitions of outside employment on the part of legislators such as representations of government agencies. Legislation in this area has been mandated by the new Florida Constitution.

In the matter at hand this Committee is of the opinion that Representative Matthews has met his obligations by disclosure under the law, and Rules of this House of Representatives.

John J. Savage
Chairman

*(Journal, House of Representatives, 1969, December 1, pages 11-15)*

**OPINION 13**

CONFLICT OF INTEREST
ATTORNEY-LEGISLATOR REPRESENTING CERTAIN DEFENDANTS
IN CRIMINAL PROCEDURES AND HAVING AMENDMENTS
ADOPTED TO A LOCAL BILL—REPRESENTATIVE JEROME PRATT

The Committee on Standards and Conduct was requested by Representative Jerome Pratt to render an advisory opinion concerning a possible conflict of interest on his part in the handling of amendments to a local bill pertaining to regulations of fishing and/or commercial fishermen.

The request for an opinion was made by Representative Pratt on the basis that front page news stories had been carried in the local press stating that he had "sold out" to certain interests in sponsoring amendments to a local bill or had a conflict of interest. The news stories contained alleged quotations from an attorney named Ernest S. Marshall that Representative Pratt was "selling out to commercial fishermen" and being "in direct conflict of interest."

Hearings were held by the Committee on Standards and Conduct at Tallahassee, Fla., on June 3 and 4, 1970.

The facts developed at the hearings were that Representative Pratt had represented or now represents a number of commercial fishermen who are defendants in criminal proceedings pending in Manatee County. It developed that portions of the existing law have been declared invalid by a recent decision of a Circuit Judge in Tallahassee on a suit brought by commercial fishermen attacking the law. Proposed changes in the existing law were presented to the legislature in the form of a local bill. Representative Pratt and Representative Gallen, the other member of the House of Representatives from Manatee County, did not agree on the contents of the local bill but amendments to the bill proposed by Representative Pratt were adopted by the House of Representatives.

At the hearings allegations were made by Attorney Ernest S. Marshall that there was conflict of interest on the part of Representative Pratt in representing commercial fishermen charged with violation of the law and his duties as a member of the House of Representatives in proposing and having adopted amendments to the current law.

The committee heard the testimony of Attorney Marshall, examined the copies of court records presented by him, heard testimony from Representative Gallen, and heard testimony from officials of commercial fishermen's associations. Mr. Marshall was given additional time by the committee to produce witnesses or evidence to support his allegations. He advised the committee by telephone on June 4, 1970, that he did not have any additional witnesses or evidence at that time. At the conclusion of the hearing it was the unanimous opinion of the committee that there was no conflict of interest on the part of Representative Pratt. It was the further opinion of the committee that there was no evidence to show that Representative Pratt's representation of certain commercial fishermen, who were defendants in criminal cases, in any way benefited Mr. Pratt as a legislator or lawyer.

It was the finding of the committee that the information obtained by the committee did not prejudice either Mr. Pratt or his clients in the criminal cases now pending.

It was the unanimous opinion of the committee that there was no truth to the allegation that Representative Pratt was selling out to commercial fishermen or that there was any conflict of interest on the part of Mr. Pratt between his actions as an attorney in representing his clients in criminal cases and his activities as a legislator.

Since it was the opinion of the committee that the allegations made concerning Mr. Pratt were unfounded this matter was concluded.

John J. Savage
Chairman

*(Journal, House of Representatives, 1970, June 5, page 1285)*

**OPINION 14**

CONFLICT OF INTEREST
ATTORNEY-LEGISLATOR MEMBER OF FIRM WHICH REPRESENTS
NATIONAL AIRLINES WHICH IS EXEMPT FROM CERTAIN TAXATION
REPRESENTATIVE TALBOT D'ALEMBERTE—LOBBYIST THOMAS COBB

The Question presented to the Committee was whether Representative Talbot D'Alemberte had a conflict of interest because of his membership in a law firm which represents National Airlines; National Airlines being a corporation exempt from certain taxing provisions of Florida law. The question was presented in a letter dated June 3, 1970, addressed to Representative Granville Crabtree, Jr., by Thomas T. Cobb, a duly registered lobbyist. Copies of the letter were distributed to some members of the Florida Senate. The letter stated that HB 5120 (1970 regular session) afforded favored tax treatment to some named commercial ventures including National Airlines, a client of the law firm with which Representative D'Alemberte is associated. The letter also stated that there appeared to be a flagrant and undisclosed conflict of interest on the part of Representative D'Alemberte because he did not disclose in debate on the floor of the House that his firm represented National Airlines nor did he recuse himself.

A public hearing was held by the Committee on Standards and Conduct in Tallahassee on June 4, 1970. Testimony was heard from Thomas Cobb, members of the House Ad Valorem Tax Committee and others. The testimony was recorded and transcribed and filed in the committee records.

Two questions were presented for a committee opinion:

1. Did Representative D'Alemberte have a conflict of interest in sponsoring and debating and voting on HB 5120 without stating representation of National Airlines by his law firm?
2. Was there any impropriety on the part of Lobbyist Thomas Cobb in making the allegations in his letter of June 3, 1970, concerning Representative D'Alemberte?

It was the unanimous opinion of the Committee, after hearing testimony, that there was not a conflict of interest involved in accordance with the rules of the House and that Representative D'Alemberte complied with the pertinent statute by filing with the Secretary of State a list of the clients of his law firm. It was the further opinion of the Committee that there had been no showing that there was any impropriety or any violation of the rules on the part of Representative D'Alemberte.

Rule 13.8 of the House provides that a lobbyist shall be prohibited from lobbying for the duration of the session for which the lobbyist is registered if said lobbyist violates Rules of the House. The hearing herein was held on the next to last day of the 1970 session. In view of the time element involved it was the unanimous opinion of the Committee that no action be recommended concerning Mr. Cobb as a registered lobbyist.

John J. Savage
Chairman

*(Journal, House of Representatives 1970, June 5, page 1286)*

## OPINION 15

CONFLICT OF INTEREST AND/OR MISCONDUCT
OF A MEMBER OF HOUSE OF REPRESENTATIVES

Allegation that legislative aide of Member employed in private business while still employed as aide; allegation that Member secured private employment and/or compensation for sponsoring legislation; Member, in private business capacity representing client before administrative agency, utilizing services of legislative aide in private business; Member signing check for meals charged to lobbyist; allegation that Member secured favorable mortgage on home from corporation after recommending appointment of officer of corporation to hospital board; allegation that Member offered employment to newspaper reporter writing series of articles concerning Member—Representative Joseph Martinez

The Committee on Standards and Conduct was requested by the House Administration Committee in May, 1970, to render an Advisory Opinion concerning the employment of a legislative aide by Representative Joseph Martinez, the said aide being at the same time employed full time in private industry.

The Committee also determined to make inquiry into possible misconduct or conflict of interest on the part of Representative Joseph Martinez on the basis of a series of newspaper articles published in the Miami Herald charging Representative Martinez with misconduct and/or conflict of interest on the basis of the following allegations:

1. Allegation that Representative Martinez solicited and accepted a financial arrangement with the Glen Iris Investment Corporation after recommending the Corporation President, Sidney Finkel for appointment to the South Broward Hospital District Board.
2. Allegation that William Horvitz paid Representative Martinez a fee to expedite a liquor license for the Emerald Hills Country Club, while acting in his capacity as legislator.
3. Allegation that racetrack owner Steve Calder placed Representative Martinez on the payroll of Hurricane Pipe Co., after Representative Martinez used his position as legislator to obtain approval in the legislature for a summer racing plan for Calder.
4. Allegation that Hurricane Pipe Co. hired Representative Martinez to make contact with Western Electric Co., improperly, to secure sale of pipe by Hurricane Pipe to Western Electric.
5. Allegation that Representative Martinez paid for private parties or signed checks for private parties, entertaining legislators to influence them to vote for Calder's racing bill.
6. Allegation that Representative Martinez offered position of legislative aide to newspaper reporter for Miami Herald after learning that reporter was investigating his activities.

A public hearing was held by the Committee on Standards and Conduct jointly with the House Administration Committee in Tallahassee in May, 1970, concerning the matter of a legislative aide who was being employed by Representative Martinez and at the same time who was also being employed by a private business. Records and testimony indicated that Martinez' administrative aide at that time named McCauley, was employed in private business full time at the same time that he was employed as an aide by Representative Martinez. Mr. McCauley testified that he was devoting some of his time to the legislative work of Representative Martinez while at the same time being a full time employee of a private business. Testimony also produced evidence that there had been no particular guide lines laid down by the legislature as to hours of employment or duties of legislative aides. After hearing the testimony it was the opinion of the Committee on Standards and Conduct that the matter of the employment of Mr. McCauley was purely an administrative matter that should be handled by the House Administration Committee and did not come within the purview of the jurisdiction of the Committee on Standards and Conduct. Mr. McCauley advised he was resigning his position as of May 31, 1970.

With respect to the allegation that Representative Martinez had obtained a mortgage on his home from the Glen Iris Investment Co., after recommending the employment of the President of the Company, Sidney Finkel, for appointment to the South Broward Hospital District Board, the Committee heard testimony in Ft. Lauderdale, Fla., on June 24, 1970. The testimony clearly showed

that the mortgage in question was secured by Representative Martinez prior to the time he became a member of the legislature. The mortgage was a conventional FHA mortgage loan which was brokered through Mr. Finkel's Company. The testimony further showed Finkel was appointed by the Governor of Florida to the non-paying job of a member of the South Broward Hospital District Board. Mr. Finkel has been active in other community affairs and testified that he devoted much time to his duties on the Hospital Board, had no financial dealings with the hospital and had never discussed any legislation with Representative Martinez. After hearing the testimony it is the opinion of the Committee on Standards and Conduct that the appointment of Mr. Finkel was based on the recommendation of a group of persons including Representative Martinez, and that the appointment had no connection with any financial arrangement between Representative Martinez and the Glen Iris Investment Co. There was no evidence that there was anything improper insofar as Representative Martinez' activity as a legislator is concerned.

With respect to the allegation that Representative Martinez acted improperly in expediting a liquor license for the Emerald Hills Country Club, the Committee is of the opinion that the testimony showed that this was a business relationship between the Emerald Hills Country Club and Creative Enterprises. Creative Enterprises is a public relations firm owned by Representative Martinez. Testimony showed that Representative Martinez in his private business capacity as Creative Enterprises did receive a fee for assistance in expediting a liquor license for the Emerald Hills Country Club. The Committee is of the opinion that once Creative Enterprises entered into a business relationship with the Emerald Hills Country Club this was a proper business function for Creative Enterprises. However, testimony showed that Representative Martinez utilized the services of a legislative aide in performing some of the business functions. The Committee is of the opinion that there is nothing improper or wrong for a member of the legislature to assist his constituents in securing or expediting licenses or expediting matters with a State Agency provided that there is no fee involved as far as the legislator is concerned. Since in this case a $500 fee was involved the Committee is of the opinion that Representative Martinez acted improperly in utilizing the services of his legislative aide in connection with this private business capacity. The mere fact that a member of the legislature because of his past activities or expertise in his profession enters into a business relationship does not make the business relationship on the part of a legislator improper. However, if the legislator uses legislative prerogatives or a legislative aide in expediting the business relationship it becomes improper. In this case use of a legislative aide in private business was improper on the part of Representative Martinez.

With respect to the allegation that Representative Martinez was placed on the payroll of the Hurricane Pipe Co., by Steve Calder after Representative Martinez used his influence and legislative position to get legislative approval for Calder's summer racing plan, the Committee heard testimony that Mr. Calder in fact was a half owner of the Hurricane Pipe Co. He said that he did not participate in the management of the Company and did not recommend or employ Representative Martinez in a private business capacity to represent Hurricane Pipe Co. The other part owner and manager of Hurricane Pipe Co. testified that he employed Representative Martinez in connection with the product approval of a product of the Pipe Company because of Representative Martinez' previous business connections with a telephone company and his knowledge of the business. There was testimony that in a private business capacity Representative Martinez did make a number of trips for Hurricane Pipe Co., to secure product approvals leading to business contracts, i.e., sale of pipe. There was testimony that product approvals were made and that this was expedited by Representative Martinez' previous business connections with persons considering the purchase of pipe. There was no testimony that Representative Martinez was employed because of his sponsorship of a summer racing plan for Mr. Calder. It is the opinion of the Committee that Representative Martinez was employed by Hurricane Pipe Co. on the basis of his business background and not on the basis of his activities as a member of the legislature.

With respect to the allegation that Hurricane Pipe Co. employed Representative Martinez to secure improperly the product approval of pipe to Western Electric, the Committee is of the opinion that Representative Martinez was hired in his business capacity, and did properly fulfill his employment in a business capacity for Hurricane Pipe Co. Testimony reflected that Representative Martinez, because of his previous employment with the telephone company, had contacts available to him which would be beneficial to Hurricane Pipe Co. There was no testimony that this employment was improper and the Committee finds nothing improper about this employment. Hurricane Pipe Co. had no legislative matters pending before the legislature.

With respect to the allegation that Representative Martinez paid for private parties for undecided legislators in order to lobby them into voting for Calder's summer racing bill, there was testimony that

on one occasion Representative Martinez in fact signed a check for a dinner at a restaurant in Tallahassee, Fla., which check was charged to his private account and which charge was later transferred to the account of Steve Calder at the restaurant. There was also testimony by Mr. Benner that Representative Martinez was authorized to sign the check because as a lobbyist for Mr. Calder he, Benner, had other entertainment going on at the same time as the dinner in question. The testimony was clear that Representative Martinez did in fact sign a dinner check which was later charged to the account of Mr. Calder. While there is no provision against any member of the legislature entertaining any other member of the legislature and while there is no prohibition against any lobbyist purchasing a meal for any member of the legislature, the Committee is of the opinion that it was improper for Representative Martinez to sign a check on behalf of the lobbyist for Mr. Calder. The Committee is of the opinion that no member of the legislature should be able to charge bills to any lobbyist or to any other interest other than himself. The Committee does not believe that any legislator should have at his disposal an open account to be paid for by any person or organization interested in the passage of legislation even though said legislator may have introduced the legislation. The rules of the House do not speak to this matter but the Committee is of the opinion that it was a violation of the spirit of the rules of the House relating to conduct on the part of a member of the legislature. The Committee is further of the opinion that any time a lobbyist purchases a meal for a member of the legislature in order to discuss legislation that the lobbyist must be present at the time.

With respect to the allegation that Representative Martinez offered to employ as his legislative aide a reporter for the Miami Herald after learning that the reporter was writing a series of articles concerning Representative Martinez, there was testimony by the reporter, Harold Aldrich, that he had been approached by Mr. Dave Zachem on behalf of Representative Martinez concerning his employment as a legislative aide by Representative Martinez. The question for the Committee to determine was whether Representative Martinez believed that the reporter Aldrich was writing or preparing to write articles against the best interests of Representative Martinez. On the basis of the conflicting testimony it appeared that there was some discussion between Mr. Zachem and Mr. Aldrich about the possibility of Mr. Aldrich going to work for Representative Martinez. These discussions were in the early part of May, 1970. The articles that were actually written were published the latter part of May, 1970. Representative Martinez denied that he had made any offer of employment to the reporter Aldrich. The Committee is of the opinion that there was nothing in the testimony of sufficient basis of fact that would indicate improper motive or conduct on the part of Representative Martinez insofar as the alleged employment of Mr. Aldrich was concerned.

The principal allegation made in this matter concerning Representative Martinez was that he received a financial payment from Steve Calder for sponsoring and securing the passage of legislation permitting Mr. Calder to engage in a summer racing program. The testimony by Eugene Nail, former legislative aide to Representative Martinez, was to the effect that on one occasion in an elevator Mr. Calder surreptitiously passed something to the hand of Representative Martinez. Mr. Nail further testified that immediately thereafter in an automobile Representative Martinez showed him a $500 bill with a comment that Mr. Calder knew his business. Mr. Calder denied paying any money to Representative Martinez. Representative Martinez denied receiving any money from Mr. Calder. The only testimony concerning the payment of any money was that offered by Mr. Nail. Testimony further reflected, and it is a matter of public record, that the legislation in question was also sponsored by other members of the House of Representatives and the Senate. There was no testimony that any of these persons received any money for the sponsorship or securing of passage of the legislation. Concerning this most serious allegation, the Committee is of the opinion that the testimony was not sufficient to support the allegation that Representative Martinez did in fact receive money for sponsoring and supporting legislation on behalf of Mr. Calder.

John J. Savage
Chairman

*(Journal, House of Representatives, 1970, October 9, pages 19-20)*

**OPINION 16**

ATTORNEY-LEGISLATOR—PARTNER FILING CLAIMS BILL

The question presented to the Committee on House Administration and Conduct by a Member of the House of Representatives was whether or not it would constitute a conflict of interest if the law partner of the Member caused to be introduced a claims bill on behalf of a client.

It was the Opinion of the Committee that the introduction of a claims bill by the law partner of a Member, particularly if a fee was involved, would constitute a conflict of interest on the part of the Member. It is well settled that every member of the law firm is the agent of all other members of the firm. The introduction of a claims bill would necessarily require lobbying on behalf of the bill. The Florida Bar Association in two Opinions, 67-5 and 67-5 Supplement, has ruled that a Member of the Legislature would violate Canon 6 if a legislator was a member of a firm active in lobbying in the Legislature even though the legislator did not participate in the lobbying fee, and even though the legislator disqualified himself in voting on the proposal for which the lobbying service was rendered, in this matter the claims bill.

The Committee on Standards and Conduct of the House of Representatives rendered an Opinion during the 1967 session of the House under Rule 5.9 that it was a conflict of interest for a Member, his law partner, or his law firm, to receive a fee and to participate in sharing any fee derived from claimant cases.

Therefore, in view of the ruling of the Florida Bar Association, and the previous ruling of this Committee, it appears that there would be a conflict on the part of the Member if there was introduced, or caused to be introduced, a claims bill by his law partner.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, February 4, page 119)*

**OPINION 17**

MEMBER—BUSINESS FIRM HAVING
BUSINESS COMMITMENT WITH STATE

The question presented to the Committee on House Administration and Conduct was whether or not a Member of the House of Representatives would have a conflict of interest if a business firm in which he has substantial commitments, or is a director, made presentations to the State of Florida to help professionally manage certain trust funds that may be allocated to security investments.

It is the Opinion of the Committee that under Chapter 67-469, Laws of Florida, that the Member, being a member, director, agent, owner, or having a substantial interest in a firm or company having a business commitment with the State of Florida, does have a conflict of interest under the above-named Laws, and must file in writing, under oath, with the Secretary of State a disclosure of his connection with the firm and a mention of the firm's business commitment with the State.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, February 4, page 119)*

**OPINION 18**

MEMBER—FINANCIAL DISCLOSURE

The question presented to the Committee on House Administration and Conduct was whether or not a Member of the Legislature would be required to disclose his interest in a medical center or convalescent center under Chapter 67-469, Laws of Florida. The Member in question is the owner of a medical center.

It is the Opinion of the Committee that this ownership does represent a conflict of interest under the above-named Chapter of the Florida Laws, and that the Member is required to disclose his ownership, in writing, under oath, by filing with the Secretary of State's Office.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, February 4, page 119)*

**OPINION 19**

MEMBER—CONFLICT OF INTEREST

During the first week of April, 1971, a newspaper article appeared in the St. Petersburg Times containing allegations of possible misconduct on the part of Representative William Fleece, Republican from Pinellas County. Basically the news story alleged that during the 1970 Legislative Session Representative Fleece introduced, and assisted in passing, certain legislation which benefited two clients who he represented in his law practice, and who were the owners of a small park area in St. Petersburg, Florida. The article implied that the legislation introduced by Representative Fleece was designed to clear the title to the property by barring members of the public from claiming any right to the use and enjoyment of the park. Immediately upon the article being brought to this Committee's attention, it was turned over to the Committee's staff with instructions to conduct a preliminary inquiry into the facts which were the basis for the article. A thorough inquiry was conducted by the Staff involving approximately 35 hours of staff time. A detailed report was prepared by the Staff, and has been reviewed by this Committee.

After reviewing the report, it is the Opinion of this Committee that Representative Fleece has not violated any Rule of the Florida House of Representatives as a result of his participating during the 1970 Legislative Session in the introduction and passage of House Bill No. 4731 which bill amended Section 95.36, Florida Statutes, and Section 167.09, Florida Statutes. The Committee could find no evidence that Representative Fleece represented the owners of the park at the time the above legislation was introduced and considered, nor did it find any evidence that Representative Fleece represented these two gentlemen prior to January 1, 1971. The Committee finds no evidence that Representative Fleece was personally benefited, either financially or otherwise, from the legislation.

However, in reaching the above conclusion, the Committee feels compelled to note that better judgment could have been exercised on the part of Representative Fleece. The facts and circumstances surrounding this situation are such as to raise questions in the minds of the general public of a possible conflict of interest. The particular facts and circumstances are summarized as follows:

(a) Representative Fleece has held a long standing friendship with the owners of the park.

(b) Representative Fleece practices law in a joint venture arrangement with the son of one of the owners in the article, under an arrangement which is held out to the public as a true partnership. The firm's offices are located in a shopping center adjacent to the park, and owned by the same men who own the park. The son, and a member of the firm, has for many years handled his father's legal affairs, and did so during the year 1970.

(c) The general history of controversy and litigation involving Fern Park, thus indicating a particularly sensitive situation in regard to this property.

Obviously, members of the Legislature occasionally introduce and support bills which deal with problems brought to their attention by their experiences in business, law practice or other pursuits unrelated to legislative service. This is a common occurrence which occasionally causes embarrassment to members of the House as questions of conflict of interests are raised. Most often, the conflict is one of appearance as in the matter involving Representative Fleece. Nonetheless, the membership of the House must be encouraged to avoid even the appearance of a conflict of interest.

In conclusion, the Committee on House Administration and Conduct would caution members of the Florida House of Representatives to avoid situations giving rise to the appearance of a conflict of interest even though no conflict in fact exists.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, June 4, page 1212)*

**OPINION 20**

LOBBYIST REGISTRATION—ELECTED OFFICIAL

The House Committee on Administration and Conduct has been asked for an advisory opinion as to whether an elected public official is required to register as a lobbyist pursuant to House Rule 13.6.

The facts that are available from the official are that he appeared before a local legislative delegation to advise the legislators in the local delegation concerning “bills” which would affect the operation of a port district which is a public corporation created by the state legislature. The official also asked whether he was required to register when appearing or discussing matters affecting his public body with representatives with districts other than those in which the official resided.

On the assumption that the official, by his own statement, was advocating or opposing some legislation affecting the port authority of which he is an official, it is the opinion of the Committee on House Administration and Conduct that under the Rules of the House every person advocating the passage of or the defeat of legislation on behalf of any person or group other than himself is required to register as a lobbyist. The purpose of the Rule is very clear; it enables Members of the Legislature to determine the interest of the person appearing before them or discussing with them personally passage or defeat of legislation. The fact that a person is an elected official does not release him from the duty to register as a lobbyist.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, June 4, page 1213)*

**OPINION 21**

USE OF LEGISLATIVE STATIONERY
FOR FUND RAISING PURPOSES

The question presented to the Committee on House Administration & Conduct by a Member of the House of Representatives is whether a House Member can use official House stationery, or a reproduction thereof, to solicit financial contributions on behalf of a private lobbying organization. No direct precedent exists on this point. However, well settled principles of legislative conduct coupled with relevant statutory guidance require this Committee to conclude that a Member may not solicit contributions in such a manner. House Rule 5.6 explicitly outlines the standard of legislative conduct required of House Members:

> 5.6 Legislative Conduct—Legislative office is a trust to be performed with integrity in the public interest. A Member of the House of Representatives is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the law-making body, he shall watchfully guard the responsibility of his office.

It is clear that the action of a legislator must at all times be beyond reproach. He must represent his entire constituency to the best of his ability on all issues. By explicitly lending the prestige and influence of his office to raise funds for a private lobbying organization through the use of the official House letterhead, a legislator puts in question his objectivity on issues of interest to the particular lobby and casts doubt on his desire to weigh the relative merits of such proposals. Such action clearly impugns the integrity of the legislative office and jeopardizes the trust placed in him by the public.

Further guidance can be gleaned from Chapter 104.31 of the Elections Code which provides that a state officer cannot directly or indirectly coerce, command or advise any other state officer or state employee to contribute any sum of money to any organization for political purposes. The clear purpose of this section is to prohibit a legislator or other state officer from using the influence of his office to raise political funds that might not otherwise be forthcoming. Although this section is primarily keyed into election situations and the acts of state officers and employees, its clear purpose might reasonably be extended to limit the actions of a legislator in using his office to raise funds for organized lobbying efforts. In such a case, he would directly be advising other state officers as well as any state employees receiving the solicitation to contribute to the lobby organization. Moreover, the subtleties of possible direct and indirect coercion or intimidation inherent in such a plea further require us to conclude that House Members should not engage in such solicitation.

Since official House stationery is impressed with the state seal and because reproduction of such stationery is also at issue in the question at hand, one further statute should be noted. Chapter 817.38 prohibits any person from sending any letter (for the purpose of obtaining any money) which simulates the state seal or the stationery of any state agency with the intent to lead the recipient to believe it is genuine. The term “simulate” is generally defined as copying, representing, feigning, or giving the effect or appearance of something else. Clearly within the scope of this definition is reproduction, and we would therefore conclude that under existing law, it would be unlawful to use reproduced House stationery impressed with the state seal in order to solicit funds for any purpose.

It should be pointed out that Congress and a number of other state legislatures have permitted the use of official stationery to promote private lobbying activities. Because of this, and because of the absence prior to this date of a clear policy to the contrary in Florida, it is unfair to criticize or condemn those who, prior to the adoption of this ruling, permitted their official stationery to be used in such a fashion. However, the use of official stationery on behalf of organizations or persons whose intent is to lobby the legislature is demeaning to the legislative process and creative of an atmosphere of mistrust and suspicion about the ethics and conduct of legislators generally.

In sum, it is the opinion of the Committee on House Administration & Conduct that a House Member cannot use official House stationery, or a reproduction thereof, to solicit financial contributions on behalf of a private lobbying organization.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, November 29, page 11)*

**OPINION 22**

REPRESENTATIVE DONALD L. TUCKER

On June 3, 1971, a newspaper article appeared in the Miami Herald, containing allegations of possible misconduct on the part of Representative Donald L. Tucker, Democrat from Leon County. The news story inferred that during the 1971 Legislative Session, Representative Tucker sought to amend Senate Bill 156 so as to exclude regulation of a special interest in which his brother allegedly

held an interest. Senate Bill 156 prohibits the copying of sounds from any records, disk, tape, etc., without the owner's consent and also makes it illegal to sell or use these items for profit. The amendment to the bill, which was supported by Representative Tucker, would have provided an exclusion, where the manufacturer of such sound recordings has paid all copyright royalties due under the Federal Copyright Statute. The newspaper article alleged that Representative Tucker's brother, Luther C. "Kit" Tucker, Jr. either represented or held an interest in a business enterprise whose activities would have been made illegal under the terms of Senate Bill 156, as originally introduced.

Shortly after the above newspaper article appeared, Representative Donald L. Tucker contacted the Chairman of the Committee on House Administration & Conduct and requested that a preliminary inquiry be conducted into facts which were the basis for the article. A preliminary inquiry was undertaken by the Committee's staff, and a related report, prepared by the staff has been reviewed by this Committee.

After reviewing the report, it is the opinion of this Committee that these facts do not sustain an allegation that Representative Donald L. Tucker violated any rule of the Florida House of Representatives or that he committed any act of misconduct in regard to his involvement in attempting, during the 1971 Legislative Session, to amend Senate Bill 156. The Committee did not receive evidence that Representative Tucker had a financial interest in any business enterprise which might have been affected by the legislation, neither does the Committee find that Representative Tucker had any common financial interests with any individual or firm which might be affected by the legislation. Finally, there is no direct evidence that Representative Tucker's efforts in attempting to amend Senate Bill 156 were in any way an attempt to assist his brother, Mr. Luther C. "Kit" Tucker, Jr., or to otherwise further any interest, if any, which his brother might have held in the sound recording business.

In reaching the above conclusion, the Committee noted several independent facts and circumstances, which when viewed in connection with each other, gave rise to the allegations contained in the newspaper article. The mere fact that the story was published once again points out the necessity to avoid situations which give the slightest appearance of the existence of a conflict of interest. News reports such as the one here can certainly cause embarrassment for the individual legislator, and embarrassment for the legislative body as a whole.

George Firestone
Chairman

*(Journal, House of Representatives, 1971, November 29, page 11)*

## OPINION 23

ATTORNEY-LEGISLATOR—REPRESENTING OR HAVING INTEREST IN CORPORATION SEEKING STATE CHARTER OR PERMIT

The Select Committee on Standards & Conduct has responded, under Rule 5.12, with the following to a request from a Member for an advisory opinion on these questions:

1. Whether a member of the House may ethically represent, serve as an agent for or otherwise do business on behalf of a client in an application for a state charter, alcoholic beverage license, dredge and fill permit, etc.?
2. Whether a member of the House may ethically serve as an officer, director, or organizer for a client seeking an application for a state charter, license or permit such as a state bank charter, alcoholic beverage license, dredge and fill permit, etc.?
3. Whether a member of the House may ethically subscribe for stock or have a partnership or other interest in a corporation, business or other entity seeking a state charter, permit or license such as a state bank charter, alcoholic beverage license, dredge and fill permit, etc., where such interest exceeds 5% of the total stock, partnership or other interest?
4. Whether a member of the House may ethically subscribe for stock in a corporation or have a partnership or other interest in a corporation, business or other entity seeking a state charter, permit

or license such as a state bank charter, alcoholic beverage license, dredge and fill permit, etc., where the member does not otherwise represent or do business on behalf of the entity and where he is not an organizer, officer or director, and where such interest in one of the above entities does not exceed 5% of the total interest in such entity.

For the purpose of this opinion we assume that the applications referred to in the questions are applications to the *executive* branch of state government and that no action of the House of Representatives is involved in the granting or denial of them.

A consideration of your questions must be undertaken with a consciousness of the prevailing attitude toward ethics in government. The people of Florida set the tone by adopting Section 18 of Article III of the 1968 Constitution:

> "Section 18. *Conflict of Interest*
>
> A code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests *shall* be prescribed by law." (emphasis added)

The Legislature adopted the same approach by enacting Part III of Chapter 112 which includes a declaration of policy:

> *"*112.311 *Declaration of Policy*
>
> It is hereby declared to be the policy of the legislature that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement such policy and strengthen the faith and confidence of the people of the state in their government, there is herein enacted a code of ethics setting forth standards of conduct to be observed by state, county, and city officers and employees, and by officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the legislature that this code shall serve not only as a guide for official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of part III of chapter 112."

And the Florida House of Representatives has adopted Rule 5, the essence of which is contained in Rule 5.6:

> "5.6—Legislative office is a trust to be performed with integrity in the public interest. A member of the House of Representatives is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office."

When the people of the state, the entire Legislature and the House of Representatives all speak in concert about the same subject there can be no room for doubt about the intent. Integrity is required. The spirit of the Constitution, the Statute and the Rule should be followed.

But care should be exercised to prevent a distortion of that spirit. Members of the legislature are citizens who are paid for and devote only part of their time away from their regular businesses to devote to their governmental duties. There is no prohibition against employment, investment or business activity that does not create a conflict of interest or otherwise violate the law. The Legislature, in enacting the Code of Ethics, provided:

> "112.316 *Construction*
>
> It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not

> interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his duties to the state or the county, city, or other political subdivision of the state involved."

The Attorney General has recognized these limitations in holding that no conflict of interest exists where a part time City Attorney declines to represent his other clients in matters involving the licensing or regulatory power of the municipality. Although he may represent those clients in other matters (SC70-6). Also, in 1971, (071-264), the Attorney General held:

> "The construction firm of which a legislator is president may contract with a city housing authority. Such a contract would be valid even though the director of the city housing authority is the father-in-law of the president of the construction firm."

None of the activities described in your questions are prima facie unethical, although, where applicable, the House Member's relationship should be disclosed under Section 112.313(2) F.S. (see Opinion No. 11, Standards & Conduct, Florida House of Representatives, May 2, 1969). But, as each situation arises the facts and circumstances should be carefully examined to determine whether the member of the House is violating Section 112.313(3) F.S. by using or attempting to use his office to secure special privileges or exemptions or whether such activity might impair his independence of judgment in the performance of his duties in violation of Section 112.313(6) F.S. and Rule 5.8.

It should be noted, parenthetically, that the Supreme Court in *State v. Llopis*, 257, So. 2d 17, 1971, held Section 112.313(6) to be unconstitutionally vague. This decision could become involved in any proceeding under House Rule 5.8.

In Opinion No. 15, Standards and Conduct, October 9, 1970, the House (Member) who expedited a liquor license for a fee and used a legislative aide to assist in the effort. The Committee said:

> " . . . The Committee is of the opinion that there is nothing improper or wrong for a member of the legislature to assist his constituents in securing or expediting licenses or expediting matters with a State Agency provided that there is no fee involved as far as the legislator is concerned. Since in this case a $500 fee was involved the Committee is of the opinion that Representative _____ acted improperly in utilizing the services of his legislative aide in connection with this private business capacity. The mere fact that a member of the legislature because of his past activities or expertise in his profession enters into a business relationship does not make the business relationship on the part of the legislator improper. However, if the legislator uses legislative prerogatives or a legislative aide in expediting the business relationship it becomes improper. In this case use of a legislative aide in private business was improper on the part of Representative _____ . . ."

The extent of the House members' interest should be a factor to consider. An attorney is considered the agent of his client (SC67-12 and other authorities cited there). Certainly an officer, director, partner, or organizer is an integral part of the entity. But a stockholder who owns less than 10% of the capital stock and has no other interest in the corporation is not a "member" of a corporation and not even required to disclose the interest under Section 112.313(3) F.S. (072-418).

It is therefore concluded that in relation to an application for a state charter, license or permit such as a state bank charter, alcoholic beverage license, dredge and fill permit, etc., in which the granting authority exercises discretion, a member of the Florida House of Representatives would not be guilty of unethical conduct if he is an officer, director, organizer, partner, agent, attorney or otherwise interested in the business entity making the application unless he uses his legislative prerogatives in connection with the application or, by his involvement in the application, impairs his independence of judgment in the exercise of his official duties.

Each of your questions are answered in the affirmative subject to the conditions set forth.

While none of the questions presented an unethical activity on the part of a member, the Committee again takes this opportunity to admonish our colleagues that, in keeping with the spirit of the Constitution, the Statutes, the House Rule, and above all, the public trust, all acts which may be technically lawful, but which give rise to public suspicion, should be avoided. Note, however, such a problem would not be as likely to occur in the question 4 situation. In all cases of doubt the members

should not create the appearance of using public office for private gain, losing complete independence or impartiality of action, or in any other way affecting adversely the confidence of the public in the integrity of the government.

In light of our duty to set and measure the ethical conduct of others in state government, it is imperative that the standards we set for ourselves be no less stringent.

Leon N. McDonald, Sr.
Chairman

*(Journal, House of Representatives, 1973, April 24, page 351)*

**OPINION 24**

LEGISLATIVE AIDE—COMPENSATION BY LAW FIRM

The Select Committee on Standards & Conduct has responded to an inquiry from a Member with the following:

Dear Sir:

In your letter to this committee dated April 13, 1973, you asked the following questions, in part:

1. Is it improper for me to pay my administrative aide $5200 per year in addition to his state salary of $8,664?

2. Time permitting, could I use my aide on occasion for services in connection to my law practice, as I am sure that the service to the law firm would not exceed 10 percent of his time.

Unanimously, the committee answers your questions as follows:

1. It is not only improper to have such an employee in your firm helping with your law practice, but it is illegal per F.S. s. 11.26 as follows:

Employees of the legislature; restrictions of employment.—

(1) No employee of the legislature shall:

(a) Reveal to any person outside his division the contents or nature of any request for services made by any member of the legislature except with the written consent of the person making such request;

(b) Urge or oppose any legislation;

(c) Give legal advice on any subject to any person, firm or corporation, except members of the legislature;

(d) During his employment by any division of the legislature, be associated or interested in the private practice of law in any manner, nor be personally engaged in any other business for profit.

(2) A violation of any provision of this section by any such employee shall be sufficient cause for his or her immediate dismissal; provided that this section shall not be a limitation on the authority of the legislature to dismiss or change its employees.

2. Per Fla. Statutes, Chapter 112.313(7) it is improper as follows:

> No officer or employee of a state agency or of a county, city, or other political subdivision of the state, or any legislator or legislative employee shall receive any compensation for his services as an officer or employee of a state agency, county, city, or other political subdivision of the state, or as legislator or legislative employee from any source other than this state or the county, city, or other political subdivision of the state of which he is an officer or employee, except as may be otherwise provided by law.

The committee wishes to impress upon you that this opinion does not apply to contractual arrangement between an attorney at law and the House of Representatives, or one of its committees. Obviously, the contract is for part-time and specific duties, but does not serve to establish that attorney as an "employee" of the House.

I hope this answers your questions adequately and wish to thank you for referring your questions to the committee.

Leon N. McDonald, Sr.
Chairman

*(Journal, House of Representatives, 1973, May 4, page 460)*

**OPINION 25**

PROPOSED BUSINESS AGREEMENT WITH THE STATE

The Select Committee on Standards & Conduct has responded to an inquiry with the following:

In your letter of May 29, 1973, you asked for an opinion of this committee concerning proposed business agreement with a state agency.

The committee met Thursday, May 31 and unanimously agreed that the only rule or statute applicable to this situation is as follows:

> 112.313(2) If an officer or employee of a state agency, or of a county, city, or other political subdivision of the state, or any legislator or legislative employee is an officer, director, agent, or member of, or owns a controlling interest in any corporation, firm,
>
> partnership, or other business entity which is subject to the regulation of, or which has substantial business commitments from any state agency, county, city, or other political subdivision of the state, he shall file a sworn statement disclosing such interest with the department of state, if he is a state officer or employee, or if he is an officer or employee of a county, city, or other political subdivision of the state he shall file the sworn statement with the clerk of the circuit court of the county in which he is principally employed.

Leon N. McDonald, Sr.
Chairman

*(Journal, House of Representatives, 1973, May 31, page 1082)*

**OPINION 26**

MEMBER—BUSINESS
USE OF HOUSE STATIONERY

The Committee, after consulting with a Member, addressed the following to him:

The matter considered by this committee June 6, 1973 was your writing business clients, and/or former clients on official House stationery and enclosing your business card with the apparent purpose of soliciting business.

It is the opinion of the committee that accepted principles of legislative conduct would prohibit such action on the part of any Member of the House.

> House Rule 5.6—Legislative office is a trust to be performed with integrity in the public interest. A member of the House of Representatives is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

This rule mandates that all actions of a legislator must be beyond reproach. By inference that the prestige and influence of his office is available if his private business is retained, the legislator thoroughly impugns the integrity of his legislative office and jeopardizes the trust placed in all of us by our constituency.

In addition we refer to Chapter 112.313(3), Florida Statutes as follows:

> 112.313 Standards of conduct for officers and employees of state agencies, counties, cities, and other political subdivisions, legislators and legislative employees.—
>
> (3) No officer or employee of a state agency, or of a county, city or other political subdivision of the state, or any legislator or legislative employee shall use, or attempt to use, his official position to secure special privileges or exemptions for himself or others, except as may be otherwise provided by law.

Based on available information and your voluntary statement, the committee voted unanimously to reprimand you for your recent actions.

I would suggest that in the future you take advantage of Rule 5.12, wherein you may request an advisory opinion of this committee prior to any action on your part.

By copy of this letter, all interested parties are to be notified.

Leon N. McDonald, Sr.
Chairman

*(Journal, House of Representatives, 1973, June 6, page 1284)*

**OPINION 27**

ATTORNEY-LEGISLATOR
PRACTICE WITH AN ATTORNEY-LOBBYIST

The Committee has responded to an inquiry from a Member with the following:

Dear Representative:

You asked for an opinion from the Select Committee on Standards and Conduct as follows:

> I would like to have an opinion from your committee whether or not a member of the legislature may be in practice with or associated with an attorney who is a lobbyist.

It was the unanimous decision of this Committee that such an arrangement is in conflict with the best interests of the Legislature and the constituents you serve. In no way does this reflect on the integrity of those engaged in lobbying. We accept lobbying as an entirely legitimate activity in the democratic process and do not intend to reflect on any member of this profession as long as a person is in compliance with applicable law.

The Committee further suggests that you and your intended associate refer to the canons of the Florida Bar, vis-a-vis, Opinion 67.5 and others.

In conclusion, the Committee would caution members of the Florida House of Representatives to avoid situations that would appear to be a conflict of interest even though no conflict does exist.

Leon N. McDonald, Sr.
Chairman

*(Journal, House of Representatives, 1974, January 30, page 14)*

**OPINION 28**

MEMBER—PRIVATE RIGHTS

The Committee has responded to an inquiry from a Member with the following:

In reference to your request on April 22, 1975, for an opinion from the Select Committee on Standards and Conduct, the following question was presented:

> Was there a violation of any standard of conduct by me as a newspaper editor and publisher in supporting and voting for HB 399 which repeals the Florida “right to reply law”?

This question must focus on the meaning contained in House Rule 5.1 and 5.10. Rule 5.1 provides that the Members shall vote on all matters “ . . . except that no Member shall be permitted to vote on any question immediately concerning his private rights as distinct from the public interest.” The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest.

Rule 5.10 further speaks to this issue: “A Member of the House of Representatives prior to taking any action or voting upon any measure in which he has a personal, private or professional interest which inures to his special private gain, or the special gain of any principal by whom he is retained, shall disclose the nature of his interest as a public record . . . Upon disclosure, such Member may disqualify himself from voting on a measure in which he has a conflict of interest.” The matter of “private rights as distinct from the public interest” contained in Rule 5.1 is further delineated in Rule 5.10 as that “which *inures* to his *special private gain*.” “Inures” is used in this context to mean “contributes”. A conflict of interest, therefore, would have to involve a personal, private or professional interest which would further *contribute* to a special private gain.

Therefore, “special private gain” is used in a narrow sense to exclude a benefit or gain to a certain “class” of which the legislator is a member. “Class” as used in this sense would mean a profession, occupation or other similar collectivity of which the legislator is a member. This differentiation is crucial to the concept of a “citizen-legislator” which Florida has traditionally adhered to. The rationale for this dual role of citizen-legislator is that a cross section of citizens from diverse professions and occupations will provide higher quality public policy than a professional full time legislator. This would mean that it is acceptable for all legislators to vote on matters, from time to time, which affect a “class” of which they are a member or have an association with, so long as there is no special private gain.

The committee, therefore, finds no conflict of interest or violation of House Rules 5.1 or 5.10 in your support and vote for HB 399 because there would be no special private gain by you as distinct

from the larger public interest and furthermore, since this law has been ruled unconstitutional by the United States Supreme Court.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1975, May 16, pages 551-552)*

**OPINION 29**

MEMBER—EMPLOYMENT—CONFLICT OF INTEREST

The Committee has responded to an inquiry from a Member with the following:

In your letter of May 19, 1975, to the Select Committee on Standards and Conduct you have asked for an advisory opinion on essentially the following question:

> Would there be any conflict of interest by me as a state representative in accepting a position as a manufacturer's representative for marketing industrial type equipment to wholesalers, jobbers and certain local governments excluding those local governmental bodies within my district?

It is the decision of this committee that based on the facts you have presented, there would be no conflict of interest by you in accepting this position.

There is no House Rule or other standard of conduct for public officials which could establish a conflict of interest in the case you have presented. House Rules 5.8 and 5.9 do, however, provide general guidelines for "conflicting employment" and "conflict of interest". In addition, section 112.313(5) of chapter 74-177, Laws of Florida, provides the following prohibition for "other employment" by public officers and employees:

> . . . No public officer or employee of an agency shall accept other employment with any business entity subject to the regulation of, or doing business with, an agency of which he is an officer or employee nor shall an officer or employee of an agency accept other employment that will create a conflict between his private interests and the performance of his public duties, or will impede the full and faithful discharge of his public duties . . .

These guidelines are merely being pointed out for your information should any further question arise.

Furthermore, you have stated that you intend to exclude those local governmental bodies within your district from your business operation. We wish to point out that a business transaction by you with these local governmental bodies would not, on the face, be a conflict of interest provided that a situation or relationship as prohibited by the above rules and statutes does not arise.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1975, May 29, page 925)*

**OPINION 30**

MEMBER—CONTRIBUTIONS RECEIVED

The Committee has responded to an inquiry from a Member with the following:

In your letter of June 3, 1975, to the Select Committee on Standards and Conduct, you have asked for an advisory opinion on essentially the following question:

> Does s. 111.011, Florida Statutes, (Statement of contributions received by elected public officers) require gifts or contributions with a value less than twenty-five dollars to be reported, if, during the six months reporting period, the gifts or contributions from one source have a cumulative value in excess of twenty-five dollars?

It is apparent that the language of s. 111.011 is unclear on this particular point. However, the Department of State has interpreted the intent of this section to mean that all gifts and contributions from one source, having a cumulative value in excess of twenty-five dollars for the reporting period shall be reported as a "contribution" as defined in s. 111.011 (c), Florida Statutes. It is the opinion of this committee that the contributions or gifts from one source must be reported in this manner so that the legislative intent may not be circumvented.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1975, June 5, pages 1190-1191)*

**REVISED OPINION 31**

CONFLICT OF INTEREST
SUBCOMMITTEE CHAIRMANSHIP

The Committee has responded to an inquiry from a member with the following:

In your letter of May 12, 1975 to the Select Committee on Standards and Conduct you requested an advisory opinion on essentially the following question:

> Would there be a conflict of interest by a member of the House serving as chairman of a subcommittee with jurisdiction over legislation related to a class of state regulated non-profit corporations if the member's law partner serves as general counsel to a particular corporation in question?

It is the opinion of this committee that a member holding a subcommittee chairmanship under the above specific circumstances would face a situation of conflicting interest. This opinion is based on the inherent prerogatives exercised by a chairman in setting an agenda, directing the course of debate, directing the staff support and the subject matter being considered.

Furthermore, the representation of an interest by a law firm as established by advisory opinions 12 and 16 in *Opinions on Standards and Conduct* lends further support to the conflicting situation: "It is a well settled principle that all members of a law firm are agents of the other members and that representation of an interest by the firm applies to all members of the firm."

Membership on the subcommittee or full committee would not in itself create a conflicting situation. However, a vote by the member on certain legislation directly affecting the specified corporation in a way which would inure to the law firm's special private gain as stated in House Rule 5.10 and interpreted by advisory opinion 28 by this committee would be a conflict of interest. If a conflict did arise under these circumstances it should be decided by the member and he should

abstain accordingly. It has been the posture of this committee that a voting conflict should be a situational matter to be determined by the member with the advice of this committee if requested.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1976, April 6, page 171)*

**OPINION 32**

ATTORNEY-LEGISLATOR—CONFLICT OF INTEREST
REPRESENTATION OF STATE-WIDE ASSOCIATION

The Committee has responded to an inquiry from a Member with the following:

In your letter of October 29 you have asked for an advisory opinion on essentially the following question:

> Would there be any conflict of interest by me as a state representative in accepting a contract to represent a statewide association of accountants in a private capacity, excluding representation before any state agency?

It is the decision of this committee, based on the facts you have presented, that there would be no conflict of interest in your accepting this contract.

There is no House Rule or other standard of conduct for public officials which could establish a conflict of interest in the case you have presented. House Rules 5.8 and 5.9 do, however, provide general guidelines for "conflicting employment" and "conflict of interest". In addition, section 112.313(7) of chapter 75-208, Laws of Florida, provides the following prohibition for "any employment or contractual relationship" by public officers and employees:

> . . . 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 doing business with an agency of which he is an officer or employee excluding those organizations and their officers who enter into or negotiate a collective bargaining contract with any state, county, municipal, or other political subdivision of the state when acting in their official capacity; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties . . .

Furthermore, you have stated that you intend to include information concerning this client in your full disclosure statement.

We wish to point out that a contractual agreement between you and a client would not appear to be a conflict of interest provided a situation or relationship as prohibited by the above rules and statute does not arise.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1976, April 6, pages 171-172)*

**OPINION 33**

MEMBER—CONTRIBUTIONS RECEIVED
FROM A REGULATED INDUSTRY

The Committee has responded to an inquiry from a Member with the following:

In your telephone conversation of December 18, 1975, to the Select Committee on Standards and Conduct, you have asked for an advisory opinion on essentially the following question:

> Does s. 111.011, Florida Statutes, (Statement of contributions received by elected public officers) require that I reject or accept a Christmas gift with a value of approximately five dollars since it is from the district and local manager of Southern Bell Telephone Company, a regulated industry, and the fact that I do name all gifts received by me regardless of whether they are less than the cumulative value of twenty-five dollars for the reporting period?

It is apparent that the language of s. 111.011 is unclear on this particular point. However, the Department of State has interpreted the intent of this section to mean that all gifts and contributions from one source, having a cumulative value in excess of twenty-five dollars for the reporting period shall be reported as a "contribution" as defined in s. 111.011(c), Florida Statutes.

Additionally, House Rule 5.7 of the Florida House of Representatives which states "a member of the House of Representatives shall accept nothing which reasonably may be construed to improperly influence his official act, decision or vote" provides no separation between a regulated or other type industry.

Therefore, it is the decision of this committee that your acceptance of this Christmas gift from Southern Bell Telephone Company with a value of approximately five dollars does not violate the intent or the spirit of the Florida Statutes or the rules of the Florida House of Representatives.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1976, April 6, page 172)*

**OPINION 34**

MEMBER—CONFLICT OF INTEREST
EXPENSE-PAID TRIP—LEGALIZED GAMBLING

The Committee has responded to an inquiry from a Member with the following:

In your letter of January 28, 1976, to the Select Committee on Standards and Conduct, you have asked for an advisory opinion on the following question:

> "When an expense-paid trip for the purpose of legalized gambling is made available to the general public, would there be a conflict of interest for a member of the House of Representatives to accept such an offer?"

It is the decision of this committee, based on the facts you have presented, that there will be no conflict in your accepting the above offer. There is no House Rule or other Standards of Conduct for public officials which could clearly establish a conflict of interest in the case you have presented.

House Rules 5.6 and 5.7 do, however, provide general guidelines for conduct for a member of the House of Representatives and conflicting interest. In addition, Sections 112.311(6), 112.312(11), 112.313(2) and (6), 112.3141(1), and 112.3143 of Chapter 75-208, Laws of Florida, provide the following:

112.311(6)—It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

112.312(11)— "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

112.313(2)—No public officer or employee of an agency 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.

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

112.3141(1)—In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

House Rule 5.6—Legislative office is a trust to be performed with integrity in the public interest. A Member of the House of Representatives is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

House Rule 5.7—A Member of the House of Representatives shall accept nothing which reasonably may be construed to improperly influence his official act, decision or vote.

112.3143—No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest which inures to his special private gain, or the special gain of any principal by whom he is retained, shall within 15 days after the vote occurs disclose the nature of his 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.

These guidelines are merely being pointed out for your information should any further questions arise.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1976, April 6, page 172)*

**OPINION 35**

MEMBER—VOTING—CONFLICT OF INTEREST

The Committee has responded to an inquiry from a Member with the following:

In reference to your request of October 6, 1976, for an opinion from the Select Committee on Standards and Conduct, the following question was presented:

> Is there a conflict of interest of the existing law if I voted on any legislation dealing with trusts, as on September 1, 1976, I became interim administrator for the Police Benevolent Association National Insurance Trust, whom I have also represented as a salesman prior to September 1, 1976?

There is no House Rule or other standard of conduct for public officials which could establish a conflict of interest in the case you have presented. House Rules 5.1 and 5.10 do, however, provide general guidelines for "conflict of interest" and "conflicting employment".

Furthermore, the opinions as established by advisory opinions 14 and 28 in *Opinions on Standards and Conduct* lend further support to the situation.

Rule 5.1 provides that Members "shall vote on each question put . . . except that no Member shall be permitted to vote on any question immediately concerning his private rights as distinct from the public interest". The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest.

Rule 5.10 further states: "A Member of the House prior to taking any action or voting upon any bill in which he has a personal, private or professional interest which inures to his special private gain, or the special gain of any principal by whom he is retained or employed, shall disclose the nature of the interest as a public record . . . Upon disclosure, such Member may disqualify from voting on a bill in which he has a conflict of interest pursuant to Rule 5.1."

Based on your question as stated above and prior opinions on similar questions of conflict, the committee finds no prohibition on your serving this trust.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1977, April 5, page 116)*

**OPINION 36**

MEMBER—ACCEPTANCE OF IN-KIND SERVICES

The Committee has responded to an inquiry from a Member with the following:

In your letter of April 28, 1976, to the Select Committee on Standards and Conduct you asked for an advisory opinion on the following question:

> "Is it legal and an accepted practice and in every respect a practice approved by your committee for a legislator to accept in-kind services by a contributor as long as all such services are acknowledged and reported to the Secretary of State as if checks or cash?"

Section 106.11(3)(a), (b) and (c) provide the following:

> "Contribution" means:

(a) A gift, subscription, conveyance, deposit, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election.

(b) A transfer of funds between political committees.

(c) The payment by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to a candidate or committee for such services.

Notwithstanding the foregoing meanings of "contribution", the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee.

It is the opinion of this committee that in-kind services may be accepted. They must, however, be reported as provided in section 106.07, Florida Statutes.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1977, April 5, page 116)*

**OPINION 37**

(DELETED AS OBSOLETE)

**OPINION 38**

MEMBER—BIDDING AS A
SUBCONTRACTOR ON A STATE JOB

The Committee has responded to an inquiry from a Member with the following:

In response to your request of April 28, 1976, to the Select Committee on Standards and Conduct in which you asked for an advisory opinion on the following question:

"Can I, as an elected official, bid as a subcontractor to a general contractor on a state job?"

The Committee answers in the affirmative. Section 112.313(7), Florida Statutes, provides the following:

"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 doing business with, an agency of which he is an officer or employee excluding those organizations and their officers who enter into or negotiate a collective bargaining contract with any state, county, or municipal, or other political subdivision of the state when acting in their official capacity; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. Where the agency referred to is that certain kind of special tax district created by general or specific laws and limited specifically to improvements in the land area over which the agency has jurisdiction, or where the agency has been

> organized pursuant to Chapter 298, Florida Statutes, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this section or be deemed a conflict per se; however, that conduct by such officer or employee prohibited by this section or otherwise frustrating the intent of this section shall be deemed a conflict of interest in violation of this section. However, when the agency referred to is a legislative body and when the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or deemed a conflict. This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation where such practice is required or permitted by law or ordinance of persons holding such public office or employment."

House Rules 5.6 and 5.7 provide general guidelines for conduct for a member of the House of Representatives and conflicting interest. In addition, sections 112.311(6), 112.312(11), 112.313(3) and (6), 112.3141(1), and 112.3143 of Chapter 75-208, Laws of Florida, are mentioned to you as guidelines.

Tom McPherson
Chairman

*(Journal, House of Representatives, 1977, April 5, page 116)*

**OPINION 39**

FORMER MEMBERS—PROHIBITION

The Committee has responded to inquiries from Members with the following:

Confusion has arisen and several inquiries have been propounded regarding Article II, Section 8(e) of the Florida Constitution—part of the Sunshine Amendment. Therefore, the Committee issues this legal opinion and interpretation which correctly construes the law regarding that constitutional provision.

The question presented to the Committee on Standards and Conduct at its May 9, 1978, meeting was:

> Does the prohibition contained in Article II, Section 8(e) of the State Constitution, relating to a two year prohibition upon former legislators, affect legislators currently holding office?

By now, all of you have heard of the case decided by the Florida Supreme Court involving the Sunshine Amendment and the forfeiture of Judge Sam Smith's retirement benefits, *Williams v. Smith*, case No. 52,840 (Fla. Sup. Ct., April 4, 1978). The statements made by the Supreme Court in that slip opinion clearly demonstrate the fact that, except for financial disclosure, the Sunshine Amendment is not self-implementing (or self-executing):

> There could hardly be a more specific record of patent intent of the framers that the Legislature would act to implement the constitutional amendment and supply the needed specifics. Slip Op. at p. 4
>
> In each of the subsections of the Sunshine Amendment, implementing legislation is authorized and obviously anticipated. Id., at p. 4

> That subsection [s. 8(a)] standing alone cannot be said to be self-executing, and in obvious recognition of that fact, the framers included a schedule which provides those specifics "until changed by law". *No similar schedule was provided for the other subsections*. Id., at p. 5 (emphasis supplied)
>
> Instead, [the framers] followed *the general scheme of the entire amendment* and, except for the financial disclosure provisions, *left it to the Legislature to provide the statutory implementation* to carry out the mandate of the people. Id., at p. 6 (emphasis supplied)
>
> Had such a fear existed the framers would have drafted a self-executing amendment. Id., at p. 8, footnote 8
>
> *We therefore, conclude that in adopting Article II, Section 8, the people intended that the amendment not be self-executing and that the Legislature should subsequently enact implementing laws to make it workable and effective and to carry out the intent. . .* Id., at p. 8 (emphasis supplied)

The Supreme Court's holding was quite clear and unequivocable. The Attorney General, however, has filed a "Petition for Rehearing And/Or Clarification" because he had previously opined in AGO 077-136 that Article II, Section 8(e) was self-executing and because many actions which the Commission on Ethics had taken are now subject to question (for example: defining breach of public trust). He has also issued an opinion (dated March 6, 1978) to the Ethics Commission stating that this prohibition applies only when a former legislator goes into the private sector after having served in the Legislature. He said that if a former legislator was elected to serve in another public capacity, the prohibition against lobbying wouldn't affect him. This opinion, of course, raises serious problems as to equal protection. The Secretary of State has construed the requirement in the Sunshine Amendment that candidates for constitutional office must disclose their personal finances as required by Article II, Section 8 in light of the *Williams* decision. In DE 78-21, filed April 21, 1978, he ruled that failure to so comply with the State Constitution does not disqualify an individual from being placed on the ballot for the State Senate. Unless the Supreme Court retracts all that it said and admits that it made a big mistake (due to the haste to issue opinions before Justice Karl's departure and the Chief Justice's duties on the Constitution Revision Commission), the opinion in *Williams v. Smith* will hold true to its original language and meaning. One reporter, in an ex parte communication with a Justice, was told that the Court didn't mean to say what it clearly did.

Regardless of which way the self-implementing issue is decided, however, it is clear that Article II, Section 8(e) will not affect legislators currently in office. The amendment is clearly one that has prospective application only. In other words, the prohibition affects only legislators who take their office after the effective date of the Sunshine Amendment (January 4, 1977). The law on that point is clear.

The Sunshine Amendment provides that:

> No member of the legislature or statewide elected office shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. Article II, Section 8(e), Florida Constitution

Article XI, Section 5(c), however, establishes the effective date of amendments to the State Constitution. That section provides that:

> If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

The Sunshine Amendment, then, took effect on January 4, 1977, following its approval by the voters of the State of Florida in November, 1976.

Successful candidates for legislative office, however, assume office immediately upon their election by the voters. A newly elected legislator assumes his or her office before taking the Oath of office at the Organizational Session.

It is fundamental to accepted principles of law, and indeed axiomatic, that constitutions, as well as statutes, are construed to operate prospectively unless on the face of the instrument or enactment, the contrary intent is manifest beyond a reasonable doubt. See the maxims set forth at 16 C.J.S. Con. Law s. 40, 16 Am. Jur. 2d Con. Law s. 48, and 6 Fla. Jur. Con. Law s. 41. This rule is well articulated in Sands, *2 Southerland Statutory Construction* (4th ed. 1973):

> It is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair. There is a general consensus among all people that notice or warning of the rules that are applied to determine their affairs should be given in advance of the actions whose effects are to be judged by them. The hackneyed principle that everyone is held to know the law, itself a principle of dubious wisdom, nevertheless presupposes that the law is at least susceptible of being known. But this is not possible as to law which has not yet been made. Sands, *supra*, at p. 247

One Florida case is on all fours with the factual situation discussed here. In *State ex rel. Judicial Qualifications Commission v. Rose*, 286 So. 2d 562 (Fla. 1973) the Florida Supreme Court applied the rules herein discussed in determining whether Article V, as it relates to the mandatory retirement of judges, was retrospective or prospective in application.

Judge Rose was elected on November 3, 1970, for a four year term as Judge of the Court of Record for Lee County. He took office on January 5, 1971. Pursuant to Article V, Section 20(d)(2), he was elevated to the position of Circuit Court Judge for the Twentieth Judicial Circuit on January 1, 1973. Judge Rose reached the age of seventy on October 22, 1972. The issue was whether Judge Rose reached the age of mandatory retirement on that date.

The Supreme Court held that the provisions relating to mandatory retirement which took effect on January 1, 1973, were to operate prospectively as to Judge Rose. The Court said:

> It is clear that the Constitution means that a judge who has entered by appointment or election to a judgeship knowing that he must retire at age seventy shall do so. This requirement is legally and morally certain. *However, it is a different situation where a judge elected to a judgeship and commissioned for a four year term has no foreknowledge at that time from then existing constitutional language that he will be compelled to retire at seventy*. Rose, *supra*, at 463 (emphasis supplied)

On this same set of facts, the Supreme Court of Missouri has reached the same conclusion. See, *State ex rel. Hall v. Vaughn*, 483, S.W. 2d 396 (Mo.1972). Along this same line, see *Stone v. Healy*, 5 Conn. 278 (S. Ct. 1824); *State v. Giles*, 2 Pinn. 166, 52 AmD 1949 (Wisc. 1849); *State ex rel. Stutsman v. Light*, 281 N.W. 777 (N.D. 1938); and *Powell v. Price*, 41 S. E. 2d 539 (Ga. 1941).

The parallel is clear. A member of the Legislature, elected in, or prior to, November, 1976 took office unburdened by the prohibition in Article II, Section 8(e) and with no foreknowledge at that time from then existing constitutional language that he or she would be denied the opportunity to personally represent another person or entity before the Legislature for a period of two years following vacation of office. Indeed, others would be denied having those people with perhaps the greatest expertise representing their cause.

The First Amendment to the United States Constitution confers broad immunity upon the activities of those who attempt to present their points of view to elected officials. Chief Justice Charles Evans Hughes once wrote:

> The maintenance of the opportunity for free political discussions to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our Constitutional system. *Stromberg v. California*, 83, U.S. 359, 369 (1931)

Justice Brennan once summed it up well when he observed “speech concerning public affairs is more than self expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 69, 74-75 (1964).

This First Amendment right should not be forfeited away without notice. Forfeitures are abhorred in the law. That principle is so well settled that no citation is needed.

In conclusion, the prohibition set forth in Article II, Section 8(e) does not apply to any legislator except those who were elected after the effective date of the Sunshine Amendment, to wit, January 4, 1977.

Sidney Martin
Chairman

*(Journal, House of Representatives, 1978, May 31, pages 888-890)*

**OPINION 40**

(DELETED AS OBSOLETE)

**INTERPRETATION 1**

LOBBYIST REGISTRATION

**Letter from a member of the Public Service Commission, dated March 26, 1971:**

"This is to request that my name be removed from the list of lobbyists who appear before various committees of the State Legislature.

"As an elected official and a member of the Florida Public Service Commission, I can see no reason for my being required to register as a lobbyist in order to appear before various committees of the Florida State Legislature. The only reason I would ever appear or ever have appeared is in the interest of better informing particular committees about particular bills which relate themselves in some way to the Florida Public Service Commission. I have been asked to appear before many committees and I have volunteered to appear before others, but only in this role.

"Since this is my only reason for ever appearing and it is strictly in the interest of government of the State of Florida, I can see no reason why I should be required to be a lobbyist. If you agree, please remove my name from your list of registered lobbyists and if you do not agree please contact me as to your reasons why."

**Response by Chairman Firestone, dated April 12, 1971:**

"In my opinion, when a request is made to you for your appearance before a Committee by a Member of the House of Representatives or a Committee, registration under Rule 13.1 would not be required. However, as you state in your letter, 'I have volunteered to appear before others', and in my judgment even though this is relative to particular bills relating themselves to the Florida Public Service Commission, it would still be necessary for you to comply with the registration provided under Rule 13.1.

"I personally see no stigma attached to registration under Rule 13 and would encourage all members of the Executive Branch who desire to encourage the passage, defeat or modification of any legislation to register with the Clerk of the House."

## INTERPRETATION 2

MEMBER AND FORMER LOBBYIST
SHARING OFFICE SPACE

**Letter from a Member of the House, dated September 9, 1971:**

"Would you please advise me as to whether or not it would be improper for me to share office space in my law offices with Mr. _____, who in the past has registered as a lobbyist, when the only relationship would be that of his paying a prorata proportion of the office rent. There would be no sharing of legal business or profits, or any association or partnership, with the only cause of his physical presence in a large office, and as above mentioned, paying his portion of office rent."

**Response by Chairman Firestone, dated September 17, 1971:**

"Under the circumstances, it would appear that there is no particular conflict of interest or problem of ethics in this type of arrangement. I would point out, however, that unfortunately in the minds of the public, it is difficult to distinguish this point and the sharing of this space could be questioned in the future.

"Your letter and this response will be filed with the Clerk of the House of Representatives, clearly establishing your intent and the circumstances surrounding the sharing of office space."

## INTERPRETATION 3

LOBBYIST REGISTRATION
STATE UNIVERSITY PRESIDENT

**Letter from a State University President, dated March 30, 1972, after having been cautioned about the requirements of Rule 13:**

"As you are probably aware, I and other university presidents have discussed with interested members of the legislature on several occasions this session proposed legislation which would affect the state universities. As a member of the Board of Regents Legislative Liaison Committee, I have appeared before several committees, often at the request of legislators and frequently at the request of the Chancellor.

"At no time did I perceive that these contacts might be in violation of the House rule. It is certainly my intention to comply fully with the letter and spirit of all rules of the Legislature. So as to avoid any possible misunderstandings about the propriety of my contacts with members of the Florida House of Representatives, I plan to register with the Clerk of the House in accordance with House Rule 13.1."

## INTERPRETATION 4

MEMBER—USE OF HOUSE STATIONERY

**Inquiry in behalf of a Member of the House regarding use of House of Representatives letterhead, dated November 22, 1974:**

"Mr. _____ would like to join other public officials in an offer of assistance to newcomers in governmental problems. He would do so by a letter written on his House of Representatives letterhead but with the message, including a photograph, printed at his expense. He would like to include the phrase 'not printed at public expense'.

"Mr. _____ is offering to make available the service for which, in part, he was elected to do—help citizens cope with State government. There may be some incidental political value but that is true, I suspect, of every linking of legislator and constituent."

**Response by Chairman McPherson, dated January 10, 1975:**

"I have received your inquiry concerning the use of House letterhead on letters of welcome and offers of governmental assistance to newcomers in your community.

"It is my opinion that based on the information I have received as to the content of your letter, the service or activity in question would come clearly within your rights and responsibilities as a state legislator in providing information and assistance to your constituents.

"The amount and extent of activity must, as you well know, always be conducted with caution and prudence. Therefore, based upon the information I have thus far received on your request for an opinion as to the use of House letterhead for constituent welcome letters, it is my opinion that the activity is within the realm of legislator-constituent relations."

## INTERPRETATION 5

MEMBER—BANK OFFICER
CONFLICT OF INTEREST

**Letter from a Member of the House, dated December 5, 1974:**

" . . . I am also Vice President . . . at _____ Bank. In this capacity, I'll be in charge of the bank's advertising, public relations and new business. Since I was employed around October 23, 1974 and since our financial disclosure conflict of interest forms were sent in earlier this summer, I feel that you and anyone else you think should know be aware of this.

"Also I would like any advisory opinions you or the proper person could give me as to what may be a conflict of interest on issues dealing with banking legislation before I have to vote on any such matters."

**Response by Chairman McPherson, dated January 10, 1975:**

"According to Section 112.313(3), Florida Statutes, your new position should have been reported to the Secretary of State's office 'within forty-five days of the acquisition of such position or of such material interest'.

"However, it is my understanding that there is no penalty for a 'good faith' misunderstanding of this sort so I am enclosing a copy of the appropriate form for you to complete and return to the Secretary of State's office.

"In reference to your concern about possible conflicts of interest on banking legislation, I would like to commend you for your conscientiousness but I must advise you that this is a matter of individual discretion which each legislator must deal with. There are no guidelines or rules other than the general information contained in the House Rules and Chapter 74-177 relating to financial disclosure and ethics matters."

## INTERPRETATION 6

MEMBER—USE OF HOUSE STATIONERY

**Letter from a Member of the House, dated February 5, 1975:**

"A constituent and friend who is applying for an SBA loan to make additions to a small business which he owns in _____ has asked me to furnish an accompanying letter of recommendation. This

letter would be directed To Whom It May Concern. I am willing to do so with full confidence that this individual has the intelligence, integrity and motivation to put the funds, if received, to good use.

"This question has arisen on which I would appreciate your opinion based on analogous situations. First, would there be any objections to my writing such a letter on legislative stationery? Second, if the answer to that question is 'yes', would there be any objections to my writing this letter on plain stationery and the applicant for the loan explaining my position as his State Representative in a separate, but accompanying, communication?"

**Response by Chairman McPherson, dated February 12, 1975:**

"I have received your request of February 5 for an opinion concerning use of House stationery for a letter of recommendation or character reference.

"Based on similar but not identical situations such as yours, it has been the posture and opinion of this Committee that this matter comes within the legitimate realm of legislator-constituent relations.

"I feel therefore that there would be no conflict or misuse of House letterhead in a letter of recommendation or character reference to which you refer."

## INTERPRETATION 7

(DELETED AS OBSOLETE)

## INTERPRETATION 8

LEGISLATIVE ASSISTANT—BUSINESS
AND PERSONAL CORRESPONDENCE

**Response by Chairman McPherson, dated May 24, 1976, to an inquiry from a Member of the House regarding the use of his legislative assistant for business and personal correspondence:**

"In your letter of May 5, 1976, in which you requested an advisory opinion from this committee, you stated:

> From time to time I have authorized my assistant to transcribe incidental correspondence relating to my business and personal affairs. In all cases, the time devoted has been additional to the 40 hours weekly required for performance of her state responsibilities. All correspondence has been on my business or personal stationery.

"Your question is, 'Does such work have to be performed after the close of the normal business day, . . .'

"Reference is made to the following:

> Chapter 112.3141(2), Florida Statutes—Additional standards of conduct for public employees.
>
> (2) No full-time legislative employee shall be otherwise employed during the regular hours of his primary occupation, except with the written permission of the presiding officer of the house by which he is employed, filed with the Clerk of the House of Representatives or with the Secretary of the Senate, as may be appropriate. Employees of joint committees must have the permission of the presiding officers of both houses. This section shall not be construed to contravene the restrictions of s. 11.26, Florida Statutes.

"Your question continues, 'or may it be performed after the close of the normal business day, or may it be performed during the day so long as her hours fulfill those required for her state employ and so long as the work does in no way interfere with her legislative duties'?

"Reference is made to the following House Rule:

> House Rule 1.6—Hours of employment and duties of employees; absence; political activity.
>
> Employees shall perform the duties allotted to them by custom and by rule of the House and by order of the Speaker. All full-time employees shall observe a minimum of a forty hour week unless absence from duty is authorized by the appropriate authority. If employees are absent without prior permission, save for just cause, they shall be dismissed pursuant to Rule 1.4 or forfeit compensation for the period of absence upon the recommendation of the Committee on House Administration to the Speaker.

"There appears to be no violation on your part of either statutes or rules of the House."

## INTERPRETATION 9

MEMBER—USE OF HOUSE STATIONERY

**Letter to a Member of the House by Chairman McPherson regarding use of House of Representatives letterhead, dated June 22, 1976:**

"We call your attention to a letter from the State Attorney [relating to] your letter to Copy Products of North Miami Beach and House of Representatives envelope under your letterhead.

"Reference is made to House Rule 5.6 and to Chapter 112.313(6), Florida Statutes.

"It would be my opinion that accepted principles of legislative conduct would prohibit such action on the part of any member or employee of the House of Representatives. House Rule 5.6 and Chapter 112.313(6), Florida Statutes, mandate that all actions of a legislator must be beyond reproach. By inference that the prestige and influence of his office is available for his private gain thoroughly impugns the integrity of his legislative office and jeopardizes the trust placed in all of us by our constituency.

"In review of the information and facts available I am further of the opinion that neither directly or indirectly was there intent on your behalf to misuse your position of public trust. I, therefore, consider this matter closed."

## INTERPRETATION 10

MEMBER—STANDARDS OF CONDUCT—PUBLIC OFFICE

**Letter to a Member of the House by Vice Chairman Fontana regarding House Rule 5.6, dated October 26, 1976:**

"The attached letter bearing your signature on the letterhead of [a business house] has been presented to the Committee on Standards and Conduct.

"While there may be no intent to misuse your public position, it is suggested that caution be used to avoid the appearance of misuse.

"I specifically refer to House Rule 5.6:

> 5.6—Legislative Conduct
>
> Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in him by the people. By personal example and by

admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

"This rule mandates that all actions of a legislator must be beyond reproach. By inference that the prestige and influence of his office is available if his private business is retained, the legislator thoroughly impugns the integrity of his legislative office and jeopardizes the trust placed in all of us by our constituency.

"Also we refer to Chapter 112.313(3), Florida Statutes:

112.313 Standards of conduct for officers and employees of state agencies, counties, cities, and other political subdivisions, legislators and legislative employees.—

(3) No officer or employee of a state agency, or of a county, city or other political subdivision of the state, or any legislator or legislative employee shall use, or attempt to use, his official position to secure special privileges or exemptions for himself or others, except as may be otherwise provided by law.

"It would be my sincere hope that you would receive this correspondence in the spirit with which it is intended."

## INTERPRETATION 11

MEMBER—CONFLICT OF INTEREST
BANK DIRECTOR AND ON HOUSE COMMERCE COMMITTEE

**Response by Chairman Martin, dated December 30, 1976, to an inquiry from a Member of the House regarding a possible conflict of interest:**

"This is to inform you that I have received your letter of December 17, 1976, in which you have requested an advisory opinion on a possible conflict of interest.

"You questioned whether your appointment to the House Commerce Committee would be in conflict with your membership on the Board of Directors of a small state bank and your ownership of stock in this bank in the amount of $2,000.

"It is my opinion that there would be no conflict of interest under these circumstances. It has been the posture of this committee that a part-time citizen legislator will frequently vote on matters which may in some way affect his profession, occupation, or business interests, but unless this vote would result in an obvious special benefit to the member, there is no conflict of interest involved. It has also been the position of this committee that a voting conflict should generally be a situational matter to be determined by the member with the advice of this committee if requested.

"I appreciate your conscientiousness in this matter and as I have stated, there appears to be no conflict of interest with your membership on the House Commerce Committee and your banking affiliation."

## INTERPRETATION 12

MEMBER—CONFLICT OF INTEREST
RENTAL AGENT AND OFFICE SPACE

**Response by Chairman Martin, dated April 4, 1977, to an inquiry from a Member of the House regarding a possible conflict of interest:**

"This is in response to your letter of February 16, 1977, in which you asked essentially the following questions:

> 1) Would there be a conflict of interest for a legislator acting in the capacity of a rental agent for the owners of a group of buildings to rent office space to the state Department of Health and Rehabilitative Services?
>
> 2) Would there be a conflict of interest for a legislator to rent office space, for a legislative district office, to another legislator in a building in which the first legislator has a partial ownership and the district office space is located in the second legislator's place of business?

"The answer to your first question is that there would be no conflict of interest because the business relationship would not be with the legislator's own agency as prohibited by subsection (3) of section 112.313, F.S., 1975, which states in relevant part:

> . . . Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision . . .

"In addition, paragraph (a) of section 112.313(7), F.S., 1975, provides further prohibitions on certain contractual relationships:

> 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 is an officer or employee . . . 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

"However, sub-paragraph 2. of paragraph (a) of section 112.313(7) provides an exemption to the foregoing which addresses the question at hand:

> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

"The answer to your second question is that there would be no conflict of interest when the district office is located in the legislator's place of business because subsection (3) of section 112.313, F.S., 1975, exempts legislative district office rental arrangements such as this when one legislator rents or leases district office space to himself or another legislator. Although the exact intent and meaning of this section is somewhat vague, the language exempting legislative district offices would allow the arrangement you have described. This section states in part:

> (3) DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. *The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business . . .*

"The italicized section provides an ambiguous exemption as previously stated but is directly applicable to the arrangement you have described.

"In conclusion, neither of the business arrangements you have described would present a conflict of interest."

## INTERPRETATION 13

MEMBER—USE OF HOUSE STATIONERY

**Response by Chairman Martin, dated April 7, 1977, to an inquiry from a Member of the House regarding use of House stationery for a newsletter:**

"This is in response to your telephone inquiry regarding the propriety of printing a constituent newsletter on House stationery.

"From the information you have provided, this newsletter would fall in the normal realm of legislator-constituent relations. If the design and content of the newsletter is for constituent informational purposes, this would be an acceptable practice under House Rule and the Code of Ethics for public officers and employees.

## INTERPRETATION 14

MEMBER—VIOLATION OF HOUSE RULES

**Response by Chairman Martin, dated June 10, 1977, to an inquiry from a Member of the House regarding a possible violation of the Rules:**

"This is in response to your recent inquiry in which you asked the following question:

> Is it not a violation of rules for a Member to knowingly sit at his desk, in the Chamber, and not vote? If so, how does this get enforced and what are the penalties, if any?

"House Rule 5.1 speaks to this question, as follows:

> 5.1—Members Shall Vote
>
> Every Member shall be within the House Chamber during its sittings unless excused or necessarily prevented, and shall vote on each question put, except that no Member shall be permitted to vote on any question immediately concerning his private rights as distinct from the public interest. This rule shall not abridge the right of a Member to enter on the Journal his reasons for such abstention pursuant to Rule 5.10.

"Although this rule requires members to 'vote on each question put' the interpretation and application of this rule over the years has been that voting should be a matter of each member's personal conscience.

"In researching this question and consulting with the House Clerk my staff has found that it has been traditionally and informally acceptable for a member to occasionally choose not to vote or not to be within the House Chamber when the vote is taken. The rationale has been that it is better on occasion, not to vote if the question or matter is not fully understood than to vote in an uninformed or uneducated manner.

"Further, there is no case on record to my knowledge in which a House Member has been challenged for not voting on a particular question. The fact that each member must answer to his constituents every two years has traditionally precluded this type of issue from becoming a problem."

## INTERPRETATION 15

ATTORNEY-LEGISLATOR—CONFLICT OF INTEREST
CONDOMINIUM LEGISLATION

**Response by Chairman Martin, dated July 20, 1977, to an inquiry from a Member of the House regarding a possible conflict of interest:**

"In your letter of July 6, 1977, you have requested an opinion on essentially the following question:

> Is it a conflict for an attorney legislator whose law firm represents condominium owners to become involved [(a) by authorship, (b) by voting, (c) by debate] in condominium legislation when the legislation affects clients of the firm in the same manner as it affects the public generally?

"The Standards & Conduct Committee has addressed this issue in previous opinions in attempting to clarify House Rule 5.10, which states in part:

> A Member of the House prior to taking any action or voting upon any bill in which he has a personal, private or professional interest which inures to his special private gain, or the special gain of any principal by whom he is retained or employed, shall disclose the nature of his interest as a public record in a memorandum filed with the Clerk of the House and published in the Journal of the House.

"This rule is important when considering the concept of a part-time 'citizen legislature' which Florida has traditionally maintained. Due to the diverse composition of a part-time citizen legislature, it has been expected and accepted that members of various professions and occupations would speak on and vote for legislation that would affect them as members of certain 'classes' of professions and occupations.

"The primary concern in interpreting this Rule has been with the meaning and application of the term 'special private gain'. The prohibition of a 'special private gain' in this context and by interpretation (*Opinions on Standards and Conduct*, Opinion No. 28) has excluded a benefit or gain to a certain 'class' of which the legislator may be a member. 'Class' as used in this sense would mean a profession, occupation or other similar collectivity of which the legislator is a member. This means that it is acceptable for legislators to vote on matters which affect a class of which they are a member so long as there is no special private gain to them which would be different from the gain or benefit derived by all members of the particular class affected.

"Therefore, if the gain or benefit to you or your clients resulting from your sponsoring, supporting, or voting for condominium legislation would be no different than the benefits that all other condominium attorneys or owners in the state would enjoy, there would be no conflict based on the information you have provided."

## INTERPRETATION 16

MEMBER—PART-TIME CLERICAL HELP

**Response by Chairman Martin, dated August 22, 1977, to an inquiry from a Member of the House regarding payment for part-time clerical help:**

"In your letter of August 11, 1977, you asked for a written opinion on the following question:

> Is it in any way improper or unethical for me to pay a person who is a personal employee, a sum of money each month on a regular basis, taken from the district office

expenses as part-time clerical help, to the extent that such a person provides legislative clerical assistance?

"Reimbursing a part-time employee in the manner you describe is not prohibited. Such an employee, however, should understand that he is not a state employee and is not eligible for any benefits extended to state employees. Further, according to House Administration, such an employee is responsible for providing the Member with an invoice, and the Member is responsible for reimbursing the employee upon finding the invoice valid.

"As provided in Chapter 11.13, F.S.:

> (4) Each member of the legislature shall be entitled monthly to receive reimbursement for intradistrict expenses upon his voucher for reimbursement for the payment of expense of district office rental, rental of office furniture and office equipment, utilities, telegrams, telephone and answering service, postage and post office box rent, office supplies, photocopies, legal advertising, intradistrict travel expense, *part-time clerical or technical help incurred in the performance of his legislative duties*, and other types of district expenses when specifically authorized by the Joint Legislative Management Committee . . ."

## INTERPRETATION 17

MEMBER—COMMUNICATION WITH STATE AGENCY

**Response by Chairman Martin, dated October 3, 1977, to an inquiry from a Member of the House regarding the appropriateness of communication with a state agency:**

"In response to your letter of September 21, 1977, and our subsequent conversations by phone, it is my opinion that your communication with the Florida Parole and Probation Commission was neither inappropriate or unethical.

"My staff and I have spoken to Parole and Probation Commissioner Armond R. Cross. Also, Mr. Kenneth Simmons of the Commission was interviewed in the presence of the Commission's legal counsel, Ms. Carol Snurkowski. Mr. Cross and Mr. Simmons have stated that there was nothing improper about your queries and requests for information. Indeed, Mr. Cross recognized that it is a legislator's duty to assist constituents in this type of matter, and the Commission attempts to provide information in a timely fashion in order to help legislators help their constituents.

"One of the most meaningful functions of a legislator is assisting constituents. Our esteemed Clerk, Allen Morris, in the preface of Volume I of *Facts* in a chapter entitled 'The Legislator: Sensitized to the Needs of the Public', states:

> Serving as a liaison between a constituency and state agencies is an important, year-round legislative function. The citizen, sometimes confused by the complexity of the state bureaucracy, frequently seeks the assistance of his legislator. Through this process a legislator becomes sensitized to the needs of the public. Fulfilling this function also affords a legislator an opportunity to observe the operation of state agencies and in some measure constitutes legislative oversight of the executive.
>
> The demands of modern society have extended the responsibilities of legislators far beyond the mandates of the rules that they attend all sessions, behave in an appropriate manner and vote on all issues unless excused by the house.

"In fact, Mr. Morris' other publication, *A Guide to Agencies of the Florida Executive Department* [now *Guide to Florida Government* ], was provided to each legislator to assist us in this process."

## INTERPRETATION 18

ATTORNEY-LEGISLATOR—LOBBYING BY LAW PARTNER

**Response by Chairman Martin, dated October 3, 1977, to an inquiry from a Member of the House regarding lobbying by a member of his law firm, as an individual:**

"In your letter of September 30, 1977, you requested an opinion on substantially the following question:

> May a member of my law firm lobby on behalf of "Right to Life" legislation without compensation, in his individual capacity, and not as a member of my firm?

"For your convenience, I have included a copy of the *Opinions on Standards and Conduct* published by the Clerk of the House of Representatives. I call your attention to Opinion No. 27 and other opinions regarding 'attorney-legislator, conflict of interest'.

"In this particular case, however, inasmuch as your law partner will not be appearing before the Legislature as a member of your firm and, indeed, will be appearing solely for personal reasons without any compensation or remuneration, it is my opinion that his appearance will not represent a conflict of interest."

## INTERPRETATION 19

PUBLIC OFFICIAL—VOTING—CONFLICT OF INTEREST

**Response by Lonnie Groot, Staff Director, dated October 20, 1977, to an inquiry from a Member of the House regarding the desirability of amending s. 112.3143, F.S., to require an elected or appointed official to abstain from voting when the question poses a conflict of interest:**

" . . . Section 112.3143 clearly states, and the Ethics Commission has consistently held, that a public officer can vote on *any* matter, whether a conflict exists or not. The vote counts even if a conflict of interest is not disclosed. It seems that the voting public has been made the final judge as to the propriety of the official's action. The public's recourse is to vote the official out of office.

"In Ontario, Canada, it has been made an offense to vote when one's own interest is materially benefited. I have enclosed, for your convenience, a copy of an article from the *Osgoode Hall Law Journal* which describes the state of the law there.

"Also, the developing U.S. Supreme Court law in this area seems to be that more actions of a legislative or quasi-legislative public official are prosecutable. In fact, in *U.S. v. Brewster*, 408 U.S. 501 (1972), the actual legislative actions of then Senator Brewster were declared to be part of the crime. I have enclosed a copy of a law review article which discusses that case and the related case of *U.S. v. Gravel*, 408 U.S. 606 (1972). Also, a fortiori, s. 286.012 which prohibits members of certain boards, commissions and agencies from abstaining on a vote. The section reads:

> 286.012 Voting requirement at meetings of governmental bodies.—No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act,

and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143.

"Thus, it appears clear that if you desire to deal with the situation you described, you will have to amend s. 112.3143."

## INTERPRETATION 20

MEMBER—VIOLATION OF STANDARDS AND CONDUCT

**Response by Chairman Martin, dated December 20, 1977, to an inquiry from a Member of the House regarding a possible violation of Chapter 112 in the operation of a fair booth for distribution of non-political material:**

"I am in receipt of your letter of December 14, 1977, in which you ask whether renting a booth at the county fair with your personal funds would be in violation of Chapter 112, Florida Statutes.

"There is no provision in Chapter 112 prohibiting such action on your part. Likewise, there is no provision in the House Rules prohibiting this legitimate and highly beneficial legislative activity. This activity aimed at assisting your constituents should, indeed, be commended. Also, as to the ramifications of Chapter 106 relating to Campaign Financing, I do not believe that this out-of-pocket expense could, in any way, be construed as a campaign expenditure."

## INTERPRETATION 21

MEMBER—ENDORSEMENT OF POLITICAL CANDIDATE

**Response by Chairman Martin, dated December 29, 1977, to an inquiry from a Member of the House regarding the propriety of a state representative endorsing a political candidate in a newspaper advertisement paid for by someone else:**

"Pursuant to phone conversations between you and Committee staff, I am answering your request for an advisory opinion as to the ethical considerations regarding whether or not it would be proper for you, as a State Representative, to endorse someone for political office in a newspaper advertisement paid for by someone other than yourself.

"There is nothing improper in such actions as you are not using any resource of state government for the benefit of the person you intend to endorse. Indeed, it is customary for the voters of this state to look to their elected officials for recommendations as to who to vote for in elections. An elected official does not sacrifice his rights under the First Amendment to the United States Constitution or his rights under Sections 2 and 4 of Article I of the State Constitution upon obtaining office."

## INTERPRETATION 22

MEMBER—CONFLICT OF INTEREST—AFFILIATE
RENTING OFFICE SPACE TO STATE AGENCY

**Response by Chairman Martin, dated January 27, 1978, to an inquiry from a Member of the House regarding a possible conflict of interest if a company affiliate rents office space to a state agency:**

"This is in response to your request, by telephone, for an opinion regarding the following factual situation:

> You are an officer in a development company from which you receive your sole compensation. An affiliate (one officer is in both companies and you are generally perceived as associates) owns an office building which a state agency has made inquiry as to renting space. The total footage of the space to be rented is less than 5,000 square feet. Also, a brokerage company of which you are an officer and which is another affiliate of the development company is the leasing agent for this building and would receive a commission for its part in the transaction.

"You asked whether this situation represents a prohibited conflict of interest. The answer is no. The Code of Ethics for Public Officers and Employees does not prohibit any of the transactions outlined above.

"The Code of Ethics provides in relevant parts:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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.
>
> [Section 112.313(3), Florida Statutes (1975).]

"This provision prohibits a public officer acting in his official capacity from leasing any realty for his own agency from any business entity of which he is an officer, partner, director or proprietor or in which he has a material interest.

"The provision also prohibits a public officer acting in a private capacity from leasing any realty to his own agency, if he is a state officer.

"As a state representative, your agency is the Florida Legislature, according to the definition of 'agency' contained in Section 112.312(2), Florida Statutes (Supp. 1976). Since the proposed lease would not be between you and your agency, the above-quoted provision does not apply.

"The Code of Ethics further provides as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and

> the performance of his public duties or that would impede the full and faithful discharge of his public duties . . .
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a) and (7)(a)2, Florida Statutes (1975).]

"This provision prohibits a public officer from having a contractual relationship with an agency which is subject to the regulation of his agency. Were the lease to be entered, it would seem that you would be a party to such lease and, therefore, you would have a contractual relationship with an agency which is subject to the regulation of the Legislature. However, Section 112.313(7)(a)2, quoted above, provides a limited exception to this prohibition where the officer's agency is a legislative body and the regulatory power which that body exercises over the regulated agency is strictly through the enactment of laws.

"This decision is similar to one rendered by the Commission on Ethics last year (CEO 77-13). In that case, it was deemed appropriate for a State Representative to lease property to the Department of Health and Rehabilitative Services. Also, in a later opinion (CEO 77-67), the Commission found no conflict of interest when a State Senator leased property in which he had a substantial interest to a county for county office space. Thus, a legislator does not totally give up the right to make a living upon taking office."

## INTERPRETATION 23

MEMBER—TRANSACTING PERSONAL BUSINESS
WITH DEPARTMENT OF TRANSPORTATION

**Response by Chairman Martin, dated February 16, 1978, to an inquiry from a Member of the House regarding appropriate conduct as a legislator in dealing with the Department of Transportation on a personal business matter:**

"I am in receipt of your letter of February 10, 1978, requesting guidance as to a situation which has resulted with regard to a 52 acre parcel of land which you own . . .

"Your question centers around what is the proper and appropriate conduct in your dealings with the Department of Transportation in your efforts to receive a waiver from the DOT so that you may dig fill material from land that rests within 300 feet of a right of way which bisects your property and is on the residue of your 52 acres and has been essentially rendered useless due to the effect of the right of way upon that residue.

"The guiding statute here is s. 112.313(6), Florida Statutes, which relates to misuse of public office. That section states:

> (6) MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

"Corrupt intent is defined in s. 112.312(7), Florida Statutes, which reads:

> (7) "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

"Also, it is significant to note that House Rule 5.6 states:

5.6—Legislative Conduct

Legislative office is a trust to be performed with integrity in the public interest. A member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

"In Opinion No. 26, *Opinions on Standards and Conduct*, Florida House of Representatives, a House Member was reprimanded for 'writing business clients, and/or former clients on official House stationery and enclosing your business card with the apparent purpose of soliciting business'. And, the Opinion went on to state:

This rule mandates that all actions of the legislator [House Rule 5.6] must be beyond reproach. By inference that the prestige and influence of his office is available if his private business is retained, the legislator thoroughly impugns the integrity of his legislative office and jeopardizes the trust placed in all of us by our constituency.

"Similarly, a House Member was found to have acted improperly by using House stationery to solicit financial contributions on behalf of a private lobbying organization. In that Opinion, No. 21, it was stated that the use of House stationery lends 'the prestige and influence of his office' for a private purpose. Also, it is noteworthy that s. 817.38, Florida Statutes, prohibits the use of State stationery for private purposes.

"The above mentioned legal authority would have similar application as to the use of a state telephone for the purposes of long distance phone calls and the use of one's title of State Representative to induce influence in any private business dealings or affairs.

"The recent case involving a state Senator was based upon the use of state resources and the use of his title as state Senator to obtain an advantage in a personal and private business matter.

"To sum the whole matter up, if you deal with the DOT using your private resources and not using state resources or intending to use your title of State Representative to obtain influence and if you seek the waiver as just plain John Q. Public you are not in violation of any rule or statute. And, of course, you do not give up your right to sue DOT for a 'taking' of your property merely because you have attained public office."

## INTERPRETATION 24

HOUSE EMPLOYEE—RESIGNATION TO SEEK ELECTION
TO A NONPARTISAN COUNTY OFFICE

**Response by Chairman Martin, dated February 17, 1978, to an inquiry from an employee of the House regarding the necessity of resigning his position to seek election to a nonpartisan, full-time, county position:**

"I am in receipt of your letter of February 16, 1978, which asks whether or not a full-time employee of the Florida House of Representatives must resign his position to seek election to a nonpartisan, full-time, county position.

"House Rule 1.8 is the main point of authority as to this question. That Rule states:

1.8—Hours of employment and duties of employees; absence; political activity

Employees shall perform the duties allotted to them by custom and by rule of the House and by order of the Speaker. All full-time employees shall observe a minimum of a forty hour work week unless absence from duty is authorized by the appropriate authority. If employees are absent without prior permission, save for just cause, they shall be dismissed pursuant to Rule 1.6 or forfeit compensation for the period of absence upon the recommendation of the Committee on House Administration to the Speaker.

> Employees of the House shall be regulated concerning their political activity pursuant to Section 110.092, Florida Statutes.

"Thus, the political activities of a House employee are, insofar as possible, regulated by s. 110.092, Florida Statutes. The applicable subsections are s. 110.092(4) and s. 110.092(5). Those subsections state:

> (4) As an individual, each employee retains all rights and obligations of citizenship provided in the Constitution and laws of the state and the Constitution and laws of the United States. However, no employee in the career service shall:
>
> (a) Hold, or be a candidate for, public or political office while in the employment of the state or take any active part in a political campaign while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the state. However, when authorized by his agency head and approved by the Division of Personnel, an employee in the career service may be a candidate for or hold a local public office which involves no interest which conflicts or interferes with his state employment. The Division of Personnel of the Department of Administration shall prepare and make available to all affected personnel who make such request a definite set of rules and regulations and procedures consistent with the provisions herein.
>
> (b) Use the authority of his position to secure support for, or oppose, any candidate, party, or issue in a partisan election or affect the results thereof.
>
> (5) No state employee or official shall use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate or party.

"As you can see, although you are an employee of the House, you retain all rights under both the United States Constitution and the State Constitution. Thus, if you meet the requirements of Florida Law as to qualifying for the office of which you speak, you may seek election to such office subject to the following conditions:

"1. You may not campaign for such office '. . . while on duty or within any period of time during which . . . [you are] expected to perform services for which . . . [you receive] compensation from the state'. s. 110.092(4)(a), F.S.

"2. You may run for elected office only if the Speaker so authorizes. You need not receive permission from the Division of Personnel, however, as House Rule 1.8 clearly adopts the principles of s. 110.092 and not the technicalities thereof. Proper separation of powers also mandates that this power be vested solely in the Speaker. s. 110.092(4)(a). In any event, see AGO 074-141 and *Strough v. Camp*, 293 So. 2d 689 (Fla. Sup. Ct. 1974).

"3. You may not '[u]se the authority of . . . [your] position to secure support for [yourself] or oppose any [other] candidate . . .' s. 110.092(4)(b), F.S.

"4. You may not ' . . . use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to . . . [your candidacy]'. s. 110.092(5).

"Lastly, as a cautionary word of advice, you should read Part III of Chapter 112, Florida Statutes, and refer particularly to s. 112.113(6) which relates to misuse of public office. If you take care to not use state resources and heed to the strictures of s. 110.092, F.S., you should have no trouble complying with Chapter 112.

"In summary, with the above provisions in mind and with the permission of the Speaker, you may be a candidate for elective office. To conclude otherwise, I might add, would deprive the voters of this state of many capable, experienced, and well-qualified candidates. As to any possible problems or adverse situations which may arise from such a candidacy, the Speaker will use his good and sound judgment on these matters when deciding whether or not permission is granted."

## INTERPRETATION 25

ATTORNEY-LEGISLATOR—REPRESENTATION OF NURSING HOME OPERATORS BEFORE LOCAL AND STATE AUTHORITIES

**Response by Chairman Martin, dated February 22, 1978, to an inquiry from a Member of the House, an attorney, regarding representation of operators of a nursing home facility before local and areawide authorities by him and/or his law partner:**

"You have requested by telephone that I provide you with an opinion as to the following questions:

> (1) May you represent a group of Nuns who operate a nursing home facility before a 'health facilities authority' created under s. 154.207(2), Florida Statutes (1977)?
>
> (2) May you represent the Nuns before an 'areawide council' or 'advisory comprehensive health planning council' (s. 154.205(1), Florida Statutes), to wit, a 'health systems agency' as defined in s. 381.493(3)(h), Florida Statutes?

In either of the above cases,

> (3) May your law partner represent the Nuns?

"The Sunshine Amendment, Article II, Section 8 of the Florida Constitution, provides in subsection (e) as follows:

> No member of the Legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. *No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals*. Similar restrictions on other public officers and employees may be established by laws. [Emphasis added.]

"Initially, it is clear that the questioned representation is not before a 'judicial tribunal'. You should note that this issue is currently before the Supreme Court in the case of *Myers v. Hawkins*, case number 52,639. The *Myers* case is scheduled to be argued before the Supreme Court on March 28, 1978.

"In your case, however, in answer to question number (1), your representation would be before a purely local agency and would not violate the provisions of Article II, Section (8)(e). The definition set forth in s. 154.205(2), Florida Statutes, tells the tale:

> (2) 'Authority' or 'health facilities authority' means any of the *public corporations created by s. 154.207 or any board, body, commission, or department of a county or municipality succeeding to the principal functions thereof* or to whom the powers conferred upon each authority shall be given by law. [Emphasis added.]

"Question number (2) lies in a more complicated framework. It is quite clear that a 'health systems agency' as defined in s. 381.493(3)(h), Florida Statutes, is an agency of the Federal Government created as mandated by and established in Public Law 93-641, which vests the appointive powers in local authorities. Contacts with the staff of the Committee on Health and Rehabilitative Services have made this point clear. State involvement as to statutory enactments is required in order to receive Federal funding. I might add, that the entire system is largely Federal in nature or hybrids such as Federal/Local or Federal/State.

"In s. 381.494(4), Florida Statutes, although the recommendation as to a certificate of need is made by the Federal 'health systems agency', there is the following requirement:

> At least 30 days prior to filing an application, a letter of intent shall be submitted by the applicant to the health systems agency and the department [Department of Health and Rehabilitative Services] respecting the development of a proposal subject to review . . .

"It is necessary, initially, to construe the intent of constitutional provision at hand. 'Constitutional interpretation is actuated by the rule of reason, and unreasonable or absurd consequences should, if possible, be avoided.' 6 *Fla. Jur.*, Constitutional Law s. 16 (1963). 'That constitutional language will not be construed in such a way as to lead to an absurd result is manifest.' 16 *Am. Jur. 2d* s. 78 (1976). The Supreme Court of Florida has made it clear that:

> The fundamental object in construing a constitutional provision is to ascertain and give effect to the intentions of the framers and adopters, and constitutional provisions must be interpreted in such a manner as to fulfill this intention rather than to defeat it. State ex rel. West v. Gray, 74 So. 2d 114 (Fla. 1954). In construing particular constitutional provisions, the object sought to be accomplished and the evils sought to be remedied should be kept in mind by the courts, and the provisions should be so interpreted as to accomplish, rather than to defeat such objects. State ex rel. West v. Gray, *supra*; Owens v. Fosdick, 153 Fla. 17, 13 So. 2d 700 (Fla. 1943). [*State ex rel. Dade County v. Dickinson*, 230 So. 2d 130, 135 (Fla. 1969).]

"Bayless Manning, Professor and Dean of the Stanford Law School, author of *Federal Conflict of Interest Law* and former Staff Director of the New York City Bar study, *Conflict of Interest and Federal Services*, said it well when he wrote:

> . . . The art of ethics . . . lies in the continual search for balance points that are for a time within a range of operable tolerances. . . the need for public confidence in the ethical quality of government must be weighed against a good many considerations that argue for caution in imposing more restraints on officials in the name of morality. 'The Purity Potlatch: An Essay on Conflicts of Interest, American Government, and Moral Escalation' 24 *Federal Bar Journal* 239, 256 (1964).

"The Code of Ethics for Public Officers and Employees defines 'represent' as:

> . . . actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client. s. 112.312(15), Florida Statutes.

"It is my opinion, therefore, that you may not file the letter of intent which is required by s. 381.494(4) as it is reviewed by the Department of Health and Rehabilitative Services. The question as to whether your law partner may is considered later. In any event, as a practical matter, I have been advised that the letter of intent is filed and written by the applicant and not their legal counsel.

"You should note carefully, that you may not make contact with or in any other way represent the Nuns before the Department in any other event. Despite its largely Federal function in these proceedings, the Department of Health and Rehabilitative Services is clearly a state agency. Clearly, the provisions of Article II, Section 8(e) were intended to preclude representation before the Department. The preamble of Article II, Section 8 demonstrates the intent of the People:

> A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse . . .

"Whether the mere filing of a letter of intent with the Department endangers or invites abuse of the public trust is doubtful, but it is my advice, under current law, that you do not file it personally.

"As to question (3) and the situation outlined above where you could not pursue the matter further, your law partner may represent the Nuns in any and each of these instances. Since constitutional omissions are presumed to be intentional and since the constitutional provision only prohibits 'personally' representing a client, nothing in Article II, Section 8(e) prohibits you from having a partner, or counsel associated with you, represent your client in those instances where you are prohibited from doing so. Such representations before a state agency by a partner or associate of your firm must be disclosed on a quarterly basis pursuant to Section 112.3145(4), Florida Statutes.

"In conclusion, noting the requirements of s. 112.3145(4), Florida Statutes, your partner may represent the Nuns in any of the cases cited in your questions. And, you may represent them before a health facilities authority or a health systems agency, but your personal representation must cease if the matter comes before the Department of Health and Rehabilitative Services."

## INTERPRETATION 26

MEMBER—SPONSORING CERTAIN LEGISLATION

**Response by Chairman Martin, dated March 31, 1978, to an inquiry from a Member of the House regarding the propriety of sponsoring legislation creating a study commission on which the Member's spouse is designated to serve:**

"You have transmitted a request for an opinion regarding the following factual situation:

> You have been asked to sponsor the House companion to the Senate bill creating a study commission on which your spouse is designated to serve without any remuneration whatsoever.

"The applicable House Rules here are 5.6, 5.9, and 5.10 and your sponsoring the above mentioned legislation would not contravene any of these rules.

"Without setting forth the text of these rules, I can summarize their application by saying that since you will not be receiving compensation, are not in a retainee or employee relationship, and will not receive any special private gain, your sponsorship and subsequent vote, if any, would be entirely proper. It is a matter of personal judgment as to whether or not you desire to disqualify yourself from voting or publish some sort of memorandum regarding your vote (filed with the Clerk). See Opinion No. 28, Select Committee on Standards and Conduct, (May 26, 1975) and the Chairman's Interpretation dated July 20, 1977, which was published in Interim Calendar No. 2 (1977).

"In these times when it is not unusual for both spouses to be employed and have separate careers and in these times when female legislators are increasing in number, we must be careful not to shackle the public official's right to *fully* represent those who elected him on the basis of some tangential effect the official's actions may have on a spouse who is involved in totally separate activities."

## INTERPRETATION 27

MEMBER—CONFLICT OF INTEREST—SALARIES

**Response by Chairman Martin, dated April 27, 1978, to an inquiry from a Member of the House regarding a possible conflict of interest in drawing both a salary from an electric cooperative and his legislative salary:**

"You have written me and have asked whether you have a conflict of interest because you draw a salary from an electric cooperative and also draw your legislative salary.

"In the guidebook *Welcome to the Florida House of Representatives*, our esteemed Clerk, Dr. Allen Morris, set forth a principle which has run throughout Florida's Legislative history:

> The Florida House retains its identification as a 'citizen' body in the sense that virtually all of its members are active in occupations and professions in addition to lawmaking.
>
> Affording a melding of experiences, the House has among its Members an architect, an author, a cemetery executive, a dairy feed manufacturer, an entomologist, a funeral director, a lecturer, a pharmacist, a police sergeant, a retired Air Force colonel, five educators, a turf and a garden supply wholesaler, a writer and producer of country music, four homemakers, four citrus growers, and a number of businessmen. Seven of the Members regard themselves as fulltime lawmakers. There are indeed few fields of human endeavor in which some Member does not possess expertise.

"In other words, Florida's Legislature is a 'part time Legislature' and Members are free to have outside activities because those activities give them a better perspective on what the public needs. They can understand their constituency because they remain part of it.

"Your outside employment does not conflict with any law or rule. You have disclosed this outside employment in accordance to the Sunshine Amendment and you have complied with all other provisions in Chapter 112, the Code of Ethics."

## INTERPRETATION 28

ATTORNEY-LEGISLATOR
LAW PARTNER SPOUSE OF REGISTERED LOBBYIST

**Response from Chairman Martin, dated May 15, 1978, to an inquiry from a Member of the House regarding a possible ethical violation if the Member's law partner is the spouse of a registered lobbyist:**

"I am in receipt of your letter of May 11, 1978, asking essentially the following question:

> Is there any ethical violation when a member's law partner is also the spouse of a registered lobbyist before the Florida Legislature?

"Your question demonstrates a situation of the type that is occurring much more frequently now and it is not uncommon for both spouses in a marriage to be involved in professional careers which overlap from time to time.

"First, it is abundantly clear that your situation does not fall within the realm of Chapter 112, the Code of Ethics for Public Officers and Employees. There is no provision in the Code that would pertain to this situation unless some other action or activity were involved which, of course, related to some corrupt misuse of office.

"Likewise, it is clear that the situation does not fall within one of the *specific* House Rules relating to conduct by members of the Florida House of Representatives. Rule 5.6, however, does relate to the *general* conduct by a House Member. Rule 5.6 states:

> Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

"It is my opinion that this rule also has been complied with in that you are taking, and have taken in the past, great care to avoid even the appearance of any impropriety.

"I would like to point out to you, however, Opinion No. 27 of the Select Committee on Standards and Conduct, issued January 30, 1974, where the Committee held that there was a conflict when a member of the Legislature was a law partner of a registered lobbyist. The decision stated:

> It was the unanimous decision of this Committee that such an arrangement is in conflict with the best interests of the Legislature and the constituents you serve. In no way does this reflect on the integrity of those engaged in lobbying. We accept lobbying as an entirely legitimate activity in the democratic process and do not intend to reflect on any member of this profession as long as a person is in compliance with applicable law.

"Also, it should be noted that the Florida Bar has issued several opinions (59-31 and 67-5) which concluded:

> It is improper for a lawyer whose partner serves in the Florida Legislature to represent a client before the Legislature as a registered lobbyist even though the lawyer who is a legislator makes full disclosure of such facts, and does not share in any fees generated by the lobbying activities. Opinion 59-31, April 11, 1960 Committee on Professional Ethics of the Florida Bar.

"We have contacted, hypothetically, and have spoken to the Staff Counsel of the Florida Bar and, although this particular situation has never been decided, he cited Opinion 74-49 wherein it was held that:

> Where two attorneys are husband and wife, it is not unethical *per se* for a law firm employing one spouse to represent a client whose interests are adverse to those of a client represented by a law firm employing the other spouse; but impermissible conflicts may arise and must be decided on a case by case basis. Opinion 74-49, February 20, 1975 Committee on Professional Ethics of the Florida Bar.

"In conclusion, the situation you have posited does not represent an unethical situation unless other behavior, outside of the bare situation, would cause such situation to arise."

## INTERPRETATION 29

MEMBER—STATE PURCHASING PERSONAL PROPERTY

**Response by Chairman Martin, dated May 26, 1978, to an inquiry by a Member of the House regarding the ethical ramifications of state purchase of land owned by him:**

"I am in receipt of your letter regarding a question you have regarding the ethical ramifications of a purchase of land which you own by the state.

"I have reviewed the provisions in the Code of Ethics and in the Sunshine Amendment with your situation in mind. No provision is directly applicable because most of the events relating to the purchase (for example the vote on the Appropriations Act) occurred prior to your becoming a Member of the Legislature. Also, neither the Code or the Amendment prohibit an official from

representing himself or herself before a state agency. The key as to representation is whether an official receives compensation for representing a person or entity.

"The only applicable section of the Code of Ethics is s. 112.313(6) which states:

> (6) MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

"The only reason I call this to your attention is because a State Senator was disciplined earlier this year because, in part, he used state resources (including state long distance telephone services) to conduct his personal business.

"So, in conclusion, the situation you have presented does not contravene any provision of law relating to ethics in government."

## INTERPRETATION 30

MEMBER—CONFLICT OF INTEREST
EMPLOYED BY FIRM DOING BUSINESS WITH STATE

**Response by Chairman Martin, dated June 22, 1978, to an inquiry from a Member of the House regarding a possible conflict of interest if employed by a firm which does business with the state:**

"I am in receipt of your letter of June 19, 1978, requesting an opinion relating to whether there would be any ethical problems if you were to accept employment with an architectural firm either before you relinquish your office or afterwards.

"First, if you were to resign from the Legislature and begin working for the firm you mention, there would not be a conflict of interest or violation of any House Rule or provision of law. It is also my opinion that you may appear before the Legislature on the firm's behalf, Opinion No. 39, Committee on Standards and Conduct, page 888 House Journal (1978 Regular Session).

"If you decide to retain your office and also enter into an employment relationship with the firm, there would not be any problem either, but the provisions of s. 112.3145, Florida Statutes (1977) would affect you and you would be required to file disclosure of all 'state level' representations by the firm.

"Thus, in conclusion, it is up to you as to whether or not you wish to resign your office and accept employment in the private sector. In any event, except for the disclosure provision, your employment on its own would not be a violation of any provision of law relating to the proper ethical conduct of a public officer."

## INTERPRETATION 31

MEMBER—USE OF LEGISLATIVE OFFICE
AND AIDE IN CAMPAIGN ACTIVITIES

**Response by Chairman Martin, dated August 2, 1978, to an inquiry from a Member of the House regarding proper use of a legislative office and aide in campaign activities:**

"I am in receipt of your correspondence regarding use of your legislative office and the proper role of a state-paid legislative aide insofar as campaign activities are concerned.

"The applicable House Rule as to the use of your aide is House Rule 1.8 which states:

1.8—Hours of employment and duties of employees; absence; political activity

Employees shall perform the duties allotted to them by custom and by rule of the House and by order of the Speaker. All full-time employees shall observe a minimum of a forty hour work week unless absence from duty is authorized by the appropriate authority. If employees are absent without prior permission, save for just cause, they shall be dismissed pursuant to Rule 1.6 or forfeit compensation for the period of absence upon the recommendation of the Committee on House Administration to the Speaker.

Employees of the House shall be regulated concerning their political activity pursuant to Section 110.092, Florida Statutes.

"Also coming into play is s. 110.092, Florida Statutes (1977) which reads in relevant part:

110.092 Political activities and unlawful acts prohibited.—

(4) As an individual, each employee retains all rights and obligations of citizenship provided in the Constitution and laws of the state and the Constitution and laws of the United States. However, no employee in the career service shall:

(a) Hold, or be a candidate for, public or political office while in the employment of the state or take any active part in a political campaign while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the state. However, when authorized by his agency head and approved by the Division of Personnel, an employee in the career service may be a candidate for or hold a local public office which involves no interest which conflicts or interferes with his state employment. The Division of Personnel of the Department of Administration shall prepare and make available to all affected personnel who make such request a definite set of rules and regulations and procedures consistent with the provisions herein.

(b) Use the authority of his position to secure support for, or oppose, any candidate, party, or issue in a partisan election or affect the results thereof.

(5) No state employee or official shall use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate or party.

"And, Personnel Directive Number 3 of the Joint Legislative Management Committee reads:

*3.1 Hours of Work*

The department head shall establish a workweek of forty hours a week for employees, except those employees filling part-time positions. Full time employees of the Florida Legislature are to be present on their assigned jobs for the total hours indicated unless absence from duty is authorized by the appropriate authority in accordance with the policies set forth in these directives. The work day is to be from 8:00 A.M. to 5:00 P.M., except when specifically authorized by the House of Representatives, the Florida Senate or the Joint Legislative Management Committee. If special circumstances dictate, the hours of work may be different for different classes of positions, but the average length of the workweek shall be uniform for each class.

* * * * *

The rules applicable to breaks are as follows:

- No work break shall exceed 15 minutes absence from the employee's work station.

- Unused work breaks may not be accumulated.

- Work break time shall not be authorized to cover an employee's late arrival to duty or early departure from duty.

Falsification of an attendance or leave record shall be cause for dismissal of the employee or employees involved.

Except for regular compensatory leave used during the workweek in which it was earned, approved leaves of absence with pay and holidays, including delayed holidays that are granted as compensatory leave earned for working on a holiday, shall be counted as time worked during the workweek.

"That directive supersedes the Chairman's Interpretation of May 5, 1976 by Rep. McPherson which relates to outside employment. Also, you should note that Advisory Opinion No. 15 issued in 1970 is no longer followed insofar as the House Administration Committee having sole jurisdiction over the hours of employees and the ethical ramifications thereof.

"Personnel Directive No. 3 additionally provides that '[a]n employee who is granted a leave of absence without pay shall be an employee of the state while on leave . . .'

"Thus, reading the above authorities together and in conjunction with the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112 of the Florida Statutes, it is clear that an employee of the Florida House of Representatives may not participate in any campaign activities during the course of the work day as defined in Personnel Directive No. 3.

"Likewise, it would be improper for a representative to use state paid office space or resources to further a political campaign. This would include the use of telephones, materials, and personnel. There are, of course, inadvertent situations. For instance, if a call comes in to you as a representative, your aide will not be able to surmise whether the caller wants to talk politics or whatever unless she has ESP or some other power unknown to man. Nevertheless, it would be proper for the aide to answer such a call because you were called in your capacity as state representative. Therefore, it is proper for your aide to function as usual in this type of situation because your role as state representative encompasses meetings with members of the public *no matter what they may have on their minds*. Good common sense is the key to the use of your aide and insofar as use of your legislative office is concerned.

"Rule 5.6 must be our guide with regard to this area and our activities as well as to those who we have responsibility for and authority over. That rule reads:

5.6—Legislative Conduct

Legislative office is a trust to be performed with integrity in the public interest. A member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

"In conclusion, so long as your activities and the resources under your control are 'performed with integrity and in the public interest' your activities will comport with the standards and conduct demanded of all members."

## INTERPRETATION 32

LEGISLATIVE AIDE—EMPLOYED
IN OTHER CAPACITY BY MEMBER

**Response by Chairman Martin, dated August 14, 1978, to an inquiry from an employee of the House regarding employment, in some other capacity, of a Member's legislative aide:**

"You have asked for my interpretation as to whether or not it is proper for a Member's legislative aide to be employed in some other capacity by the Member.

"The applicable House Rule is Rule 1.8 which reads:

> 1.8—Hours of employment and duties of employees; absence; political activity
>
> Employees shall perform the duties allotted to them by custom and by rule of the House and by order of the Speaker. All full-time employees shall observe a minimum of a forty hour work week unless absence from duty is authorized by the appropriate authority. If employees are absent without prior permission, save for just cause, they shall be dismissed pursuant to Rule 1.6 or forfeit compensation for the period of absence upon the recommendation of the Committee on House Administration to the Speaker.
>
> Employees of the House shall be regulated concerning their political activity pursuant to Section 110.092, Florida Statutes.

"Also applicable here, however, are Personnel Directives promulgated by the Joint Legislative Management Committee. The applicable provisions of the Directives are:

> *3.1 Hours of Work*
>
> The department head shall establish a workweek of forty hours a week for employees, except those employees filling part-time positions. All full time employees of the Florida Legislature are to be present on their assigned jobs for the total hours indicated unless absence from duty is authorized by the appropriate authority in accordance with the policies set forth in these directives. The work day is to be from 8:00 A.M. to 5:00 P.M. except when specifically authorized by the House of Representatives, the Florida Senate or the Joint Legislative Management Committee. If special circumstances dictate, the hours of work may be different for different classes of positions, but the average length of the workweek shall be uniform for each class.
>
> * * * * *
>
> The rules applicable to breaks are as follows:
>
> - No work break shall exceed 15 minutes absence from the employee's work station.
> - Unused work breaks may not be accumulated.
> - Work break time shall not be authorized to cover an employee's late arrival to duty or early departure from duty.
>
> Falsification of an attendance or leave record shall be cause for dismissal of the employee or employees involved.
>
> Except for regular compensatory leave used during the workweek in which it was earned, approved leaves of absence with pay and holidays, including delayed holidays that are granted as compensatory leave earned for working on a holiday, shall be counted as time worked during the workweek.

"Personnel Directive Number 3 additionally provides that '[a]n employee who is granted a leave of absence without pay shall be an employee of the state while on leave . . .'

"Lastly, and additionally, s. 112.3141(2) would apply here. The subsection reads:

> 112.3141 Additional standards of conduct for public officers.—

(2) No full-time legislative employee shall be otherwise employed during the regular hours of his primary occupation, except with the written permission of the presiding officer of the House by which he is employed, filed with the Clerk of the House of Representatives or with the Secretary of the Senate, as may be appropriate. Employees of joint committees must have the permission of the presiding officers of both houses. This section shall not be construed to contravene the restrictions of s. 11.26.

"Thus, reading the above provisions together, it is clear that a Member may hire and compensate his legislative aide, for non-legislative business so long as compliance with the above provisions is accomplished."

**INTERPRETATION 33**

MEMBER—USE OF HOUSE STATIONERY

**Response by Chairman Martin, dated September 19, 1978, to an inquiry from a Member of the House regarding the use of legislative stationery in a local United Way campaign:**

"You have requested my opinion as to whether it would be proper to use your legislative stationery to assist your local organizers in the United Way campaign drive being organized in your community.

"I have reviewed the applicable rules and statutory provisions as well as prior opinions and interpretations. Without a doubt there is no reason for you not to assist the Drive in your legislative role including correspondence as a State Representative soliciting volunteers."

**INTERPRETATION 34**

MEMBER—CONFLICT OF INTEREST
CONSULTANT TO PRIVATE BONDING COMPANY

**Response by Chairman Martin, dated November 13, 1978, to an inquiry from a Member of the House asking if his serving as consultant to a private bonding company handling bonds generated from the Public Housing Finance Authority Law creates a conflict of interest:**

"Thank you for your letter of November 7, 1978, wherein you request a determination as to whether your serving as consultant to a private bonding company handling bonds generated from the Public Housing Finance Authority Law creates a conflict of interest in the Florida House of Representatives.

"In consideration of our telephone conversation and your letter, and opinions previously rendered by this Committee, I can see no conflict in your being a consultant to the firm.

"I would advise you, however, to file the appropriate statements with Allen Morris, Clerk of the House, so that no one may question your involvement in this matter."

**INTERPRETATION 35**

MEMBER—BUSINESS ENTITY
DOING BUSINESS WITH STATE AGENCY

**Response by Chairman Healey, dated May 25, 1979, to an inquiry from a Member of the House as to the propriety of his association with a business entity doing business with a state agency:**

"This is in response to your recent letter in which you inquired as to the propriety of your association with a business entity doing business with a state agency. Specifically, an opinion was requested in answer to the following question:

> 'May a member of the Florida House of Representatives be an officer and stock-holder in a corporation which is providing a service to a state agency?'

"It was stated in your letter that this corporation would provide a news clipping service for a monthly fee to private as well as public agencies. Your question is answered in the affirmative.

"The standards of conduct for public officers and employees are set forth in s. 112.313, F.S. The prohibitions there are applicable to all public officers which include 'any person elected or appointed to hold office in any agency'. s. 112.313(1), F.S. As is pertinent here, agency is defined for the purpose of that section to mean 'any state . . . government entity of this state, whether elective, judicial, or legislative . . .' s. 112.312(2), F.S. Therefore, the provisions of the statutory standards of conduct are applicable to members of the state legislature.

"As described, the business corporation will be doing business with public agencies by virtue of the service provided for a fee. The standards of conduct proscribe such business with an officer's own agency. It is there stated in part:

> 'Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof if he is serving as an officer or employee of that political subdivision . . .' s. 112.313(3), F.S.

"This language prohibits a public officer from acting in a private capacity to sell goods or services to that officer's own agency. This private capacity has previously been construed to be present when the private officer owns a 'material interest' in the entity doing business with the government agency. *Op. Comm. Ethics* 75-196. 'Material interest' is defined as direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. s. 112.312(11), F.S.

"For the purposes of the Code of Ethics, the agency of a state representative is the Florida Legislature. The prohibition against doing business applies only to one's own agency. Therefore, with the possible exception of the Legislature of which you are a member, there is no prohibition against a business entity with which you are associated or have a material interest in doing business with state agencies.

"In determining whether a Legislator's business entity could also do business and perform services for the Legislature, or individual members thereof, the applicable statute is s. 112.313(7)(a)(2), F.S. That provision reads:

> '2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.'

"The business entity which you have described is subject to regulation by the Legislature only through the enactment of laws affecting that and all similar businesses. Therefore, by virtue of your position as a member of the House of Representatives you are within the statutory exception to the conflict of interest law as set out above. See *Op. Comm. Ethics* 76-167 (September 13, 1976). Accordingly, there is no statutory prohibition against a business of which you are a stockholder or officer doing business with state agencies, including the Legislature.

"The rules of the House of Representatives provide that no member shall receive compensation for services rendered when such activity is in conflict with the member's duties as a state representative. Rule 5.9, *Rules of the Florida House of Representatives (1979)*. The statutory provisions noted above indicate there is no conflict involved in the situation you've described. Likewise, no conflict of interest under the House rule is present. Therefore, the provisions of Rule 5.9 are not applicable.

"In summary, no conflict exists under either the statutory code of ethics or the rules of the House in the case of a business entity of which a member of the House is an officer or stockholder doing business with state agencies, including the Legislature."

## INTERPRETATION 36

ATTORNEY-LEGISLATOR—LAW FIRM
REPRESENTING CLIENT IN TRANSACTION WITH COUNTY
CONFLICT OF INTEREST

**Response by Chairman Healey, dated May 25, 1979, to an inquiry from a Member of the House regarding his law firm's representation of a client in a transaction with the county:**

"This is in response to your letter requesting an interpretation of the statutory code of ethics and House rules in answer to the following question:

> 'Does the fact that I am a member of the Florida Legislature, who would benefit from the fee to my law firm, constitute a conflict of interest?'

"The situation you have described contemplates another member of your law firm, which is a professional association, representing a land owner who is seeking to sell certain real property to a county. The property qualifies for state matching funds for the purpose under the Endangered Lands Act.

"For the purpose of the statutory code of ethics (Part III, Ch. 112, F.S.) your agency is the Florida Legislature. The situation described involves an agency other than the Legislature (in this case, a county). Therefore, there is no prohibited conflict of interest since no business is being done with your agency.

"The fact that state funds may be involved does not by itself raise the spectre of any conflict. The only regulatory authority which your position as a state legislator possesses over the county is through the enactment of laws. No conflict exists when the only regulatory authority exercised over a business entity is the enactment of laws. s. 112.313(7)(a)(2), F.S. See *Op. Comm. Ethics* 77-10 (February 1, 1977).

"The Ethics Commission has previously opined that an attorney for a town may represent a building project which had previously been in litigation with the town and is subject to regulation by the town through the enactment of ordinances. *Op. Comm. Ethics* 76-63 (March 16, 1976). Also, the commission has determined that a legislator's law firm may represent municipalities and special taxing districts because the legislator's regulatory authority is strictly through the enactment of laws by the Legislature as a whole. *Op. Comm. Ethics* 75-197 (November 5, 1975).

"Both of the above cited opinions appear applicable to the situation which you have described. The result is the same in that your firm will receive compensation in the form of a legal representation fee for representing a client in matters before an agency over which you exercise no direct regulation.

"Therefore, your question is answered in the negative. No conflict of interest exists by virtue of your law firm's representation of a client in a transaction with the county. Likewise, no conflict appears to exist under Rule 5.9, *Rules of the House of Representatives*."

## INTERPRETATION 37

ATTORNEY-LEGISLATOR—CONFLICT OF INTEREST
REPRESENTING CLIENT BEFORE STATE AGENCY

**Response by Chairman Martin, dated July 9, 1982, to a request by the Speaker for a preliminary report regarding a Member of the House and the "question of whether any presence or contact between a lawyer member of the Legislature on behalf of a paying**

**client constitutes a prohibited conflict under Section 8(e) of Article II of the Florida Constitution:"**

*REPORT TO SPEAKER*

"An article in the *Miami Herald* on April 19, 1982, alleged that Representative Terence T. O'Malley had represented a client, the Kenilworth Insurance Company, before the Florida Department of Insurance in violation of the state constitution.

"On May 3, 1982, Representative O'Malley requested by letter, of the Speaker of the House of Representatives, that an investigation be conducted into the allegations. Subsequently, I was directed by the Speaker to 'gather information necessary to determine if an investigation should be conducted'.

"Representative O'Malley was informed of the preliminary inquiry and statements concerning the allegations were requested from him and Mr. Gary Kelly, Director of the Division of Insurance Company Regulation of the Florida Department of Insurance. Both individuals submitted statements explaining the purpose of the meetings (see exhibits E and F, respectively) and what transpired.

"In brief, the statements reflect that meetings occurred on December 14, 1981, January 25, 1982, March 1, 1982, and March 12, 1982, to discuss the Kenilworth Insurance Company reinsurance agreement with the Beacon Insurance Company. The individuals involved are included in the statements and both statements reflect Representative O'Malley's attendance at each meeting.

"Representative O'Malley's statement reflects that at the time of the meetings the Kenilworth Insurance Company was a client of the law firm of which Rep. O'Malley is a partner. Furthermore, Mr. Kelly and the Department viewed Rep. O'Malley as the attorney for his client and not as a legislator (see exhibit E & G). A March 3, 1982, Department memorandum to the Commissioner on Insurance reflects that Rep. O'Malley was representing the Kenilworth Insurance Company in regard to the new proposed insurer (exhibit H).

"The four meetings were at the request of the Department and contact with Rep. O'Malley was for the purpose of having Rep. O'Malley advise his client of the request for the meetings.

"Mr. Kelly states that such meetings are normal procedure whenever the Department desires to meet with various insurance companies.

"In Representative O'Malley's request for an investigation, he specifically raised 'the question of whether any presence or contact between a lawyer member of the Legislature [and a state agency] on behalf of a paying client constitutes a prohibited conflict under Section 8(e) of Article II of the Florida Constitution'. The prohibited conflict he refers to reads as follows:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. *No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.* Similar restrictions on other public officers and employees may be established by law.

"The Commission on Ethics, in opinion 77-168, addressed the question of representation before a state agency by a member of the legislature. The Commission advised that the provision concerns only personal representation by a legislator of a client before a state agency and such representation as defined in the Code of Ethics for Public Officers and Employees means:

> actual physical attendance on behalf of a client in an agency proceeding the writing of letters or filing of documents on behalf of a client, and personal communication made with officers or employees of any agency on behalf of a client. [s. 112.311(15), F.S. (1981)]

"It is apparent from the facts submitted in the statements of both Rep. O'Malley and Mr. Gary Kelly that:

1. The meetings at which Rep. O'Malley was present were before a state agency, the Division of Insurance Company Regulation of the Department of Insurance [refer to s. 20.13(2), F.S. (1981) and Kelly statement, Exhibit M].
2. Rep. O'Malley was perceived by the Department to be the attorney for the Kenilworth Insurance Company as reflected in Mr. Kelly's statement, [Kelly memo dated March, 1982, Exhibits E, F & G].
3. Kenilworth Insurance Company was a client of the law firm of Brandy, O'Malley and Vitello, of which Rep. O'Malley was a partner [O'Malley statement, Exhibit E], and
4. Compensation for representation is inferred by the question posed in Rep. O'Malley's letter dated May 3, 1982, exhibit A.

"In considering the facts mentioned, one must take into account the trust inherent in the office of a Member of the House of Representatives.

"Any and all actions of a Member, whether officially or privately, should be above reproach and leave no doubt in the public's mind that he is guarding the responsibility of his office entrusted to him by the public.

"In conclusion, I feel there are sufficient facts to conclude that Representative O'Malley, whether intentional or not, violated the constitutional provision prohibiting a legislator from personally representing any person or entity before a state agency for compensation.

"I trust you will find this preliminary report satisfactory and await further direction on this matter."

## INTERPRETATION 38

LOBBYIST—REPRESENTATION OF
CORPORATION OR ITS CLIENTS

**Response by Chairman Allen, dated June 25, 1985, to an inquiry from a former Member of the House regarding a lobbyist representing a corporation and its clients before the Legislature:**

"Under the provisions of Section 11.045, you have requested an opinion on the following question:

> 'When a lobbyist represents a corporation, which corporation is retained by various clients for the purpose of seeking to encourage the passage, defeat, or modification of any legislation, is that lobbyist required to register with the Joint Legislative Office on behalf of all clients of the corporation or simply on behalf of the corporation named?'

"Section 11.045 is modeled on House Rule 13 and both require lobbyists to register. The purpose of registration is to enable Members of the Legislature 'to determine the interest of the person appearing before them or discussing with them personally passage or defeat of legislation'. See Advisory Opinion 20, Opinions and Interpretations - Ethics, compiled by the Office of the Clerk. [Now titled *Legislative Conduct*] In most cases the real party in interest is the client of the corporation which employs you, not the corporation itself (though the corporation may have its own interests for which you may be called upon to lobby.) Your situation is not unlike that of an attorney in a law firm employing several attorneys. While you are technically employed by the firm, you actually represent the interest of clients who are assigned to you. Therefore, you should register with the Joint Legislative Office on behalf of all clients whose interest you represent."

## INTERPRETATION 39

MEMBER—USE OF HOUSE STATIONERY

**Response by Chairman Allen, dated September 11, 1985, to an inquiry from a Member of the House regarding the use of House letterhead stationery:**

You have proposed sending on your House letterhead stationery a letter soliciting advertising customers for a minority newspaper in your area. While I am unable to find any precedent specifically on point, I must advise against the use of House letterhead for such a purpose based on several considerations.

While you state in your letter that you, as an elected official, are "very deeply concerned with the success of small and minority businesses", you have chosen only one on whose behalf to solicit specific support. This action could cause your motives to be questioned particularly in light of s. 112.313(6), Florida Statutes, which provides:

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

Even where no "corrupt" motive can be found, there will be those who will question what public interest is served by your solicitation of advertising clients for this one newspaper. Similarly, if the use of House letterhead for such a purpose were allowed, it would set a precedent under which a wide variety of appeals might be possible, and effective controls and guidelines would be most difficult to devise.

If your advertising appeal were to succeed, the result would be to provide funds to the newspaper. In Opinion 21 of *Opinions and Interpretations on Standards of Legislative Conduct*, the Committee on House Administration considered "whether a House Member can use official House stationery, or a reproduction thereof, to solicit financial contributions on behalf of a private lobbying organization". [The publication is now titled *Legislative Conduct* ] In the course of the opinion which disapproved of such use reference was made to s. 817.38, Florida Statutes, which

> . . . prohibits any person from sending any letter for the purpose of obtaining any money which simulates the state seal or the stationery of any agency with the intent to lead the recipient to believe it is genuine. The term "simulate" is generally defined as copying, representing, feigning or giving the appearance of something else. Clearly within the scope of this definition is reproduction, and *we would therefore conclude that under existing law, it would be unlawful to use reproduced House stationery impressed with the state seal in order to solicit funds for any purpose.*

[But see Interpretation 33, *Opinions and Interpretations* (Now *Legislative Conduct*) authorizing use of legislative letterhead in a local United Way Campaign.] The Committee concluded that "a House Member cannot use official House stationery . . . to solicit financial contributions on behalf of a private lobbying organization." While the beneficiary of your appeal is not a private lobbying organization, the reasoning of the opinion has some applicability here.

Finally, Rule 5.6 sets the general standard of conduct for a House Member:

> Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the legislative body, he shall watchfully guard the responsibility of his office.

Using House letterhead lends the dignity and prestige of the House to what is essentially a private enterprise and thereby impugns the integrity of the House.

Nothing herein is intended to question your motives or purposes, and you are commended for your conscientiousness in seeking guidance in this matter. In spite of the fact that use of House

stationery is not recommended, there appears to be no bar to sending the letter in your personal capacity. See Opinion 23, *Opinions and Interpretations* [Now *Legislative Conduct* ]

## INTERPRETATION 40

ATTORNEY-LEGISLATOR—COMMUNICATION
WITH LEGISLATIVE AND DEPARTMENT STAFF
WHILE REPRESENTING CLIENT

**Response by Chairman Allen, dated October 3, 1985, to an inquiry from a Member of the House, regarding communicating with legislative staff while acting as an attorney on behalf of a client who wants to establish an alcohol rehabilitation center:**

You have posed the following situation:

You are an attorney representing a client who wants to establish an alcohol rehabilitation center. It is not clear under current law whether a certificate of need (CON) is necessary. You want to know if you may legally and ethically talk to legislative staff and department personnel to determine the necessity for a CON.

Article II Section 8(e), Florida Constitution, states in part, “No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.” The Ethics Commission first interpreted this provision in CEO 77-168, a copy of which is attached. That opinion disapproves of communications by a legislator/attorney on behalf of a client when such communications involve some discretion by the agency since that “presents the opportunity for a legislator/attorney to misuse the influence of his public office and also can present the appearance of improper influence even where none is attempted, especially where the agency’s decision is favorable to the client”. Relying in part on the broad definition of “represent” and “representation” in s. 112.312(17), and a similar Texas constitutional provision, the Ethics Commission took a hardline view and made no exception even for ministerial acts, though the commission retreated from that position in CEO 82-83 (allowing the filing of papers with the Division of Corporations) where communications involve no discretion by an agency.

In light of these guidelines, I am of the opinion that under Article II, Section 8(e) you may not communicate with agency staff (the legislature is included in the definition of “agency” in s. 112.312(2)) on behalf of a client where such communications require an interpretation and application of current law to your client’s situation. As indicated in CEO 77-168, you are not barred from making inquiries “in behalf of a constituent, as such are not undertaken for compensation”, nor from representing clients before judicial tribunals. Finally, that opinion also specifically allows a partner or other counsel associated with you to represent your client when you are prohibited from doing so, provided such representation is disclosed on a quarterly basis pursuant to s. 112.3145(4).

## INTERPRETATION 41

USE OF GOLD SEAL

**Memorandum, dated May 29, 1985, to Dr. Allen Morris, Clerk, from Speaker Thompson regarding the use of the House Seal on gold wafers:**

I concur in your judgment that the impressions of the House seal on gold wafers are to be used only on official papers of the House of Representatives.

It is my understanding that these seals have in the past been reserved for use on documents such as resolutions, joint proclamations of the Speaker and President calling special sessions, and on documents certified by the Clerk for submission to the courts as evidence in litigation. I would prefer that we continue to restrict use of the seal for these purposes.

## INTERPRETATION 42

USE OF HOUSE SEAL

**Response, dated January 6, 1986, to an inquiry from a Member regarding the use of the House Seal:**

You recently referred to this committee an inquiry from a Member regarding the use of the House seal. The Member was forming a not-for-profit corporation whose primary purpose was to foster and enhance understanding of governmental affairs and current events. This function was to be accomplished by having public officials address the group, round-table discussions and trips to various government meetings and buildings, including the Capitol complex. The inquiring Member wished to use the House seal on the corporation's letterhead.

In a telephone call to the Member I advised against such use for the following reasons:

1. Neither the corporation nor its primary purpose are official House or legislative business. While the House seal has never been formally adopted by the House (see, for example, s. 11.49, describing the Senate seal and coat of arms), its use has become customary on stationery and other documents. It carries with it the honor, prestige and integrity of the House and its use should be restricted to official House and legislative affairs and activities having a close nexus therewith. While the purpose of the proposed corporation is laudatory and the corporation founder is a legislator, those facts alone are insufficient to justify use of the seal on corporate letterhead.
2. The House would have no effective future control over the use of the seal on the corporate letterhead. Unlike most requests for use of the seal, this one is not for a single subject or short duration use. A corporation has a perpetual existence and its articles of incorporation and bylaws may be amended. Future corporation officials may seek a different role for the corporation which could be inconsistent or in conflict with the use of the House seal. The House presently has no effective means to monitor such ongoing future activities.

This opinion should be distinguished from inquiries by Members regarding the proper use of House letterhead stationery which carries the House seal. Restricting the use of the seal, itself, is consistent with a May 29, 1985 memo from Speaker James Harold Thompson to you, which was published in the first Interim Calendar, September 26, 1985 (p. 6). While that memo concerned the use of the seal on gold wafers, it is the seal, itself, not its form, which carries the dignity of the House. The use of House stationery by a Member has not been as restricted as the use of the seal but there are many instances where a requested use has been denied. See *Opinions and Interpretations on Standards of Legislative Conduct* compiled by the Office of the Clerk, April, 1983. [Now titled *Legislative Conduct* ]

## INTERPRETATION 43

USE OF HOUSE STATIONERY FOR
SOLICITATION OF FUNDS

**Response, dated January 24, 1986, to an inquiry from a Member regarding the use of House letterhead stationery for solicitation of funds:**

You have inquired whether you may use House letterhead to solicit contributions from industry and other interested businesses and individuals for research conducted by IFAS on the Formosan termite. Your solicitation derives from your membership on the Formosan Termite Taskforce which is composed of industry representatives, public officials and interested citizens. Based on the specific circumstances set out below, your use of House stationery for this solicitation is approved.

The Taskforce, which is staffed and assisted by the Cooperative Extension Service Office in Davie, is responsible for coordinating and disseminating the research on the Formosan termite among interested industries and the general public. The Taskforce predated, and was instrumental in, the passage of Chapter 84-293 which created the Formosan Termite Coordinating Council. The

Council was appropriated $10,000 to carry out its responsibilities. During its one-year lifespan, the Council issued a report containing a number of recommendations relating to the monitoring and research of the Formosan termite, including funding.

The Institute of Food and Agricultural Sciences (IFAS) at the University of Florida is heavily involved in this activity: it is the primary funding source for the research; the Extension Service is a branch of IFAS; the research is being conducted by IFAS. IFAS received $78 million in state funding in FY 1985-86 and over $100,000 has been allocated by IFAS to this effort this year.

The minutes of the Taskforce meeting of September 30, 1985 include a discussion of the need for additional funding. Among the suggested sources were grants and donations from builders, bankers, and other associated groups with an interest in this problem. You have indicated that your solicitation letter directs readers to send any contributions to the SHARE account of the University of Florida Foundation, Inc., the private fundraising arm of the university.

Thus, the following factors appear to exist:

—the use of letterhead directly relates to an issue or subject addressed in official legislative business, and which has received both direct and indirect appropriations of public funds;

—the proposed action is consistent with the legislative position;

—the proposed action is in accord with the recommendations of the Taskforce and the officials serving on it;

—responses (contributions) are directed to an appropriate, non-profit agency (and not to a legislator or legislative staff).

Based on the foregoing information, the use of your House letterhead stationery for such a solicitation is proper, though a joint letter from Taskforce members may be more appropriate.

This opinion would appear to conflict with Opinion 21 of *Opinions and Interpretations on Standards of Legislative Conduct* [Now *Legislative Conduct* ] in which the Committee on House Administration and Conduct considered "whether a House Member can use official House stationery, or a reproduction thereof, to solicit financial contributions on behalf of a private lobbying organization". In the course of that opinion, which disapproved of such use, reference was made to s. 817.38, Florida Statutes. The statute makes it

> unlawful for any person, firm, or corporation to send or deliver, or cause to be sent or delivered . . . any letter, paper, or document which simulates the seal of the state or the stationery of any state agency or fictitious state agency *with intent to lead the recipient or sendee to believe that the same is genuine*, for the purpose of obtaining any money or thing of value, or that a state agency is the sending party. (emphasis added)

Opinion 21 held that

> The term "simulate" is generally defined as copying, representing, feigning or giving the appearance of something else. Clearly within the scope of this definition is reproduction, and we would *therefore conclude that under existing law, it would be unlawful to use reproduced House stationery impressed with the state seal in order to solicit funds for any purpose*. (emphasis added)

I believe the Committee on House Administration and Conduct misinterpreted the statute based on an overbroad definition of "simulate." Webster's New Collegiate Dictionary defines "simulate" as, "to assume the outward qualities or appearance of, usually with the intent to deceive." While deception is not always the purpose of a simulation, it is clearly essential for a violation of s. 817.38 to occur. When the letterhead is genuine (even as duplicated, reproduced or copied) and the sender is acting within the scope of his official capacity and the solicitation addresses an issue of official agency business, then there is no violation of the statute. Thus, to the extent that Opinion 21 declares it unlawful to use House stationery to solicit funds for *any* purpose, it is overruled.

However, that Opinion was supported by other sound reasoning and principles and remains effective as a statement of House policy. That policy is reflected in House Rule 5.6:

> 5.6 Legislative Conduct—Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

The use of House stationery, especially for solicitation purposes, is an area fraught with danger, both as to what is appropriate and what is perceived to be appropriate. It is suggested that any doubt about proper use of House stationery be resolved by seeking an opinion from this committee, and your sensitivity to this issue is commendable.

Under the circumstances set forth above, the use of your House stationery is appropriate.

## INTERPRETATION 44

USE OF HOUSE SEAL

**Response, dated May 13, 1986, to an inquiry from a Member of the House regarding the use of the House Seal:**

I am responding to your request for guidelines on the use of the House seal and materials carrying the seal, such as letterhead stationery and business cards. Your inquiry is the latest in a series of such questions which have been directed to this Committee and I am taking the opportunity to comprehensively address this issue and provide guidelines for future use. All prior Opinions, Interpretations, and related correspondence on this question have been reviewed. (See Opinions 21 and 26, and Interpretations 4, 6, 9, 13, 33, 39, and 43 published in *Opinions and Interpretations on Standards of Legislative Conduct* and memoranda published in 1985-86 Interim Calendar Numbers 1 and 5.) [The publication is now titled *Legislative Conduct* ]

The House seal, though never officially adopted by the House, is, by customary use, a symbol of the Florida House of Representatives and carries with it the honor, prestige, and integrity of this body. Its use should be carefully guarded in order to preserve its valuable reputation. It is the seal, itself, not its form, which carries the authority of the House, and, therefore, any material carrying the seal is subject to the guidelines provided herein.

The following guidelines are provided:

1. *Material carrying the House seal shall only be used by a member, officer, or employee of the House or others employed or retained under House Administration Policy 2.2.* Such persons are, or should be, more aware of the special impact carried by the use of the seal, and are subject to disciplinary action under the rules for any misuse.

2. *Use of the materials bearing the seal shall be limited to official House or legislative business and matters properly within the scope of the responsibilities of a member, officer, or employee.* The fact that an issue or matter is of legislative interest or concern may not be sufficient to justify use of letterhead stationery in support thereof. (See, for example, Interpretation 39.) Likewise, the area of constituent relations is necessarily broad and some specific uses have been authorized (Interpretation 4 authorizing use of letterhead stationery for letters welcoming new residents to the community; Interpretation 6 approving letters of recommendation on House stationery; Interpretation 13 allowing newsletters to be printed on letterhead paper); however, other uses of material containing the seal are clearly improper (documents intended for use in an election campaign; see s. 104.31).

These guidelines will not resolve all questions relating to proper use of material containing the seal. Specific questions should be directed in writing to this Committee or to the Clerk of the House.

However, as a general guideline, reference should be made to s. 112.313(6), Florida Statutes, relating to misuse of public position, and House Rule 5.6 which states:

> 5.6—Legislative Conduct
>
> Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in him by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, he shall watchfully guard the responsibility of his office.

In addition, many members have voluntarily subscribed to the Florida Legislator's Code of Ethics which was promulgated by this Committee last year. Adherence to these high standards will help to maintain and protect the prestige and honor of the House.

## INTERPRETATION 45

LOBBYIST REGISTRATION

**Response by Chairman Crady, dated February 3, 1987, to correspondence involving two persons charged with failure to register as lobbyists during the 1984-1986 legislative biennium:**

. . . The fact that you have been registered in the past and therefore should be more than familiar with the laws of this State and the rules of the House with regard to lobbying activities, serve to enhance the seriousness of this violation. When you failed to receive a notice from the Clerk's Office of the requirement to file semi-annual expenditure reports as required in s. 11.045(3), F.S., this should have alerted you to the possibility that you weren't properly registered. These reports are required of lobbyists even if there was no expenditure of funds during the reporting period. It is your responsibility to not only follow the statutory requirements for lobbyists but to be familiar with the rules of the governing body with which you have lobbying privileges.

House Rule 13.8 refers to "Penalties for Violations" by lobbyists and states that:

> "separately from any prosecutions or penalties otherwise provided by law, any person determined to have violated the foregoing requirements of this Rule may be reprimanded, censured or prohibited from lobbying for *all or any part of the legislative biennium during which the violation occurred.*"

Section 11.045(6), F.S., provides that where a violation of this section has occurred, the committee investigating such violation shall report its findings to either the President of the Senate or Speaker of the House as appropriate with the following recommendations: reprimand, censure, probation, or prohibition from lobbying for all or any part of the legislative biennium during which the violation occurred. However, I found the penalty provisions to be out of order since the time period for enforcement of the penalties had passed. In lieu of the harsher penalties provided by the statute and House Rule 13.8, I am today notifying the Clerk of the Florida House of Representatives of this Committee's intention to carefully monitor your lobbying activities for the 86-88 legislative biennium and am instructing the Clerk to notify this committee if any failure on your part to comply with the laws of this State and the rules of this House with regard to lobbying comes to his attention.

In addition, I have instructed my staff to prepare the language necessary to provide more timely and enforceable penalties for violations such as yours. Please be advised that the penalty provisions available for such violations of the lobbying laws and rules *are* enforceable for violations occurring during this legislative biennium and should you ignore these requirements again, you will be penalized accordingly.

I trust that you will be more cognizant of these requirements in the future and strongly advise you to assume personal responsibility for your own registration as a lobbyist with this body.

## INTERPRETATION 46

MEMBER—CONFLICT OF INTEREST
FATHER REGISTERED LOBBYIST

**Response by Chairman Ostrau, dated May 30, 1989, to an inquiry from a Member of the House regarding prohibition from voting on issues in which father has an interest as registered lobbyist:**

This letter is in response to your inquiry of May 29, 1989, requesting an interpretation regarding the application of House Rules 5.1 and 5.10. You have requested that I provide you with an interpretation to the following question:

> Are you prohibited from voting on issues in which your father has an interest as a registered lobbyist for an entity with legislation pending before this body?

You state in your letter you will derive no benefit, either directly or indirectly, from your father's activities. You further state you have not been lobbied by your father nor have you sought to influence other members with respect to issues of interest to your father's client.

Rule 5.1, of *The Rules* of the Florida House of Representatives, states that each member within the chamber during session shall vote on each question unless excused . . . "except that no Member shall be permitted to vote on any question immediately concerning his private rights as distinct from the public interests."

As is pertinent hereto, Rule 5.10 states . . . "A Member of the House prior to taking any action or voting upon any bill in which he has a personal, private or professional interest which inures to his special private gain, or the special gain of any principal by whom he is retained or employed, shall disclose the nature of his interest as a public record in a memorandum filed with the Clerk of the House and published in the Journal of the House."

Therefore, based on the facts you have presented, it is my interpretation you may vote on the issues of interest to your father's clients. Further, no conflict of interest exists which requires disclosure.

Part III, Chapter 112, Florida Statutes, also contains statutory language relating to voting conflicts for public officers. This interpretation does not speak to this language nor do I believe it is necessary to do so. The House has taken and continues to maintain the position that our rules of procedure, adopted pursuant to the constitutional authority set forth in Art. III, s. 4, takes precedent over Part III, Chapter 112, Florida Constitution.

Out of an abundance of caution, you may wish to file a memorandum of disclosure with the Clerk of the House.

## INTERPRETATION 47

USE OF GOLD SEAL

**Memorandum, dated September 10, 1991, to the Members of the Florida House of Representatives, from Thomas R. Tedcastle, General Counsel, regarding the use of the House Seal in any campaign activity:**

Through the adoption of Rule Sixteen of the Rules of the Florida House of Representatives, use of the House Seal is now restricted to Members of the Florida House of Representatives for use in official House or legislative business, except when specifically authorized in writing by the Speaker. One of the effects of this rule is to prohibit the use of the House Seal in any campaign activities,

including the sending of letters seeking campaign contributions. You should, therefore, use either personal or campaign stationery which does not include the House Seal when sending any correspondence relating to your campaign activities.

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**ADVISORY OPINIONS**

**of the**

**COMMISSION ON ETHICS**

**Relating to**

**MEMBERS OF THE LEGISLATURE**

**of the State of Florida**

**September 6, 1974, through April 16, 1998**

**CEO 74-1—September 6, 1974**

**ASSETS**

CLARIFICATION OF DEFINITION OF ASSETS

*To: Charles L. Nergard, Representative, 76th District, Ft. Pierce*

*Prepared by: Hal Johnson*

**QUESTION:**

**What is the meaning of the term "asset" as used in s. 112.3145(1)(e), F.S., as amended by Ch. 74-177, Laws of Florida, and CE Form 1, question 6?**

**SUMMARY:**

**The term "asset" as used in s. 112.3145(1)(e), F.S., as amended by Ch. 74-177, Laws of Florida, and CE Form 1, question 6, includes real and personal property, whether tangible or intangible, with emphasis on property "of value" or convertible thereto so as to provide a means of paying one's debts. Further, assets exempt from disclosure under provisions of s. 112.3145(1)(e), *supra*, should be included when calculating the value of the officer's gross assets for purposes of ascertaining minimum percentage requirements for disclosure.**

The term "assets" includes real and personal property, whether tangible or intangible. The emphasis in this definition is that property be "of value" or convertible thereto so as to provide a means of paying one's debts. Any property of this nature must be included within the definition of an asset.

It should be noted that s. 112.3145(1)(e), F.S., Ch. 74-177, Laws of Florida, excludes from the list of assets which must be disclosed:

> . . . any asset which is equal to or less than fifteen percent of the total; any property not situate in Florida and the personal and recreational or vacation homes of each public officer or candidate . . . .

While these items need not be disclosed, they nevertheless constitute assets when calculating the value of the officer's gross assets.

**CEO 74-3—September 3, 1974**

**FINANCIAL DISCLOSURE**

INCLUSION OF VACATION OR RECREATIONAL HOME

*To: Grover C. Robinson III, Representative, 1st District, Pensacola*

*Prepared by: Staff*

**QUESTION:**

> **Is a vacation or recreational home that is used personally part time but also held out for rental part time an excluded asset under s. 112.3145(1)(e), F.S.?**

**SUMMARY:**

> **Notwithstanding the exclusion of vacation or recreational homes from the statement of disclosure provisions, s. 112.3145(1)(e), F.S., as amended by Ch. 74-177, Laws of Florida, such exclusion is intended for holdings purely personal in nature and not private business transactions possibly affording a conflict of interest with public duty. The rental of a vacation or recreational home constitutes the act of granting use of an asset for consideration and is therefore a business transaction. Thus, recreational or vacation homes held out for rental on even a part-time basis come within the purview of disclosure requirements of s. 112.3145, F.S.**

Your question is answered in the negative.

Section 112.3145(1)(e), F.S., Ch. 74-177, Laws of Florida, requires candidates and public officers to file a statement of disclosure including:

> (e) A list of the total assets of each public officer or candidate, listed in order of size, *excluding* any asset which is equal to or less than fifteen percent of the total; any real property not situate in Florida and the personal residence and *recreational or vacation homes* of each public officer or candidate shall be excluded from the list. Each listed asset shall be identified only by type, location, address or legal description. (Emphasis supplied.)

The intent of the Financial Disclosure Act is to make the public aware of instances where a conflict of interest might arise between a public duty and a private business transaction or professional activity. In light of this purpose, the Legislature allowed exclusions from disclosure for holdings purely personal in nature, such as one's personal residence. When a vacation home is rented, it loses this purely personal character. The act of granting use of an asset for consideration is a business transaction, no matter how informal the transaction might be.

It is the opinion of the Ethics Commission that a recreational or vacation home that is held out for rental on even a part-time basis is not excluded from the required disclosure of s. 112.3145, F.S., s. 5, Ch. 74-177, Laws of Florida.

**CEO 74-9—September 25, 1974**

**CONFLICT OF INTEREST**

APPEARANCES BY PUBLIC OFFICER WITHOUT
FEE OR COMMISSION

*To: Bill Fulford, Representative, 40th District, Orlando*

*Prepared by: Gerald Knight*

**QUESTION:**

**As president and major stockholder of a public carrier company licensed and regulated by the Public Service Commission, is a member of the Florida House of Representatives required to comply with s. 112.3145(1)(c), F.S., as created by Ch. 74-177, Laws of Florida, if he represents such company without fee or commission before the Public Service Commission in public necessity and convenience hearings?**

**SUMMARY:**

**Notwithstanding the exclusion from disclosure provisions those appearances made without fee or commission by a public officer on behalf of another before his own agency or any agency at the same level of government as his own agency [s. 112.3145(1)(c), F.S., as amended by Ch. 74-177, Laws of Florida], the intent of the provision is to disclose situations in which public officers may use their office to influence actions by public agencies. The "fee or commission" provision should not be limited to moneys but applies to compensation by whatever name, since the provision is intended to disclose interests, not solely moneys. Therefore, Mr. Fulford, as president and major stockholder in a public carrier company, must file CE Form 2 disclosing his appearances (even those without fee or commission) as an attorney in behalf of such company before the Public Service Commission. Further, he is required to file CE Form 3 disclosing his status and interest in the public carrier company, as a business entity controlled by the Public Service Commission [see s. 112.312(7), *supra*].**

Section 112.3145(1)(c), F.S., created by s. 5, Ch. 74-177, Laws of Florida, provides, in general, that

> [a]ny public officer or candidate who represents another before his own agency or any agency at the same level of government as his agency, except in ministerial matters, for a fee or commission shall list the agencies before which he appears, and the name of the client whom he represented, in a quarterly report subsequent to such appearance.

The form for filing the quarterly report required by this provision is CE Form 2.

Against this background, you state that you are a member of the Florida House of Representatives and are president and major stockholder in a public carrier company licensed by the Public Service Commission (P.S.C.). You also state that you represent such company without fee or commission before the P.S.C. in public necessity and convenience hearings. You inquire as to whether you are required to file the disclosure statement required by s. 112.3145(1)(c), *supra*.

We are of the opinion that the foregoing provision of Ch. 74-177, *supra*, was directed at disclosing those situations in which public officers or candidates may attempt to use, or hold out the prospect of using, the office they hold or the office they seek to influence actions by such public agencies. We are aware of the possible interpretation of a limited application to those public officers or candidates who receive "a fee or commission" for their services, but we feel that this provision should be construed to apply to compensation by whatever name. Otherwise, the obligation could easily be avoided by a simple exercise in semantics. We feel, therefore, that you are required to file CE Form 2 under the circumstances stated.

You should also give consideration to the provisions of Ch. 74-177, Laws of Florida, which requires the filing of a statement of disclosure by any public officer or employee of an agency (*see* s. 112.312(1), *id*., for definition of "agency") *who is an officer of, or who owns a material interest in*, any business entity which is granted a privilege to operate. A business entity which is granted a "privilege to operate" is defined in s. 112.312(7), *id*., to include "any entity controlled by the public service commission." The form for making such a disclosure, apparently required in the instant situation, is CE Form 3.

**CEO 74-12—September 25, 1974**

**CE FORMS 1, 2, AND 3**

PROCEDURES AND CIRCUMSTANCES OF COMPLETION

*To: R. E. Henderson, Mayor, Melbourne Village*

*Prepared by: Patricia Butler*

**QUESTIONS:**

**1. Must CE Form 1, the financial disclosure statement, be filed by a candidate or public officer if the answers to all statutorily required information would be "none" or "not applicable"?**

**2. Must CE Form 2, quarterly statement of disclosure of clients represented before agencies, and CE Form 3, disclosure of conflicts of interest by public officers, public employees, and candidates, be filed if the answers to all statutorily required information would be "none" or "not applicable"?**

**SUMMARY:**

**Section 112.3145, F.S., as amended by Ch. 74-177, Laws of Florida, requires all public officers and candidates to disclose income, interests, and assets on CE Form 1. The form must be filed even if the answers to all statutorily required information would be "none" or "not applicable." Failure to file CE Form 1 constitutes failure to comply with the law. However, totally negative responses to CE Forms 2 or 3 need not be filed. *See also* CEO 74-02.**

Your question 1 is answered in the affirmative. Section 112.3145, F.S., requires that "all public officers and candidates *shall disclose*" their income by source, any interest they may have in certain business enterprises, debts on which they may have been given a preferential rate of interest, and a list of their total assets. A minimum percentage is included below which these items need not be included. The law also makes certain exceptions as to sources of income which need not be disclosed. By ordering the statute in this manner, the Legislature has indicated its desire that the financial disclosure statement be filed even if the response to each question would be "none" or "not applicable."

In addition, there are practical reasons which support our conclusion. Without such a filing, it would be difficult for the Ethics Commission to distinguish between those candidates and officers who had complied with the law but did not meet the minimum percentage requirements and those who simply failed to comply with the law.

Your question 2 is answered in the negative.

It is our opinion that negative reports are not to be filed on CE Forms 2 and 3. The type of disclosure sought by these forms is positive or affirmative in nature. Therefore, if you or, if applicable, any partner or associate of the professional firm of which you are a member have not represented a client, during the quarter, before your own agency, the agency in which you are seeking office, or any agency at the same level of government as the agency in which you hold office or are seeking office, then you are *not* required to file CE Form 2.

Likewise, if you do not hold any of the positions enumerated in s. 112.313(3), F.S. 1974, as amended by Ch. 74-177, Laws of Florida, in any business entity which is granted a privilege to operate, or is doing business with the governmental agency of which you are an officer or employee; or you do not own, directly or indirectly, 10 percent or more of the total assets or capital stock of such a business entity, you are *not* required to file CE Form 3.

**CEO 74-16—October 10, 1974**

**PENALTIES**

APPLICATION OF PENALTIES REQUIRED BY PART III, CH. 112, F.S., AS AMENDED BY CHS. 74-176 AND 74-177, LAWS OF FLORIDA, TO SUBSEQUENT BIDS FOR OFFICE

*To: Vince Fechtel, Representative, District 34, Leesburg*

*Prepared by: Gerald Knight*

**QUESTION:**

**Do the penalties for failure to report financial disclosure information as required by part III, Ch. 112, F.S., as amended by Chs. 74-176 and 74-177, Laws of Florida, apply only to the office which the public official would presently hold, or would the penalties also apply to any public office the individual might hold or seek to hold?**

**SUMMARY:**

**As stated in s. 112.314, F.S., as amended by Ch. 74-177, Laws of Florida, penalties for violation of the Code of Ethics and financial disclosure procedures by any candidate, public officer, or employee include dismissal from employment or removal from office or the ballot. Should a public officer be removed from office or a candidate from the ballot, however, there is no future penalty provided. Thus, an officer or candidate is not precluded by part III, Ch. 112, F.S., from becoming a candidate for public office, from holding a subsequent public office, or from becoming a public employee. Should the public officer removed from office for intentional violation of part III again fail to comply with the Code of Ethics provisions while in subsequent office or employment subject to those provisions, he may again be disciplined and penalized as provided in s. 112.317, *supra*.**

Part III, Ch. 112, F.S., as amended by Chs. 74-176 and 74-177, Laws of Florida, establishes a code of ethics and financial disclosure procedure for public officers and employees. Section 112.314, *supra*, as amended by s. 8, Ch. 74-177, *supra*, provides that

> Intentional violation of any provision of this part by any officer, employee or candidate shall constitute grounds for dismissal from employment, removal from office, or removal from the ballot.

*See also* s. 112.325, *supra*, as created by s. 2, Ch. 74-176, *supra*. These penalties are apparently to be imposed by the "official having power to take disciplinary action." See s. 112.324, *supra*, created by Ch. 74-176, *supra*. Attorney General Opinion 074-251.

Once removed from office, however, there is no further penalty provided by the statute for a public officer who has violated part III. Thus, such an officer is not precluded by part III from becoming a candidate for further public office, from holding a subsequent public office, or from becoming a public employee. Of course, if a former public officer who was removed from office for violation of part III assumes another position which subjects him to the application of part III, and if he again intentionally fails to comply with the code of ethics or financial disclosure procedure established therein, he may again be disciplined and penalized as provided by s. 112.317, *supra*.

**CEO 74-33—November 1, 1974**

**ASSETS**

DEFINED AS ASSETS OWNED DURING
PRECEDING TAXABLE YEAR

*To: William Nelson, Representative, District 47, Melbourne*

*Prepared by: Gerald Knight*

**QUESTION:**

> **Does the disclosure of assets required by question 6 of the commission's Form 1 apply to such assets owned at the time of disclosure or to such assets owned during the preceding taxable year?**

**SUMMARY:**

> **Section 112.3145(1)(e), F.S., as amended by Ch. 74-177, Laws of Florida, does not refer to the preceding taxable year in enumerating assets to be disclosed on CE Form 1. However, the definition of the term "disclosure period" in s. 112.312(4), F.S., clearly evinces that disclosure of assets is to be of assets held during the disclosure period, January 1 through December 31 immediately preceding the date on which the financial disclosure statement is to be filed. Therefore, s. 112.3145(1)(e), *supra*, requires disclosure of all assets held during the preceding taxable year, with the exception of those assets specifically excluded by statute.**

Pursuant to s. 112.3145(1)(e), F.S., as created by s. 5 of Ch. 74-177, Laws of Florida, the statement of disclosure shall include:

> A list of the total assets of each public officer or candidate, listed in order of size, including any asset which is equal to or less than fifteen percent of the total; any real property not situate in Florida and the personal residence and recreational or vacation

> homes of each public officer or candidate shall be excluded from the list. Each listed asset shall be identified only by type, location, address, or legal description.

Although the language quoted above does not make specific reference to the "preceding taxable year," it seems clear from the definition of the term "disclosure period" in s. 112.312(4), F.S., as amended by Ch. 74-177, *supra*, that the Legislature envisioned a disclosure of assets held during the disclosure period—which is "the period extending from January 1 through December 31 immediately preceding the date on which the financial disclosure statement . . . is required to be filed"—rather than at the time of filing the disclosure statement. To conclude otherwise would tend to defeat the purpose of the disclosure requirements by permitting a person who is required to make disclosure to dispose of assets immediately prior to the filing of his disclosure statement and thereby avoid disclosure. There is nothing to suggest that such was the intent of the Legislature. Therefore, unless and until otherwise clarified by the Legislature or the courts, we are of the view that s. 112.3145(1)(e), *supra*, requires disclosure of all assets held during the "preceding taxable year" except, of course, those assets specifically excluded by the statute.

**CEO 74-37—November 1, 1974**

**JUDICIAL PROCESS**

ROLE IN ENFORCING FINANCIAL DISCLOSURE

*To: Vince Fechtel, Jr., Representative, District 34, Leesburg*

*Prepared by: Patricia Butler*

**QUESTION:**

> **May a person subject to the financial disclosure requirements of Ch. 74-177, Laws of Florida, who intentionally fails to make the required disclosure be compelled to do so by writ of mandamus or by any extraordinary writ or declaratory judgment?**

**SUMMARY:**

> **Under present provisions of part III, Ch. 112, F.S., as amended by Ch. 74-177, Laws of Florida, a person who intentionally fails to make required disclosures can be dismissed from employment, removed from office, or removed from the ballot. Section 112.317, *supra*. Since neither Ch. 74-177 nor Ch. 74-176, Laws of Florida, specifically mentions court action, such as a writ of mandamus, in the enforcement of said financial disclosure requirements, the role of the courts in these matters must be decided by the courts when and if the question is placed before them in an appropriate case.**

Section 112.317, F.S., as amended by Ch. 74-177, Laws of Florida, now reads:

> Intentional violation of any provision of this part by any officer, employee or candidate shall constitute grounds for dismissal from employment, removal from office, or removal from the ballot.

However, neither Ch. 74-177, *supra*, nor the related provisions of Ch. 74-176, Laws of Florida, contain any specific mention of the role of the courts in the enforcement of the financial disclosure requirements of Ch. 74-177, *supra*. Accordingly, the matter about which you inquire may be answered by the courts only when and if the question is placed before them in an appropriate case.

**CEO 74-44—November 1, 1974**

**DISCLOSURE FORMS**

FILING OF CE FORMS WHERE INAPPLICABLE
TO PUBLIC OFFICER

*To: William G. Zinkil, Sr., Senator, 32nd District, Hollywood*

*Prepared by: Gene L. "Hal" Johnson*

**QUESTION:**

**Must CE Forms 2, 3, and 4 be filed even if they are inapplicable to me as a public officer?**

Please find enclosed a copy of a previous opinion of this Commission, CEO 74-12, which, we believe, answers your inquiry as to CE Forms 2 and 3. The rationale upon which this opinion is based is equally applicable to CE Form 4, as the type of disclosure sought is also positive or affirmative in nature.

**CEO 75-7—January 6, 1975**

**CONTRACTS BY BID**

GOVERNMENT CONTRACT ISSUED ON "BEST BID" BASIS
PRESENTING NO CONFLICT OF INTEREST

*To: Vernon C. Holloway, Senator, 39th District, Miami*

*Prepared by: Gene L. "Hal" Johnson*

**QUESTION:**

**If Interstate Electric Company subcontracts work on state projects, would I have a conflict of interest, since I own controlling stock in the subject company?**

**SUMMARY:**

**When contracts are issued on a competitive basis, no violation of the Code of Ethics exists even though the public officer owns a material interest in a business entity doing business with an agency of which he is an officer. Section 112.313(2), F.S., as amended by Ch. 74-177, Laws of Florida. Nor does conflict of interest exist if the major contractor awarded a bid on a competitive basis subsequently subcontracts with another business entity in which a public officer owns a material interest.**

Your question is answered in the negative so long as the contracts are issued on a competitive basis.

Section 112.313(2), F.S., as amended by Ch. 74-177, Laws of Florida, states:

> No public officer or employee of an agency shall own a material interest in any business entity doing business with the agency of which he is an officer or employee, except in those cases when the business is contracted with full public competition and award is made to the lowest or best bidder or to a consultant in accordance with Chapter 287.055, Florida Statutes.

Where these competitive bid procedures have been followed, no conflict of interest exists even though the public officer does own a material interest in a business entity doing business with an agency of which he is an officer. Further, if these procedures have been followed, no conflict of interest exists where the major contractor subsequently subcontracts with another business entity to perform some work, even though a public officer owns a material interest in the firm performing the subcontracting work.

We should also point out that this provision applies only when the public officer's or employee's agency is the contracting agency. For example, in your situation the contracting agency must be the State Legislature for the provision to apply.

We therefore conclude that no conflict of interest exists even though you may own a material interest in the subject company.

**CEO 75-26—February 20, 1975**

**CONTRACTS BY BID**

STATE GOVERNMENT CONTRACT AWARDED ON "BEST BID" BASIS CREATES NO CONFLICT OF INTEREST

*To: Ralph R. Poston, Senator, 38th District, Miami*

*Prepared by: Gene L. "Hal" Johnson*

**QUESTION:**

> **Is a conflict of interest created where my company, Poston Bridge & Iron, Inc., is awarded a contract for work on a state project if the award is made on a competitive bid basis?**

Please find enclosed a copy of a previous opinion of this commission, CEO 75-07, the rationale of which we believe to be equally applicable to your inquiry.

Accordingly, your question is answered in the negative.

**CEO 75-27—March 14, 1975**

**CONFLICT OF INTEREST**

THE RETENTION BY A CITY OF LAW FIRM OF WHICH LEGISLATOR IS AN ASSOCIATE DOES NOT CONSTITUTE A CONFLICT OF INTEREST

*To: Barry S. Richard, Representative, 112th District, North Miami Beach*

*Prepared by: Gene L. "Hal" Johnson*

**QUESTION:**

**The law firm of which I am an associate has received an offer to represent a city in the capacity of city attorney: Would such representation by a member of my firm or by me personally constitute a conflict of interest with my public position as a state legislator?**

**SUMMARY:**

**Reference is made to CEO 74-58, CEO 74-69, and AGO SC 70-18. Section 112.313(5), F.S., as amended by Ch. 74-177, Laws of Florida, prohibits a public officer from accepting employment which conflicts with or impedes his public duties. In previous interpretations, this prohibition has been seen as contingent only on employment that by its very nature or scope creates conflict between private interest and public duty. The law firm of which Representative Richard is an associate has been offered the position of city attorney by a Florida municipality. Such representation by Representative Richard does not appear to be a conflict of the nature described in s. 112.313(5), F.S. However, Representative Richard is required by the Code of Ethics to make full disclosure of possible or potential conflicts of interest which may arise; *see* s. 112.313(3), F.S.**

Your question is answered in the negative.

The question you pose results from a Florida municipality having offered the position of city attorney to the law firm of which you are an associate. Since members of the firm, including you personally, will be expected to advise and represent the city on legal matters, you are inquiring as to whether such representation would be in violation of the standards of conduct provisions of the Code of Ethics in light of your position as a state legislator.

As you are aware, Chs. 74-176 and 74-177, Laws of Florida, rewrote virtually every section of the Code of Ethics, part III, Ch. 112, F.S. As a state legislator, you are clearly a public officer, s. 112.312(7)(a), *supra*, and therefore are subject to the standards of conduct as set forth in s. 112.313(5), F.S. That section, which deals with subjective conflicts of interest, states in part:

> No public officer or employee of an agency shall accept . . . other employment that will create a conflict between his private interests and the performance of his public duties, or will impede the full and faithful discharge of his public duties. [Section 112.313(5), F.S.]

We have interpreted this provision to prohibit only such employment that by its very nature or scope would create a continuous or constantly recurring conflict between one's private interests and his public duties. *See* CEO 74-58 and CEO 74-69.

In the instant case, it does not appear that a municipality's retention of your law firm or of you personally would create the type of conflict intended to be prohibited by this provision.

In lieu of a prohibition, we read the Code of Ethics as requiring full disclosure of conflicts of interest which *may* arise infrequently. Whereas s. 112.313(5) sets forth *prohibited* conflicts,s. 112.313(3) provides for disclosure of other *possible* or *potential* conflicts. Where a state legislator is retained in his private capacity as an attorney by a corporate entity, for example, he must comply with the financial disclosure requirements of s. 112.3145(1)(c), F.S., *and* the disclosure of conflicts provision contained in s. 112.313(3). Further, should a voting conflict of interest arise, he would then be required to file a statement disclosing the conflict under s. 112.314(2), F.S.

The view we take in this opinion is consistent with the Attorney General advisory opinion numbered SC 70-18. In that opinion, a state legislator inquired as to the propriety of his acceptance of a position as an attorney for an aqueduct authority or a building and zoning department of a county. The Attorney General found no prohibiton, stating that acceptance of employment is not prohibited where it does not interfere with the full and faithful discharge by such legislator of his duties to the state. We find these cases analogous to the question you have raised and concur in the Attorney General's opinion.

In conclusion, we find that acceptance of the position of city attorney by your law firm or by you personally will not create a prohibited conflict of interest under provisions of the Code of Ethics for Public Officers and Employees.

**CEO 75-32—February 21, 1975**

**REQUIRED FILING PERIOD**

FINANCIAL DISCLOSURE STATEMENT

*To: James L. Redman, Representative, 62nd District, Plant City*

*Prepared by: Patricia Butler*

**QUESTION:**

**If I filed a financial disclosure statement as a candidate in August 1974, must I file another such statement as a public officer by May 15, 1975?**

**SUMMARY:**

**Section 112.3145(1), F.S., as amended by Ch. 74-177, Laws of Florida, provides that a candidate for election or nomination shall file his or her statement of disclosure after candidacy qualification; a public officer must file by May 15 of each year. Accordingly, Representative Redman must file as a public officer by May 15, 1975, even though he filed as a candidate in August 1974. The latter filing will apply to the 1973 tax year; the former to the 1974 tax year, since the disclosure period is a calendar year, Jan. 1 to Dec. 31.**

This question is answered in the affirmative.

The applicable section of the disclosure law states in part:

> A candidate for nomination or election shall file a statement of disclosure no later than twelve o'clock noon on the tenth day after the last day to qualify as a candidate. A public officer . . . shall file a statement of disclosure no later than twelve o'clock noon of May 15th of each year, including the May 15th following the last year a public officer is in office . . . . [Section 112.3145(1), F.S., as amended by Ch. 74-177, Laws of Florida.]

The disclosure period is a calendar year, *i.e.*, from January 1 to December 31. Accordingly, the statement you filed in August of 1974 would have pertained to the 1973 tax year, whereas the May 15, 1974, required filing date will pertain to your financial situation during the 1974 tax year.

**CEO 75-39—March 14, 1975**

**CONFLICT OF INTEREST**

RETENTION BY COUNTY LEGISLATIVE DELEGATION OF CITY COMMISSIONER AS ITS ATTORNEY DOES NOT CREATE A CONFLICT OF INTEREST

*To: William G. Zinkil, Sr., Senator, 32nd District, Hollywood*

*Prepared by: Gene L. "Hal" Johnson*

**QUESTION:**

**Would it be a prohibited conflict of interest for the Broward County Legislative Delegation to retain an individual who is a city commissioner as the delegation attorney?**

**SUMMARY:**

**The employment prohibition contained in s. 112.313(5), F.S., as amended by Ch. 74-177, Laws of Florida, is limited to those cases in which the employment by its very nature or scope creates a continuous or recurrent conflict between private interest and public duty. No such conflict seems to be indicated in the retention of a city commissioner as attorney for the Broward County Legislative Delegation, paid for by the Broward County Commission funds. Should conflict arise when the attorney must work on matters affecting his municipality, the conflict should be reexamined as to special circumstances. Further, the attorney will be regulated in his private capacity by the Code of Professional Responsibility and in his public capacity by the disclosure requirements of s. 112.314(2), F.S.**

Your question is answered in the negative.

You have advised us in your letter of inquiry that the Broward County Legislative Delegation retains for legal assistance an attorney whose position is provided for by funds approved by the Broward County Commission under Ch. 63-1150, Laws of Florida. Since the delegation is considering retaining as the delegation attorney an individual who is also a city commissioner for a municipality within Broward County, you question the propriety of such action in light of s. 112.313(5), F.S., which states in part:

> No public officer or employee of an agency shall accept . . . other employment that will create a conflict between his private interests and the performance of his public duties, or will impede the full and faithful discharge of his public duties. [Section 112.313(5), F.S., as amended by Ch. 74-177, Laws of Florida.]

The issue is whether a public officer may be retained in his private capacity as an attorney by the delegation without creating a prohibited conflict of interest.

In a previous opinion of this commission, CEO 74-58, we held this provision to be limited to those cases in which the employment, by its very nature or scope, creates a continuous or

constantly recurring conflict between the individual's private interest and his public duties. We can find no such conflict in the present situation.

While the attorney may be asked to address his work to matters which may have an effect on his municipality, we feel that in such situations the conflict question should be reexamined as to each special circumstance. The possibility of any such disqualifications should be taken into account by the delegation in its decision on the employment. The attorney will, of course, be regulated by the Code of Professional Responsibility in his private capacity and disclosure requirements of s. 112.314(2), F.S., as amended, in his public capacity.

We therefore conclude that no prohibited conflict of interest would be created by his employment as delegation attorney, subject to appropriate consideration of special circumstances as they arise in the work you call on him to do.

**CEO 75-45—March 5, 1975**

**STANDARDS OF CONDUCT**

PROPRIETY OF STATE REPRESENTATIVE DISTRIBUTING
"BUSINESS" CARD IN CORRESPONDENCE
TO HIS CONSTITUENTS

*To: Jerry G. Melvin, Representative, 5th District, Tallahassee*

*Prepared by: Gene L. "Hal" Johnson*

**QUESTION:**

**May I enclose a business card printed at my own expense containing a picture of me; my name, public office, political party, state district, and telephone number; and various consumer assistance telephone numbers in correspondence to my constituents?**

**SUMMARY:**

**The Code of Ethics, part III, Ch. 112, F.S., as amended by Ch. 74-177, Laws of Florida, does not prohibit a state representative from enclosing a card in correspondence with constituents. In this instance, Rep. Melvin's card bears the representative's phone numbers, photograph, political party, state district, and various consumer assistance groups' telephone numbers. Additional information as to whether such a card is subject to elections code regulations should be obtained from the Elections Division of the Department of State or from the Attorney General.**

Your question is answered in the affirmative.

The Code of Ethics, part III, Ch. 112, F.S., as amended by Ch. 74-177, Laws of Florida, contains no provisions which would prohibit you from printing and using such a card in this manner. However, you may wish to obtain an opinion from the Elections Division of the Department of State or the Attorney General as to whether such a card is subject to elections code regulations.

**CEO 75-53—March 27, 1975**

**FILING PERIOD**

REQUIRED FOR FINANCIAL DISCLOSURE

*To: Gwen Margolis, Representative, 102nd District, Tallahassee*

*Prepared by: Lawrence A. Gonzalez*

**QUESTION:**

**If I filed a financial disclosure statement as a candidate in 1974, must I file another such statement as a public officer by May 15, 1975?**

This question is answered in the affirmative.

Enclosed please find a copy of a previous opinion of this commission, CEO 75-32, the rationale of which is equally applicable to your question. Your question is answered accordingly.

**CEO 75-151—July 9, 1975**

**CONFLICT OF INTEREST**

NO CONFLICT WHERE A LEGISLATOR SERVES AS A MEMBER OF THE BOARD OF DIRECTORS OF A PRIVATE HOSPITAL

*To: (Name withheld at the person's request.)*

*Prepared by: Jeff Trammel*

**QUESTION:**

**Does a conflict of interest exist where I am a duly elected State Representative and serve as a member of the board of directors of a private hospital?**

**SUMMARY:**

**The standards of conduct promulgated by the Code of Ethics prohibit situations where a public officer has private interests which conflict with his public duties or otherwise impede the full and faithful discharge of his duties. There is no inherent conflict, however, where a state legislator also serves as a member of the board of directors of a privately owned hospital. An occasional voting conflict could arise should the legislator be called upon to vote on laws affecting the hospital, however. In such cases, disclosure of a voting conflict is required by the Code of Ethics.**

This question is answered in the negative.

In your letter of inquiry, you indicate that you are the state representative from _____. Recently you were appointed a member of the Board of Directors for _____ Hospital, a position which is noncompensatory. You own no stock in the hospital, which is an investor-owned facility.

As a legislator, you are clearly a public officer and subject to the Code of Ethics. Section 112.312(7)(a), F.S. (1974 Supp.). The standards of conduct promulgated in the code prohibit situations where a public officer has private interests which conflict with his public duties or otherwise impede the full and faithful discharge of his duties. We are of the opinion that there is no

inherent conflict between your duties as a member of the board of directors of a privately owned hospital and your responsibilities as a legislator. This does not preclude an occasional conflict arising, however, should legislation involving this hospital come before you for action. In such cases the Code of Ethics requires a disclosure of the conflict by the filing of a memorandum with the person responsible for recording the minutes of the meeting.

**CEO 75-166—August 6, 1975**

**DISCLOSURE REQUIREMENTS**

ATTORNEY EMPLOYED BY STATE AGENCY

*To: T. Terrell Sessums, General Counsel, Tampa Port Authority, Tampa*

*Prepared by: Gene Rhodes*

**QUESTIONS:**

**1. Am I, as general counsel for the Tampa Port Authority, required to make a disclosure of specified interests on an annual basis?**

**2. Does my change in status from public officer to public employee require that I again make a disclosure of specified interests?**

**3. Am I, as a director of the Southeast Bank of Tampa and an employee of the Tampa Port Authority, required to make a disclosure of specified interests even though no state or Tampa Port Authority funds are deposited in Southeast Bank of Tampa?**

**4. Am I, as an employee of the Tampa Port Authority, required to file a Statement of Financial Disclosure, CE Form 1, or a Quarterly Statement of Disclosure of Clients Represented Before Agencies, CE Form 2?**

**5. Would my disclosure requirements be the same if I were a private attorney retained by Tampa Port Authority?**

**SUMMARY:**

**Section 112.313(3), F.S. (1974 Supp.), requires that a disclosure of specified interests (CE Form 3) be made within 45 days of one's becoming an officer or employee or within 45 days of acquiring such interest or position specified by that section. There is no statutory requirement for an annual disclosure of such interests; rather, CE Form 3 becomes a permanent public record and need not be refiled unless one's circumstances change so as to require disclosure of new information.**

**Where one's public position changes from state to local, however, Form 3 must be filed again, for the place of filing changes from the office of the Secretary of State to that of the Circuit Court Clerk. Conversely, if the place of filing is the same for two public positions, one need not refile based on the change of status.**

**A public officer or employee who serves as director of a bank is required to file CE Form 3 even though the bank does no business with the agency of which he is**

**an officer or employee. Section 112.313(3), *supra*, requires the disclosure of certain specified interests regardless of the relationship between one's agency and that business.**

**CE Form 2, the Disclosure of Clients Represented Before Agencies, is required to be filed only by public officers and candidates for office. Public employees are not subject to the disclosures required by s. 112.3145(1), F.S., and filed on CE Form 2.**

Question 1 is answered in the negative.
The Code of Ethics provides in relevant part:

> If a public officer or employee of an agency is an officer, director, partner, proprietor, associate or general agent (other than a resident agent solely for service of process) of, or owns a material interest in, any business entity which is granted a privilege to operate, or is doing business with an agency of which he is an officer or employee, he shall file a statement disclosing such facts within forty-five days of becoming an officer or employee or within forty-five (45) days of the acquisition of such position or of such material interest. [Section 112.313(3), F.S. (1974 Supp.).]

There is no statutory requirement that you make *annual* disclosure of specified interests on CE Form 3, the form prescribed by the commission for compliance with s. 112.313(3), *supra*. Once properly filed, Form 3 becomes a permanent public record and it is not necessary to file again unless your circumstances change so as to require a disclosure of new information of the type required to be listed on this form.

Question 2 is answered in the affirmative.

First, it should be noted that while you were serving as a State Representative you were required to make disclosure of specified interests on CE Form 3, the form prescribed by the Commission on Ethics for compliance with s. 112.313(3), *supra*. Previous disclosures filed by you with the Secretary of State indicating your directorship of the Southeast Bank of Tampa, though consistent with the scope and spirit of the disclosure law which became effective on July 1, 1974, were not made on the appropriate form pursuant to s. 112.3145, F.S. (1974 Supp.). Although you did file CE Form 3 with the Secretary of State on June 27, 1975, this was not until after your status had changed from a public officer (State Representative) to a public employee (general counsel for the Tampa Port Authority). It will now be necessary for you to refile CE Form 3 since your new position requires that you file with the Clerk of the Circuit Court for Hillsborough County, rather than with the Secretary of State. Section 112.313(3), *supra*. Conversely, if the place of filing is the *same* for two public positions, there is no need for one to refile when his status changes from one of the positions to the other or when two or more such positions are held concurrently.

Question 3 is answered in the affirmative.

The relevant portion of the Code of Ethics is quoted above in question 1, s. 112.313, *supra*. You are an employee of an agency (Tampa Port Authority), s. 112.312(1), *supra*, and you are a director of a business entity (Southeast Bank of Tampa), s. 112.312(2), *supra*, which is granted a privilege to operate. Therefore, under the statute, you are required to make a disclosure of specified interests regardless of the business relationship between the state or Tampa Port Authority and Southeast Bank of Tampa.

Question 4 is answered in the negative.

The Code of Ethics requires that only candidates for nomination or election and public officers file statements of financial disclosure, s. 112.3145(1), *supra*, and quarterly statements of disclosure of clients represented before agencies, s. 112.3145(1)(c), *supra*. Since you are neither a candidate for nomination or election nor a public officer, you need not file CE Form 1 or CE Form 2.

As to question 5, it is the policy of the Commission on Ethics to render official advisory opinions only when requested by public officers or employees or candidates for nomination or election concerning real, as opposed to hypothetical, questions involving their particular positions. As you can appreciate, there are many variables which must be considered before we can issue an advisory opinion. We feel it would be counter-productive to issue binding advisory opinions on hypothetical situations.

**CEO 75-177—August 26, 1975**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE ACTING AS ATTORNEY
FOR STATE AGENCY

*To: James H. Thompson, Representative, 10th District, Quincy*

*Prepared by: Gene Rhodes*

**QUESTION:**

**Does a conflict of interest exist when I, as a state representative and a practicing lawyer, occasionally represent the Division of Family Services of the Department of Health and Rehabilitative Services?**

**SUMMARY:**

**No conflict of interest exists under the Code of Ethics where a state representative occasionally represents in his private capacity as an attorney the Division of Family Services of the Department of Health and Rehabilitative Services. A conflict would exist under s. 112.313(5), F.S. (1974 Supp.), only where outside employment creates a continuous or frequently recurring conflict between one's private interests and public duties. Voting conflicts of interest could arise out of such employment, however, in which case the public officer would be bound by s. 112.3141, F.S., providing for the disclosure of such voting conflict whether or not one chooses to abstain from voting.**

Your question is answered in the negative.

Your letter of inquiry advises us that during the past 2 or 3 years you have occasionally represented the Division of Family Services in obtaining permanent commitment of abandoned or neglected children in your locale so they may be made available for adoption. The maximum fee allowable for this service is regulated by the agency.

The Code of Ethics states, in relevant part, that an officer or employee of an agency may not "accept other employment that will create a conflict between his private interests and the performance of his public duties, or will impede the full and faithful discharge of his public duties." Section 112.313(5), F.S. (1974 Supp.).

This subsection might seem to have possible application to you. It is our view, however, that the above-quoted portion of subsection (5) is applicable only in those instances in which the nature or scope of the accepted employment creates a continuous or constantly recurring conflict between one's private interests and his public duties. In such a case the employment is a conflict per se and is prohibited by this subsection. A revision of the above-quoted portion of subsection (5) [*see* s. 112.313(7), Ch. 75-208, Laws of Florida] will take effect October 1, 1975. This revision is consistent with our opinion as contained herein.

Although we find none of the conflict provisions of s. 112.313 applicable to the facts you have described, there could be situations in which a voting conflict would arise in your capacity as a state representative. For this reason you should be aware of the code's provision regarding voting conflicts, which states:

> No public officer shall be prohibited from voting on any matter in his official capacity. However, when the matter being considered directly or indirectly inures to the public officer's particular private gain, as opposed to his private gain as a member of a special class or creates a conflict between such officer's private interests and his public duties he may abstain from voting on the matter and shall file a statement explaining the conflict with the appropriate officials. [Section 112.3141, F.S.]

Thus, under no circumstances would you be prohibited from voting; but if for any reason you feel that a conflict exists, you may voluntarily abstain from voting and you are required to file a statement explaining the conflict. The proper statement would be Ethics Commission Form 4; a copy should be filed with the Commission on Ethics and a copy with the body of which you are a member. After October 1, 1975, the revised Code of Ethics will require that you file a memorandum with the person responsible for recording the minutes of the meeting at which the voting conflict occurs within 15 days after the vote in lieu of filing Form 4 with the Ethics Commission. Section 112.3143, F.S., as created by Ch. 75-208, Laws of Florida.

**CEO 75-197—November 5, 1975**

**CONFLICT OF INTEREST**

STATE LEGISLATOR ACTING AS CITY ATTORNEY

*To: Edgar M. Dunn, Jr., State Senator, 10th District, Daytona Beach*

*Prepared by: Gene Rhodes*

**QUESTION:**

**Would a prohibited conflict of interest exist if I, a state legislator, or my law firm were retained or employed in the capacity of city attorney for a Florida municipality or as counsel for a special purpose district or special tax district?**

**SUMMARY:**

**Because the regulatory power of the Florida Legislature over both municipalities and special purpose or special tax districts is strictly through the enactment of laws, a state legislator and his law firm may represent cities and tax districts pursuant to the exemption found in s. 112.313(7), F.S., as amended by Ch. 75-208, Laws of Florida. The section generally provides that conflicting employment is constituted where a public official is employed by or contracts with a business or agency subject to his agency's regulation. Exception is made, however, where such regulation is solely through the enactment of laws or ordinances. Occasional voting conflicts of interest could arise, however, and must be disclosed pursuant to s. 112.3143, as created by Ch. 75-208.**

This question is answered in the negative.

Your letter of inquiry advises us that you are contemplating the formation of a law firm which may represent units of local government.

In a previous opinion, this commission advised that a state legislator did not violate the Code of Ethics for Public Officers and Employees when he served in the capacity of city attorney. CEO 75-27. Since that opinion was issued, the Legislature has revised the Code of Ethics to read in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 doing business with an agency of which he is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. Where the agency referred to is that certain kind of special tax district created by general or special laws and limited specifically to

> constructing, maintaining, managing and financing improvements in the land area over which the agency has jurisdiction, or where the agency has been organized pursuant to Chapter 298, Florida Statutes, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or deemed a conflict per se; however, that conduct by such officer or employee prohibited by this section or otherwise frustrating the intent of this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section. However, *when the agency referred to is a legislative body and when the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict . . . .* [Section 112.313(7), as amended by Ch. 75-208, Laws of Florida; emphasis supplied.]

The nonemphasized portion of the above-quoted standard of conduct prescribes, for the most part, the general rule as to conflicting employment or contractual relationships by public officials. The portion which is italicized excludes from the meaning of the term "regulation" and also from the scope of the term "conflict" the mere enactment of laws and ordinances by a legislative body.

The regulatory power of the Florida Legislature over both municipalities and special purpose districts or special tax districts is strictly through the enactment of laws, thus bringing your contemplated situation squarely within the exception emphasized above. It therefore is our view that your personal representation of these governmental bodies would not create a prohibited conflict of interest under subsection (3) of s. 112.313. Nor do we find any basis for concluding that such representation by your law partners or associates would constitute a conflict.

We would suggest, however, that you be on guard to disclose your interest in legislation affecting any municipality or special legislation affecting any municipality or special tax district represented when you vote on such matters in your official capacity, provided such interest falls within the purview of the following provision:

> VOTING CONFLICTS.—No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest which inures to his special private gain, or the special gain of any principal by whom he is retained, shall within 15 days after the vote occurs disclose the nature of his 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. [Section 112.3143, amended by Ch. 75-208.]

**CEO 75-205—November 6, 1975**

**COUNTY STUDY COMMISSION**

APPLICABILITY OF DISCLOSURE LAW TO MEMBERS

*To: Ralph H. Haben, Jr., State Representative, 71st District, Palmetto*

*Prepared by: Bonnie Johnson*

**QUESTION:**

> **Are members of the Manatee County Study Commission public officers within the meaning of that term as found in part III, Ch. 112, F.S. (1974 Supp.), and therefore subject to financial disclosure requirements?**

**SUMMARY:**

**Reference is made to CEO 74-22. Members of public boards are subject to disclosure unless the board is solely advisory in nature. The Manatee County Study Commission is charged to study governmental structures within the county and to submit a plan to area legislators and local officials for the solution of problems discovered in the study. Although the commission is authorized to contract, hold hearings, and undertake investigations, it has no final authority to alter those aspects of local government which it studies. Under the present law, it is therefore deemed to be an advisory body, its members exempt from disclosure requirements. This opinion does not address the status of the commission in relation to the revised financial disclosure law which takes effect on January 1, 1976, however. A new definition of "advisory body" is contained in that law, and it therefore may be necessary to seek another opinion before the 1976 filing deadline.**

Your question is answered in the negative.
The term "public officer" is defined to include:

> Members of boards, commissions, authorities, special taxing districts, and the head of each state agency, however selected but excluding advisory board members. [Section 112.312(7)(b), F.S. (1974 Supp.).]

All commission members, therefore, are public officers unless the commission is advisory in nature. The Ethics Commission has determined in previous opinions that the advisory board exclusion applies only to those boards whose duties are *solely* advisory in nature. *See* CEO 74-22.

The Manatee County Study Commission was created by Ch. 75-434, Laws of Florida, to conduct a study of governmental structures within Manatee County and to submit a plan to area legislators and local officials for the solution of any problems revealed by the study. The commission is authorized to enter into contracts with persons or agencies for the furnishing of information which may be required, and may hold hearings, undertake investigations, and employ such technical, special, clerical, and legal assistance as may be needed to fulfill its purpose. Operational moneys are appropriated from the general funds of Manatee County and are expended at the direction of the study commission.

It appears that the Manatee County Study Commission serves in a solely advisory capacity, having no final authority to alter those aspects of local government which it studies. The commission's authority to expend funds and to hold hearings and conduct investigations is exercised solely in pursuit of its advisory function. It is therefore our opinion that the Manatee County Study Commission is an advisory body; its members therefore are exempt from current financial disclosure requirements.

We would like to point out that on January 1, 1976, the revised financial disclosure law will take effect. The new law requires, in part, that all "local officers" file statements of financial disclosure. The term "local officer" is defined to include:

> Any appointed member of a board, commission, authority, community college district board of trustees, or council of any political subdivision of the state, excluding any member of an advisory body. A governmental body with land planning, zoning or natural resources responsibilities shall not be considered an advisory body. [Section 112.3145(1)(a)2., amended by Ch. 75-196, Laws of Florida.]

Further, s. 112.312(1), Ch. 75-196, defines "advisory body" as:

> . . . any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or $100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties or obligations, other than those relating to its internal operations.

Whether the study commission members will be subject to the revised law will depend on whether they are "advisory" within the above definition. Should there be uncertainty in this matter, we will, upon request, issue an opinion based upon more detailed information relating to funding. The deadline for filing in 1976 is noon, July 15.

**CEO 76-33—February 13, 1976**

**CONFLICT OF INTEREST**

OFFICER PURCHASING AUTOMOBILE FROM COMPANY WHOSE PRODUCT HE PROMOTES PRIVATELY

*To: Thomas L. Hazouri, State Representative, District 21, Jacksonville*

*Prepared by: Bonnie Johnson*

**QUESTION:**

> **Are any provisions of the Code of Ethics for Public Officers and Employees violated where I purchase by "balloon" note a new automobile from an automobile company whose product I promote in my private capacity as a public relations employee?**

**SUMMARY:**

> **A state legislator who purchases by "balloon" note a new automobile from a company whose product he promotes in his private capacity as a public relations employee does not breach any provision of the Code of Ethics. Such notes are a common business practice and, because the automobile company is properly compensated, the vehicle could not be considered a conflicting gift pursuant to the prohibition contained in Fla. Stat. s. 112.313(2)(1975).**

Your question is answered in the negative.

It is our understanding, based upon your letter of inquiry, that you hold an occupational license to engage in work under the name "TLH Enterprises: Administrative Management and Public Relations." In this capacity you promote the product of Gordon Thompson Chevrolet of Jacksonville.

In a personal capacity you recently purchased a new automobile from Thompson Chevrolet, making a down payment and financing the balance on a "balloon" note. Under this method you entered into an 11-month contract, making monthly payments at a high rate of interest. Within 9 or 10 months you will be offered the options of paying off the balance in one sizable payment, refinancing the balance, or trading the car for a comparable 1977 model and continuing similar monthly payments. We further understand that such "balloon" notes are not uncommon but, in fact, are especially favored by those who choose to trade their automobiles at the end of each year.

The arrangement described above appears to have no bearing on your public position as a State Representative inasmuch as it constitutes a common business practice. We therefore perceive no conflict of interest pursuant to Fla. Stat. s. 112.313(6)(1975). Nor could the automobile

be considered a conflicting gift under Fla. Stat. s. 112.313(2)(1975) inasmuch as the client/company is being properly compensated by you.

Based on the facts before us, we find no violation of any provision of the Code of Ethics for Public Officers and Employees.

**CEO 76-37—February 13, 1976**

**CONFLICT OF INTEREST**

STATE SENATOR DOING BUSINESS WITH AN ACCOUNTING FIRM
THAT DOES BUSINESS WITH THE STATE

*To: Philip D. Lewis, Senator, 27th District, West Palm Beach*

*Prepared by: Gene Rhodes*

**QUESTION:**

**Does a prohibited conflict of interest exist where I, a State Senator, do business privately with an accounting firm that also does business with various state agencies?**

**SUMMARY:**

**No provision of the Code of Ethics for Public Officers and Employees would prohibit a State Senator from privately engaging an accounting firm which does work for various state agencies. The private business conducted with such firm would bear no relation to his responsibilities as a State Senator.**

Your question is answered in the negative.

Your letter of inquiry advises us that you engage an accounting firm to do accounting work for you personally, for your company, and for other business enterprises in which you are involved. This firm additionally does work for the Florida Keys Aquaduct Authority, the State Turnpike Authority, and the Department of Transportation.

There is no provision within the Code of Ethics for Public Officers and Employees which would prohibit the business transactions you describe. The private business which you conduct with the subject accounting firm bears no relation to your public responsibilities as a State Senator or to contracts held by the firm with other agencies of the state. Accordingly, we perceive no conflict under the Code of Ethics.

**CEO 76-50—March 16, 1976**

**DECLARATION OF GIFTS**

FAIR MARKET VALUE SHOULD BE DISCLOSED

*To: Jere Tolton, Representative, 6th District, Fort Walton Beach*

*Prepared by: Bonnie Johnson*

**QUESTION:**

**For purposes of disclosing on CE Form 1 gifts received, is it appropriate to report the fair market value of each gift?**

**SUMMARY:**

**The standard of conduct provision dealing with prohibited gifts states that a public official may not solicit or accept "anything of value to the recipient . . . [t]hat would cause a reasonably prudent person to be influenced in the discharge of his official duties." By analogy, the value of gifts which are required to be disclosed pursuant to Fla. Stat. s. 112.3145(3)(d)(1975) should be based on the fair market value of such gifts rather than on the wholesale value to the giver. It is the opinion of the commission that the legislative intent of the gift disclosure provision is to enlighten the public as to the identity of donors as well as to the value of such gifts to the officer/recipient.**

This question is answered in the affirmative.

The relevant provision of the Code of Ethics for Public Officers and Employees requires, in part, that the reporting official disclose on CE Form 1:

> A list of all persons, business entities, or other organizations, and the address and a description of the principal business activity of each, from whom he received a gift or gifts from one source, the total of which exceeds $100 in value during the disclosure period . . . . [Fla. Stat. s. 112.3145(3)(d)(1975).]

You advise us in your letter of inquiry that, in construing the above-cited provision of the law, you are uncertain as to whether you should report the value of gifts received based on the wholesale value to the giver, or based on the gift's fair market value.

In our view, the legislative intent of this provision is to enlighten the public as to the identity of donors as well as to the value of such gifts to public officers.

In support of this view, we would point out that gifts which are prohibited by the standards of conduct section of law include "anything of value to the recipient . . . [t]hat would cause a reasonably prudent person to be influenced in the discharge of his official duties." Fla. Stat. s. 112.313(2)(a)(1975).

For purposes of the Code of Ethics, a gift's value to the recipient/official is more important than its cost to the donor.

Accordingly, we are of the opinion that for purposes of disclosure of CE Form 1, you should ascertain the worth of any gift received based on the fair market value of such gift.

**CEO 76-87—May 17, 1976**

**CONFLICT OF INTEREST**

STATE LEGISLATOR EMPLOYED BY CONDOMINIUM ASSOCIATION

*To: John Adams, State Representative, District 94, Fort Lauderdale*

*Prepared by: Gene Rhodes*

**QUESTIONS:**

**1. Does my position as an administrative consultant to Condominium-Co-op Executives Council of Florida, Inc. interfere with my right to vote in my capacity as a legislator?**

**2. Does a prohibited conflict of interest exist where I, as a state legislator, am additionally an administrative consultant to Condominium-Co-op Executives Council of Florida, Inc.?**

**SUMMARY:**

**The voting rights of a state legislator are not impaired by his private employment as an administrative consultant to a condominium association. Florida Statute s. 112.3143(1975) states that no public officer may be prohibited from voting in his official capacity. Where a voting conflict of interest exists, however, the officer either may abstain from voting or may exercise his right to vote and make a public disclosure of the conflict. Further, such employment does not constitute a prohibited conflict of interest for the legislator.**

Question 1 is answered in the negative.

Please find enclosed a copy of CEO 76-23, question 3 of which fully explains the present state of the law as to voting conflicts.

The rationale of that response is equally applicable to your inquiry, which is answered accordingly in the negative.

Question 2 is answered in the negative.

There is no provision in the Code of Ethics for Public Officers and Employees that would prohibit you from simultaneously being a state legislator and an administrative consultant to the above-named condominium association.

**CEO 76-155—September 13, 1976**

**DISCLOSURE OF CLIENTS REPRESENTED BEFORE AGENCIES**

DOES NOT INCLUDE RENTAL TENANTS

*To: J. Hyatt Brown, Representative, 31st District, Daytona Beach*

*Prepared by: Bonnie Johnson*

**QUESTION:**

**Am I required to disclose on CE Form 2, Quarterly Client Disclosure, the fact that a state bureau rents warehouse space from a business in which I own a 15 percent interest?**

**SUMMARY:**

**Public officers are required to disclose quarterly, on Commission on Ethics Form 2, representation of clients before agencies at the same level of government as the reporting person's agency. The term "represent" or "representation" is defined to mean "actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client." Fla. Stat. s. 112.312(14)(1975). Accordingly, the rental of warehouse space to a state agency by a state legislator does not constitute a Form 2 disclosure. Should such rental income constitute in excess of 10 percent of the gross income of a business entity in which the legislator holds a material interest, however, provided such income constituted more than 10 percent of his gross income and exceed $1500, the source of such income is subject to disclosure in Part D of CE Form 1, the Statement of Financial Disclosure.**

Your question is answered in the negative.

You inform us in your letter of inquiry that you own a 15 percent interest in Ecology Business Park, which rents out warehouses. The Talking Book Library of the Bureau of Blind Services rents warehouse space in the park and was an occupant prior to your having bought an interest in the business.

Commission on Ethics Form 2, about which you inquire, is the vehicle for quarterly disclosure of clients represented before agencies, as mandated by Fla. Stat. s. 112.3145(4)(1975). "Represent" or "representation" is defined to mean

> . . . actual physical attendance on behalf of a client in an agency proceeding, [the writing of letters or filing of documents] on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client. [Fla. Stat. s. 112.312(14)(1975).]

Inasmuch as you do not represent the Bureau of Blind Services before any governmental agency, CE Form 2 is not applicable to the situation about which you inquire. You have informed our staff, however, that you wish to be advised as to what, if any, disclosure should be made of the above-described situation.

In pertinent part, the Code of Ethics requires that one disclose, in his annual statement of financial interests,

> [a]ll sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and [from which] received [an amount which was] in excess of 10 percent of his gross income during the disclosure period and which exceeds $1,500. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting. [Fla. Stat. s. 112.3145(3)(b)(1975).]

"Material interest" is defined to mean "direct or indirect ownership of [more than] 5 percent of the total assets or capital stock of any business entity." Fla. Stat. s. 112.312(10)(1975). Your 15 percent interest in the subject warehouse park thus constitutes a material interest for purposes of the disclosure provision quoted above. Accordingly, if you received 10 percent of your gross income during the disclosure period from the subject warehouse rental business, providing the income you received from the business exceeded $1500, you are required to disclose each source of income to that business entity which exceeded in value 10 percent of the business' gross income. More specifically, if you derived 10 percent or more of your gross income during 1975 from Ecology Business Park, *and* if the rental payments from the Bureau of Blind Services amounted to more than 10 percent of the business park's gross income that year, the Talking Book Library of the Bureau of Blind Services must be listed as a source of business entity's income on Part D of CE Form 1, the Statement of Financial Disclosure.

**CEO 76-167—September 13, 1976**

**CONFLICT OF INTEREST**

STATE SENATOR OWNER OF MATERIAL INTEREST
IN BUSINESS SELLING TO STATE AGENCIES

*To: (Name withheld at the person's request.)*

*Prepared by: Gene Rhodes*

**QUESTION:**

> **Would a prohibited conflict of interest be created were I, a state senator, to purchase a material interest in a business that sells merchandise to state agencies?**

**SUMMARY:**

> **The Code of Ethics prohibits a state officer from acting in a private capacity to sell any realty, goods, or services to his own agency. Fla. Stat. s. 112.313(3)(1975). The term "agency," however, is defined to include any state government entity and any department, division, bureau, commission, authority, or political subdivision therein. Fla. Stat. s. 112.312(2)(1975). Accordingly, a state senator's agency is the Florida Legislature, and thus he is not prohibited from selling to other agencies of state government. Also, although s. 112.313(7)(a) prohibits a public officer from having a contractual relationship with any agency subject to the regulation of his agency, subparagraph (7)(a)2. thereof exempts from such prohibition members of legislative bodies whose regulatory power is strictly through the enactment of laws.**

This question is answered in the negative.

Your letter of inquiry advises us that you have opportunity to purchase a material interest in a business that sells merchandise to various state agencies. This business does not sell to the Florida Legislature, however.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision* . . . . [Fla. Stat. s. 112.313(3)(1975); emphasis supplied.]

The italicized language above prohibits a state officer from acting in a private capacity to sell goods to his own agency. We have previously determined that ownership of a material interest in a business entity constitutes acting in one's private capacity to sell where that business sells. *See* CEO 75-196. Pursuant to Florida Statute s. 112.312(2)(1975), however, your agency is the Florida Legislature, thus rendering the above-quoted prohibition inapplicable to your situation.

The Code of Ethics further provides as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
>
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties . . . .
>
> * * * * *
>
> 2. *When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.* [Fla. Stat. s. 112.313(7)(a)(1975); emphasis supplied.]

This section prohibits a public officer from having a contractual relationship with a business entity subject to the regulation of his public agency. However, the italicized language above exempts members of legislative bodies from the prohibition where the regulatory powers exercised over a business entity is strictly through the enactment of laws. As the Florida Legislature regulates businesses in the state strictly through the enactment of laws, you are not prohibited by the Code of Ethics from purchasing a material interest in the above-described business.

**CEO 77-6—February 1, 1977**

**CONFLICT OF INTEREST**

STATE LEGISLATOR CONSULTANT TO BUSINESS ENTITY
PERFORMING WORK FOR AGENCIES OF GOVERNMENT

*To: (Name withheld at the person's request.)*

*Prepared by: Bonnie Johnson*

**QUESTION:**

**Would a prohibited conflict of interest be created were a business entity which I, a state legislator, serve as consultant to do business with governmental entities within the state?**

**SUMMARY:**

**Section 112.313(7)(a), F.S. 1975, prohibits a public officer from holding employment or a contractual relationship with any business entity or agency subject to the regulation of his public agency. However, subparagraph 2. of that statute provides an exemption when the officer's agency is a legislative body whose regulatory authority over the business entity is strictly through the enactment of laws or ordinances. Accordingly, no prohibited conflict is created in a state legislator's serving as a consultant to a family-owned business which does business with government agencies, so long as the business does not transact with the Florida Legislature, the legislator's agency, in violation of s. 112.313(3).**

Your question is answered in the negative.

You inform us in your letter of inquiry that prior to your election to the State Legislature you served as a corporate officer and member of the Board of Directors of _____, general contractors and a family-held corporation in which your father controls all of the stock. You further advise that upon taking office as a state representative, you resigned both positions with the corporation and presently hold the title of "consultant" to the business. In such capacity you retain the use of a corporation-owned car as well as medical and life insurance coverage written through the corporation's group policy. Your duties as consultant will be to act for the corporation president, your father, only in the event of his serious illness or extended absence from the business. You have further advised our staff that you will be compensated at the rate of $100 per week while being employed as a consultant to the corporation.

The Code of Ethics for Public Officers and Employees provides in relevant part as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S. 1975.]

A public officer accordingly is prohibited from holding employment or having a contractual relationship with any agency subject to the regulation of his public agency. As the Florida Legislature regulates all governmental entities within the state, your situation would appear to be

precluded by the above-quoted provision of the law. However, s. 112.313(7)(a) further provides as follows:

> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

As the Florida Legislature clearly is a legislative body whose regulatory authority over other agencies of government is strictly through the enactment of laws or ordinances, the situation about which you inquire falls squarely within this exemption. Accordingly, no prohibited conflict of interest is constituted in your serving as consultant to a family-owned corporation which does business with governmental agencies.

We would point out, however, that should you, during your tenure as a state representative, resume your duties as an officer or director of the corporation, that corporation would be precluded from transacting business with the Legislature, your agency, pursuant to the mandate of s. 112.313(3), F.S. 1975.

**CEO 77-10—February 1, 1977**

**CONFLICT OF INTEREST**

STATE SENATOR PARTNER IN INVESTMENT GROUP OWNING LAND CONTIGUOUS TO MUNICIPAL AIRPORT

*To: (Name withheld at the person's request.)*

*Prepared by: Bonnie Johnson*

**QUESTION:**

> **Where a state senator is a limited partner in an investment group owning property near a municipal airport, would a conflict of interest be created for the senator were the municipality to purchase additional land for airport use which is adjacent to the investment group's property?**

**SUMMARY:**

> **No prohibited conflict of interest is created in a state senator's being a limited partner in an investment group which owns property near a municipal airport, were the municipality to purchase additional airport land adjacent to the investment group's property. Although a public officer is prohibited by s. 112.313(7)(a), F.S. 1975, from having a contractual relationship with a business entity subject to the regulation of his agency, subparagraph 2. of that statute exempts from this prohibition members of legislative bodies who regulate strictly through the enactment of laws or ordinances.**

Your question is answered in the negative.

You advise in your letter of inquiry that around 1970 an investment group called _____ was organized with 2 general partners and 18 limited partners. Since the group's inception, Senator _____ has been a limited partner. In 1971, the investment group purchased property located

approximately a quarter of a mile east of _____ Air Force Base. Later, around 1974, _____ became a joint use airport and subsequently was deeded to the city by the Air Force. An airport authority was created in 1976 and, although he was nominated for membership on that body, the senator asked that he not be considered. The city now is negotiating the purchase of additional property which is contiguous to that held by the investment group, and the senator wishes to know if the purchase, and the consequent increase in value of the group-owned land, creates a conflict with his recently acquired public position.

The Code of Ethics for Public Officers and Employees provides in relevant part as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S. 1975.]

A public officer thus is precluded from holding private employment or having a contractual relationship with a business entity subject to the regulation of his public agency or which conflicts with his public duties. Pursuant to s. 112.312(2), F.S. (1976 Supp.), the senator's agency is the Florida Legislature which, in varying degrees, regulates all businesses and agencies within the state. However, the above-quoted provision continues so as to establish an exception to the general prohibition:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2., F.S. 1975.]

As the Florida Legislature is a legislative body whose regulatory authority over the investment group is restricted to the enactment of laws, the subject senator's situation falls within this statutory exception. Based on the circumstances before us, we perceive no conflict between the senator's private interest in the group and the performance of his duties as a state senator.

Accordingly, we find no prohibited conflict to be created in the senator's privately being a limited partner in an investment group which owns property contiguous to that of a municipal airport. We would, however, call the senator's attention to s. 112.3143, relating to voting conflicts, should he ever be faced with a vote affecting the value of the property and/or the municipality's future purchase of it from the investment group.

**CEO 77-13—February 1, 1977**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE LEASING PROPERTY TO DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

*To: (Name withheld at the person's request.)*

*Prepared by: Bonnie Johnson*

**QUESTION:**

**Would a prohibited conflict of interest exist were I, a state representative, to lease property to the Department of Health and Rehabilitative Services?**

**SUMMARY:**

**A legislator may not be deemed to be doing business with his own agency in violation of s. 112.313(3), F.S. 1975, where he leases property to a state department, inasmuch as the legislator's agency is the Florida Legislature pursuant to the definition of the term "agency." *See* s. 112.312(2), F.S. (1976 Supp.). Nor is such leasing of property in violation of s. 112.313(7)(a), as subparagraph 2. therein provides an exemption where the officer's agency is a legislative body which regulates the other agency strictly through the enactment of laws.**

Your question is answered in the negative.

In your letter of request you have stated that you are a member of the Florida House of Representatives. You have also stated that you own and lease various business properties, one of which is a building located near various governmental offices in downtown _____ , Florida. Representatives of the Department of Health and Rehabilitative Services have contacted you and other property owners in _____ regarding possible lease of office space to the department. Because the office space required will exceed 5,000 square feet, the Department of General Services will advertise for bids before any lease will be signed. The Code of Ethics for Public Officers and Employees provides in relevant part:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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. [Section 112.313(3), F.S. 1975.]

This provision prohibits a public officer acting in his official capacity from leasing any realty for his own agency from any business entity of which he is an officer, partner, director, or proprietor or in which he has a material interest.

The provision also prohibits a public officer acting in a private capacity from leasing any realty to his own agency, if he is a state officer.

As a state representative, your agency is the Florida Legislature, according to the definition of "agency" contained in s. 112.312(2), F.S. (1976 Supp.). Since the proposed lease would be between you and the Department of Health and Rehabilitative Services rather than between you and your agency, the above-quoted provision does not apply.

The Code of Ethics further provides as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties . . . .
>
> * * * * *
>
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2., F.S. 1975.]

This provision prohibits a public officer from having a contractual relationship with an agency which is subject to the regulation of his agency. Were you to enter into a lease with the Department of Health and Rehabilitative Services you would have a contractual relationship with an agency which is subject to the regulation of the Legislature. However, s. 112.313(7)(a)2., quoted above, provides a limited exception to this prohibition where the officer's agency is a legislative body and the regulatory power which that body exercises over the regulated agency is strictly through the enactment of laws.

Accordingly, we find that the Code of Ethics for Public Officers and Employees does not prohibit your leasing office space to the Department of Health and Rehabilitative Services while you are serving as a state representative.

**CEO 77-22—February 17, 1977**

**CONFLICT OF INTEREST**

STATE SENATOR APPEARING BEFORE COUNTY COMMISSIONERS OF COUNTY WITHIN HIS DISTRICT TO REQUEST REZONING

*To: Thomas M. Gallen, Senator, 24th District, Bradenton*

*Prepared by: Phil Claypool*

**QUESTIONS:**

**1. Does a prohibited conflict of interest exist where I, a state senator who is an attorney, represent clients seeking rezoning before the board of county commissioners of a county within my district?**

**2. Does a prohibited conflict of interest exist where I, a state senator, appear before the board of county commissioners of a county within my district in seeking the rezoning of property owned by me?**

**SUMMARY:**

**The Code of Ethics prohibits a public officer from holding any employment or contractual relationship with a business entity or agency which is subject to the regulation of, or is doing business with, his public agency or which creates a continuing conflict with and impedes the discharge of his public duty. Section 112.313(7)(a), F.S. 1975. A state senator's agency is the Legislature pursuant to the definition of "agency" contained in s. 112.312(2), F.S. (1976 Supp.). His representation of a client before a board of county commissioners within his legislative district does not constitute employment or a contractual relationship with that board; nor does the question involve the Legislature's regulation of his clients, with whom he does have a contractual relationship. Such representation of clients, or appearance before the board on his own behalf, does not present a frequently recurring conflict between his private interests and public duties or that would impede the full and faithful discharge of his public duties. Consequently, the Code of Ethics does not prohibit a state senator from appearing before a board of county commissioners of a county within his district to seek rezoning of property owned either by himself or by a party whom he represents as attorney.**

Question 1 is answered in the negative.

According to information supplied with your request, you are the State Senator for the 24th District of Florida, which encompasses Manatee County. As an attorney, you have represented before the Manatee County Board of County Commissioners clients who were seeking the rezoning of property in which you also have an interest.

The Code of Ethics for Public Officers and Employees provides in part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S. 1975.]

As a state senator, your agency is the Legislature. Section 112.312(2), F.S. (1976 Supp.). Your representation of a client before the board of county commissioners does not constitute an employment or contractual relationship with that board. Nor does your question involve the Legislature's regulation of your clients, with whom you do have a contractual relationship. Consequently, the first clause of the above provision is not relevant to your situation. Moreover, we do not feel that your representation of clients in matters of rezoning creates a continuing or frequently recurring conflict between your private interests and the performance of your public duties or that would impede the full and faithful discharge of your public duties as a senator.

Accordingly, we find that the Code of Ethics for Public Officers and Employees does not prohibit you from representing clients in matters of rezoning before the board of county commissioners of a county within your district.

Question 2 is answered in the negative.

Section 112.313(7)(a), F.S. 1975, quoted above, does not apply to this situation because of the absence of an employment or contractual relationship. Nor do we find any other provision of the Code of Ethics relevant to the question presented.

Accordingly, we find that the Code of Ethics for Public Officers and Employees does not prohibit you from appearing before the board of county commissioners of a county within your district in seeking the rezoning of property owned by you.

**CEO 77-67—April 21, 1977**

**CONFLICT OF INTEREST**

STATE SENATOR LEASING PROPERTY TO COUNTY

*To: (Name withheld at the person's request.)*

*Prepared by: Bonnie Johnson*

**QUESTION:**

> **Would a prohibited conflict of interest be created were I, a state senator, to lease property in which I have a substantial interest to a county for county office space?**

Your question is answered in the negative.

You advise in your letter of inquiry that you own a substantial interest in an office building located in downtown Tampa. Your plans are to lease a portion of the building to Hillsborough County, to be used as county office space. In an abundance of caution, however, you seek our advice as to any possible ethical considerations.

Enclosed please find a copy of a recent opinion of this commission, CEO 77-13, the rationale of which is equally applicable to your inquiry inasmuch as, pursuant to the definition of "agency" contained in s. 112.312(2), F.S. (1976 Supp.), the county constitutes an agency separate and

distinct from your agency, the Florida Legislature. Your question is answered accordingly in the negative.

**CEO 77-108—July 21, 1977**

**CONFLICT OF INTEREST**

SENATOR USING FUNDS FROM DISTRICT OFFICE EXPENSES
TO ADVERTISE AVAILABILITY AND FUNCTIONS
OF HIS OFFICE

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees prohibit me, a state senator, from joining with two other senators to use funds from district office expenses to advertise the existence and availability of the services provided by our offices?**

**SUMMARY:**

**Section 112.313(6), F.S. 1975, prohibits a public officer from corruptly using or attempting to use his official position or any property or resource within his trust to secure a special privilege, benefit, or exemption for himself or others. The term "corruptly" is defined in s. 112.312(7), F.S. (1976 Supp.) to mean done with a wrongful intent and for the purpose of receiving compensation or benefit from an act inconsistent with public duty. Neither provision is applicable to a state senator's using funds from district office expenses to purchase newspaper space advising of the availability and functions of his office, unless such use of funds were deemed to be unlawful. Section 11.13(4) sets forth the uses which may be made of district office expenses, including "other types of district expenses when specifically authorized by the Joint Legislative Management Committee." Accordingly, the authorization of the committee appears to be necessary in order for such funds to be expended lawfully, in which case no conflict of interest would exist under the Code of Ethics.**

In your letter of inquiry you advise that you, Senator Philip Lewis, and Senator Harry Johnston represent the same geographical area, which covers six counties. The three of you would like to use funds from your district office expenses to run a small ad in local newspapers within five counties, excluding Palm Beach County, advising the citizens of those five counties that they should contact your individual offices in West Palm Beach if they have questions concerning legislation, etc. You estimate that the cost, divided three ways, would run approximately $50 to $75 per month for ads approximately two column inches wide and 3 inches long. You further state your belief that the three of you will be providing a service to your constituents by running these ads once or twice monthly since you represent approximately one million people in six counties, with thousands of new residents moving into the area monthly.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special

> privilege, benefit, or exemption for himself or others . . . . [Section 112.313(6), F.S. 1975.]

In turn, the term "corruptly" is defined in s. 112.312(7), F.S. (1976 Supp.), to mean

> done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

We address this section of the Code of Ethics because it is the only provision which potentially applies to the situation you have described and, secondly, because we feel that this provision might be violated were a legislator to knowingly spend district office expense funds for a purpose not permitted by law to secure a special privilege or benefit for himself or others. Therefore, we must first determine whether the law permits the use of district office expense funds for advertisements such as you have described.

Section 11.13(4), F.S. 1975, provides as follows:

> Each member of the Legislature shall be entitled monthly to receive reimbursement for intradistrict expenses upon his voucher for reimbursement for the payment of expenses of district office rental, rental of office furniture and office equipment, utilities, telegrams, telephone and answering service, postage and post-office box rent, office supplies, photo copies, legal advertising, intradistrict travel expense, part-time clerical or technical help incurred in the performance of his legislative duties, and *other types of district expenses when specifically authorized by the Joint Legislative Management Committee*. The rules and procedure for reimbursement of the monthly intradistrict expense allowed shall be set from time to time by the Joint Legislative Management Committee, but shall not exceed $300 per month per member. Said reimbursement shall be a proper expense of the Legislature and shall be disbursed from the appropriation for legislative expense. The reimbursement of expenses provided under this subsection shall not include any travel and per diem reimbursed under subsections (2) and (3) of this section or the rules of either house. [Emphasis supplied.]

As the type of expenditure you are contemplating does not fall within those specifically set forth above, it appears that you will need the authorization of the Joint Legislative Management Committee before that expenditure may be made lawfully.

Accordingly, so long as the use of funds from district office expenses to advertise the existence and availability of the services provided by your office is approved by the Joint Legislative Management Committee, as provided by law, we find that the Code of Ethics does not prohibit the use of those funds for such a purpose.

**CEO 77-129—August 24, 1977**

**CONFLICT OF INTEREST, VOTING CONFLICT OF INTEREST**

STATE REPRESENTATIVE WHOSE LAW FIRM REPRESENTS CONDOMINIUM ASSOCIATIONS PARTICIPATING IN A CONDOMINIUM LEGISLATION BY AUTHORSHIP, VOTE, AND DEBATE

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTIONS:**

**1. Would a prohibited conflict of interest exist were I, a state representative and attorney whose law firm represents condominium associations, to participate in condominium legislation by authorship, vote, or debate where the legislation affects my clients just as it does all condominium owners?**

**2. Would a voting conflict of interest exist were I, a state representative and an attorney whose law firm represents condominium associations, to vote on condominium legislation that affects my clients just as it does all condominium owners?**

**SUMMARY:**

**Section 112.313(7)(a), F.S., prohibits a public officer from having a contractual relationship with a business entity which is subject to the regulation of his public agency. However, members of legislative bodies are provided a limited exemption from this prohibition in subparagraph 2. therein "where the regulatory power over the business entity resides in another agency or when the regulatory power which the legislative body exercises is strictly through the enactment of laws or ordinances . . . ." As the regulatory power which the Florida Legislature exercises over business entities within the state is strictly through the enactment of laws, a legislator is not prohibited from representing as an attorney condominium associations so long as he does not corruptly misuse his public position for private gain as prohibited by s. 112.313(6). Nor is a voting conflict of interest deemed to be created where the legislator votes on condominium legislation which affects his clients just as it does all condominium owners, because such vote would not inure to the *special* private gain of either the legislator or his clients. In the Commission's view the question of what constitutes special private gain turns in part on the size of the class of persons who stand to benefit from the measure. *See* previous opinions 77-57, 77-111, 77-119, and 76-62. In the instant case, condominium legislation will benefit a very large class of persons—condominium owners within the state. Accordingly, a voting conflict requiring disclosure pursuant to s. 112.3143 would be created only if particular legislation would be of special benefit to the legislator's clients due to their circumstances being unique as compared with all other condominium owners.**

Question 1 is answered in the negative.

In response to public allegations of conflict of interest because of your role in the enactment of a law which creates a rebuttable presumption of the unconscionability of certain types of condominium recreation leases, you are inquiring as to the propriety of that role in light of the fact that you are an attorney whose law firm represents condominium associations, among other clients.

The Code of Ethics for Public Officers and Employees provides as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S. 1975.]

This provision prohibits a public officer from having a contractual relationship with a business entity which is subject to the regulation of his agency. As a state representative, your agency is the Legislature, whose regulatory powers extend generally over every business entity in the state. However, members of legislative bodies are given a limited exemption from the application of this provision by subparagraph (7)(a)2., which states:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

As the regulatory power which the Legislature exercises over business entities in this state is strictly through the enactment of laws, your relationship with condominium associations falls within the exemption and therefore does not present a conflict of interest.

While providing a limited exception for the employment or contractual relationship of members of legislative bodies, the Code of Ethics recognizes that it is possible for a legislator to misuse his public position. Section 112.313(6), F.S. 1975 provides:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

This provision prohibits a public officer from corruptly performing his official duties to secure a special benefit for himself or others. As a state representative, your official duties include participating in legislation by authorship, debate, and vote.

The term “corruptly” is defined in the Code of Ethics to mean

> done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties. [Section 112.312(7), F.S. (1976 Supp.).]

While we are not in a position to judge, in an advisory opinion, your intent with regard to such legislation, we note generally that a legislator necessarily works with legislation that may impinge on his personal financial interests; the very nature of his position is such that he must provide effective representation of his constituents’ interests on all issues coming before the Legislature.

Where a legislator has participated in legislation on a social or economic issue that he honestly feels is in the best interests of the people of this state, neither is his intent wrongful nor are his actions inconsistent with the proper performance of his public duty.

In addition, a violation of s. 112.313(6), above, requires that an officer must have performed his official duties to secure a *special* benefit for himself or others. Where a benefit has been secured through a general act of the Legislature which affects a broad class of persons, we are of the view that the phrase "special benefit" contemplates a benefit to a particular person or group which exceeds that received by the other members of the class of persons affected. Here, where you have specified that the legislation affects clients of your firm in the same manner as it affects condominium owners generally, there can be no special privilege or benefit.

Accordingly, we find that there is no prohibited conflict of interest in your participation in condominium legislation by authorship, vote, or debate while also being an attorney whose law firm represents condominium associations and where the legislation affects your clients just as it does condominium owners in general.

As to question 2, the Code of Ethics provides in relevant part:

> *Voting conflicts*.—No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143, F.S. 1975.]

When an officer is contemplating voting upon a measure in which he has a professional interest and which inures to the special private gain of himself or his principal, this provision does not require his abstention or prohibit his receiving a special private gain but, instead, merely requires the filing of a memorandum disclosing the nature of his interest, should he elect to vote. In our view, whether a measure inures to the *special* private gain of an officer or his principal will turn in part on the size of the class of persons who stand to benefit from the measure. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he stands to gain more than the other members of the class. *See* CEO 77-57. Where the class of persons benefiting from the measure is extremely small, the possibility of special gain is much more likely. *See* CEO's 77-111, 77-119, and 76-62.

Here, condominium legislation will benefit a very large class of persons—condominium owners within the state. Accordingly, if the legislation would be of special benefit to your clients because their circumstances are unique as compared with all other condominium owners, a voting conflict would be created requiring you to file a Memorandum of Voting Conflict if you choose to vote.

**CEO 77-165—October 24, 1977**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE CONTACTING CONSTITUENTS

*To: Dorothy E. Sample, Representative, 61st District, St. Petersburg*

*Prepared by: Bonnie Johnson*

**QUESTION:**

> **Would any provision within the state ethics laws be violated were I to make myself available to constituents by means of situating myself on street corners with a sign identifying my presence and availability as their representative?**

**SUMMARY:**

**No provision of part III, Ch. 112, F.S., or of s. 8, Art. II, State Const., would be violated were a state representative to make herself available to constituents by means of situating herself on street corners with a sign identifying her presence and availability as their representative. The Commission on Ethics exercises no jurisdiction over state elections laws, however. The Department of State, Division of Elections, should be contacted to determine whether any election laws are applicable to the activity under consideration.**

Your question is answered in the negative.

The standards of conduct for public officers and employees over which this commission exercises jurisdiction are contained in part III, Ch. 112, F.S., and s. 8, Art. II, State Const. In general, these provisions relate to financial disclosure and to the use of public office for private gain. None of these provisions are germane to your proposal to make yourself accessible to your constituents for aid with their legislative concerns.

The Commission on Ethics exercises no advisory jurisdiction over the elections laws. You may wish to contact the Department of State, Division of Elections, to determine whether such laws are applicable to the activity under consideration.

**CEO 77-168—November 10, 1977**

**SUNSHINE AMENDMENT**

APPLICABILITY OF s. 8(e), ART. II OF FLORIDA CONSTITUTION TO LEGISLATOR-LAWYER REPRESENTATION OF A CLIENT IN ENVIRONMENTAL LITIGATION UNDER ENVIRONMENTAL PROTECTION ACT

*To: Tom R. Moore, Representative, 55th District, Clearwater*

*Prepared by: Phil Claypool*

**QUESTION:**

**To what extent does s. 8(e), Art. II of the Florida Constitution apply to a legislator who in his private capacity as an attorney represents a client in environmental litigation under the Florida Environmental Protection Act?**

**SUMMARY:**

**Section 8(e), Art. II, State Const., provides, in part, that "[n]o member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals . . . ." A state representative who, privately as an attorney, represents a client in environmental litigation under the Florida Environmental Protection Act is required by that act to notify the Department of Environmental Regulation of his private client's intention to file suit. He therefore questions whether his participation in subsequent communications with the staff of that agency constitutes the personal representation of another person or entity before a state agency.**

**The purpose of s. 8(e), Art. II, appears to be to secure the public trust against abuse by prohibiting a legislator from using the influence of his office over state agencies in order to gain benefits for a private client. As discussions between a legislator and a state agency may result in the agency's making a decision beneficial to the legislator/attorney's client, it would appear to fall squarely within the constitutional prohibition. This view is in accord with the commonly accepted meaning of "represent" as well as with the definition of that term contained in s. 112.312(15), F.S. (1976 Supp.). Too, a broad interpretation of this prohibition is consistent with the post officeholding restriction which appears in the first sentence of s. 8(e), Art. II, the purpose of which is to prohibit a public officer from exploiting the special knowledge or influence gained from his office by lobbying for his personal profit after having left office. However, the legislator/attorney is not prohibited from representing a private client before a court of law; neither is he prohibited from having a partner, or counsel associated with him, represent his client in those instances before state agencies where he is prohibited from doing so.**

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and also an attorney who practices in the area of environmental law.

The Environmental Protection Act of 1971 provides in part as follows:

> (a) The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against:
>
> 1. Any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations;
>
> 2. Any person, natural or corporate, governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules or regulations for the protection of the air, water, and other natural resources of the state.
>
> (b) In any suit under paragraph (a), the Department of Legal Affairs may intervene to represent the interests of the state.
>
> (c) As a condition precedent to the institution of an action pursuant to paragraph (a), the complaining party shall first file with the governmental agencies or authorities charged by law with the duty of regulating or prohibiting the act or conduct complained of a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. Upon receipt of a complaint, the governmental agency or authority shall forthwith transmit, by registered or certified mail, a copy of such complaint to those parties charged with violating the laws, rules, and regulations for the protection of the air, water and other natural resources of the state. The agency receiving such complaint shall have 30 days after the receipt thereof within which to take appropriate action. If such action is not taken within the time prescribed, the complaining party may institute the judicial proceedings authorized in paragraph (a). However, failure to comply with this subsection shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the conduct or activity complained of.
>
> (d) In any action instituted pursuant to paragraph (a), the court, in the interest of justice, may add as party defendant any governmental agency or authority charged with the duty of enforcing the applicable laws, rules, and regulations for the protection of the air, water and other natural resources of the state. [Fla. Stat. s. 403.312(2)(1975).]

Thus, the act allows a private citizen to bring suit for an injunction against a private party to halt violations of the environmental laws. However, before such a suit may be filed in court, the act requires that notice must be given to the governmental agencies or authorities charged by law with the duty of regulating or prohibiting the act or conduct which forms the basis of the complaint. A copy of this notice is sent to the alleged violator by the agency, and the agency is given 30 days

within which to take appropriate action. If no such action is taken by the agency within that time period, the complaining citizen may file the suit. Section 403.412(2)(c), quoted above.

The Sunshine Amendment, s. 8, Art. II of the Florida Constitution, provides in subsection (e) as follows:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. *No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals*. Similar restrictions on other public officers and employees may be established by laws. [Emphasis supplied.]

The question you present is whether your notifying a state agency of a private client's intention to file suit under the Environmental Protection Act and your participation in subsequent communications with the staff of that agency constitute the personal representation of another person or entity before a state agency.

At the outset we note that your question does not relate to the propriety of inquiries made by a legislator in behalf of a constituent, as such are not undertaken for compensation. Nor does your question relate to representation of a client before a judicial tribunal, permitted under the amendment, because your question concerns circumstances occurring before any pleading is filed in court.

As s. 8(e), Art. II, has not been interpreted previously, we must turn to the courts for guidance.

> The fundamental object in construing a constitutional provision is to ascertain and give effect to the intentions of the framers and adopters, and constitutional provisions must be interpreted in such a manner as to fulfill this intention rather than to defeat it. State ex rel. West v. Gray, 74 So.2d 114 (Fla. 1954). In construing particular constitutional provisions, the object sought to be accomplished and the evils sought to be remedied should be kept in mind by the courts, and the provisions should be so interpreted as to accomplish, rather than to defeat such objects. State ex rel. West v. Gray, *supra*; Owens v. Fosdick, 153 Fla. 17, 13 So.2d 700 (Fla. 1943). [State *ex rel*. Dade County v. Dickinson, 230 So.2d 130, 135 (Fla. 1969).]

Accordingly, we must first ascertain the intent behind this constitutional provision. The preamble to s. 8, Art. II, is as follows:

> A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse . . . .

Reading this language in conjunction with subsection (e), the purpose of that subsection appears to be to secure the public trust against abuse by prohibiting a legislator from using the influence of his office over state agencies in order to gain benefits for a private client. However, this provision also operates to prohibit members of the Legislature from undertaking to represent clients in situations which would give the *appearance* of improper influence even in the absence of intentional efforts to misuse the power of legislative influence. This concern is reflected in various articles dealing with governmental ethics, excerpts from two of which are as follows:

> State administrators are in many respects subject to the control of the legislature, which approves their budgets, including their salaries, and may change or limit their jurisdiction. These agencies are therefore susceptible to the wishes of a legislator seeking special treatment in his private capacity. Appearance by legislators before agencies of the government in behalf of private interests does not necessarily involve the use of undue influence, but these circumstances give an appearance malum in se which is almost as damaging to public confidence as an actual act of bad conduct. [*State Conflict of Interest Laws: A Panacea for Better Government?*, 16 DePaul L. Rev. 453,459 (1966).]

> One of the more pressing and controversial conflict problems arises when a public official represents private interests before a government agency. The danger is that the official will be in a position to influence unduly or to bring pressure upon the agency in order to gain a favorable ruling or decision as, for example, when a member of the state road board goes before a county commission to obtain an exclusive right to community antenna service for one of two competing corporations. [*Conflicts of Interest: A New Approach*, 18 U. Fla. L. Rev. 675,683 (1966).]

As you recognize in your letter of inquiry, litigation by a citizen under the Environmental Protection Act will result as a matter of course in discussions between the citizen's attorney and the staff of the affected agency, as a result of which the agency will decide what action it will take, if any. These discussions may result in the agency's deciding to pursue an alleged violator of environmental laws. This, in turn, would result in substantial benefit to the attorney's client, who is relieved of the expense of a lawsuit. This situation presents the opportunity for a legislator/attorney to misuse the influence of his public office and also can present the appearance of improper influence even where none is attempted, especially where the agency's decision is favorable to the client. Therefore, the situation you have described seems to fall squarely within the intent behind the constitutional prohibition.

It has been stated that, because the primary purpose of the rules of constitutional interpretation is to ascertain the intention of the people adopting a particular provision, it is presumed that words appearing in the Constitution have been used according to their natural and popular meaning as usually understood by the people who have adopted them. Therefore, the words in a Constitution should be construed in their plain, ordinary, and commonly accepted meaning unless the text suggests that they have been used in a technical sense. 6 Fla. Jur. *Constitutional Law* s. 26 (1963), citing, among others, State *ex rel*. West v. Butler, 69 So. 216 (Fla. 1914), and Wilson v. Crews, 34 So.2d 114 (Fla. 1948). In this regard we note that Webster's New Collegiate Dictionary (1973) defines "represent" as "to take the place of in some respect" or "to act in the place of or for usu. by legal right." Similarly, Black's Law Dictionary (4th ed., 1957) defines "to represent" as "to stand in his place; to supply his place; to act as his substitute." Therefore, a legislator who is acting in behalf of his client in contacting a state agency would be representing that client in a matter before that agency as the term "represent" seems to be commonly understood.

In addition, "represent" is defined in the Code of Ethics for Public Officers and Employees to mean

> actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client. [Section 112.312(15), F.S. (1976 Supp.).]

This broad definition of "represent," which encompasses all contact with an agency in behalf of a client, is consistent with the scope given to that term by other states. For example, Texas law provides as follows:

> No member of the legislature shall, for compensation, represent another person before a state agency in the executive branch of state government unless:
>
> (1) The representation is made in a proceeding that is adversary in nature or other public hearing which is a matter of record; or
>
> (2) The representation involves the filing of documents, contacts with such agency, or other relations, which involve only ministerial acts on the part of the commission, agency, board, department, or officer. [Tex. Rev. Civ. Stat. Ann., Art. 6252-9b, Section 7(a) (1977 Supp.).]

Thus, in Texas, a representation before a state agency would seem to include filing documents or making other contacts with the agency in regard to merely ministerial acts of the agency, although such forms of representation are expressly exempted from the prohibition.

In interpreting this constitutional prohibition, we note that omissions from constitutional provisions should be presumed to have been intentional. *In re* Advisory Opinion to the Governor, 112 So.2d 843 (Fla. 1959). Thus, we are not free to make distinctions between representations in

ministerial matters or representations in matters collateral to a civil action where such distinctions do not appear in the constitutional provision.

Too, a broad interpretation of this prohibition is consistent with the post officeholding restriction which appears in the first sentence of s. 8(e), Art. II, the purpose of which is to prohibit a public officer from exploiting the special knowledge or influence gained from his office by lobbying for his personal profit after having left office. *See* 18 U. Fla. L. Rev. 675, *supra*.

In this regard, we take note that lobbying is not done solely in formal proceedings, such as committee hearings, but also takes place in less formal contact with the officers and employees of an agency through letters, telephone calls, and meetings. Were we to read "represent before an agency" not to include such informal means of contact with an agency in behalf of a client for purposes of your question, we would be forced to read the identical language completely differently for purposes of the post officeholding restriction. Accordingly, until judicially clarified to the contrary, we are of the opinion that s. 8(e), Art. II of the Florida Constitution prohibits a legislator who in his private capacity as an attorney represents a client in environmental litigation under the Environmental Protection Act from filing a verified complaint noticing his intention to file suit under that act with a state agency, other than a judicial tribunal, and from discussing that complaint with any of the officers or employees of the agency. We reiterate that you are not prohibited from representing such client before a court of law, but only before state agencies other than judicial tribunals.

However, since constitutional omissions are presumed to be intentional and since the constitutional provision only prohibits "personally" representing a client, we find nothing in s. 8(e), Art. II, which would prohibit you from having a partner, or counsel associated with you, represent your client in those instances where you are prohibited from doing so. We would point out, however, that representations before a state agency by a partner or associate of your firm must be disclosed on a quarterly basis pursuant to s. 112.3145(4), F.S.

**CEO 77-175—November 10, 1977**

**CONFLICT OF INTEREST**

SENATOR DISTRIBUTING SENATE PUBLICATION TO SCHOOL AND CIVIC GROUPS

*To: George A. Williamson, Senator, 29th District, Ft. Lauderdale*

*Prepared by: Phil Claypool*

**QUESTION:**

**Would a prohibited conflict of interest be created were I, a state senator, to distribute a brochure entitled "The Florida Senate" with my name stamped inside to school and civic groups upon their request?**

**SUMMARY:**

**No misuse of public position, as described and prohibited by s. 112.313(6), F.S., is deemed to exist where a state senator transmits copies of a brochure entitled "The Florida Senate" which have been stamped with his name to persons or groups which have requested copies of such document. The stamped message is deemed to serve a function similar to that of a cover letter or a business card. Reference is made to CEO 75-45. Section 112.313(6) potentially would be violated, however, were the brochure to be transmitted unsolicited as, for example, part of an election campaign effort. As the jurisdiction of the Commission on Ethics is limited to s. 8, Art. II of the Florida Constitution and part III, Ch. 112, F.S., the**

**Attorney General and the Division of Elections should be consulted as to the potential applicability of other statutes.**

Your question is answered in the negative.

In your letter of inquiry you advise that you have received numerous requests from local school and civic groups for a publication known as "The Florida Senate" and that you would like to distribute some of these brochures with an added message to be stamped inside the back cover which would read, "Compliments of Senator George A. Williamson, District 29, Fort Lauderdale, Florida." In a telephone conversation with our staff, your aide advised that these brochures are given free of charge to visitors to the Capitol and have been given previously by you without your name stamped to persons requesting copies.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others . . . . [Section 112.313(6), F.S. 1975.]

In turn, the term "corruptly" is defined in s. 112.312(7), F.S. (1976 Supp.), to mean

> done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

Under this provision, we see nothing wrong with your sending copies of "The Florida Senate" which have been stamped with your name to persons or groups which have requested copies. Where copies have been requested, the stamped message would serve a function similar to that of a cover letter or a business card. *See* CEO 75-45, a copy of which is enclosed. However, we perceive a possible violation of this provision were copies to be sent unsolicited as, for example, part of a campaign.

Accordingly, we find that the Code of Ethics for Public Officers and Employees does not prohibit you from distributing the brochure "The Florida Senate" with your name stamped inside to school and civic groups upon their request. As our jurisdiction is limited to s. 8, Art. II of the Florida Constitution and the Code of Ethics for Public Officers and Employees, you may wish to obtain the opinion of the Elections Division of the Department of State or of the Attorney General as to whether the practice you have described would be subject to elections code regulations.

**CEO 78-2—January 19, 1978**

**SECTION 8(e), ART. II, STATE CONST.**

REPRESENTATION BY LEGISLATOR/ATTORNEY OF CLIENT IN FORMAL PROCEEDINGS CONDUCTED BY HEARING OFFICER PURSUANT TO CH. 120, F.S.

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**Would my representation of a client for compensation in formal proceedings before a hearing officer pursuant to Ch. 120, F.S., constitute a representation before a judicial tribunal under s. 8(e), Art. II of the Florida Constitution?**

**SUMMARY:**

**Section 8(e), Art. II of the Florida Constitution prohibits a member of the Legislature from personally representing a client during term of office before any state agency other than judicial tribunals. It is presumed that the framers of s. 8, Art. II, popularly known as the Sunshine Amendment, intended the phrase "judicial tribunal" to apply to a body or bodies in addition to the courts but not to include all state agencies exercising quasi-judicial powers. Apparently any agency which is a judicial tribunal must exercise power of more than a quasi-judicial nature but which falls short of the judicial power granted the courts. In Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166 Fla. 1978) the Supreme Court directly held that the Industrial Relations Commission (I.R.C.), although a part of the executive branch within the Department of Commerce, is a judicial tribunal functioning in a judicial capacity in its reviews of workmen's compensation appeals. This decision apparently was based in large part on a prior opinion, *In re* Florida Workmen's Compensation Rules of Procedures, 285 So.2d 601 (Fla. 1973), in which the Supreme Court approved rules of procedure submitted to it by the Industrial Relations Commission, finding workmen's litigation to be more judicial than quasi-judicial. The court thus opined in *Scholastic Systems* that the I.R.C. provides the equivalent review of workmen's compensation litigation to be more judicial than quasi-judicial. The court thus opined in Scholastic Systems that the I.R.C. provided the equivalent review of workmen's compensation litigation afforded by the District Courts of Appeal in other cases. The Ethics Commission is unable to perceive any analogy between the functions of the I.R.C., a judicial tribunal, and the functions of hearing officers under CH. 120, the Administrative Procedure Act. Judicial review in workmen's compensation proceedings is provided by the I.R.C. judicial review of administrative matters, under the terms of the A.P.A., is provided by the courts. Moreover, under the A.P.A. a hearing officer provides only a recommended order, with the final order and proper exercise of delegated power residing with the agency. The hearing officer does not determine issues of law and fact and has no authority to apply the sanctions of the law. *See* Scholastic Systems, 307 So.2d at 169-170.**

**Accordingly, unless judicially clarified to the contrary, a legislator's representation of a client for compensation in formal proceedings before a hearing officer pursuant to Ch. 120, F.S., does not constitute a representation before a judicial tribunal under s. 8(e), Art. II of the Florida Constitution and therefore is prohibited by that article. It is further noted that the primary issue for decision in the case of Myers v. Hawkins (Case No. 52,639) presently pending before the Supreme Court, is whether the Public Service Commission constitutes a "judicial tribunal" under s. 8, Art. II. Consequently, it is expected that the court's opinion will have a significant impact upon this opinion, which is strictly advisory in nature and lacks the binding effect of opinions relating to the Code of Ethics under s. 112.322(3)(b), F.S. 1975.**

Your question is answered in the negative.
Section 8(e), Art. II of the Florida Constitution provides:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state

> agency *other than judicial tribunals*. Similar restrictions on other public officers and employees may be established by law. [Emphasis supplied.]

Clearly, the courts of this state are judicial tribunals. With respect to the judicial power of the state, the Constitution provides as follows:

> **Courts.**—The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. [Section 1, Art. V, State Const.]

The Supreme Court of Florida, in Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973), held that even though the county board of public instruction was acting in a quasi-judicial capacity when suspending a pupil, the board violated the Sunshine Law when it recessed to reach a decision in the matter. In that case, the court cited the following definition of "quasi-judicial":

> A term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. Black's Law Dictionary (Fourth Edition, p. 1411).

The court then stated:

> The characterization of a decisional-making process by a School Board as "quasi-judicial" does not make the body into a judicial body.

The Florida Supreme Court also has laid down guidelines for the interpretation of constitutional provisions.

The fundamental object in construing a constitutional provision is to ascertain and give effect to the intentions of the framers and adopters, and constitutional provisions must be interpreted in such a manner as to fulfill this intention rather than to defeat it. *State ex rel. West v. Gray*, 74 So. 2d 114 (Fla. 1954). In construing particular constitutional provisions, the object sought to be accomplished and the evils sought to be remedied should be kept in mind by the courts, and the provisions should be so interpreted as to accomplish, rather than to defeat, such objects. *State ex rel. West v. Gray, supra*; *Owens v. Fosdick*, 153 Fla. 17, 13 So. 2d 700 (Fla. 1943). [State *ex rel*. Dade County v. Dickinson, 230 So.2d 130, 135 (Fla. 1969).]

We presume that the framers of the Sunshine Amendment used the phrase "judicial tribunal" purposefully. Had they intended to limit legislator representations before state agencies only to those courts specified in s. 1, Art. V, they could easily have done so by using the term "courts" rather than "judicial tribunals." Thus, we are of the view that the intent of the framers was to allow representations before a body or bodies in addition to the courts. However, it seems to be equally clear that had the framers intended to allow legislator representations before all state agencies when those agencies exercise quasi-judicial power, they could specifically have done so by referencing that power.

Thus, in attempting to place a proper interpretation upon the term "judicial tribunal," the question basically becomes this: Which, if any, commissions, administrative officers or bodies which have been granted quasi-judicial power under s. 1, Art. V, should be considered judicial tribunals?

Apparently any agency which is a judicial tribunal must exercise power which is more than merely quasi-judicial but which falls short of the judicial power granted to the courts. We have found only one judicial decision in this state which directly bears upon these considerations,

Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166 (Fla. 1974), a decision which we note occurred prior to the initiation of the petition drive to have the Sunshine Amendment placed on the ballot.

In *Scholastic Systems* the Supreme Court directly held that the Industrial Relations Commission (I.R.C.), although a part of the executive branch within the Department of Commerce, is a judicial tribunal functioning in a judicial capacity in its reviews of workmen's compensation appeals. This decision apparently was the result of a prior opinion of the Supreme Court, *In re* Florida Workmen's Compensation Rules of Procedure, 285 So.2d 601 (Fla. 1973), in which the court approved rules of procedure submitted to it by the Industrial Relations Commission, stating:

> A Judge of Industrial Claims is a quasi-judicial officer under the authority of Florida Statutes, Section 20.17(7), F.S.A., whose duties are devoted **exclusively** to the trial and disposition of workmen's compensation claims of industrial employees. The Industrial Relations Commission created as aforementioned is a quasi-judicial body devoted exclusively to a review of orders of Judges of Industrial Claims in workmen's compensation proceedings under principles announced by the appropriate appellate courts and statutes of the State of Florida, and the review of orders of appeals referees in unemployment compensation proceedings. The workmen's compensation proceedings aforementioned are subject to review by the Supreme Court of Florida (Florida Statutes, Section 440.27(1), F.S.A.) . . . .
>
> In workmen's compensation cases, we, therefore, have a duplicitous situation where the litigation is quasi-judicial at one level and judicial when it reaches this Court. Because the total authority in workmen's compensation cases involves the review on appeal of the Judges of Industrial Claims and the Industrial Relations Commission, *we deem such litigation to be* ***more judicial than*** **quasi-judicial**. [Italicized emphasis supplied.]

As a result of this view of litigation in workmen's compensation cases, the Supreme Court held in *Scholastic Systems* that there was no need for the extensive, appellate type of review it had previously given decisions of the I.R.C., and that henceforth its consideration of those decisions would be governed by a less strict standard. This was permitted by the constitutional requirement of due process because:

> [a] party is afforded his "day in court" with respect to administrative decisions when he has a right to a hearing and has the right of an appeal to a judicial tribunal of the action of an administrative body. [Scholastic Systems, *supra*, at p. 169.]

Thus, as the court stated later in that opinion, the I.R.C. provides the equivalent review of workmen's compensation litigation that the district courts of appeal provide in other cases.

Hearing officers play an important role in the functioning of the Administrative Procedure Act (A.P.A.). Section 120.65, F.S. (1976 Supp.), provides in part:

> (1) There is hereby created the Division of Administrative Hearings within the Department of Administration, to be headed by a director who shall be appointed by the Administration Commission and confirmed by the senate. The division shall be exempt from the provisions of chapter 216.
>
> (2) The division shall employ full-time hearing officers to conduct hearings required by this chapter or other law. No person may be employed by the division as a full-time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding 3 years.

Under the A.P.A. a hearing officer may participate in two types of proceedings: In an administrative determination of the invalidity of a rule under s. 120.56 or s. 120.54(4); or in a formal proceeding in which the substantial interests of a party are determined by an agency under s. 120.57(1).

Under the first type of proceeding, a person substantially affected by an agency's rule or proposed rule may petition for an administrative hearing before a hearing officer and seek to show that the rule is an invalid exercise of delegated legislative authority. Sections 120.56 and 120.54(4), F.S. (1976 Supp.). Following the hearing, the hearing officer may declare all or part of a

rule or proposed rule invalid, stating his reasons in writing. Sections 120.56(3) and 120.54(4)(c). The hearing is intended to be an adversary proceeding between the petitioner and the agency whose rule is attacked, with the hearing officer's determination constituting final agency action reviewable by the courts as provided in s. 120.68. Sections 120.56(4), 120.54(4)(d), and 120.68, as amended by Ch. 77-104, Laws of Florida.

The second type of proceeding which may involve a hearing officer is a full, formal hearing with the presentation of evidence and argument on all issues pursuant to s. 120.57(1), F.S., as amended by Ch. 77-453, Laws of Florida. Following this type of hearing, the hearing officer is to submit a recommended order consisting of his findings of fact; conclusions of law; interpretation of administrative rules; recommended penalty, if applicable; and any other information required by law or agency rule. Section 120.57(1)(b)8., F.S., as amended by Ch. 77-453, Laws of Florida. At this time each party may submit written exceptions to the recommended order to the agency, and the agency then determines whether to adopt, reject, or modify the proposed order in composing its final order. In the final order the agency may reject or modify the recommended conclusions of law and interpretation of administrative rules but may not reject or modify the recommended findings of fact unless it determines that they were not based upon competent, substantial evidence or that the proceedings did not comply with essential requirements of law; in order to increase a recommended penalty, the agency must review the complete record. Section 120.57(1)(b)9., F.S., as amended by Ch. 77-453, Laws of Florida. The final order of the agency constitutes final agency action subject to judicial review under the provisions of s. 120.68, F.S. (1976 Supp.).

Under the provision of the A.P.A. regarding judicial review of agency actions, s. 120.68, most proceedings for review are instituted by filing a petition in an appropriate district court of appeal. The A.P.A. provides fairly detailed requirements of the scope and standards of judicial review of agency actions in that section, depending upon whether the errors alleged are of procedure, interpretations of law, findings of fact, failure to follow established policies, or in excess of agency discretion.

We are unable to perceive any analogy between the functions of the Industrial Relations Commission, a judicial tribunal, and the functions of hearing officers under the Administrative Procedure Act which would enable us to describe their functions as "more judicial than quasi-judicial." Judicial review in workmen's compensation proceedings is provided by the I.R.C.; judicial review of administrative matters, under the terms of the A.P.A., is provided by the courts—the district courts of appeal and, in some cases, the Supreme Court.

Moreover, under the A.P.A. a hearing officer is to provide only a recommended order, with the final order and proper exercise of delegated power residing with the agency. The hearing officer does not determine issues of law and fact and has no authority to apply the sanctions of the law. *See* Scholastic Systems, 307 So.2d (Fla. 1974) at 169-170.

Accordingly, we are of the opinion that, unless judicially clarified to the contrary, your representation of a client for compensation in formal proceedings before a hearing officer pursuant to Ch. 120, F.S., does not constitute a representation before a judicial tribunal under s. 8(e), Art. II of the Florida Constitution. Please note that the case of Myers v. Hawkins, Case No. 52,639, is presently pending before the Supreme Court of Florida. The primary issue for decision in that case is whether the Public Service Commission constitutes a "judicial tribunal" under s. 8(e), Art. II of the Florida Constitution. Consequently, we expect that the Supreme Court's opinion will have a significant impact upon this opinion, which is strictly advisory in nature and lacks the binding effect of our opinions relating to the Code of Ethics for Public Officers and Employees under s. 112.322(3)(b), F.S. 1975.

**CEO 78-39—June 13, 1978**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE PART OWNER OF, OFFICER AND DIRECTOR OF, AND RECEIVING BENEFITS FROM CORPORATION PERFORMING CONSTRUCTION WORK FOR THE STATE

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**Would a prohibited conflict of interest be created were I to purchase stock in, to resume my position as an officer and director of, and to receive compensation from a corporation which performs construction work for municipalities, counties, and the state?**

**SUMMARY:**

**A public officer is prohibited from being an officer or director of, or owning a material interest in, any business entity which is doing business with his public agency. Section 112.313(3), F.S. 1977. However, under the definition of "agency" contained in s. 112.312(2), a state legislator's agency is the Florida Legislature. Therefore, no conflict of interest is created where he is part owner and an officer and director of a corporation which performs construction work for the state so long as that corporation does not do business with the Legislature. Nor is there a conflict created under s. 112.313(7)(a), F.S., as subsection (2) thereof creates an exemption where the officer's agency is a legislative body and the regulatory power exercised over the business entity is strictly through the enactment of laws or ordinances. *See* CEO 77-06.**

Your question is answered in the negative.

In your letter of inquiry, which references an earlier advisory opinion to you, CEO 77-06, you advise that you wish to terminate your consultant status with the corporation which was the subject of that opinion and that you wish to purchase stock in the corporation and to resume your position as its secretary-treasurer and member of its board of directors. As a consequence of your position as an officer of the corporation, you advise that you will receive monetary remuneration as well as other benefits. You also advise that the corporation from time to time performs construction for municipalities, counties, and the state on a competitive bid basis, and that the corporation has not and foreseeably will not be under direct contract with the Legislature, since state contracts are handled by the Division of General Services.

The Code of Ethics provides in relevant part:

> (3) DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. [Section 112.313(3), F.S. 1977.]

This provision prohibits a public officer from being an officer or director of, or owning more than 5 percent of, any business entity which is doing business with his agency. *See* CEO's 75-196, 76-5, and 76-12. However, since your "agency," as that term is defined in s. 112.312(2), F.S. 1977, is the Legislature, and since the corporation is not doing business with the Legislature, this prohibition is not applicable.

Nor do we find that s. 112.313(7)(a), F.S. 1977, which prohibits a public officer from being employed by a business entity which is doing business with or subject to the regulation of his agency, applies to your situation, for the same reasons outlined in CEO 77-06. Accordingly, we find that the Code of Ethics does not prohibit you from purchasing stock in, resuming your position as an officer and director of, and receiving compensation from a corporation which performs construction work for municipalities, counties, and the state.

**CEO 78-40—June 13, 1978**

**GIFT DISCLOSURE**

NECESSITY OF REPORTING FREE LEGAL COUNSEL

*To: Dick J. Batchelor, Representative, 43rd District, Orlando*

*Prepared by: Phil Claypool*

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees require the disclosure of free legal representation?**

**SUMMARY:**

**Section 112.3145(3)(d) of the Code of Ethics provides that the statement of financial interests which is to be filed annually shall include a list of all donors "from whom the reporting official received a gift or gifts from one source, the total of which exceeds $100 in value during the disclosure period." The term "gift" is defined for purposes of the Code of Ethics to mean "real property or tangible or intangible personal property, of material value to the recipient, which is transferred to a donee directly or in trust for his benefit or by any other means." Section 112.312(9)(a), F.S. 1977. Inasmuch as "intangible personal property," as defined by s. 192.011(11)(b), does not include services, the receipt of free legal representation cannot be said to constitute a "gift" for purposes of disclosure under s. 112.3145. However, the Commission on Ethics has no jurisdiction to interpret the disclosure requirements contained in s. 111.011, F.S., pertaining to elected officers. The petitioner is advised to contact the Attorney General in this regard in light of his opinions AGO's 074-167, 075-152, and 076-58.**

Your question is answered in the negative.

In your letter of inquiry you advise that you recently had to appear before the Florida Elections Commission on alleged campaign law violations and that you retained legal counsel for these appearances. You also advise that the attorney who represented you is a personal friend, and although he has sent you several bills in excess of $3,000, he is willing to forgive payment.

The Code of Ethics for Public Officers and Employees provides that the statement of financial interests which is to be filed annually by each "local officer" is to include:

> A list of all persons, business entities, or other organizations, and the address and a description of the principal business activity of each, from whom he received a gift or gifts from one source, the total of which exceeds $100 in value during the disclosure period. The person reporting shall list such benefactors in descending order of value with the largest listed first. Gifts received from a parent, grandparent, sibling[,] child, or spouse of the person reporting or from a spouse of any of the foregoing; gifts received by bequest or devise; gifts disclosed pursuant to s. 111.011; or campaign contributions which were reported as required by law need not be listed . . . . [Section 112.3145(3)(d), F.S. 1977.]

The term "gift" is defined in the Code of Ethics as follows:

> (a) "Gift," for the purposes of ethics in government and financial disclosure required by law, means real property or tangible or intangible personal property, of material value to the recipient, which is transferred to a donee directly or in trust for his benefit or by any other means.
> (b) For the purposes of subsection (a), "intangible personal property" means property as defined in s. 192.011(11)(b). [Section 112.312(9), F.S. 1977.]

Section 192.011(11)(b), F.S. 1977, provides:

> "Intangible personal property" means money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

We cannot say that the receipt of free legal representation constitutes the receipt of a "gift," as that term is defined above, because legal representation is a service rather than real property or tangible or intangible personal property. Accordingly, we find that the Code of Ethics does not require you to disclose free legal representation provided by a friend.

Please be advised that we have no jurisdiction to interpret the disclosure requirements contained in s. 111.011, F.S. 1977. You may wish to contact the Attorney General for advice as to the application of that provision, in light of his opinions AGO's 074-167, 075-152, and 076-58.

**CEO 78-56—September 8, 1978**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE SHARING OFFICE SPACE WITH LAW FIRM, ONE MEMBER OF WHICH LOBBIES BEFORE THE LEGISLATURE

*To: Joseph M. Gersten, Representative, 109th District, Miami*

*Prepared by: Phil Claypool*

**QUESTION:**

> **Does a prohibited conflict of interest exist where I, a State Representative, share law office space with a law firm, one member of which lobbies before the Legislature?**

**SUMMARY:**

**Section 112.313(7)(a), F.S. 1977, prohibits a public officer from having a contractual relationship with any business entity which is subject to the regulation of, or is doing business with, his public agency. Where a State Representative shares law office space with a law firm, one member of which lobbies before the Legislature, that member is not deemed to be doing business with the Legislature. However, pursuant to Ch. 78-268, Laws of Florida, lobbyists clearly are subject to the regulation of the Legislature. However, Ch. 78-268, relating to lobbyist registration and disclosure as well as to legislative regulation of lobbyists, in its specificity and by virtue of its being the latest expression of legislative intent, is deemed to control over the general prohibition contained in s. 112.313(7). Accordingly, no prohibited conflict of interest is created where a State Representative shares office space with a law firm, one of whose members lobbies before the Legislature.**

Your question is answered in the negative.

In your letter of inquiry you advise that you are an attorney, practicing law as a sole practitioner. You also advise that recently you have moved your law offices so that you are sharing space with another law firm of which you are neither a member nor an associate, although there are business relations between the two firms. In addition, you advise that one of the members of this law firm serves as a lobbyist for Dade County before the Legislature, and it is anticipated that he may represent additional interests before the Legislature.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S. 1977; emphasis supplied.]

The question which must be addressed is whether a lobbyist is subject to the regulation of or is doing business with your agency, the Legislature. Section 112.312(2), F.S.

We are of the opinion that the exercise of the people's constitutional right to instruct their elected representatives and to petition for the redress of grievances under the First Amendment to the United States Constitution and s. 5, Art. I, State Const., does not constitute doing business within the contemplation of the Code of Ethics. It does appear, however, that a business entity which engages in lobbying before the Legislature is subject to the regulation of the Legislature. In this regard, Ch. 78-268, Laws of Florida, requires a legislative lobbyist to register with a joint legislative office and to submit a semiannual statement listing lobbying expenditures and sources of lobbying funds and authorizes the committee of each house charged by its presiding officer with the responsibility for the ethical conduct of lobbyists to investigate any lobbyist upon receipt of a sworn complaint. Section 112.313(7)(a) of the Code of Ethics also provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2., F.S. 1977.]

However, this legislative exemption does not apply in the present case. First, under Ch. 78-268 the regulatory power over lobbyists is exercised by the Legislature and does not reside in another agency. Secondly, the regulatory power over lobbyists, while exercised through the enactment of a law, is not exercised strictly through the enactment of the law. The Legislature has retained direct control through the requirements of registration and of submission of lists of expenditures and through the retention of investigative authority. Section 11.045(2), (3), and (6), F.S., as created by s. 1, Ch. 78-268, Laws of Florida.

Nevertheless, we are of the opinion that the Code of Ethics does not prohibit your relationship with the subject law firm. When registering with the Legislature, every lobbyist is required to state under oath the extent of any direct business association or partnership with any current member of the Legislature. Section 11.045(2), F.S., as created by Ch. 78-268, Laws of Florida. These registrations are required to be open to the public. Thus, your relationship with the subject lobbyist should be disclosed in his registration. In our view this provision, in its specificity and by virtue of its being the latest expression of legislative intent, controls over the general prohibition contained in s. 112.313(7) as a matter of law. Adams v. Culver, 111 So.2d 665 (Fla. 1959), Askew v. Schuster, 331 So.2d 297 (Fla. 1976).

Accordingly, we find that the Code of Ethics for Public Officers and Employees does not prohibit you, a State Representative, from sharing law office space as a sole practitioner with a law firm, one member of which lobbies before the Legislature. The facts that you have described present no issue under the Sunshine Amendment, s. 8, Art. II, State Const., as it does not appear that you are representing a client before a state agency or are contemplating any lobbying activities before the Legislature. Questions concerning your actions as an attorney under the Code of Professional Responsibility, of course, should be addressed to The Florida Bar.

**CEO 78-76—October 20, 1978**

**CONFLICT OF INTEREST**

USE OF STATE LEGISLATOR'S LEGISLATIVE STAFF,
OFFICE, OR RESOURCES IN CAMPAIGN FOR REELECTION

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**Under the Code of Ethics for Public Officers and Employees, to what extent may a legislator use his or her legislative staff, office, and resources in a reelection campaign?**

**SUMMARY:**

**The Code of Ethics for Public Officers and Employees does not specifically address campaign ethics. However, s. 112.313(6), F.S., provides that no public officer or employee may corruptly use or attempt to use his official position or any public property or resource to benefit himself or others. "Corruptly," in turn, is defined to include an act or omission done with wrongful intent and inconsistently with the proper performance of public duty. Section 112.312(7), F.S. 1977. The proper performance of one's public duties on the whole is set forth by law, rule, or regulation. In the context of a legislator's use of public office, employees, or resources in a reelection campaign, this would include the election laws, House and Senate rules, and Ch. 11, F.S. So long as a legislator's conduct is consistent with such laws, rules, and regulations, the interpretation of which lies with the various governmental bodies with jurisdiction over them, there would be no violation of the Code of Ethics.**

The Code of Ethics for Public Officers and Employees does not specifically address campaign ethics. The only section of the Code of Ethics which potentially is relevant to your question provides as follows:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31. [Section 112.313(6), F.S. 1977.]

The term "corruptly" is defined to mean

> done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties. [Section 112.312(7), F.S. 1977.]

Thus, if a public officer's actions are consistent with the proper performance of his public duties, there could be no violation of the above-quoted provision. In our view, the proper performance of one's public duties on the whole is set forth by law, rule, or regulation. In the context of your question this would include the election laws, House (or Senate) Rules, and Ch. 11, F.S. For an interpretation of those provisions it would be necessary to contact the various governmental bodies with jurisdiction over them.

Accordingly, so long as your use of legislative staff, officers, or resources in your reelection campaign is consistent with applicable statutes, rules, and the interpretations of those governmental bodies which have jurisdiction over them, there would be no violation of the Code of Ethics.

**CEO 78-88—November 15, 1978**

**LOCAL GOVERNMENT STUDY COMMISSION AND ADVISORY COMMITTEE**

APPLICABILITY OF FINANCIAL DISCLOSURE LAW TO MEMBERS

*To: Lori Wilson, Senator, 16th District, Cocoa Beach*

*Prepared by: Phil Claypool*

**QUESTIONS:**

> **1. Are the members of the Brevard County Local Government Study Commission "local officers" subject to the requirement of filing financial disclosure annually?**
>
> **2. Are the members of an advisory committee to the Brevard County Local Government Study Commission "local officers" subject to the requirement of filing financial disclosure annually?**

**SUMMARY:**

> **The Code of Ethics provides that each "local officer" shall file a statement of financial interests annually. Section 112.3145(2)(b), F.S. 1977. The term "local officer" is defined in s. 112.3145(1)(a)2. to include an appointed member of any board, excluding members of advisory bodies. In order to constitute an "advisory**

**body" for purposes of the financial disclosure law, a particular board's authority must be solely advisory. Section 112.312(1), F.S. 1977. A local government study commission whose recommendations as to changes in a county charter are placed directly on a referendum ballot is not deemed to exercise solely advisory functions. *See* CEO's 74-04 and 75-189, revoking CEO 75-163. Its members accordingly are local officers subject to the filing of financial disclosure. Relative to an advisory committee to the study commission, which has not yet been appointed or its duties prescribed, it is not possible to determine the applicability of the disclosure law to its members. Generally, if the commission has complete discretion to accept or reject the advice or recommendations presented by the advisory committee, and if the committee meets the budgetary test set forth in s. 112.312(1), its members would not constitute "local officers."**

Question 1 is answered in the affirmative.

The Code of Ethics for Public Officers and Employees provides that each "local officer" shall file a statement of financial interests annually. Section 112.3145(2)(b), F.S. 1977. The term "local officer" is defined to include:

> Any appointed member of a board, commission, authority, community college district board of trustees, or council of any political subdivision of the state, excluding any member of an advisory body. A governmental body with land-planning, zoning, or natural resources responsibilities shall not be considered an advisory body. [Section 112.3145(1)(a)2., F.S. 1977.]

In turn, an "advisory body" is defined as:

> . . . any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or $100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations other than those relating to its internal operations. [Section 112.312(1), F.S. 1977.]

Chapter 78-473, Laws of Florida, creates in Brevard County a local government study commission to study the structures, services, functions, and operations of all governmental units and bodies located within the county. The commission is composed of 15 official members and 3 alternates, all of whom are chosen by the Brevard County legislative delegation. Funding for the commission comes from the board of county commissioners and from other public and private contributions. After completion of the research and studies the commission is required to make during its 18-month term of existence, the commission is to prepare a final report for transmission to the board of county commissioners, the Brevard League of Municipalities, and the legislative delegation. This report is required to contain recommended solutions or alternatives to specific problems in the operation and taxation of local government. If the report contains a proposal for a charter form of county government, this proposal is to be placed on the ballot before the voters of the county for approval or disapproval at the following general election. Proposals which would require legislative action, including a special act or any other legal instrument necessary for the creation of a new unit of local government or the changing of a unit's boundaries, similarly will be placed on the ballot. Proposals which can be implemented under existing laws granting home rule powers, which would require voluntary transfers of functions and responsibilities or which would authorize interlocal agreements for the performance of functions, also would be submitted to the electorate.

In order to constitute an "advisory body" for purposes of the financial disclosure law, a particular commission's authority must be solely advisory. We have previously advised that the Volusia County Charter Review Commission and the Broward County Charter Commission performed functions which were not solely advisory, inasmuch as their charter proposals were to

be placed directly on the ballot rather than having to be approved by another governmental body or agency before placement on the ballot. *See* CEO 74-04, and CEO 75-189 revoking CEO 75-163. As the responsibilities of the Brevard County Local Government Study Commission are substantially the same as those involved in these previous opinions, we find that the commission's powers and authority are not solely advisory.

Accordingly, we find that the members of the Brevard County Local Government Study Commission are "local officers," subject to the requirement of filing financial disclosure annually.

As to question 2, Ch. 78-473, Laws of Florida, authorizes the local government study commission to appoint an advisory committee, the members of which may be appointed to serve on subcommittees of the commission for specific study and inquiry. In a telephone conversation with our staff, your office advised that such an advisory committee has not been created at this time and its duties and responsibilities have not been specified yet, because the commission only recently has been created. In the absence of more information than that which is contained in Ch. 78-473 regarding the responsibilities of such an advisory committee, we are unable to advise you whether its members are required to file financial disclosure. Generally, if the commission has complete discretion to accept or reject the advice or recommendations presented by the advisory committee, and if the committee meets the budgetary test set forth in s. 112.312(1), above, its members would not constitute "local officers."

**CEO 78-95—December 21, 1978**

**FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS**

DISCLOSURE OF TRUST ASSETS AND LIABILITIES
BY TRUSTEE

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**In making full and public disclosure of financial interests pursuant to s. 8, Art. II, State Const., are you required to disclose as assets and liabilities property owned by yourself as a trustee and liabilities incurred as a trustee?**

**SUMMARY:**

**The Sunshine Amendment, in s. 8(h)(1), Art. II, State Const., provides that full and public disclosure of financial interests means the filing of a sworn statement "identifying each asset and liability in excess of $1000 and its value." Reference is made to CEO 78-01, in which it was advised that one's property will constitute an "asset" if it can be sold to be applied to the payment of one's debts. Where one holds as a trustee certain property and loan obligations, they do not constitute personal assets and liabilities as the legal title and estate of a trustee generally are not liable to attachment or to execution for payment of his private obligations, and the liabilities are not personal debts for which the trustee is personally responsible. Accordingly, in making full and public disclosure of financial interests as a candidate for elective constitutional office, such trustee is not required to disclose as assets and liabilities property owned as a trustee or debts incurred as a trustee.**

Your question is answered in the negative.

In your letter of inquiry you advise that in filing full financial disclosure under s. 8, Art. II, State Const., as a candidate for the Florida House of Representatives, _____, you did not list as assets property held by you and two of your law partners as trustees or, as liabilities, loan obligations incurred as trustees. You also advise that, as one of three trustees, you have no personal ownership interest in the trust property and that you are bound by the trust instrument and trust laws in regard to any transfer or other disposition of this property, as well as in incurring loan obligations against the property.

The Sunshine Amendment, in s. 8(h)(1), Art. II, State Const., provides that full and public disclosure of financial interests means the filing of a sworn statement "identifying each asset and liability in excess of $1,000 and its value." In our opinion, the trust property and loan obligations to which you have referred do not constitute assets or liabilities which must be disclosed under the Sunshine Amendment.

We have previously advised that one's property will constitute an "asset" if it can be sold to be applied to the payment of one's debts. *See* CEO 78-01. As a trustee, you have a legal interest in the property of the trust but not an equitable or beneficial interest in the property. The legal title and estate of a trustee generally are not liable to attachment or to execution for the payment of his private debts and obligations. 33 Fla. Jur. Trusts s. 31 (1960). Therefore, the trust property is not one of your "assets." Similarly, liabilities you have incurred as a trustee are not personal liabilities for which you are personally responsible.

Accordingly, we are of the opinion that in making full and public disclosure of financial interests pursuant to s. 8, Art. II, State Const., you are not required to disclose as assets and liabilities property owned as a trustee and debts incurred as a trustee.

Please be advised that opinions of this commission which relate to s. 8, Art. II of the State Constitution are strictly advisory in nature; such opinions lack the legally binding effect of our opinions interpreting the Code of Ethics for Public Officers and Employees under s. 112.322(3)(b), F.S.

**CEO 79-34—June 6, 1979**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE MEMBER OF LAW FIRM REPRESENTING PERSONS WHO WISH TO SELL PROPERTY TO COUNTY, USING STATE MATCHING FUNDS

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**Would a prohibited conflict of interest exist were the law firm of which I am a member to represent persons selling property to a county which uses state matching funds for the purchase?**

**SUMMARY:**

**No provision of the Code of Ethics for Public Officers and Employees would prohibit a law firm of which a state representative is a member from representing persons selling property to a county which uses state matching funds for the purchase. Section 112.313(7)(a), F.S., prohibits a public officer from having a contractual relationship with a business entity or an agency which is subject to the regulation of, or which is doing business with, his public agency. However, even assuming that the law firm would have a contractual relationship with the property owners or with the county, the question of whether matching funds would be**

**provided is a decision which rests with the Governor and the Cabinet, in their capacity as head of the Department of Natural Resources, not with the Legislature.**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives who privately practices law as a senior member of a law firm. You also advise that recently another member of the firm undertook to represent the owner of certain undeveloped oceanfront real property which has been offered for sale to St. Johns County. In addition, you advise that the firm's member, together with county officials, intends to seek state matching funds to enable the county to purchase this property, which will entitle your firm to an attorney fee to be paid by the owners. Finally, you advise that you intend to take no part in the proposed transaction either as an attorney or as a legislator.

In a telephone conversation with our staff, Ney Landrum, the Director of the Division of Recreation and Parks of the Department of Natural Resources, advised that any purchase of the subject property which would involve the use of state matching funds would fall within the Federal Land and Water Conservation Fund Program of the department. Under this program, he advised, the Federal Government allocates funds to the state which are matched with local funding for the purchase of property. As there are limited funds available, proposals from the various units of local government are evaluated, with the final decision as to allocation of funds being made by the Governor and Cabinet in their capacity as the head of the Department of Natural Resources. *See* s. 375.021(3), F.S. 1977.

We find no provision of the Code of Ethics for Public Officers and Employees which would prohibit the transaction you have described, prohibit your firm's representation in the proposed transaction, or prohibit the receipt of an attorney fee in connection with that transaction. Section 112.313(7)(a), F.S., prohibits a public officer from having a contractual relationship with a business entity or an agency which is subject to the regulation of, or which is doing business with his agency. Even assuming that you would have a contractual relationship with the property owners or the county, the question of whether matching funds would be provided is a decision which would be made by the Governor and the Cabinet, not by your agency, the Legislature.

Accordingly, we find that no prohibited conflict of interest would exist were a law firm of which you are a member to represent persons selling property to a county which uses state matching funds for the purchase.

**CEO 79-56—September 6, 1979**

**CONFLICT OF INTEREST**

LAW FIRM OF STATE REPRESENTATIVE
RETAINED BY STATE ATTORNEY

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTION:**

**Would a prohibited conflict of interest be created were a state attorney to retain my law firm to provide legal services while I am a member of the Florida House of Representatives?**

**SUMMARY:**

**No prohibited conflict of interest would be created were a state attorney to retain the services of a law firm of which a state representative is a member to serve in the capacity of assistant to the state attorney under provisions of s. 27.18, F.S. Although s. 112.313(7)(a) prohibits a public officer from having any employment or contractual relationship with an agency subject to the regulation of his public agency, as is the state attorney's office by the Legislature, s. 112.313(7)(a)2. provides a specific exemption when the public officer is a member of a legislative body and the regulatory power exercised is strictly through the enactment of laws, as is the case here. Additionally, the duties of an assistant to the state attorney do not include representation of that office before any state agencies, so as to preclude potential violation of s. 8(e), Art. II, State Const.**

Your question is answered in the negative.

In your letter of inquiry you advise that the State Attorney of Broward County has indicated a desire to retain your law firm at an hourly rate to provide legal services. In this capacity, you would not be employed as an assistant state attorney, but rather as an assistant to the state attorney, with his office simply being a client of the firm. You question whether this relationship would present any conflict with your position as a member of the Florida House of Representatives.

As an assistant to the state attorney, you advised in a telephone conversation with our staff, your responsibilities would be those outlined in s. 27.18, F.S., which provides: *Assistant to state attorney*.—The state attorney, by and with the consent of court, may procure the assistance of any member of the bar when the amount of the state business renders it necessary, either in the grand jury room to advise them upon legal points and framing indictments, or in court to prosecute criminals; but, such assistant shall not be authorized to sign any indictments or administer any oaths, or to perform any other duty except the giving of legal advice, drawing up of indictments, and the prosecuting of criminals in open court. His compensation shall be paid by the state attorney and not by the state.

In such a capacity, you advised, you most likely would become involved if the state attorney needed assistance in order to handle prosecutions dealing with a particular problem or in the event an assistant state attorney was presented with a conflict of interest on a particular case. However, you have agreed not to become involved in the prosecution of elected officials. In addition, you advised in that conversation, it is possible that you would render legal advice to the state attorney's office and represent that office in court proceedings, although you would not be engaged in representing the state attorney's office before any state agencies.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S.]

The office of state attorney clearly is subject to the regulation of the Legislature. Part I, Ch. 27, F.S. However, s. 112.313(7)(a)2., provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

As the regulatory power which the Legislature exercises over state attorneys is strictly through the enactment of laws, the express exception quoted above is applicable in this instance. Accordingly, we find that no prohibited conflict of interest under the Code of Ethics for Public Officers and Employees would be created if your law firm were to be retained by the State Attorney of Broward County while you serve as a member of the House of Representatives. We note that the Attorney General informally advised you on July 3, 1979, that the position of assistant to the state attorney "constitutes a position of 'employment,' and, therefore, the dual officeholding prohibition contained in s. 2, Art. II, State Const., would not be applicable to such an assistant."

**CEO 79-59—October 17, 1979**

**CONFLICT OF INTEREST**

COUNTY COMMISSIONER OR LEGISLATOR EMPLOYED AS PUBLIC COLLEGE ADMINISTRATOR OR PROFESSOR

*To: Wayne J. Spivey, Clay County Commissioner, Orange Park*

*Prepared by: Phil Claypool*

**QUESTIONS:**

**1. Would a prohibited conflict of interest be created were I, a county commissioner, to be employed as a public college provost, administrator, or professor?**

**2. Would a prohibited conflict of interest be created were I to be elected as a member of the Legislature while being employed as a public college provost, administrator, or professor?**

**SUMMARY:**

**Section 112.313(7)(a), F.S., would prohibit a county commissioner from being employed by an agency which either is subject to the regulation of, or is doing business with, the county he serves. However, inasmuch as neither public universities nor community colleges are subject to the regulation of counties in this state, a county commissioner would be prohibited only from holding employment with a college or university which does business with his county. No prohibited conflict of interest would be created were an employee of a university or community college to be elected to the Legislature, based on the exemption for members of legislative bodies contained in s. 112.313(7)(a)2.**

Question 1 is answered in the negative, subject to certain conditions expressed below.

In your letter of inquiry and in a telephone conversation with our staff you advise that you are a member of the Clay County Board of County Commissioners and that presently you are pursuing an advanced degree at a state university, with the eventual goal of being employed either as a teacher or an administrator at a public college in this state. In light of these goals, you question whether a conflict of interest would be presented by your continued service on the county commission.

The Code of Ethics for Public Officers and Employees provides in relevant part:

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) 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 is an officer or employee . . . 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S.]

This provision would prohibit a county commissioner from being employed by an agency which either is subject to the regulation of, or is doing business with, the county which he serves. Clearly, neither public universities nor community colleges in this state are subject to the regulation of a county. Such institutions are regulated by the Board of Regents and the State Community College Coordinating Board, respectively, as well as by the State Board of Education. Chapter 79-222, Laws of Florida. Without more specific information than has been provided, we are unable to say more than that, generally, you would be prohibited from being employed by a college or university which is doing business with the county, whether by grant or in another fashion.

Accordingly, so long as the public college or university which would employ you does not do business with the county, the Code of Ethics for Public Officers and Employees would not prohibit your employment as a provost, administrator, or professor.

Question 2 is answered in the negative.

Section 112.313(7)(a)2., F.S., provides as follows:

> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

As the regulatory authority exercised by the Legislature over public colleges and universities is strictly through the enactment of laws, we find that the Code of Ethics for Public Officers and Employees would not prohibit your serving as a member of the Legislature while being employed by a state university or community college as a provost, administrator, or professor.

**CEO 80-7—January 17, 1980**

**CONFLICT OF INTEREST; VOTING CONFLICT OF INTEREST**

STATE REPRESENTATIVE WHOSE LAW FIRM REPRESENTS BANK PARTICIPATING IN BANKING LEGISLATION

*To: (Name withheld at the person's request.)*

*Prepared by: Phil Claypool*

**QUESTIONS:**

> **1. Would a prohibited conflict of interest be created were I, a state representative and attorney, to represent a bank in legal matters not otherwise prohibited by s. 8(e), Art. II, State Const., and participate in legislation affecting banking by authorship, vote, or debate, or by membership on or chairmanship of the committee which is assigned the responsibility of considering banking legislation, when the legislation would affect my client just as it does all banks?**
>
> **2. Would a voting conflict of interest be created were I, a state representative and attorney, to represent a bank in legal matters not otherwise prohibited by s.**

**8(e), Art. II, State Const., and to vote on legislation affecting banking, as a member of the House of Representatives or as a member or chairman of the committee which is assigned the responsibility of considering banking legislation, when the legislation would affect my client just as it does all banks?**

**3. Would a prohibited conflict of interest or a voting conflict of interest be created were a partner or member of my law firm to represent a bank in legal matters while I, a state representative and attorney, participated in legislation affecting banking by authorship, vote, or debate, or by membership on or chairmanship of the committee which is assigned the responsibility of considering banking legislation, when the legislation would affect my client just as it does all banks?**

**SUMMARY:**

**Reference is made to question 1 of CEO 77-129. A state representative who is an attorney is not prohibited by the Code of Ethics from representing a bank in legal matters not otherwise prohibited by s. 8(e), Art. II, State Const., or from participating in legislation affecting banking by authorship, vote, or debate, or by membership on or chairmanship of the committee which is assigned the responsibility of considering banking legislation, when such legislation affects his client just as it does all banks; neither is a voting conflict of interest created by said legislative activity. No conflict would be created were a partner or member of the legislator's law firm to represent the bank in legal matters, including representation before state agencies, inasmuch as s. 8(e), Art. II, only forbids a member of the Legislature from "personally" making such representations before state agencies other than judicial tribunals. *See* CEO 77-168 in this regard.**

Question 1 is answered in the negative, based upon the rationale of our response to question 1 of CEO 77-129. Although that question did not address the propriety of participating in the legislative process as a committee member or as committee chairman, it is our opinion that your holding either of these positions while representing a bank as an attorney would not be prohibited by the Code of Ethics for the reasons outlined in CEO 77-129.

Question 2 is also answered in the negative, based upon the rationale of our response to question 2 of CEO 77-129. Again, although the question posed in CEO 77-129 did not include the circumstances of someone's being a committee chairman or committee member, these additional circumstances do not alter the advice given in that opinion.

Question 3 is answered in the negative, based upon the rationales expressed in CEO 77-129 and in our response to the first two questions you have posed. We note that the phrasing of this question indicates the possibility that a partner or member of your law firm might represent the bank in legal matters in which you would be prohibited from participating by s. 8(e), Art. II, State Const., because you are a state representative. As s. 8(e), Art. II, only forbids a member of the Legislature from "personally" representing a client before state agencies other than judicial tribunals, representation by a partner or firm member would be permitted. *See* CEO 77-168.

**CEO 80-38—May 21, 1980**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE LEASING PROPERTY
TO COUNTY HEALTH DEPARTMENT

*To: James Harold Thompson, Representative, 10th District, Tallahassee*

*Prepared by: Phil Claypool*

**QUESTION:**

**Would a prohibited conflict of interest exist were I, a state representative, to lease property to a county for use by the county health department in the WIC Program?**

**SUMMARY:**

**Reference is made to CEO 77-13, in which it was found that the Code of Ethics did not prohibit a state representative from leasing property to the Department of Health and Rehabilitative Services, because he would not be leasing property to his own agency and because the only regulation of the department by the Legislature is strictly through the enactment of laws. The same rationale is applicable when a state representative seeks to lease property to a county health department, and no prohibited conflict of interest is deemed to be created in such leasing.**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and that recently you were contacted by members of the Gadsden County WIC Program about renting office space from you. According to Mr. Paul Boisvert, WIC Program Administrator for the Department of Health and Rehabilitative Services, the WIC Program is a federally funded, special supplemental food program for women, infants, and children ("WIC"). The program is administered by county health departments, which prescribe and provide supplemental food coupons to expectant mothers, infants up to age 1, and children up to age 5 who have been certified as incurring "nutritional risks."

You also advise that the health departments expend funds from the County Health Unit Trust Fund for the operation of the WIC Program and then claim monthly reimbursement from the Department of Health and Rehabilitative Services, which in turn receives funds from the Federal Government. These funds then are deposited into the County Health Unit Trust Fund. If a local health department needs to rent space, we are advised, it locates suitable accommodations and sends information about the proposed rental to the state WIC office. If that office feels that the rental is justified, approval is requested from the United States Department of Agriculture regional office, which grants or denies approval for the rental.

In CEO 77-13 we found that the Code of Ethics for Public Officers and Employees did not prohibit a representative from leasing property to the Department of Health and Rehabilitative Services, as the representative would not be leasing property to his own agency and as the only regulation of the department by the Legislature was strictly through the enactment of laws. We are of the opinion that the rationale of that opinion is equally applicable to the situation you have described.

Accordingly, we find that no prohibited conflict of interest would be created were you to lease property to a county for use by the county health department in the WIC Program.

**CEO 80-41—May 21, 1980**

**SUNSHINE AMENDMENT**

APPLICABILITY OF POST-OFFICEHOLDING RESTRICTION ON LOBBYING

*To: William H. Lockward, State Representative, 104th District, Tallahassee*

*Prepared by: Phil Claypool*

**QUESTION:**

**Does the Sunshine Amendment to the State Constitution, s. 8(e), Art. II, prohibit a former member of the House of Representatives from serving as the legislative officer of a veterans organization without receiving a salary but receiving reimbursement for traveling expenses?**

**SUMMARY:**

**The Sunshine Amendment, s. 8(e), Art. II, State Const., provides that "[n]o member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office." This provision would not be violated, however, were a former member of the House of Representatives to serve as the legislative officer for a veterans organization without receiving a salary but receiving reimbursement for traveling expenses, as reimbursement of travel expenses is not deemed to constitute "compensation" within the meaning of the constitutional prohibition.**

**Generally, "compensation" does not include reimbursement for expenses. For example, *see* the definition of the term contained in Black's Law Dictionary (5th Rev. ed.); ss. 145.021, 145.131, and 145.17, F.S., which distinguish compensation to county officials from those officials' travel expenses; and AGO 055-232, advising that travel allowances provided by state law were not intended as additional compensation to state officers and employees. It is further noted that the purpose of the Sunshine Amendment prohibition seems to have been to preclude certain high officials of the state from using the expertise gained through officeholding for their personal profit after leaving office, whereas in the instant situation no personal profit would be derived.**

Your question is answered in the negative.

In your letter of inquiry you advised that presently you are in your last term as a member of the House of Representatives. You also advise that you are contemplating serving as a legislative officer for the Disabled American Veterans organization in the future. Finally, you advise that, as the legislative officer for this organization, you would not receive a salary; but you would be reimbursed for your traveling expenses.

The Sunshine Amendment, s. 8(e), Art. II, State Const., provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of

> which the individual was an officer or member for a period of two years following vacation of office . . .

This provision would prohibit you from representing an organization before the Legislature for a period of 2 years following the end of your term of office if such representation is undertaken for compensation. However, in our opinion, the receipt of reimbursement for travel expenses does not constitute "compensation" within the meaning of this prohibition.

Generally, "compensation" does not include reimbursement for expenses. For example, Black's Law Dictionary (5th Rev. ed.) defines the word as "remuneration for services rendered, whether in salary, fees, or commissions." Clearly, reimbursement for travel expenses is not the equivalent of salary, fees, or commissions. Nor does it appear to us that state law generally equates travel expenses with compensation. For example, *see* ss. 145.021, 145.131, and 145.17, F.S., which provide for compensation to county officials and which distinguish this compensation from travel expenses. In this respect, we also note that the Attorney General has advised that the travel allowances provided by state law were not intended as additional compensation to the state officers and employees to whom the law applies. Attorney General Opinion 055-232.

Finally, we note that the purpose of the Sunshine Amendment's prohibition seems to have been to preclude certain high officials of the state from using the expertise gained through their officeholding for their personal profit after leaving office. However, by receiving only travel expenses and not a salary, you would be deriving no personal profit from your service as a legislative officer to the organization. In this regard, we wish to emphasize that this finding is limited to the reimbursement for *travel* expenses, as posed in your letter of inquiry.

Accordingly, based on the circumstances described above, we find that s. 8(e), Art. II, State Const., would not prohibit your serving as legislative officer for the Disabled American Veterans organization after the end of your current term in the House of Representatives.

**CEO 80-61—September 19, 1980**

**CONFLICT OF INTEREST; VOTING**

STATE SENATOR LEASING PROPERTY TO
DEPARTMENT OF PROFESSIONAL REGULATION

*To: Elliott Messer, Attorney, Tallahassee*

*Prepared by: Phil Claypool*

**QUESTIONS:**

**1. Would a prohibited conflict of interest be created were a partnership of which a state senator is a member to lease property to the Department of Professional Regulation?**

**2. Would a voting conflict of interest be created were I to vote as a state senator upon measures which would impact on my interest in a partnership which is leasing property to the Department of Professional Regulation?**

**SUMMARY:**

**Reference is made to CEO 77-13. Based on the legislative exemption contained in s. 112.313(7)(b), F.S., no prohibited conflict of interest would be created were a partnership of which a state senator is a member to lease property to the Department of Professional Regulation. Relative to a potential voting conflict of interest based on such circumstances, reference is made to CEO 79-14, concerning the types of conflicts of interest which justify abstention from voting.**

**Another opinion may be requested based upon any specific situation which might arise.**

Question 1 is answered in the negative.

In your letter of inquiry you write that you are a candidate for the Florida Senate. You also advise that you hold a 16-percent interest in a partnership which owns a building that has been leased to the Department of Professional Regulation. You question whether your interest in the partnership would create a prohibited conflict of interest should you be elected to the Senate.

In a previous advisory opinion, CEO 77-13, we advised that the Code of Ethics for Public Officers and Employees does not prohibit a member of the House of Representatives from leasing business property to the Department of Health and Rehabilitative Services. Based upon the rationale of that opinion, we find that no prohibited conflict of interest would be created should you serve in the Senate while retaining your interest in a partnership leasing property to the Department of Professional Regulation.

Regarding question 2, your letter of inquiry provides no specific details of the measures on which you may be called to vote as a senator; we are able to provide you only with the following general information regarding voting conflicts of interest. The Code of Ethics for Public Officers and Employees provides:

> *Voting conflicts*.—No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143, F.S.]

With respect to this provision, we have advised that whether a particular measure inures to the special private gain of an officer or his principal will turn in part on the size of the class of persons which stands to benefit from the measure. When the class of persons is large, special gain will result only if there are circumstances unique to the officer or principal under which he stands to gain more than the other members of the class. On the other hand, when the class of persons benefited is extremely small, the possibility of special gain is much more likely. *See* CEO 77-129.

Regarding abstention from voting, s. 286.012, F.S., provides:

> *Voting requirement at meetings of governmental bodies*.—No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143.

We call your attention to a previous opinion, CEO 79-14, for your information as to our interpretation of the types of conflict of interest which justify abstention.

Please note also that the Senate Rules contain a provision regarding disclosure and disqualification, interpretations of which would have to be made by that body. In the event that a specific situation arises in the future about which you would like an interpretation of the voting provisions of the Code of Ethics, please feel free to request another opinion.

**CEO 81-6—January 22, 1981**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE ACTING AS ATTORNEY FOR
PRIVATE CORPORATION ELIGIBLE TO RECEIVE STATE FUNDS

*To: Jon Mills, State Representative, 27th District, Gainesville*

**SUMMARY:**

**Section 112.313(7)(a), F.S., in part prohibits a public officer from having a contractual relationship with a business entity which is subject to the regulation of his agency. However, members of legislative bodies are given a limited exemption from the application of that prohibition by subparagraph (7)(a)2 where the regulatory power which the legislative body exercises over the business entity is strictly through the enactment of laws or ordinances. As the regulatory power which the Legislature exercises over business entities in this State is strictly through the enactment of laws, no prohibited conflict of interest would be created were a State Representative to represent as corporate attorney a private corporation which is eligible to receive State funds. It should be noted, however, that Article II, Section 8(e), Florida Constitution, would prohibit him from personally representing the corporation for compensation before any State agency other than judicial tribunals. CEO 77-168 is referenced in this regard.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to represent as corporate attorney a private corporation which is eligible to receive State funds?**

Your question is answered in the negative.

In your letter of inquiry you advise that the Shands Teaching Hospital became a private corporation on July 1, 1980, and that the Hospital is eligible to receive State funds under Chapter 79-248, Laws of Florida. You question whether you may represent Shands Teaching Hospital and Clinics, Inc. as their corporate attorney.

Section 112.313(7)(a), F.S., in part prohibits a public officer from having a contractual relationship with a business entity which is subject to the regulation of his agency. As a State Representative, your agency is the Legislature, whose regulatory powers extend generally over every business entity in the State. However, members of legislative bodies are given a limited exemption from the application of Section 112.313(7)(a) by subparagraph (7)(a)2 where the regulatory power which the legislative body exercises over business entities in this State is strictly through the enactment of the laws; your relationship with the hospital falls within the exemption and therefore does not present a prohibited conflict of interest. *See* CEO's 77-129 and 80-7.

Accordingly, we find that no prohibited conflict of interest would be created were you to represent as corporate attorney a private corporation which is eligible to receive State funds. Please note that Article II, Section 8(e), Florida Constitution, would prohibit you from personally representing the corporation for compensation before any State agency other than judicial tribunals. For further information in this regard, we are enclosing a copy of advisory opinion CEO 77-168.

**CEO 81-12—February 26, 1981**

**SUNSHINE AMENDMENT; VOTING CONFLICT OF INTEREST**

STATE REPRESENTATIVE PARTICIPATING IN LEGISLATION
AFFECTING HOUSING AUTHORITY REPRESENTED BY HIS LAW FIRM

*To: H. Lee Moffitt, State Representative, 66th District, Tampa*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, prohibits a legislator from personally representing a client before State agencies other than judicial tribunals. *See* CEO 77-168 as to what constitutes "representation" before an administrative agency. Aside from this restriction, neither the legislator nor his law firm is prohibited either by the Sunshine Amendment or the Code of Ethics from representing a municipal housing authority. As to whether a voting conflict of interest would be created were the legislator to participate in consideration of legislation affecting the housing authority which his firm represents, reference is made to CEO 77-129. Generally, a voting conflict would be created only were the legislator to participate in consideration of special legislation affecting in particular the housing authority which is represented in legal matters by his law firm.**

**QUESTION 1:**

**Does Article II, Section 8(e), of the Florida Constitution prohibit you or your law firm from representing a city housing authority while you serve as a member of the Florida House of Representatives?**

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and that you are a senior partner in a law firm which currently represents the Tampa Housing Authority in various legal matters. You also advise that the Authority is a potential subject for special and general legislation, as are all housing authorities.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

This provision does not prohibit you or your law firm from representing any particular client, including a housing authority. However, the provision does limit the extent of your personal representation of a client, although it does not limit the extent to which other partners or members of your law firm may represent a client. For example, your personal representation of the housing authority before the courts of this state is not precluded, since the courts are "judicial tribunals." *See* Myers v. Hawkins, 362 So. 2d 926 (Fla. 1978), in which the Florida Supreme Court held that the Public Service Commission is not a judicial tribunal. However, you would be prohibited from representing the Tampa Housing Authority before state agencies other than "judicial tribunals," such as executive departments and administrative hearing officers, in regulation, rulemaking, or other administrative proceedings. *See* CEO 78-2. For additional information as to what will constitute "representation" before an administrative agency, we refer you to another advisory opinion, CEO 77-168.

Accordingly, so long as you do not personally represent the Housing Authority before state agencies other than judicial tribunals, we find that Article II, Section 8(e), Florida Constitution, does not prohibit you or your law firm from representing the Tampa Housing Authority while you serve as a member of the Florida House of Representatives.

**QUESTION 2:**

**Does a prohibited conflict of interest, under the Code of Ethics for Public Officers and Employees, exist where your law firm represents a city housing authority while you serve as a member of the Florida House of Representatives?**

This question is answered in the negative.
The Code of Ethics for Public Officers and Employees provides in relevant part:

> (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S.]

This provision would prohibit a State Representative from being employed by, or having a contractual relationship with, a governmental agency which is subject to the regulation of the Legislature. However, the following provision of the Code of Ethics creates an exemption from this prohibition for members of legislative bodies:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, F.S.]

A similar example of the application of this exemption may be found in CEO 79-56.
Accordingly, we find that no prohibited conflict of interest exists where your law firm represents a city housing authority while you serve as a member of the Florida House of Representatives.

**QUESTION 3:**

**Would a voting conflict of interest be created were you to participate in consideration of special or general legislation affecting a city housing authority which is represented in legal matters by a partner or a member of your law firm?**

The Code of Ethics for Public Officers and Employees provides in relevant part:

> **Voting conflicts.**—No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143, F.S.]

Under this provision, a public officer cannot be prohibited from voting in his official capacity on any matter. However, if he has a personal, private, or professional interest in the matter and if the

measure being voted upon would inure to his special private gain or the special gain of a principal by whom he is retained, the officer is required to file a memorandum of voting conflict.

Applying the circumstances you have described to the disclosure requirement discussed above, we are of the view that you would have a "professional interest" in legislation directly affecting a client of your law firm. In a previous advisory opinion, CEO 77-129, we advised that whether a measure inures to the "special" gain of an officer or his principal will turn in part on the number of persons who stand to benefit from the measure. Where the class of persons is large, a "special" gain will result only if there are circumstances unique to the officer or principal under which he or the principal would stand to gain more than the other members of the affected class. We are of the opinion that, if you vote upon general legislation which would affect all city and county housing authorities, there would be no "special" gain to a principal by whom you are retained, which would be the particular city housing authority which is represented by your law firm. However, if you vote upon special legislation, for example, a special legislative act relating only to the Tampa Housing Authority and inuring to the benefit of that Authority, that legislation would inure to the special gain of a principal by whom you are retained.

Accordingly, we find that a voting conflict of interest would be created were you to participate in consideration of special legislation affecting in particular the Tampa Housing Authority, which is represented in legal matters by your law firm. The existence of such a voting conflict of interest, if one occurs, should be disclosed on CE Form 4, Memorandum of Voting Conflict, filed with the person responsible for reporting the minutes of the meeting. On the other hand, we find that no voting conflict of interest would be created were you to participate in consideration of general legislation affecting all housing authorities in a similar manner.

**CEO 81-14—February 26, 1981**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE LEASING OFFICE SPACE
FROM UNIVERSITY WHICH EMPLOYS HIM

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**The Code of Ethics for Public Officers and Employees does not prohibit a State Representative from leasing office space for his district legislative office from the State university which employs him despite the fact that Section 112.313(7)(a) thereof prohibits a public officer from being employed by an agency which is subject to the regulation of, or is doing business with, the agency of which he is an officer. Insofar as the university is subject to the regulation of the Legislature, Section 112.313(7)(a)2 exempts conflicts of interest based on the Legislature's regulatory power. Nor would the legislator be employed by an agency which is doing business with the Legislature if he were to lease such office space, inasmuch as he would be dealing personally and directly with the university in leasing the space, paying for it out of the $700 per month he receives for intradistrict expenses pursuant to Section 11.13(4), F.S.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to lease office space for your district legislative office from the State university which employs you?**

Your question is answered in the negative.

In your letter of inquiry you write that recently you were elected to the Florida House of Representatives. In addition, you advise that you are an instructor on the faculty of the Center for Labor Studies and Research at Florida International University. You also advise that you would like to lease office space from the University for the purpose of setting up your district legislative office.

The Code of Ethics for Public Officers and Employees provides in part:

> (3) DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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. [Section 112.313(3), F.S.]

This provision would not prohibit your lease of office space from the University for a district legislative office, since the University is not a business entity in which you have an interest. We note in particular that the statute exempts district offices maintained by a legislator in the legislator's place of business.

The Code of Ethics also provides:

> (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
>
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S.]

This provision prohibits a public officer from being employed by an agency which is subject to the regulation of, or is doing business with, the agency of which he is an officer. Insofar as the University is subject to the regulation of the Legislature, Section 112.313(7)(a)2, F.S., exempts conflicts of interest based on the Legislature's regulatory power. That subsection provides as follows:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, F.S.]

Nor do we find that you would be employed by an agency which is doing business with the Legislature if you were to lease office space from the University for your district legislative office. In a telephone conversation with our staff, you advised that each legislator receives a check for

$700 each month for the legislator's intradistrict expenses. This expense allowance is provided for by Section 11.13(4), F.S. You also advised that from this allowance each legislator pays for his office expenses directly, including the expense of leasing his district legislative office. Thus, the Legislature would not be doing business with the University by providing office space; instead, you will be dealing directly with the University to lease your legislative office from it. Under these circumstances, and especially in light of the specific exemption for legislators' district offices which is contained in Section 112.313(3), we are of the opinion that the Legislature did not intend any of the provisions of the Code of Ethics to prohibit the lease of a district office from the legislator himself, from a business in which he has an interest, or from his employer.

Accordingly, we find that no prohibited conflict of interest would be created were you to lease office space for your district legislative office from the State University which employs you.

**CEO 81-24—April 2, 1981**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE SENATOR OWNER OF COMPANY PROVIDING SERVICES
TO STATE HOSPITAL AND TO HOSPITAL EMPLOYEES

*To: John A. Hill, Senator, 33rd District, Hialeah*

**SUMMARY:**

**No prohibited conflict of interest would be created were a company owned by a State Senator to provide fringe benefits, statements, and employee attitude surveys for a State hospital in exchange for the opportunity to sell insurance coverage to hospital employees. The company owned by the Senator would not be selling its services to the Legislature, which would be prohibited by Section 112.313(3), F.S. Under the circumstances presented, Section 112.313(7)(a), F.S., would not be violated, as the Senator would not be employed by or have a contractual relationship with an agency which is subject to the regulation of his agency, and because of the exemption contained in Section 112.313(7)(a)2. Nor would a continuing or frequently recurring conflict of interest be created, since a member of the Legislature does not have such direct and immediate authority over State employees that they would feel compelled to purchase insurance through the Senator's company. Compare CEO 80-68. Article II, Section 8(e), Florida Constitution, would not prohibit a person other than the subject Senator from representing his corporation in contacting a State hospital in seeking to have the corporation provide services to the hospital and to hospital employees, as the Senator would not be "personally" involved in such representation.**

**QUESTION 1:**

**Would a prohibited conflict of interest be created under the Code of Ethics for Public Officers and Employees were a company owned by you, a State Senator, to provide services to a State hospital and to employees of that hospital?**

This question is answered in the negative.

In your letter of inquiry you advise that you are a life and health insurance agent and business owner. You further advise that you have formed a corporation for the purpose of providing a service to employers by producing fringe benefit statements for their employees. In addition, as part of its services, the company surveys employees' attitudes to their work and provides a breakdown of its survey to the employer. The costs of these actions, you advise, are paid by your corporation, which requests from the employer only a payroll deduction slot and the time to talk to employees. The employees then are offered insurance coverage on a voluntary acceptance basis.

Finally, you advise that you would like to attempt to provide this service to the South Florida State Hospital, located in Broward County.

The Code of Ethics provides in part:

> (3) DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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. [Section 112.313(3), F.S.]

This provision prohibits a public officer from being an officer or director of, or owning more than five percent of, any business entity which is doing business with his agency. However, since your "agency," as that term is defined in Section 112.312(2), F.S., is the Legislature, and since your corporation does not propose to do business with the Legislature, this prohibition is not applicable.

The Code of Ethics also provides:

> (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
> (a) 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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S.]

This provision prohibits a public officer from being employed by or having a contractual relationship with an agency which is subject to the regulation of his public agency. We find that you would not have employment or a contractual relationship with the State Hospital both because it is your corporation that would be working with the Hospital and because it appears that the corporation would be providing its services to the Hospital without charge. In addition, the exemption for members of legislative bodies contained in Section 112.313(7)(a)2, F.S., would exclude your situation from this prohibition.

Section 112.313(7)(a), above, also prohibits a public officer from having any employment or contractual relationship that will create a continuing or frequently recurring conflict of interest or that would impede the full and faithful discharge of his public duties. In CEO 80-68 we found that this provision would prohibit a school board member from acting as an insurance broker to administer an insurance program offered privately to school district employees through a teachers' union and through an association of administrative personnel. In our view, the situation which you propose is distinguishable from the situation in that opinion. Unlike the authority of a school board member over school district personnel, a member of the Legislature does not have such direct and immediate authority over the State employees who might be contacted by your company. Thus, Hospital employees would not feel compelled to purchase insurance through your company when solicited by the company. Nor do we feel that considerations of retaining and increasing the business done by your corporation with these employees would tend to lead to disregard of your responsibility as a legislator to act independently and impartially.

Accordingly, we find that no prohibited conflict of interest would be created under the Code of Ethics for Public Officers and Employees were a company owned by you, a State Senator, to provide services to a State hospital and to hospital employees.

**QUESTION 2:**

> **Would Article II, Section 8(e) of the Florida Constitution prohibit a person other than yourself representing your corporation from contacting a state hospital in seeking to have the corporation provide services to the hospital and to hospital employees?**

This question is answered in the negative.

In a telephone conversation with our staff, you advised that if your corporation contacts the South Florida State Hospital, you will not be involved personally in any dealings between the corporation and the Hospital or its staff. However, you question whether some other person may contact the hospital in behalf of your company.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

As we advised in CEO 77-168 the purpose of this provision appears to be to secure the public trust against abuse by prohibiting a legislator from using the influence of his office over State agencies in order to gain benefits for a private client, as well as by prohibiting situations which would give the appearance of improper influence even in the absence of intentional efforts to misuse the power of legislative influence. If you, personally, were to negotiate with the Hospital in behalf of your corporation, we recognize that you would not be representing a "client" as an attorney would, but you nevertheless would be representing your corporation. The constitutional prohibition is not phrased in terms of representation of a "client," but rather in terms of representation of persons or entities. We understand this choice of language to indicate that the people of this State intended to prohibit a broader range of representation than that only of "clients" before State agencies.

However, Article II, Section 8(e) addresses only those situations where a member of the Legislature "personally" represents another person or entity before certain State agencies. As we noted in CEO 77-168, we find nothing in this constitutional provision which would prohibit your corporation from being represented by another person in contacting a State hospital or other State agency regarding the provision of services by the corporation.

Accordingly, it is our opinion that Article II, Section 8(e) of the Florida Constitution does not prohibit persons other than yourself from contacting a State hospital for the purpose of seeking to provide services, through a corporation owned by you, to the hospital and to hospital employees.

**CEO 81-57—September 17, 1981**

**SUNSHINE AMENDMENT**

STATE SENATOR RESIGNING TO ACCEPT POSITION WITH
STATE AGENCY REQUIRING LEGISLATIVE LOBBYING

*To: The Honorable Sherman S. Winn, State Senator, District 34, Miami*

**SUMMARY:**

> **The Sunshine Amendment in Article II, Section 8(e), Florida Constitution, prohibits a member of the Legislature from personally representing another person or entity for compensation before the government body or agency of which**

**the individual was an officer or member for a period of two years following vacation of office. This provision would prohibit a former State Senator from accepting employment as Division Director of a State department within two years after leaving office, where that employment would require him to engage in lobbying activities before the Legislature in behalf of the Division. As the constitutional provision prohibits the representation of "another person or entity," it appears that the prohibition would extend to governmental entities as well as private entities, the Commission not having discovered any evidence that those who adopted the Amendment intended otherwise. The provision would not prohibit a former Senator from accepting such employment if the duty of lobbying were transferred to another person, since the restriction contemplates only "personally" representing another person or entity before the Legislature.**

**Article II, Section 8(e), Florida Constitution, however, would not prohibit a former Senator from accepting employment as Division Director of a State department, where his employment would not require him to engage in lobbying activities before the Legislature in behalf of the Division but where he might be requested by the Legislature to appear before a legislative committee or subcommittee as a witness or for informational purposes. This provision was intended to prevent influence peddling and the use of public office to create opportunities for personal profit through lobbying once an official leaves office. However, an appearance before a legislative committee or subcommittee upon the request of the committee or subcommittee rather than upon the former senator's initiative would not constitute lobbying.**

**QUESTION 1:**

**Does the Sunshine Amendment to the State Constitution, Article II, Section 8(e), prohibit you from resigning your office as a State Senator and accepting employment as Division Director of a state department, where that employment would require you to engage in lobbying activities before the Legislature in behalf of the Division?**

This question is answered in the affirmative.

In your letter of inquiry you advise that presently you are a member of the Florida Senate and that you are being considered for employment as Director of the Division of Hotels and Restaurants in the Florida Department of Business Regulation. We are advised by the Secretary of the Department that representation of the Division's interests before the Legislature normally is a duty and responsibility of the Division Director. Therefore, you question whether Article II, Section 8(e), Florida Constitution, would permit you to resign from the Senate, to accept the position of Division Director, and as Director to represent the Division as a lobbyist before the Legislature.

The Sunshine Amendment of the Florida Constitution provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office …. [Article II, Section 8(e), Florida Constitution.]

Thus, as a member of the Legislature, you are prohibited from personally representing another person or entity for compensation before the Legislature for a period of two years following the date on which you leave office.

It is apparent that as Division Director you would be compensated for the performance of your responsibilities, including the responsibility of personally representing the Division's interests before the Legislature. Since these representations would occur within two years after you have

left the Senate, the only question which we must resolve is whether by representing the Division's interests you would be "representing another person or entity" before the Legislature.

The Florida Supreme Court, interpreting the second sentence of Article II, Section 8(e), in the case of *Myers v. Hawkins*, 362 So. 2d 926 (Fla. 1978), stated:

> We have already held that the intent of the framer of a constitutional provision adopted by initiative petition will be given less weight in discerning the meaning of an ambiguous constitutional term that [sic] the probable intent of the people who reviewed the literature and the proposal submitted for their consideration.

*Myers*, at p. 930, citing *Williams v. Smith*, 360 So. 2d 417 (Fla. 1978). On this basis, the Supreme Court in *Myers* examined the terminology of the constitutional provision and the explanatory flyer which accompanied the Sunshine Amendment petition when it was circulated for placement on the ballot. The Court then made its interpretation in light of the primary purpose for which the provision had been adopted.

We are aware that Governor Askew, as one of the framers of the Sunshine Amendment, has indicated that it was not his intention that Article II, Section 8(e) prohibit a former legislator from representing a public entity in a public capacity before the Legislature during the two years following vacation of office. However, given the Supreme Court's direction in *Myers*, we are required to give greater weight to the probable intent of the people who reviewed and adopted the Sunshine Amendment than to the intent of its framers. Similarly, in interpreting a statute a court cannot consider affidavits of members of the Legislature stating their views of what the Legislature intended. *McLellan v. State Farm Mutual Automobile Company*, 366 So. 2d 811 (Fla. 4th D.C.A. 1979).

The terminology of the provision—"another person or entity"—does not indicate that the provision would apply only to representations of private or nongovernmental entities. By use of the term "person," as distinct from an "entity," we believe the Amendment intended to include only natural persons, although the word "person" may include governmental bodies in some instances. *City of St. Petersburg v. Carter*, 39 So. 2d 804 (Fla. 1949). The term "entity" as generally defined is broad enough to include both private and governmental organizations. For example, Webster's Third New International Dictionary (1966) defines "entity" at p. 758 as "something that has objective or physical reality and distinctness of being and character [;] something that has a unitary and self-contained character." An entity may be a corporate entity, a legal entity, a public entity, or a sovereign entity, among others. *See* 14A Words and Phrases, 395.

In addition, we note that the Legislature has defined the term "agency" for purposes of the Code of Ethics for Public Officers and Employees as meaning

> any state, regional, county, local or municipal government *entity* of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university. [E.S.] [Section 112.312(2), Florida Statutes (1979).]

The explanatory flyer referenced by the Supreme Court in *Myers*, entitled "An Explanation of the Sunshine Amendment," provides:

> The amendment prohibits a member of the legislature or the holder of a statewide elective office from representing any client for a fee before the body or agency of which he or she was a member for a period of two years after leaving office. This provision provides a strong framework for conflict-of-interest legislation to prevent influence peddling and the use of public office to create opportunities for personal profit once officials and employees leave office. The legislature, once again, has the flexibility to include other public officials or employees in the prohibition. The subsection also prohibits members of the legislature from representing clients before state agencies except before judicial tribunals. Judicial tribunals would include the courts, the Industrial Relations Commission and judges of industrial claims.

* * * * *

> . . . The people of Florida need additional assurances that their public officials are serving the public interest, and not a private interest. They need assurances that public office is regarded by officials as a public trust and not as a public license.
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> * * * * *
>
> . . . The supporters of The Sunshine Amendment do not maintain that it would rid government of corruption and deception for all time. But they feel it would cause second thoughts by those who may otherwise have abused their public trust for their own personal gain. And they contend that it would help establish a more serious and responsible tone in government—that it would help reassure the people that their public officials are actually representing the people and not themselves, that it would help restore the confidence of the people in their leaders and their government.

This explanation of Article II, Section 8(e), however, does not assist us in answering the question you have posed, as it does not indicate clearly that only clients who are private persons or entities would come within the provision. Furthermore, the amendment is phrased in broader terms than the example given in the explanation, since representation of "another person or entity for compensation" would comprehend situations where that person or entity is not a "client" and where some form of compensation other than a "fee" is received. Nor does the explanation indicate that a public official could abuse his public trust only by benefiting a private person or entity; instead, it clearly contemplates that the abuse of trust results from an official's valuing his personal gain above the public interest. In our view, personal gain may be derived from both private and public entities.

Our staff has reviewed additional materials concerning the Sunshine Amendment presently located in the State Archives and has discovered nothing which would assist us in resolving the issue you have posed.

Another source of interpretative material used by the Florida Supreme Court to interpret the Sunshine Amendment is Governor Askew's address to the Legislature following the adoption of the Amendment. *Williams v. Smith*, 360 So. 2d 417 9 (Fla. 1978). The Governor's supplementary message on ethics and elections contained the following remarks:

> Another provision of the Sunshine Amendment that requires further implementation is the section prohibiting the appearance of certain elected officials before any board on which they served in the two years following their departure from the respective board. To the extent that law and the Constitution permit, we should consider extending a similar prohibition to other appointed and elected officials. I recommend that all elected officials be included who are not covered by the Sunshine Amendment. I strongly urge the Legislature to adopt comprehensive legislation to ensure that public officers and high ranking state employees do not use their public service career, and contacts developed in that capacity, to later enrich themselves at the expense of the public. This would increase public confidence that matters coming before our agencies and boards are decided on their merits. [Journal of the House of Representatives, April 5, 1977, p. 22]

Unfortunately, these remarks do not address the question of whether governmental entities were contemplated by the Amendment, but merely reiterate that one's public service career and contacts developed in that capacity should not be used to enrich oneself at the expense of the public. This expression of intent, we believe, would apply equally whether one represented a private or a public entity after leaving office.

It is apparent from the explanatory flyer and from the language of the Constitution that the provision was intended to prevent influence peddling and the use of public office to create opportunities for personal profit through lobbying once an official leaves office. In the context of the Legislature, the provision seeks to preserve the integrity of the legislative process by ensuring that decisions of members of the Legislature will not be made out of regard for possible employment as lobbyists. Since legislative decisions affect those in the public sector as well as those in the private sector, it would seem to be equally important that legislative decisions not be colored by regard for future lobbying opportunities in behalf of public entities.

In addition, the provision recognizes that the influence and expertise in legislative matters gained through a legislator's public service would give the legislator a high value and a competitive advantage within the marketplace for lobbyists. These opportunities for personal profit exist within both the private and the public sector.

Given the intent, it is not difficult to understand that the prohibition of Article II, Section 8(e) would not preclude a former legislator who has been elected to another public office from lobbying the Legislature as part of his official responsibilities. In that situation, the people have selected the former legislator through an electoral process and there simply is not the opportunity for use of prior public office to acquire lucrative employment as a lobbyist. Nor would the former lobbyist be peddling the influence he has gained through public service within the marketplace for lobbyists. We do not believe that an elected official is representing "another person or entity" when approaching the Legislature in the fulfillment of his *public* duties.

For these reasons, we agree with the conclusion reached by the Attorney General in his opinion of March 6, 1978 that an elected official, within two years following the end of his legislative term, may lobby the Legislature as part of his official duties. However, since the rationale of that opinion was based upon the Explanation of the Sunshine Amendment, which we have found to be ambiguous, we disagree with the opinion's statement that Article II, Section 8(e) was directed only toward the representation of private interests or organizations.

We also disagree with the proposition that the term "entity" should include only private entities because of the general rule of statutory construction that the government and its agencies are not ordinarily to be considered as within the purview of a statute unless the intention to include them clearly is shown. *See* 82 C.J.S. *Statutes*, 317. Beyond the legal arguments regarding the applicability of such a rule in this context, we are charged with determining the probable intent of the people who adopted the Sunshine Amendment. We do not believe that the people intended or understood that this particular rule of statutory construction could or would be applied.

We have examined other provisions of the Sunshine Amendment to determine whether the terms "person or entity" could be found to apply only to private persons or entities, so that we might be able to conclude that your proposed employment would not be prohibited. The terms appear in the second sentence of Section 8(e), which prohibits a legislator from representing another person or entity for compensation before State agencies other than judicial tribunals. However, the purpose of that provision—to prevent those with budgetary and statutory control over the affairs of public agencies from potentially influencing agency decisions when appearing as compensated advocates for others—also would seem to be served by interpreting "entities" to include governmental entities. It does not appear that the use of "state agency" in this provision contrasts with the use of "person or entity" in such a way that we could conclude that an "entity" must be something other than a "state agency." Rather, it appears that the use of "state agency" recognizes that legislators are perceived as having greater authority over State agencies than any other category of governmental entity.

Additionally, the terms "person or entity" appear in Section 8(c), which provides that any person or entity inducing a public officer or employee to breach the public trust for private gain shall be liable to the State for financial benefits received. In this provision, it is the term "private gain" which is essential to the meaning of the provision; in contrast, it is significant to note that the word "private" does not appear in Section 8(e).

We have found no basis to conclude that lobbying of governmental entities somehow is either more or less important or is more or less valuable to the people of Florida than lobbying in behalf of private entities so that the Sunshine Amendment's prohibition should be restricted to the latter. We have discovered no evidence that the framers of the Amendment or the people who adopted it intended such a result. Nor does it appear that the people's constitutional right "to instruct their representatives, and to petition for redress of grievances" (Article I, Section 5, Florida Constitution) would not permit such a distinction. The term "entity," as generally understood, is so broad that we believe the people would not have understood it to mean only "legal entities," such as private corporations, as distinct from governmental entities. As we read the Explanation of the Sunshine Amendment and the other provisions of the Amendment itself, it appears that the people were provided with nothing which clearly would indicate that Article II, Section 8(e) encompassed only private entities rather than all entities, both public and private.

Accordingly, until judicially clarified to the contrary, we are of the opinion that Article II, Section 8(e) of the Florida Constitution would prohibit you from resigning your office as a State Senator and accepting employment as Division Director of a State department, where that employment would require you to engage in lobbying activities before the Legislature in behalf of the Division.

However, since omissions in constitutional language are presumed to be intentional and since the constitutional provision only prohibits you from "personally" representing another person or entity before the Legislature within two years after leaving office, we find nothing in Article II, Section 8(e) which would prohibit you from being employed as Division Director were the duty to represent the Division's interests before the Legislature transferred to another person in the Department or Division during the two-year period following your resignation from the Senate. This interpretation, we believe, will assure that government will not lose your talents or the experience and perspective in governmental affairs which you have gained as a member of the Legislature.

**QUESTION 2:**

> **Does the Sunshine Amendment to the State Constitution, Article II, Section 8(e), prohibit you from resigning your office as a State Senator and accepting employment as Division Director of a state department, where that employment would not require you to engage in lobbying activities before the Legislature in behalf of the Division but where you might be requested by the Legislature to appear before a legislative committee or subcommittee as a witness or for informational purposes?**

Your question is answered in the negative.

As we have explained in our response to your first question, the post officeholding restriction of the Sunshine Amendment was intended to prevent influence peddling and the use of public office to create opportunities for personal profit through *lobbying* once an official leaves office. By the use of the term "lobbying," we mean affirmative action intended to influence the legislative process. The situation presented by your question, however, contemplates only an appearance before a legislative committee or subcommittee upon the request of the committee or subcommittee, rather than upon your initiative.

Such actions, we believe, do not constitute lobbying and therefore would not fall within the intent of the prohibition of Article II, Section 8(e). Were the provision to be interpreted otherwise it would have the effect of preventing the Legislature from requesting former legislators to appear and present testimony or other information, thus hampering the Legislature in the legitimate exercise of its constitutional responsibilities. In our opinion, this result clearly was not intended by the Sunshine Amendment.

In addition, we note that Section 11.061, Florida Statutes, requires the registration of non-legislative State employees who seek "to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any committee thereof . . . ." However, persons who appear before a committee or subcommittee of the House of Representatives or Senate at the request of the committee or subcommittee chairman as a witness or for informational purposes are not required to be registered as lobbyists. Section 11.061(2)(b), Florida Statutes. As these statutes were in effect at the time of the drafting and adoption of the Sunshine Amendment, it is logical to assume that those who drafted the Amendment were aware of the Legislature's distinction between lobbying and non-lobbying activities of State employees.

Accordingly, it is our opinion that Article II, Section 8(e) of the Florida Constitution would not prohibit you from resigning your office as State Senator and accepting employment as Division Director of a State department, so long as in that position you do not engage in lobbying activities before the Legislature in behalf of the Division. Further, we are of the opinion that Article II, Section 8(e) would not prohibit you from appearing before a committee or subcommittee of the Legislature at the request of the committee or subcommittee chairman as a witness or for informational purposes.

**CEO 82-16—March 4, 1982**

**CONFLICT OF INTEREST**

STATE SENATOR LEASING PROPERTY
TO STATE UNIVERSITY

*To: The Honorable George Kirkpatrick, State Senator, District 6*

**SUMMARY:**

**No prohibited conflict of interest would exist were a State Senator to lease property to the University of Florida for use as laboratory space. Previous opinions 77-13 and 80-61 are referenced as precedents.**

**QUESTION:**

**Would a prohibited conflict of interest exist were you, a state senator, to lease property to the University of Florida for use as laboratory space?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the Florida Senate and that recently you have reached an agreement with the University of Florida to lease laboratory space for use by the space astronomy laboratory for research purposes. A copy of the lease indicates that it will be entered into by the State Board of Regents for and on behalf of the university.

In a previous advisory opinion, CEO 77-13, we advised that the Code of Ethics for Public Officers and Employees would not prohibit a member of the House of Representatives from leasing business property to the Department of Health and Rehabilitative Services. Based upon that opinion, we rendered a subsequent opinion, CEO 80-61, in which we advised that the Code of Ethics would not prohibit a State Senator from leasing property to the Department of Professional Regulation.

Accordingly, under the rationale of these previous opinions, we find that no prohibited conflict of interest would be created were you to lease property to the Board of Regents for the University of Florida while serving as a member of the Florida Senate.

**CEO 82-33—May 20, 1982**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE EMPLOYED BY COMPANY DOING
BUSINESS WITH FLORIDA HOUSING FINANCE AGENCY

*To: The Honorable C. Thomas Gallagher III, State Representative, 111th District*

**SUMMARY:**

**No prohibited conflict of interest would be created under the Code of Ethics were an insurance company which employs a State Representative to contract with the Florida Housing Finance Agency to provide insurance and services regarding bond issues. Here, the insurance company would not be doing business with the Representative's agency, the Legislature. Nor would the Representative have any employment or contractual relationship with the Housing Finance Agency. CEO 81-24 is referenced.**

**Article II, Section 8(e), Florida Constitution, would not prohibit the Representative from assisting as an employee of the mortgage insurance company in the performance of a contract between the company and the Florida Housing Finance Agency. The Representative's duties in the performance of the contract would not involve any contact with members or staff of the Agency, and therefore he could not be said to be representing another person or entity before that Agency.**

**QUESTION 1:**

**Would a prohibited conflict of interest be created under the Code of Ethics for Public Officers and Employees were an insurance company which employs you, a State Representative, to contract with the Florida Housing Finance Agency to provide insurance and services regarding bond issues?**

This question is answered in the negative.

In your letter of inquiry you advise that you have been employed as a Vice President with a mortgage insurance company for the past six years. This company, you advise, has submitted a proposal to provide to the Florida Housing Finance Agency loan administration and servicing, mortgage guarantee insurance, and other related insurance and guarantees regarding proposed bond issues. You advise that you have not participated and do not intend to participate in any fashion with respect to this proposal and that you have not communicated and do not intend to communicate with any person on or related to the Florida Housing Finance Agency regarding this bid. However, if your company is awarded a contract to perform any of these services, you may be called upon under your normal employment to assist in the company's performance of the contract.

The Code of Ethics for Public Officers and Employees prohibits a public officer from being an officer of a business entity which is doing business with his public agency. Section 112.313(3), Florida Statutes. However, since your agency as a State Representative is the Legislature, and since the mortgage insurance company does not propose to do business with the Legislature, this prohibition is not applicable. *See* CEO 81-24, in which a similar situation was presented.

The Code of Ethics also prohibits a public officer from having any employment or contractual relationship with a business entity or an agency which is subject to the regulation of, or which is doing business with, his agency. Section 112.313(7)(a), Florida Statutes. This provision also would not prohibit your employment with a mortgage insurance company which is doing business with the Florida Housing Finance Agency, since the Legislature rather than the Housing Finance Agency is your "agency" for purposes of the Code of Ethics. Nor does it appear that you would have any employment or contractual relationship with the Housing Finance Agency. CEO 81-24 is similar in this respect, also.

Accordingly, we find that no prohibited conflict of interest would be created under the Code of Ethics were the insurance company which employs you to contract with the Florida Housing Finance Agency.

**QUESTION 2:**

**Would Article II, Section 8(e), of the Florida Constitution prohibit you, a State Representative, from assisting as an employee of the mortgage insurance company in the performance of a contract between the company and the Florida Housing Finance Agency?**

This question is answered in the negative.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

Initially, we note that the Florida Housing Finance Agency is a State agency. Section 420.504(1), Florida Statutes. We also find that the Florida Housing Finance Agency is not a judicial tribunal, since it does not predominantly perform a judicial function. *See* Myers v. Hawkins, 362 So. 2d 926 (Fla. 1978), and Section 420.507, Florida Statutes (1981).

As you have advised, you will not participate in any fashion concerning the insurance company's proposal to the agency, and you will not communicate with any person related to the agency regarding your company's bid. In addition, you advised in a telephone conversation with our staff that if the contract is awarded to the company, your responsibilities in the performance of the contract will not involve any contact with members or staff of the agency. Therefore, we find that you will be not representing the company before a State agency.

Accordingly, we find that Article II, Section 8(e), Florida Constitution, would not prohibit you from assisting as an employee of the mortgage insurance company in the performance of a contract between the company and the Florida Housing Finance Agency.

**CEO 82-35—May 20, 1982**

**CONFLICT OF INTEREST**

STATE SENATOR'S CORPORATION SUBCONTRACTING WITH FIRM CONTRACTING WITH ASSOCIATION OF COUNTY COMMISSIONERS OR LEAGUE OF CITIES

*To: The Honorable Clark Maxwell, Jr., State Senator, 16th District*

**SUMMARY:**

**No prohibited conflict of interest would be created were the corporation of a State Senator to subcontract with a firm which is contracting with the Association of County Commissioners or the League of Cities. CEO's 81-6, 80-7, 77-129, and 78-56 are referenced as precedent.**

**QUESTION:**

**Would a prohibited conflict of interest be created were your corporation to subcontract with a firm contracting with the Association of County Commissioners or the League of Cities, where you are a member of the State Senate?**

Your question is answered in the negative.

In your letter of inquiry you question whether there would be a conflict of interest if your corporation were to subcontract with a firm which is submitting a proposal to the Association of County Commissioners and possibly to the League of Cities to provide data to the membership of these organizations concerning revenue and budget forecasting.

The Code of Ethics for Public Officers and Employees prohibits you from having any employment or contractual relationship with a business entity which is subject to the regulation of the Legislature. Section 112.313(7)(a), Florida Statutes. However, Section 112.313(7)(a)2, Florida Statutes, also provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Therefore, to the extent that your corporation, the firm with which it would be subcontracting, the Association of County Commissioners, and the League of Cities are subject to the regulation of the Legislature, that regulation would be exercised through the enactment of laws, and the exemption quoted above would apply. *See* CEO 81-6, CEO 80-7, and CEO 77-129. With respect to any conflict arising because of the lobbying efforts of these organizations, *see* CEO 78-56, in which we advised that the provisions of Chapter 11, Florida Statutes, regarding lobbying would take precedence over the Code of Ethics.

As a cautionary note, we point out that Section 112.313(8), Florida Statutes, would prohibit your using in the course of your private business any information not generally available to the public and gained by virtue of your position as a State Senator. Similarly, under Section 112.313(6), Florida Statutes, any use of your position as Senator to advance your private business interests would contravene the Code of Ethics.

Subject to the above caveat, we find that no prohibited conflict of interest would be created were your corporation to subcontract with a firm doing business with either the Association of County Commissioners or the League of Cities.

**CEO 82-47—July 1, 1982**

**CONFLICT OF INTEREST**

STATE SENATOR USING PERSONAL PHOTOGRAPH
IN FRONT OF SENATE SEAL FOR CAMPAIGN LITERATURE

*To: The Honorable J. W. "Bill" Stevens, State Senator, District 29*

**SUMMARY:**

**No provision of the Code of Ethics would prohibit the use in a Senator's campaign literature of a photograph depicting him in front of the Senate Seal. As the Senate Seal is the "official seal of the Senate" pursuant to Section 11.49(1), Florida Statutes, it is suggested that the Senate Rules Committee be contacted regarding the use of the Seal.**

**QUESTION:**

**Would the Code of Ethics for Public Officers and Employees be violated were you, a State Senator, to use a photograph of yourself in front of the Senate Seal in your campaign literature?**

We have examined the provisions of the Code of Ethics for Public Officers and Employees, Part III of Chapter 112, Florida Statutes, and we find no provision within the Code of Ethics which would prohibit the use in your campaign literature of a photograph depicting you in front of the Senate Seal. As the Senate Seal is the "official seal of the Senate" pursuant to Section 11.49(1), Florida Statutes, we would suggest that the propriety of using the Senate Seal lies within the discretion of the Senate. Therefore, you may wish to contact the Senate Rules Committee regarding your question.

**CEO 82-83—October 29, 1982**

**SUNSHINE AMENDMENT**

STATE LEGISLATOR FILING DOCUMENTS
WITH DEPARTMENT OF STATE

*To: Honorable H. Lee Moffitt, State Representative, District 66*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, would not prohibit a State Representative from filing with the Department of State articles of incorporation or documents required by the Uniform Commercial Code in behalf of a client of his private law practice. In these situations, unlike the situation in CEO 77-168, the State agency has no discretion to take an action which may benefit the client of a legislator/attorney.**

**QUESTION:**

**Does the Sunshine Amendment to the State Constitution, Article II, Section 8(e), prohibit you, a State Representative, from filing with the Department of State articles of incorporation or documents required by the Uniform Commercial Code in behalf of a client of your private law practice?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives. You question whether Article II, Section 8(e), Florida Constitution, would prohibit you in your private law practice from filing in behalf of a client articles of incorporation under Chapter 607, Florida Statutes or documents required under the Uniform Commercial Code, Chapters 671-679, Florida Statutes.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person for compensation during term of office before any state agency other than judicial tribunals.

In a previous opinion, CEO 77-168, we advised that this provision would prohibit a State legislator from notifying a State agency of a private client's intention to file suit under the Environmental Protection Act and participating in subsequent communications with the staff of that agency. There, discussions with the agency could have resulted in the agency's decision to pursue an alleged violator of environmental law, resulting in a substantial benefit to the attorney's client.

In CEO 77-168, we found that the purpose of Article II, Section 8(e) is to secure the public trust against abuse by prohibiting a legislator from using the influence of his office over State agencies in order to gain benefits for a private client, as well as by prohibiting members of the Legislature from undertaking to represent clients in situations which would give the appearance of improper influence. In our view, subsection (e) was not intended to prohibit a legislator from filing articles of incorporation or documents under the Uniform Commercial Code with the Department of State. In these situations, no opportunity is presented for a legislator/lawyer to misuse the influence of his public office, and there is no appearance of improper influence. The filing of such documents is a routine, ministerial matter for the Department of State. If the detailed statutory requirements for articles of incorporation are met, the Department has no discretion to refuse to file those articles. Section 607.164(4), Florida Statutes. Similarly, filings under the Uniform Commercial Code intended to put members of the public on notice of interests claimed under the Code are a routine, ministerial function handled by the Department of State. Chapters 671-679, Florida Statutes. In

these situations, unlike the situation in CEO 77-168, the State agency has no discretion to take an action which may benefit the client of a legislator/attorney.

In addition, we note that at the time the Sunshine Amendment was adopted, as well as at present, Section 112.3145(4), Florida Statutes, has provided for legislators and others to report the names of clients represented before State agencies, except for appearances in ministerial matters. Therefore, when the Sunshine Amendment was adopted, legislators were not required even to disclose the filing of documents with the Department of State. If these types of matters were not sufficiently significant to be disclosed previously, we doubt very much that the framers and adopters of the Sunshine Amendment intended to prohibit them.

Accordingly, we find that Article II, Section 8(e), Florida Constitution, does not prohibit you from filing with the Department of State articles of incorporation or documents under the Uniform Commercial Code. To the extent that CEO 77-168 contains language which would indicate otherwise, that opinion is disapproved.

**CEO 82-92—December 10, 1982**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY NONPROFIT CORPORATION RECEIVING STATE AND COUNTY FUNDS

*To: The Honorable Willie Logan, State Representative, District 108*

**SUMMARY:**

**No prohibited conflict of interest exists where a State Representative is employed as executive director of a nonprofit corporation which receives state and county funding. Previous opinions CEO 81-6, CEO 80-7, and CEO 77-129 are referenced.**

**QUESTION:**

**Does a prohibited conflict of interest exist where you, a State Representative, are employed as Executive Director of a nonprofit corporation which receives State and County funding?**

Your question is answered in the negative.

In your letter of inquiry you advise that you have been elected as a State Representative and that you are employed as Executive Director of a nonprofit corporation which has the primary goal of revitalizing the Opa Locka community, a section in northwest Dade County. The project, you advise, includes the industrialization of approximately 294 acres of property located in the Opa Locka airport and is funded by both the State and the County.

For the reasons expressed in previous opinions CEO 81-6, CEO 80-7, and CEO 77-129, we find that the Code of Ethics for Public Officers and Employees would not prohibit you from retaining your present employment while serving as a member of the Florida House of Representatives. Accordingly, we find that no prohibited conflict of interest exists where you are employed as Executive Director of a nonprofit corporation which is funded by the State and the County.

While your letter of inquiry does not reference any particular matter upon which you may be called to vote, we would refer you to previous opinions CEO 81-12, CEO 80-61, CEO 79-14, and CEO 77-129 regarding voting conflicts of interest. If in the future a question arises in a particular context, we would be able to provide more specific guidance.

**CEO 83-4—January 27, 1983**

**SUNSHINE AMENDMENT**

FORMER MEMBER OF HOUSE OF REPRESENTATIVES BEING RETAINED BY THE HOUSE AS SPECIAL LEGAL COUNSEL

*To: The Honorable H. Lee Moffitt, Speaker, Florida House of Representatives*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, does not prohibit a former member of the House of Representatives from being retained by the House as special legal counsel to the House and its members for compensation within the two-year period following vacation of his office. Under the circumstances presented, the special legal counsel will not be engaged in lobbying the House in behalf of another person or entity, but instead will be employed to provide services for the House.**

**QUESTION:**

**May a former member of the House of Representatives who is subject to Article II, Section 8(e), Florida Constitution, be retained by the House as special legal counsel to the House and its members for compensation within the two-year period following vacation of office without violating the prohibition of that constitutional provision?**

Your question is answered in the affirmative.

In your letter of inquiry you advise that as Speaker of the House of Representatives you have appointed a number of task forces to assist the standing, substantive committees in preparing legislation for introduction and consideration at the 1983 legislative session. Each task force generally consists of representatives of the legislative and executive branches of government as well as representatives from the private sector interested in that particular area. The goal of each task force is to develop legislation for enactment during the 1983 session.

You also advise that it is your intention to retain one of the members of a task force as special legal counsel to the House and its members. That particular individual is a former member of the House of Representatives who decided not to seek reelection at the general election of November, 1982. The duties of the special counsel will include functioning as a liaison between the House, the Committee on Natural Resources, and the task force on water, as well as attending meetings and consulting with you and the other members of the House on water issues. Finally, you advise that you are concerned about any potential application to this situation of the prohibition contained in Article II, Section 8(e), Florida Constitution.

That provision of the Constitution provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office.

In our view, the special legal counsel to the House and its members will not be representing a person or entity before the House of Representatives. Instead, this person will be employed by the House of Representatives to provide services to that body.

As recognized by the Supreme Court, the post-officeholding ban is directed against lobbying activities. *Askew v. Firestone*, 421 So.2d 151 (Fla. 1982). In this sense, the constitutional provision prohibits a former House member from being employed by a person or entity to influence the legislative process in favor of that person or entity, or in favor of the interests that person or

entity represents. We perceive a significant distinction between the situation where a former House member is employed to provide services for a person or entity involving lobbying before the House of Representatives, and the present situation, in which a former member will be employed to provide services for the House of Representatives.

Accordingly, we find that Article II, Section 8(e), Florida Constitution, does not prohibit a former member of the House of Representatives from being retained by the House as special legal counsel to the House and its members for compensation within the two-year period following vacation of office.

**CEO 83-13—March 10, 1983**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY ENGINEERING FIRM

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to be employed by an engineering firm on a part-time basis to transmit news articles concerning engineering-related matters and to solicit clients in the private sector. The exemption for legislative bodies contained in Section 112.313(7)(a)2 as applied in CEO's 77-129 and 80-7 is referenced. Services provided to the firm could include soliciting clients in the public sector such as cities, counties, and other political subdivisions. However, solicitations of State officials or employees might violate Article II, Section 8(e), Florida Constitution. Section 112.313(8), Florida Statutes, would permit also transmitting engineering-related legislative information and committee reports after the information had been presented or made available at a public meeting and the information was put into the public record. So long as the firm would not do business with the Legislature and the Representative is not involved personally in soliciting business from a State agency, the firm may do business with that State agency. CEO 80-39 is referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to be employed by an engineering firm to provide services on a part-time basis?**

Based upon the responsibilities of your position with the engineering firm, we answer your question in the negative.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and that you have been contacted by a Hillsborough County engineering firm to provide professional services on a part-time basis. The firm provides surveying, civil engineering and consulting services primarily in Hillsborough and surrounding counties. In part, your position with the firm would involve transmitting all articles or reports published by the news media containing engineering-related material and soliciting clients in the private sector.

Section 112.313(7)(a), Florida Statutes, prohibits a public officer from having any employment or contractual relationship with a business entity which is subject to the regulation of his agency. As a State Representative, your agency is the Legislature, whose regulatory powers extend generally over every business entity in the State. However, members of legislative bodies are given a limited exemption from the application of Section 112.313(7)(a) by subparagraph (7)(a)2, where the regulatory power which the legislative body exercises over the business entity is strictly

through the enactment of laws or ordinances. As the regulatory power which the Legislature exercises over engineering firms in this State is strictly through the enactment of laws, your relationship with the firm falls within the exemption and therefore does not present a prohibited conflict of interest. *See* CEO 77-129 and CEO 80-7 for other examples of this exemption.

In addition, you advise that the position also would involve transmitting engineering-related legislative information and committee reports after the information has been presented or made available at a meeting that is open to the public and the information has been put into the public record. With respect to these responsibilities, the Code of Ethics for Public Officers and Employees provides:

> DISCLOSURE OR USE OF CERTAIN INFORMATION.—No public officer or employee of an agency shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity. [Section 112.313(8), Florida Statutes (1981).]

As you have specified that this responsibility would encompass information only after it has been made available to members of the general public as a public record, we find that this prohibition would not apply. However, we would caution you to avoid the use of your legislative personnel or facilities in obtaining this information, since such use might violate, or present the appearance of a violation of, the following provision of the Code of Ethics:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit or exemption for himself or others. This section shall not be construed to conflict with s. 104.31. [Section 112.313(6), Florida Statutes (1981).]

You also have advised that your services for the engineering firm would include assisting in introduction of the engineering staff to the public sector and soliciting clients for the firm in the public sector, including various city and county political subdivisions. However, you stress that you would not undertake introductions or solicitations, whether personal or in writing, insofar as they might involve elected officials, appointed personnel, or staff of the State of Florida and any of its political subdivisions. As limited in this manner, we find that these responsibilities would not violate any provision of the Code of Ethics or the restriction of Article II, Section 8(e), Florida Constitution, against a member of the legislature personally representing another person or entity for compensation before a state agency other than judicial tribunals.

Finally, you advise that it is your understanding that the engineering firm could do business with the State of Florida if you are not involved personally in the solicitation or transaction of business or services. So long as the firm does not do business with the Legislature, the Code of Ethics would not prohibit the firm from doing business with other agencies or entities of State government. *See* CEO 78-39 in which we advised that the Code of Ethics would not prohibit a State legislator from serving as an officer and director of a corporation which performs construction for municipalities, counties, and the state.

Accordingly, subject to the restrictions noted above, we find that no prohibited conflict of interest would be created were you to provide the services you have outlined for the engineering firm.

**CEO 83-15—March 10, 1983**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE SOLICITING OR ACCEPTING FINANCIAL GIFTS TO PAY FOR INFORMATIONAL MAILINGS TO CONSTITUENTS

*To: The Honorable Virginia B. Bass, State Representative, 2nd District*

**SUMMARY:**

**So long as the solicitation or acceptance of a financial gift to pay for informational mailings is not based upon any understanding that official action would be influenced, and so long as the official does not know, and with the exercise of reasonable care should not know, that it is being given to influence some official action in which the public officer is expected to participate, neither Sections 112.313(2) nor 112.313(4), Florida Statutes, would prohibit a State Representative from soliciting or accepting that gift. CEO's 78-49, 80-27, and 80-60 are referenced. Disclosure of such gifts should be made pursuant to Section 111.011, Florida Statutes, if exceeding the $25 threshold of that statute.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to solicit or accept financial gifts to you personally or to your office account in order to pay for printing and mailing several informational materials to constituents of your District?**

In your letter of inquiry you advise that in an effort to bring State government closer to the people of your District, you have planned several informational mailings now and in the future. You advise that your monthly expense account as a State Representative is not large enough to pay for the stamps and printing for these mailings. Therefore, you question whether you may solicit or accept financial gifts to you personally or to your office account to pay for printing and mailing these informational mailings, so long as you disclose these gifts on your annual financial disclosure report.

There is no provision of the Code of Ethics for Public Officers and Employees which prohibits altogether a public officer from soliciting or accepting any financial gifts. However, this is not to say that there are no restrictions on a public officer's solicitation or acceptance of financial gifts, as the Code of Ethics does provide:

> SOLICITATION OR ACCEPTANCE OF GIFTS.—No public officer or employee of an agency 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 that is based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby. [Section 112.313(2), Florida Statutes (Supp. 1982).]
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> UNAUTHORIZED COMPENSATION.—No public officer or employee of an agency or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer or employee 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 or employee was expected to participate in his official capacity. [Section 112.313(4), Florida Statutes (1981).]

Therefore, under Section 112.313(2), Florida Statutes, you may not solicit or accept a financial gift which is based upon any understanding that your official action or judgment would be influenced. In addition, under Section 112.313(4), Florida Statutes, you may not accept a financial gift if you know, or with the exercise of reasonable care should know, that it was given to influence a vote or other action in which you were expected to participate in your official capacity. In previous opinions we have found that this prohibition would not be violated where it was improbable that the public officer would be called upon to participate in any official action involving the donor. *See* CEO 78-49 and CEO 80-60. However, we also have advised that this provision places the burden upon a public officer to exercise reasonable care in determining whether a particular payment or thing of value has been given with the intent to influence his or her official action. Assuming the donor is in a position to be benefited by the officer's action, the officer should weigh the value of the thing received against the ostensible purpose for its having been given. The larger its value, the more difficult it should be to justify its having been given for any reason except to influence, assuming that there is some official action on the part of the recipient anticipated in the future which would affect the donor or some other specific person or entity related to the donor. *See* CEO 80-27.

Regarding the disclosure of gifts received by elected public officers, Section 111.011, Florida Statutes, requires the disclosure of gifts of $25 and expenditures from, or the disposition made of, such gifts. This disclosure should be made on Commission on Ethics Form 7, which we are promulgating as part of the annual financial disclosure package to be filed by elected constitutional officers such as you.

As you have not provided us with information concerning any particular financial gift (and we note that apparently you are not in a position to provide that information at this time), we are unable to offer our opinion on any particular situation. However, so long as your solicitation or acceptance of a financial gift to pay for informational mailings is not based upon any understanding that your official action would be influenced, and so long as you do not know, and with the exercise of reasonable care should not know, that it is being given to influence some official action in which you are expected to participate, we find that the Code of Ethics would not prohibit you from soliciting or accepting that gift.

**CEO 83-16—March 10, 1983**

**SUNSHINE AMENDMENT**

APPLICABILITY OF POST-OFFICEHOLDING
RESTRICTION ON LOBBYING

*To: Mr. Wilmer H. Mitchell, Attorney, Pensacola*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, does not prohibit a former member of the House of Representatives from receiving reimbursement for travel, lodging, food, and other expenses incurred in activities he has undertaken involving the Legislature in behalf of a nonprofit organization. Section 8(e) prohibits a former legislator from personally lobbying the Legislature for compensation within two years after leaving office. However, reimbursement for expenses is not "compensation." CEO 80-41 is referenced.**

**QUESTION:**

**Does Article II, Section 8(e), Florida Constitution, prohibit a former member of the House of Representatives from receiving reimbursement for travel, lodging, food, and other expenses incurred in activities he has undertaken involving the Legislature in behalf of a nonprofit organization?**

Your question is answered in the negative.

In your letter of inquiry and in a telephone conversation with our staff, you have advised that Mr. Tom Patterson, formerly a member of the Florida House of Representatives, presently serves as Executive Director of a newly formed association of entertainment and dining interests which has been created as a nonprofit organization. You also advised that he has not been compensated for his work in this capacity, although it is intended that he will be compensated in the future. He will not undertake any activities in behalf of the association which might constitute lobbying before the Legislature while receiving compensation from the association, you advised. However, prior to the date of your inquiry he undertook some activities for this group which might be construed as "representing another" before the Legislature under the provisions of Article II, Section 8, Florida Constitution. He was not due or paid any salary or other compensation during the time he undertook these activities, and you advised that he will not be compensated for these activities. You question whether the association may reimburse him for out-of-pocket travel, food, lodging, or similar expenses he incurred in these activities.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office . . . .

In CEO 80-41, we advised that this provision would not prohibit a former member of the House of Representatives from serving as a legislative officer for a veterans' organization without salary but with reimbursement for travel expenses. That opinion was based upon our interpretation of the word "compensation" as not including reimbursement for expenses. Similarly, we do not find that Article II, Section 8(e) would prohibit the reimbursement for expenses which is contemplated by the association in this case.

Accordingly, we find that Article II, Section 8(e), Florida Constitution, would not prohibit the subject former legislator from receiving reimbursement for expenses incurred in activities in behalf of the association which might constitute representing the association before the Legislature.

**CEO 83-17—March 10, 1983**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY LAW FIRM, ONE PARTNER OF WHICH APPEARS BEFORE LEGISLATURE

*To: The Honorable J. Keith Arnold, State Representative, District 73*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to be employed by a law firm, one partner of which appears before the Legislature on workers' compensation matters in behalf of the Speaker of the House and the Florida Bar without remuneration. Because of the partner's nonremunerated service as an appointee of the Speaker of the House and as a member of the**

**Florida Bar, and because of the exemption for legislative bodies contained in Section 112.313(7)(a)2, Section 112.313(7)(a), Florida Statutes, would not apply.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to be employed by a law firm, one partner of which appears before the Legislature on workers' compensation matters in behalf of the Speaker of the House of Representatives and the Florida Bar?**

Your question is answered in the negative.

In your letter of inquiry you advise that you intend to seek employment as a law clerk or legal researcher with a particular law firm. One of the partners of that law firm has been appointed by the Speaker of the House of Representatives to a commission overseeing workers' compensation and is a member of a Florida Bar committee which also is reviewing workers' compensation. The partner receives no remuneration for his work for the Speaker and the Florida Bar, and you advise that it is in these capacities that he appears before the Legislature.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1981).]

Under the circumstances you have presented, it is clear that the law firm with which you are seeking employment is not doing business with the House of Representatives. To the extent that the law firm might be considered to be subject to the regulation of the Legislature, we find that Section 112.313(7)(a)2, Florida Statutes, would be applicable. That subsection provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Nor does it appear that your employment with the law firm would create a continuing or frequently recurring conflict of interest or would impede the full and faithful discharge of your public duties as a State Representative. In particular, we note that the partner's appearances before the House result from his nonremunerated service as a member of the Speaker's workers' compensation commission and service as a member of the Florida Bar.

Accordingly, we find that no prohibited conflict of interest would be created were you to be employed by a law firm, one of the partners of which appears before the Legislature as a member of a Florida Bar committee and as a member of a commission appointed by the Speaker of the House of Representatives. You may wish to contact the Speaker's Office or the House Committee on Ethics and Elections regarding the applicability of the Rules of the House of Representatives to your situation.

**CEO 83-25—April 21, 1983**

**CONFLICT OF INTEREST**

STATE SENATOR REPRESENTING PRIVATE CLIENTS
IN SUITS AGAINST COUNTY WATER AUTHORITY

*To: The Honorable Richard H. Langley, State Senator, District 11*

**SUMMARY:**

**No prohibited conflict of interest would be created under the Code of Ethics for Public Officers and Employees or the Sunshine Amendment to the Florida Constitution were a State Senator who is an attorney to represent clients in a lawsuit filed against a county water authority. Such representation would not violate Article II, Section 8(e), Florida Constitution, as it would be before the courts. Nor is there any provision of the Code of Ethics which would prohibit this representation. CEO 75-197 and CEO 77-22 are referenced in this regard as well as CEO 77-129 and CEO 80-7, which concern a legislator voting on matters affecting a private client.**

**QUESTION:**

**Would a prohibited conflict of interest be created under the Code of Ethics for Public Officers and Employees or the Sunshine Amendment to the Florida Constitution were you, a State Senator and private attorney, to represent clients in a lawsuit filed against a county water authority?**

Your question is answered in the negative.

In your letter of inquiry you advise that you have been elected as State Senator for the 11th District, which includes all of Sumter County. In addition, you advise that you have been retained by a group of taxpayers as a private attorney to sue the Sumter County Water Authority for what appears to be a pattern of illegal activities concerning the collection of taxes under the special act which created the Authority in 1953. You question whether the representation of your clients in this lawsuit would present a conflict of interest which would necessitate your withdrawing from the case.

The Sunshine Amendment, in Article II, Section 8(e), Florida Constitution, provides in part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

While this provision would prohibit you from personally representing a client for compensation before most State agencies, it would not prohibit you from representing that client in litigation before the courts. Nor do we find any provision of the Code of Ethics for Public Officers and Employees which would prohibit the representation you have described. *See* CEO 75-197, in which we advised that a legislator may serve as city attorney or attorney for a special taxing district, and CEO 77-22, in which we advised that a legislator may represent a client in a rezoning matter before a county commission.

We note that you currently serve as a member of the Senate Natural Resources and Conservation Committee. As it is possible that legislation which might affect the County Water Authority might come before this Committee, we refer you to previous opinions CEO 77-129 and CEO 80-7, regarding a legislator voting on matters affecting a private client.

Accordingly, we find that no prohibited conflict of interest exists in your representation of private clients in a lawsuit against a County Water Authority. You also may wish to contact the Florida Bar for an opinion regarding your obligation under the Code of Professional Responsibility in this situation.

**CEO 83-31—June 16, 1983**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY
CORPORATION SPONSORED BY CORPORATION
RECEIVING STATE FUNDS

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to be employed as a sales representative for a corporation which is sponsored by a community development corporation that receives an administrative grant from the State. Previous opinion CEO 82-92 is referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to be employed as a sales representative for a corporation which is sponsored by a community development corporation that receives an administrative grant from the State?**

Your question is answered in the negative.

In your letter of inquiry you advise that you serve as a member of the Florida House of Representatives. You question whether you may be employed as a sales representative with a corporation sponsored by a community development corporation. You advise that the community development corporation receives an administrative grant from the State of Florida through the Community Development Support and Assistance Program.

In a previous opinion, CEO 82-92, we advised that no prohibited conflict of interest existed where a State Representative was employed as executive director of a nonprofit corporation receiving State and county funding. This being the case, we find no prohibited conflict of interest in your proposed employment, especially where your employment is not directly with the corporation receiving a State grant, but with a separate venture sponsored by that corporation.

**CEO 83-43—June 16, 1983**

**VOTING CONFLICT OF INTEREST**

STATE SENATOR VOTING ON MEASURE AFFECTING RACE
TRACK REPRESENTED BY ATTORNEY FOR CORPORATION
OF WHICH SENATOR IS A DIRECTOR

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**No voting conflict of interest was created under Section 112.3143, Florida Statutes, where a State Senator voted against a bill affecting a race track, where the lobbyist for the race track is a general counsel to a corporation of which the Senator is a director. In this case, the bill would not have inured to the special private gain of the Senator or to a principal by whom the Senator was retained, as**

**the Senator was not retained by any race track. Similarly, no voting conflict of interest would be created were the Senator to vote on a legislative issue presented by an association of retail grocers, where the president of a corporation which the Senator serves as director also serves as president of the association.**

**QUESTION 1:**

**Was a voting conflict of interest created where you, a State Senator, voted against a bill affecting a race track, where the lobbyist for the race track is a general counsel to a corporation of which you are a director?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a State Senator and that since 1982 you have served as an outside director of a corporation. In addition, you serve on the auditing committee, which is responsible for reviewing all of the accounting and record-keeping procedures of the corporation with its external auditors, and on the executive committee of the corporation. You are compensated for your services and receive reimbursement for expenses. You advise that neither you nor any member of your family owns any stock in the corporation, and you receive no legal fees for any other perquisite from the company.

In addition, you advise that one of the two general counsels to the corporation also is retained as a lobbyist by a Florida race track. Recently, as a member of the Senate Commerce Committee, you voted against a bill which would have reallocated racing dates among three racing establishments in Southeast Florida. One of the three establishments was the race track which has retained the corporation's general counsel; that track was opposed to the bill. You advise that you have received campaign contributions from lobbyists representing each of the three racing establishments, but that you do not serve on the board of directors of any of these tracks and have no professional association with any of them.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> **Voting conflicts.—**No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143, Florida Statutes (1981).]

In addition, Section 286.012, Florida Statutes (1981), states:

> No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143.

In previous opinions we have advised that a public official faced with a voting conflict of interest under Section 112.3143 either may abstain from voting or may vote and file the required Memorandum of Voting Conflict (Commission on Ethics Form 4). *See*, for example, CEO 81-79. If the official chooses to abstain from voting, no memorandum is required to be filed. *See* CEO's 77-57, 76-182, and 76-62. In any event, the first sentence of Section 112.3143 makes it clear that an official is not prohibited from voting on any matter; the choice of whether to vote or to abstain lies within the discretion of the voting official.

We are of the opinion that no voting conflict of interest was created under Section 112.3143 by your vote regarding the racing dates bill. Under that section, a memorandum of voting conflict must be filed only where the measure voted upon would inure to the official's special private gain or the special gain of any principal by whom he or she is retained. Under the circumstances you have presented, it does not appear that the allocation of racing dates would result in any private gain to you whatsoever. Nor would the allocation of racing dates inure to the special gain of a principal by whom you are retained, as you have not been retained by any racing establishment. As a director of the corporation, you have certain fiduciary responsibilities to that entity, but those responsibilities do not extend to another, separate business which has retained an attorney who serves as general counsel to the corporation.

Accordingly, we find that no voting conflict of interest was created by your vote on a bill which would have reallocated racing dates under the circumstances you have presented. For the same reasons, you would not be precluded from voting on a pari-mutuel issue involving the race track in the future.

**QUESTION 2:**

**Would a voting conflict of interest be created were you to vote on a legislative issue presented by an association of retail grocers, where the president of a corporation which you serve as director also serves as president of the association?**

This question also is answered in the negative.

In your letter of inquiry you advise that the president of the corporation which you serve as director will be elected president of an association of retail grocers. Each year, you advise, the association presents a platform of issues to the Legislature. You question whether you are prohibited from voting on any issue presented by the association, and whether you would be required to file a memorandum of voting conflict if you were to vote on any of those issues.

In our view, the issues presented by this question are substantially the same as presented by your first question. Accordingly, it is our opinion that you are not prohibited from voting on any issue presented by the association and that you would not be required to file a memorandum of voting conflict after voting on an issue presented by the association, as you are not retained by the association and as it does not appear that any of these issues would inure to your special private gain.

**CEO 83-45—June 16, 1983**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY COMPANY
PROVIDING BUSINESS TAX SERVICES

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to be employed by a company which provides services to businesses regarding tax benefits, including benefits provided by Florida law. To the extent that the Representative would be employed by a company which is subject to the regulation of the Legislature, the exemption for legislative bodies provided in Section 112.313(7)(a)2, Florida Statutes, would apply, as the regulatory power exercised by the Legislature would be strictly through the enactment of laws.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to be employed by a company which provides services to businesses regarding tax benefits, including benefits provided by Florida law?**

Your question is answered in the negative.

In your letter of inquiry you advise that you serve as a member of the Florida House of Representatives. You question whether you may be employed by a company to market several tax advantage programs offered by the company to the business community. One of these programs, you advise, involves the Florida Enterprise Zone Act of 1982, which provides certain State and local incentives and programs for areas of the State designated as "enterprise zones." Section 220.181, Florida Statutes (Supp. 1982), allows an income tax credit for businesses which establish new jobs to employ persons who live in "enterprise zones." This legislation expires June 30, 1986 and, you advise, will be up for reconsideration by the Legislature in 1986.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1981).]
>
> * * * * *
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1981).]

Although the company which would employ you may be considered to be subject to the regulation of the Legislature, Section 112.313(7)(a)2 exempts the situation, as the regulatory power exercised by the Legislature would be strictly through the enactment of laws. Nor does it appear that any continuing or frequently recurring conflict of interest would arise under the circumstances presented, or that your proposed employment would impede the full and faithful discharge of your public duty.

Accordingly, we find that no prohibited conflict of interest would be created by your proposed employment. Regarding the possibility of a voting conflict of interest if the Legislature reconsiders this program in 1986, please see previous opinions CEO 77-129 and CEO 80-7. Because the determination of whether a voting conflict of interest exists in a particular situation depends on the nature and impact of the measure being considered, factors which are unknown at this time, we are unable to render more specific advice. You may wish to request another opinion in the future on this subject.

**CEO 84-6—January 26, 1984**

**SUNSHINE AMENDMENT**

STATE REPRESENTATIVE PARTICIPATING AS ATTORNEY
IN LITIGATION AND SETTLEMENT NEGOTIATIONS IN
LAWSUIT AGAINST STATE AGENCY

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, would not prohibit a State Representative who is an attorney from personally representing a client in litigation and settlement negotiations involved in a lawsuit in Federal court against a State agency. In the view of the Commission, Article II, Section 8(e), was not intended to prohibit a State legislator from representing a client in a lawsuit in court against a State agency. Therefore, it follows that a State legislator should not be precluded from personally engaging in those activities which are attendant to the lawsuit, such as communications with opposing counsel regarding the conduct of the lawsuit and settlement negotiations.**

**QUESTION:**

**Does Article II, Section 8(e), Florida Constitution, prohibit you, a State Representative and attorney, from personally representing a client in litigation and settlement negotiations involved in a lawsuit in federal court against a state agency?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the House of Representatives and an attorney. You also advise that your law firm is involved in a lawsuit against the Governor and the Division of Retirement of the Department of Administration in behalf of a class of members of the Florida Retirement System. The plaintiff's complaint asserts that the Retirement System has discriminated unlawfully against members of the plaintiff's class on the basis of sex. Finally, you advise that your participation in the prosecution of the lawsuit potentially would include all aspects of litigation and settlement negotiations with the attorney of record or other representatives and employees of the defendants.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

This provision of the "Sunshine Amendment" is framed in terms which limit the forum in which, and the circumstances under which, a State legislator may represent another person or entity. That is, a State legislator cannot represent for compensation any person or entity other than himself if the decision-making person or body before whom the representation is made is any State agency other than a judicial tribunal.

The prohibition does not address (or limit) the party or parties who would oppose the person or entity represented by the legislator. Therefore, we conclude that a State legislator may personally represent any person or entity in a lawsuit in court against any other person or entity, including a State agency.

Having concluded that this provision of the Constitution permits a State legislator to personally represent a client in a lawsuit against a State agency before a court, we believe that all those activities which naturally are attendant to representing a client before a court also must be

permitted. We recognize that in representing a client in a lawsuit, an attorney must communicate with opposing counsel regarding the conduct of the lawsuit. Therefore, we believe that such communications would not be prohibited. Similarly, settlement negotiations in behalf of the client also are a common feature of the representation of any client in a lawsuit.

For these reasons, we are of the opinion that an attorney is not representing a client before a State agency when engaging in those communications which naturally result from a lawsuit in court against the agency. In essence, the agency has no proceedings before it which affect the legislator's client; the proceedings are before the court, a judicial tribunal.

We recognize that in these situations a legislator is in a position to potentially influence agency decisions, or at least in a position giving the appearance of having an influence over the agency's decisions. However, the plain language adopted by the people as Article II, Section 8(e), permits members of the Legislature to represent clients in lawsuits against State agencies. In addition, there are other restrictions which we feel safeguard the public's interest here. As an attorney, you are bound by the requirement of the Code of Professional Responsibility to communicate only with the lawyer(s) representing the State agency, unless there is prior consent or authorization by law. Further, we note that settlements of class actions must be approved by the court under both the Federal and Florida Rules of Court. Rule 23(e), Fed. R. Civ. P., and Rule 1.220(e), Fla. R. Civ. P.

Accordingly, we are of the opinion that you are not prohibited by Article II, Section 8(e), Florida Constitution, from personally participating as an attorney in litigation and settlement negotiations in this lawsuit against the State.

**CEO 84-9—January 26, 1984**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE'S FIRM SELLING COMPUTER SOFTWARE TO STATE ATTORNEYS AND PUBLIC DEFENDERS

*To: The Honorable Frank S. Messersmith, State Representative, District 85*

**SUMMARY:**

**No prohibited conflict of interest would be created were a marketing firm owned by a State Representative to sell computer software to state attorney and public defender offices. CEO's 83-13, 82-33, 81-24, and 78-39 are referenced as precedent. However, the State Representative would be prohibited by Article II, Section 8(e), Florida Constitution, from personally participating in the marketing of computer software systems to state attorney and public defender offices, as the representative would be personally representing another person or entity for compensation during term of office before State agencies other than judicial tribunals.**

**QUESTION 1:**

**Would a prohibited conflict of interest be created under the Code of Ethics for Public Officers and Employees were a marketing firm owned by you, a State Representative, to sell computer software to state attorney and public defender offices?**

This question is answered in the negative.

In your letter of inquiry you advise that you are a member of the House of Representatives. You also advise that following the recent enactment of sentencing guidelines legislation your marketing firm has signed a letter of agreement with an out-of-state company to sell computer software regarding sentencing guideline requirements. State attorneys, public defenders, and other legal associations would be the likely users of this software. Therefore, you question to what

extent you and your firm may participate in the marketing of these computer software systems to the state attorney and public defender offices.

In a number of opinions we have advised that the Code of Ethics for Public Officers and Employees would not prohibit a State legislator's involvement in a business entity selling goods or services to State agencies other than the Legislature. *See* CEO 83-13 (State Representative employed by engineering firm doing business with the State); CEO 82-33 (State Representative employed by company doing business with Florida Housing Finance Agency); CEO 81-24 (State Senator owning company providing services to State hospital and to hospital employees); and CEO 78-39 (State Representative part owner, officer and director of corporation performing construction work for the State).

Accordingly, based upon the rationale of these opinions, we find that no prohibited conflict of interest would be created under the Code of Ethics for Public Officers and Employees were your marketing firm to sell computer software to state attorney and public defender offices.

**QUESTION 2:**

> **Would Article II, Section 8(e), of the Florida Constitution prohibit you, a State Representative, from personally participating in the marketing of computer software systems to state attorney and public defender offices?**

This question is answered in the affirmative.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

In CEO 81-24, we advised that this provision would prohibit a State Senator from representing his corporation in seeking to have a State hospital purchase the services of the corporation, but that his corporation could be represented by another person in contacting a State hospital or other State agency regarding the provision of services by the corporation. Similarly, in CEO 82-33 we advised that Article II, Section 8(e), would not prohibit a State Representative from being employed by a mortgage insurance company seeking to do business with the Florida Housing Finance Agency, where the Representative would not participate in the company's proposal to the agency and would not communicate with any person connected to the agency regarding the company's bid. More recently, in CEO 83-13, we advised that a State Representative could be employed by an engineering firm doing business with State agencies, where he would not be involved personally in the solicitation or transaction of business or services.

In our view, Article II, Section 8(e), would prohibit you from personally participating in marketing computer software systems to state attorney and public defender offices, which we understand to be State agencies that are not "judicial tribunals." In personally marketing these software systems to State agencies, you would be representing your marketing firm and the computer software company. As we advised in CEO 81-24, the constitutional prohibition is not phrased in terms of representation of a "client" but rather in terms of representation of persons or entities, a choice of language indicating the prohibition of a broader range of representation than that only of "clients" before State agencies.

Accordingly, it is our opinion that Article II, Section 8(e), Florida Constitution, would prohibit you from personally participating in the marketing of computer software systems to state attorney and public defender offices.

**CEO 84-10—January 26, 1984**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE SELLING FILL DIRT TO INDIVIDUAL CONTRACTING WITH STATE AND LOCAL GOVERNMENTS

*To: The Honorable Carl Carpenter, Jr., State Representative, District 61*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to sell fill dirt to an individual who has contracted, and will seek to contract, with State and local governments for construction projects. CEO's 83-13, 82-35, 82-33, 81-24, and 78-39 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to sell fill dirt to an individual who has contracted, and will seek to contract, with state and local governments for construction projects?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the House of Representatives and that you recently entered into a contractual relationship involving the excavation and sale of dirt from a "borrow pit" located on property which you own. You also advise that the party with whom you have contracted in the past has been awarded construction contracts by State and local governments. You anticipate that he will seek more public construction contracts in the future, so materials from the "borrow pit" may be used on a State construction project.

In a number of opinions we have advised that similar situations would not violate the Code of Ethics for Public Officers and Employees. *See* CEO 83-13 (State Representative employed by engineering firm providing professional services to county governments); CEO 82-35 (State Senator's corporation subcontracting with association of county commissioners or league of cities); CEO 82-33 (State Representative employed by county doing business with Florida Housing Finance Agency); CEO 81-24 (State Senator owner of company providing services to State hospital and to hospital employees); and CEO 78-39 (State Representative part owner, officer, and director of corporation performing construction work for the State).

Accordingly, we find that no prohibited conflict of interest would be created were you to engage in this business endeavor with an individual who may contract with State and local governments for public construction.

**CEO 84-21—March 8, 1984**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE EMPLOYED AS CONSULTANT
BY COMPANY DOING BUSINESS WITH DEPARTMENT OF CORRECTIONS

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**Neither the Code of Ethics nor the Sunshine Amendment [Article II, Section 8(e), Fla. Const.] would be violated were a State Representative to be employed as a consultant to assist a company which is doing business with the Department of Corrections in locating sites for correctional facilities to be constructed by the company for the Department, where the Representative will not be involved in negotiations between the company and any State agency. CEO's 82-33 and 81-24 are referenced.**

**QUESTION:**

**Would the Code of Ethics for Public Officers and Employees or the Sunshine Amendment, Article II, Section 8(e), Florida Constitution, be violated were you, a State Representative, to be employed as a consultant to assist a company which is doing business with the Department of Corrections in locating sites for correctional facilities to be constructed by the company for the Department?**

Your question is answered in the negative under the circumstances presented.

In your letter of inquiry you advise that you serve as a State Representative and as Chairman of the House Subcommittee on Prison Overcrowding. You also advise that you have been asked to serve as a consultant for a corporation which is in the business of constructing and managing correctional facilities. Your role with the company would be to assist in locating sites for correctional facilities and primarily would involve contacts with city and county governments both in and out of the State of Florida. In addition, you would be required periodically to negotiate zoning changes and other issues pertinent to the location of such facilities.

At the present time the company has been requested by the Department of Corrections to construct four community treatment centers, a transaction which took place before any negotiations between you and the company. You have been asked by the company to assist it in locating sites for the community centers. However, you will not be involved in any negotiations between the company and the State for any state-funded projects. You advise that you do not foresee your being in a position to make information available to the company which is not readily available to the general public, and you advise that if you ever are in that position you understand that you would not be allowed to furnish the information to the company or any other organization. Finally, you advise that you do not foresee any situation in which the Subcommittee on Prison Overcrowding would authorize funding directly to the company.

We are of the opinion that your questions are answered fully by our opinions CEO 82-33, in which we advised that a State Representative could be employed by a company doing business with the Florida Housing Finance Agency, and CEO 81-24, in which we advised that a State Senator could own a company providing services to a state hospital and to hospital employees. For the reasons expressed in those opinions, we find that no provision of the Code of Ethics for Public Officers and Employees would prohibit your proposed employment as a consultant.

Similarly, we find applicable the rationale of these opinions regarding the Sunshine Amendment's prohibition against a legislator personally representing an entity for compensation during term of office before a State agency other than judicial tribunals [Article II, Section 8(e), Florida Constitution]. In particular, we note your statement that you will not be involved in any negotiations between the company and the State for any state-funded projects. Also, it does not

appear that your proposed employment contemplates any other representation of the company before the Department of Corrections.

Accordingly, we find that neither the Code of Ethics nor the Sunshine Amendment would prohibit you from being employed as a consultant by a company doing business with the Department of Corrections under the circumstances presented.

**CEO 84-31—April 26, 1984**

**CONFLICT OF INTEREST; VOTING CONFLICT OF INTEREST**

STATE REPRESENTATIVE ABSTAINING FROM VOTING BUT ANSWERING QUESTIONS REGARDING LEGISLATION AFFECTING CLIENTS

*To: The Honorable Art Simon, State Representative, District 116*

**SUMMARY:**

**A State Representative is permitted by Section 286.012, Florida Statutes, to abstain from voting on legislation setting uniform standards for county and municipal ordinances governing the use of railroad horns and whistles, where he is counsel for two railroads in litigation with various local governments challenging existing ordinances on that subject and where the parties have agreed to settle the litigation based on the enactment of such legislation. If choosing to vote on the legislation, the Representative would be required to file a memorandum of voting conflict under Section 112.3143, Florida Statutes, as he would have a professional interest in the matter and as the matter would inure to the gain of the railroad companies by which he is retained. No provision in the Code of Ethics would prohibit the Representative from answering questions posed by legislators and other persons and from answering questions for legislative committees regarding the legislation.**

**QUESTION 1:**

**May you, a State Representative, abstain from voting on legislation setting uniform standards for county and municipal ordinances governing the use of railroad horns and whistles, where you are counsel for two railroads in litigation with various local governments challenging existing ordinances on that subject and where the parties have agreed to settle the litigation based on the enactment of such legislation?**

This question is answered in the affirmative.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and that you are counsel of record for two railroads involved in extensive litigation against a county and various municipalities challenging the constitutionality and legality of local ordinances governing railroad “noise pollution.” You also advise that all parties to the litigation have agreed to a settlement based on the enactment of statewide legislation to provide uniform standards for counties and municipalities which promulgate “whistle stop” ordinances.

Legislation which would provide authority for optional, local ordinances limiting the use of railroad horns and whistles subject to specified conditions has been introduced in the House and Senate by other members of the Legislature. You are not a co-sponsor of the House bill, you advise, and you have not indicated any willingness to become a co-sponsor. Neither you nor your law firm will receive any compensation for the passage of the proposed legislation. You advise

that it is your intention to declare a conflict of interest and to abstain from voting on the legislation if abstention is proper.

Section 286.012, Florida Statutes (1983), provides:

> No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143.

In addition, Section 112.3143, Florida Statutes (1983), provides:

> **Voting conflicts.—**No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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.

In our view, these provisions of law grant a public official the discretion to choose to abstain from voting or to choose to vote and file the required memorandum in instances of voting conflicts of interest.

We are of the opinion that if you vote on the subject legislation, you would be required to file a memorandum of voting conflict under Section 112.3143, as you have a professional interest in the matter and as the matter would inure to the gain of the railroad companies by which you are retained. Therefore you clearly are permitted to abstain from voting by Section 286.012.

Accordingly, we find that you may abstain from voting on the subject litigation.

**QUESTION 2:**

> **Does the Code of Ethics for Public Officers and Employees prohibit you from answering questions posed by legislators and other persons and from answering questions for legislative committees regarding the subject legislation?**

This question is answered in the negative.

In your letter of inquiry you have advised that due to your involvement in the pending litigation, the sponsors of the subject legislation and other legislators occasionally ask you to provide technical background information regarding the lawsuits and the proposed legislation. Therefore, you question whether you may answer these questions when posed individually by legislators or other persons and whether you may answer questions regarding this matter before legislative committees, if you preface your remarks with a disclosure of your involvement in the pending litigation.

There is no provision in the Code of Ethics for Public Officers and Employees which would prohibit you from answering questions under the circumstances you have presented. Although legislators, like all other public officials, are prohibited from corruptly using their position to secure a special privilege or benefit for themselves or others, we do not perceive that responding to requests of this nature for background information would constitute the corrupt use of your position to secure a benefit for your client. You may wish to contact the House Committee on Ethics and Elections regarding the provisions of any House rules which might apply to your situation.

**CEO 84-92—August 30, 1984**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE STOCKHOLDER IN CORPORATION
RECEIVING COMMUNITY DEVELOPMENT BLOCK GRANT
FROM STATE DEPARTMENT

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**No prohibited conflict of interest would be created were a corporation of which a State Representative is a shareholder to receive a community development block grant awarded by a State department. CEO's 83-31, 82-92 and 82-33 are referenced. As the Representative will not represent the corporation before any State agency in trying to obtain the grant, no issue is presented under Article II, Section 8(e), Florida Constitution.**

**QUESTION:**

**Would a prohibited conflict of interest be created were a corporation of which you are a shareholder to receive a community development block grant awarded by a State department, where you serve as a member of the Florida House of Representatives?**

Your question is answered in the negative.

In your letter of inquiry and in a telephone conversation with our staff, you have advised that you serve as a member of the Florida House of Representatives and that you are a shareholder in a corporation which is considering applying for a community development block grant. You are not an officer, director, or employee of the corporation.

In order to receive the grant, which would take the form of a loan to the corporation, the corporation will apply to the county in which its business will be located. If approved, the county commission then would apply to the Department of Commerce, which would rank all applications and allocate funds according to priorities it has developed. The block grant funds are provided to the Department of Commerce by the Department of Community Affairs.

In a previous opinion, CEO 83-31, we advised that no prohibited conflict of interest would be created were a State Representative to be employed as a sales representative for a corporation which is sponsored by a community development corporation receiving an administrative grant from the State. Similarly, in CEO 82-92 we advised that the Code of Ethics permitted a State Representative to be employed as executive director of a nonprofit organization receiving State and county funding, and in CEO 82-33 we advised that a State Representative may be employed by a company doing business with the Florida Housing Finance Agency. On the basis of these opinions, we find that the Code of Ethics for Public Officers and Employees would not prohibit the corporation in which you own an interest from seeking the community development block grant.

As you have advised that you will not represent the corporation before any State agency in trying to obtain the grant, we perceive no problem under Article II, Section 8(e), Florida Constitution, which would prohibit you from personally representing another person or entity for compensation before any State agency other than judicial tribunals.

**CEO 84-98—October 18, 1984**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE COMMUNICATING WITH NEWLY REGISTERED VOTERS; USE OF HOUSE SEAL

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**So long as the use of official stationery is in accordance with rulings or interpretations of the House of Representatives, the use of such stationery to welcome newly registered voters to a legislator's district would not violate the Code of Ethics. Similarly, the use of a legislator's official title or the House of Representatives seal are matters which should be addressed directly by the House of Representatives.**

**QUESTION 1:**

**Does the Code of Ethics for Public Officers and Employees prohibit a State Representative from communicating with newly registered voters through the use of official legislative stationery?**

In your letter of inquiry you advise that you, like many other elected public officials, follow a practice of communicating with newly registered voters to welcome them to the district and to inform them of the existence of your office. This communication takes the form of a letter on official legislative stationery, together with a copy of your most recent legislative newsletter.

You also advise that recently a district office of the Immigration and Naturalization Service has naturalized approximately ten thousand new citizens, most of whom are expected to register as voters before they leave the naturalization site. Because this has occurred during an election year, you seek our opinion as to whether your communication with these newly registered voters on official stationery would constitute an ethical violation. The correspondence you contemplate simply would describe the existence of your office, would contain a welcome to the district, and would not mention the words "election" or "vote."

In a previous opinion, CEO 78-76, a State Legislator inquired concerning the application of the Code of Ethics for Public Officers and Employees to the use of legislative staff, office, or resources in a campaign for reelection. In response, we referenced the provision of the Code of Ethics which prohibits a public official from corruptly using his official position or property or resources within his trust to secure a special privilege or benefit for himself or others, Section 112.313(6), Florida Statutes. We advised that in order to constitute a misuse of public position, a public official's actions would have to be inconsistent with the proper performance of public duties, and we referenced standards set by the election laws, House and Senate rules, and Chapter 11, Florida Statutes. We concluded that so long as the use of legislative staff, offices, and resources is consistent with these provisions and the interpretations of those governmental bodies which have jurisdiction over them, the Code of Ethics would not be violated.

We note that the Chairmen of the House Committee on Ethics and Elections and of its predecessor, the Committee on Standards and Conduct, as well as those Committees, have issued a number of opinions and interpretations regarding the use of official House stationery. Accordingly, so long as your use of this stationery is in accordance with rulings or interpretations of the House of Representatives, your use of stationery would not violate the Code of Ethics. You also may wish to contact the Division of Elections, Department of State, for information concerning the possible applicability of election laws to this situation.

**QUESTION 2:**

**Does the Code of Ethics for Public Officers and Employees restrict a State Representative's use of the seal of the House of Representatives, one's title as a member of the Legislature, or similar identifying words in connection with campaign literature?**

You also inquire whether there is any ethical restriction upon the use of the seal of the House of Representatives, one's title as a member of the Legislature, or similar identifying words or logos in connection with the mailing of computer produced letters clearly indicating "paid political advertisement" with party identification.

In a previous opinion, CEO 82-47, we advised that the propriety of using the Senate seal lies within the discretion of the Senate, as that seal is designated the "Official Seal of the Senate" pursuant to Section 11.49(1), Florida Statutes. Similarly, although we have not found any statute regarding the House of Representatives seal, we are of the opinion that the use of that seal should be a matter to be determined by the House of Representatives. Regarding the use of one's title as a member of the Legislature, we note that several interpretations of House Rules have dealt with this subject. We would observe, however, that identifying in campaign literature a candidate as an incumbent office holder—information which directly bears on the qualifications of the candidates—clearly is distinguishable from the use of position or resources within an official's trust to promote his reelection.

Accordingly, we suggest that you contact the House Committee on Ethics and Elections regarding the use of the House seal and to ensure that the manner in which you propose using your official title would be consistent with House rules.

**CEO 84-100—October 18, 1984**

**SUNSHINE AMENDMENT**

DISCLOSURE OF IRS TAX LIENS AS LIABILITIES

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**Section 112.312(11), Florida Statutes, defines "liability" to exclude taxes owed for purposes of financial disclosure under Article II, Section 8 (a) and (h), Florida Constitution. Therefore, a public official need not disclose on Commission on Ethics Form 6 tax liens filed by the IRS.**

**QUESTION:**

**Is an IRS tax lien in an amount greater than $1,000 required to be disclosed as a liability on the full and public disclosure form required under Article II, Section 8 (a) and (h), Florida Constitution?**

Your question is answered in the negative.

You advise that you represent a candidate for election to a board of county commissioners. You also advise that the question has arisen as to whether an IRS tax lien is required to be disclosed when filing full and public disclosure (Commission on Ethics Form 6) pursuant to Article II, Section 8(a) of the Florida Constitution.

Article II, Section 8 (a) and (h) (1), Florida Constitution, requires elected constitutional officers and candidates for such offices to file a sworn statement which, among other things, identifies each liability in excess of $1,000 and its value. However, Section 112.312(11), Florida Statutes (1983), defines "liability" to mean:

> . . . any monetary debt or obligation owed by the reporting person to another person, except for credit card and retail installment accounts, *taxes owed, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, or accrued income taxes on net unrealized appreciation. Each liability which is required to be disclosed by s. 8, Art. II of the State Constitution shall identify the name and address of the creditor. (E.S.)*

A tax lien by the IRS is a claim against a taxpayer's property for payment of delinquent taxes. The lien reflects taxes assessed and determined to be owed by the IRS. *See*, generally, 34 Am. Jur. 2d *Federal Taxation*, Section 9420 et seq. In our view, a tax lien therefore falls within the contemplation of the exemption for "taxes owed" in the above section.

Accordingly, we are of the opinion that in filing full and public disclosure (Commission on Ethics Form 6), an IRS tax lien in excess of $1,000 need not be listed as a liability.

**CEO 84-114—November 29, 1984**

**SUNSHINE AMENDMENT**

APPLICABILITY OF POST OFFICE-HOLDING
RESTRICTION ON LOBBYING

*To: The Honorable Thomas E. Danson, Jr., Former State Representative, District 69*

**SUMMARY:**

> **Article II, Section 8(e), Florida Constitution, does not prohibit a former member of the House of Representatives from lobbying the Legislature as a member of a trade association's legislative committee without compensation but with reimbursement of actual expenses, including the payment of a reasonable room rate for the use of his residential property while in Tallahassee. CEO's 80-41 and 83-16 are referenced.**

**QUESTION:**

> **Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the House of Representatives, from lobbying the Legislature as a member of a trade association's legislative committee without compensation but with reimbursement of expenses?**

Your question is answered in the negative.

In your letter of inquiry you advise that recently you have left office as a member of the Florida House of Representatives. You also advise that in the past you have served on the Board of Directors of the Florida Association of Insurance Agents and have served as a member of the legislative committee of the Association. As part of your responsibilities as a committee member, you contacted members of your local delegation and other members of the Legislature in behalf of the Association without compensation but with reimbursement of expenses.

As you have been appointed again to the legislative committee of the Association, you question whether you may lobby, in behalf of the Association after leaving office, without compensation but with reimbursement of expenses. In addition, you question whether you may be reimbursed a reasonable room rate, not exceeding the normal commercial single accommodation rate, for the use of residential property in Tallahassee which you purchased while a member of the Legislature.

The Sunshine Amendment, in Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office.

In CEO 80-41 we advised that this provision would not prohibit a former Legislator from serving as a legislative officer for a veterans' organization without salary but with reimbursement for travel expenses. That opinion was based upon our interpretation of the word "compensation" as not including reimbursement for travel expenses. Similarly, in CEO 83-16 we advised that the Sunshine Amendment would not prohibit a former Legislator from being reimbursed for out-of-pocket travel, food, lodging, and similar expenses incurred in activities involving the Legislature in behalf of a trade association.

We have noted that the purpose of this prohibition seems to have been to preclude certain high officials of the State from using the expertise gained through their office for their personal profit after leaving office. Obviously, a large "expense account" could serve as a ruse for transferring compensation in the guise of "reimbursement for expenses." However, we do not believe that reimbursement for expenses actually incurred and the payment of a reasonable lodging rate not exceeding the normal single room rate in Tallahassee would constitute the compensation precluded by the Sunshine Amendment.

Accordingly, we are of the opinion that Article II, Section 8(e), Florida Constitution, would not prohibit you from serving on the legislative committee of the Association of Insurance Agents without compensation but with reimbursement of actual expenses, including payment of a reasonable room rate for the use of your residential property while in Tallahassee.

**CEO 85-12—January 24, 1985**

**CONFLICT OF INTEREST; VOTING CONFLICT**

STATE REPRESENTATIVE SERVING AS PRESIDENT
OF MOBILE HOME OWNERS ASSOCIATION AND
PARTICIPATING IN MOBILE HOME OWNERS LEGISLATION

*To: The Honorable Harry Jennings, State Representative, District 69*

**SUMMARY:**

> **No prohibited conflict of interest or voting conflict of interest would be created were a state representative to sponsor or vote on legislation relating to mobile home owners while serving as the president of a statewide mobile home owners association. CEO's 77-129, 79-66 and 80-7 are referenced.**

**QUESTION:**

> **Would a prohibited conflict of interest or a voting conflict of interest be created were you, a State Representative, to sponsor or vote on legislation relating to mobile home owners while serving as the president of a statewide mobile home owners association?**

Your questions are answered in the negative.

In your letter of inquiry you advise that recently you were elected to serve as a member of the Florida House of Representatives. You also advise that you are the president of a statewide mobile home owners association, in which capacity you serve as a volunteer and receive no type of compensation. The association has supported and lobbied for passage of mobile home related legislation, you advise, and you have served as a volunteer lobbyist promoting this type of

legislation. You question whether you may sponsor or vote on legislation related to mobile home owners while retaining your position with the association.

In our view, these questions can be answered by reference to our previous opinions CEO's 77-129 and 80-7, concerning State Representatives whose law firms represented condominium associations and banks. In addition, we note that as you receive no compensation for serving as president of the association, the association is not a principal by whom you are retained. *See* CEO 79-66. For this reason, also, we find that you would not be presented with a voting conflict of interest were you to vote on legislation relating to mobile home owners.

Accordingly, we find that no prohibited conflict of interest or voting conflict of interest would be created were you to sponsor or vote on legislation relating to mobile home owners while serving as president of a statewide mobile home owners association. In addition, we would suggest that you contact the House Committee on Ethics and Elections for advice on the application of House Rules to your situation.

**CEO 85-70—October 3, 1985**

**FINANCIAL DISCLOSURE**

DISCLOSURES REQUIRED WHERE STATE REPRESENTATIVE OWNS INSURANCE SERVICING AND CONSULTING COMPANIES

*To: The Honorable Carl Ogden, State Representative, District 14, Jacksonville*

**SUMMARY:**

**Where a State Representative owns interests in two insurance servicing and consulting companies which provide services for several trade associations and employer groups, the following disclosures should be made. Assets, such as stock, valued in excess of $1,000 should be identified on Form 6. If the income tax return is not filed as part of Form 6, sources of income in excess of $1,000 should be disclosed on Form 6, as well as the name of each association and employer providing more than ten percent of the total income of each of the Representative's companies, if he owns more than five percent of the company and receives more than $1,000 of income per year from it. It is suggested that the Representative's interest in the companies also be disclosed on Form 3. Finally, a Memorandum of Voting Conflict, Form 4, should be filed if the Representative votes on a measure inuring to the special gain of his companies.**

**QUESTION:**

**What disclosures are required for you, a State Representative, to disclose your interests in two insurance servicing and consulting companies which provide services for several trade associations and employer groups?**

In your letter of inquiry you advise that recently you formed two insurance servicing and consulting firms which handle (adjudicate) claims, bill, market, and consult for various trade associations and single employer groups regarding the formation and operation of self-funded health plans for their employees. You also advise that IRS rules prohibit employers from having an interest in any kind of income from such self-funded trusts and from having any ownership in or receiving any benefit from the servicing company. Finally, you advise that the fees charged are directly related to the number of employees involved, as that is the basis upon which you estimate the costs for servicing.

As a member of the Florida House of Representatives, you are an elected constitutional officer subject to the requirement of filing full and public financial disclosure under Article II, Section 8, Florida Constitution (Commission on Ethics Form 6), by July 1 of each year. As part of this disclosure, you are required to identify each asset you own which is valued in excess of $1,000. Therefore, you should identify on your Form 6 as assets your interests (stock) in these companies if the value of your ownership exceeds $1,000.

Form 6 also requires the disclosure of income, which may be satisfied by filing a copy of your most recent tax return. However, if you do not choose to file a copy of your tax return as part of Form 6, you are required to disclose specific sources of income in excess of $1,000, as well as secondary sources of income. Under Commission on Ethics Rule 34-8.05, F.A.C., if you own more than five percent of a business entity's total assets or capital stock and derived more than $1,000 of income from that business entity during the disclosure period, you are required to disclose all customers, clients, or other sources of income to that business entity which provided more than ten percent of the total income of the business. Therefore, assuming that you own more than five percent of your companies and receive more than $1,000 of income per year from them, you will be required to disclose the name of each association and employer which provides more than ten percent of the total income of each company.

You also advise that although your company is a third-party administrator, it is like a small insurance company with reinsurance to protect against large aggregate losses. Your company must be licensed by, and must provide both a surety bond and a fidelity bond to, the Department of Insurance. In addition, all self-funded trusts must be approved by that Department.

Section 112.313(9), Florida Statutes, requires a public officer who owns more than a five percent interest in a business entity which is granted a privilege to operate in this State to file a statement disclosing his interest no later than 45 days after its acquisition on Commission on Ethics Form 3. Business entities granted a privilege to operate are defined in Section 112.312(15), Florida Statutes, to include "insurance companies," as well as other types of businesses which are closely regulated by the State. Although it is not clear that your companies are "insurance companies" for purposes of this disclosure provision, we would suggest that you disclose your interests in those companies on Form 3 both because they are regulated by the Department of Insurance and because, as you have indicated, they are at least analogous to small insurance companies.

Finally, you advise that most of the trade associations with which your companies seek to do business are represented by lobbyists before the Legislature. Although many issues pertaining to the associations will not come before the committees you serve on, some issues involving the association will be presented for votes on the floor of the House.

With respect to voting conflicts of interest for members of the Legislature, the Code of Ethics provides:

> Except as provided in subsection (3), no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143(2), Florida Statutes, (Supp. 1984).]

This provision requires you to file Commission on Ethics Form 4, Memorandum of Voting Conflict, if you vote on a measure which inures to the special gain of a principal by whom you are retained.

Under the circumstances presented, whether you are presented with a voting conflict of interest on a particular measure will turn on the relationship of that measure to your companies rather than on the relationship of the measure to the associations which are clients of your companies, as you are retained by the companies rather than by the associations. For a general description of what would constitute "special gain" for a member of the Legislature, please see previous opinions CEO 77-129 and CEO 80-61.

Your questions are answered accordingly.

**CEO 85-76—October 24, 1985**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY STATE SAVINGS AND LOAN ASSOCIATION OWNED IN PART BY PARTNERS IN LAW FIRM WHICH ENGAGES IN LOBBYING

*To: The Honorable Samuel P. Bell III, State Representative, District 28, Daytona Beach*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to be employed by a State savings and loan association which is owned in part by senior partners in a law firm which engages in lobbying before the Legislature, and were he to retain an interest in a limited partnership which owns an office building leased to the law firm. Section 112.313(7)(a)2, Florida Statutes, exempts the potential conflict of a Legislator's employment with a State savings and loan association, as the regulatory power exercised by the Legislature is exercised strictly through the enactment of laws. As the Commission has found the lobbyist registration requirements of Section 11.045(2), Florida Statutes, to control over the general prohibition of Section 112.313(7), Florida Statutes, that provision would not preclude the Legislator's employment with the savings and loan association or his interest in the limited partnership.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to be employed by a state savings and loan association which is owned in part by senior partners in a law firm which engages in lobbying before the Legislature, and were you to retain an interest in a limited partnership which owns an office building leased to the law firm?**

Your question is answered in the negative.

In your letter of inquiry you advise that you serve as a member of the Florida House of Representatives and that you are an attorney with a law firm which has represented a state savings and loan association. The association has entered into an agreement to merge with another savings and loan association. The major stockholders of the second association are the two senior partners of a law firm which engages in a lobbying practice through its Tallahassee office.

In conjunction with the merger of the two savings and loan associations, the two law firms intend to merge. As you are prohibited from being a member of a law firm which is engaged in lobbying while you serve as a member of the Legislature, you intend to resign from the law firm at the time of the merger of the two firms. It is your intention to become a full-time employee of the new savings association, with your income consisting of a salary for your services to that association.

In addition, you advise that you own an interest in a limited partnership which owns the office building now occupied by your law firm. The new, merged law firm will continue to occupy this building and will assume the obligations of the pre-existing lease without change. Other than the lease arrangement, there will be no business connections between you and the new law firm.

Initially, we note that your inquiry raises no issues concerning the Sunshine Amendment, Article II, Section 8, Florida Constitution. Although Article II, Section 8(e), prohibits a member of the Legislature from personally representing any entity for compensation before State agencies other than judicial tribunals, your letter does not indicate any intent to do so.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1983).]

The first part of this provision prohibits a public officer from being employed with a business entity which is subject to the regulation of his agency. However, Section 112.313(7)(a)2, Florida Statutes, exempts potential conflicts under this provision for members of legislative bodies where the regulatory power over the business entity resides in another agency or where the regulatory power is exercised strictly through the enactment of laws or ordinances. *See* CEO 82-35 and CEO 83-17 for previous examples of the application of this exemption. Therefore, we conclude that there would be no conflict of interest per se in your employment with a state savings and loan association.

The remaining issue presented by your inquiry concerns the possibility that a conflict of interest may arise by virtue of the fact that the new law firm will be engaging in lobbying activities. In previous opinions CEO 78-56 and CEO 82-35 we advised that the lobbyist registration requirements of Section 11.045(2), Florida Statutes, control over the general prohibition contained in Section 112.313(7), Florida Statutes. In CEO 78-56, we advised that the Code of Ethics would not prohibit a State Representative from sharing office space with a law firm where one member of the firm lobbied before the Legislature. In CEO 82-35, we advised that no prohibited conflict of interest would be created were the corporation of a State Senator to subcontract with a firm which is contracting with the Association of County Commissioners or the League of Cities. Therefore, we are of the opinion that neither your employment with the new savings and loan association nor your interest in the limited partnership which will be leasing the office building to the new law firm would be precluded under the Code of Ethics because of the lobbying activities of the law firm.

Accordingly, we find that no prohibited conflict of interest would be created under the Code of Ethics were you to be employed by the new savings and loan association and were you to retain your interest in the limited partnership which will be leasing the office building to the new law firm. As the rules of the House of Representatives may apply to the situation you have referenced, you may wish to contact the House Committee on Ethics and Elections for its advice.

**CEO 85-78—October 24, 1985**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE SERVING ON BOARD OF DIRECTORS OF ORGANIZATION RECEIVING STATE FUNDS

*To: The Honorable Rick Dantzler, State Representative, District 43, Winter Haven*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State representative to serve on the Board of Directors of an organization which provides drug and alcohol rehabilitation services and which receive State and county funding. CEO's 81-6 and 82-92 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to serve on the board of directors of an organization which provides drug and alcohol rehabilitation services and which receives State and county funding?**

Your question is answered in the negative.

In your letter of inquiry you advise that recently you were invited to serve on the Board of Directors of an organization which provides drug and alcohol rehabilitation services for individuals in Polk, Highlands, and Hardee Counties. Although this is a private organization, it receives some State and county funding as part of its budget. Finally, you advise that your wife is employed by the organization as a substance abuse counselor for adolescents.

In a previous opinion, CEO 81-6, we advised that the Code of Ethics for Public Officers and Employees would not prohibit a State Representative from acting as an attorney for a private corporation which was eligible to receive State funds. In addition, in CEO 82-92 we advised that the Code of Ethics would not prohibit a State Representative from being employed by a nonprofit corporation which received State and county funding.

Based on the rationale of these opinions, we find that the Code of Ethics would not prohibit you from serving on the board of directors of an organization which receives State and county funding. Similarly, no provision of the Code of Ethics would preclude your wife from being employed by the organization.

Accordingly, we find that no prohibited conflict of interest would be created were you to serve on the board of directors of an organization which provides drug and alcohol rehabilitation services and which receives some State and county funding. Please be advised that under the Sunshine Amendment [Article II, Section 8(e), Florida Constitution] you should not undertake to represent the organization for compensation before any State agency other than judicial tribunals.

**CEO 85-83—November 26, 1985**

**SUNSHINE AMENDMENT**

STATE REPRESENTATIVE'S FIRM WRITING GRANT
APPLICATIONS FOR MUNICIPAL AND COUNTY GOVERNMENTS

*To: The Honorable Michael E. Langton, State Representative, District 15, Jacksonville*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, would not prohibit the consulting firm of a state representative from writing grant applications for various municipal and county governments. However, the provision would prohibit the representative from personally contacting state agencies other than judicial tribunals in behalf of the firm's clients.**

**QUESTION:**

**Would Article II, Section 8(e), of the Florida Constitution prohibit your consulting firm from writing grant applications for various municipal and county governments, where you have been elected to serve as a member of the Florida House of Representatives?**

Your question is answered in the negative.

In your letter of inquiry you advise that recently you were elected as a member of the Florida House of Representatives. You also advise that you are the owner and president of a public affairs

consulting firm which is engaged in the business of writing grant applications for various municipal and county governments. In the past your firm has applied to the Department of Commerce, the Department of Community Affairs, the Department of Natural Resources, and the Department of Environmental Regulation, as well as various Federal agencies, for grant monies in behalf of clients of the firm, which are small cities and counties generally located in northeast Florida.

All grant applications are in the name of the client, you advise, and grant money usually does not flow to the firm. The firm operates under annual contracts with each client and is paid a monthly retainer. Following your election, you intend to continue to own and coordinate the overall direction of the firm and to continue to draw compensation for your services to the firm. However, you will discontinue all personal contact with agencies or bodies of the State which would be prohibited.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

In CEO 84-9 we advised that this provision would prohibit a state representative from personally participating in marketing computer software systems to state attorney and public defender offices, noting that the constitutional prohibition is not phrased in terms of representation of a "client" but rather in the broader terms of representation of persons or entities. In addition, in CEO 81-57 we interpreted the term "entity" to include a governmental entity. However, in CEO 84-21, CEO 82-33, and CEO 81-24 we recognized that the firms of state legislators may do business with State agencies so long as the legislator does not personally represent the firm before the State agency.

Accordingly, we find that Article II, Section 8(e), Florida Constitution, would not prohibit your firm from continuing to write grant applications for municipal and county governments under the circumstances and limitations you have described.

**CEO 85-86—November 26, 1985**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE LEGISLATOR EMPLOYED AS EXECUTIVE DIRECTOR OF COMMUNITY ACTION AGENCY

*To: Mr. William A. McGill, Executive Director, Capital Area Community Action Agency, Midway*

**SUMMARY:**

**No prohibited conflict of interest would be created were the executive director of a community action agency, which receives state funds, to be elected to the Florida Legislature. CEO 82-92 is referenced. However, Article II, Section 8(e), Florida Constitution, would prohibit a legislator who is employed as executive director of a community action agency from representing the agency before any state agency other than a judicial tribunal.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you to be elected to the Florida Legislature while being employed as executive director of a community action agency?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are employed as the executive director of a community action agency, which has been established as a private, nonprofit corporation. In a

telephone conversation with our staff, you advised that the agency receives federal block grant funds through the Department of Community Affairs, with federal law requiring the agency to receive a certain percentage of the block grant funds received by the Department. In addition, you advised that occasionally the agency applies for grants from other State departments and works with various departments to encourage the funding of other organizations and projects. You question whether a prohibited conflict of interest would be created should you be elected to the Florida Legislature.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1983).]
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1983).]

In a previous opinion, CEO 82-92, we concluded that these provisions of the Code of Ethics would not prohibit a State Representative from being employed as executive director of a nonprofit corporation receiving State and county funding. *See* also CEO 81-6, CEO 80-7, and CEO 77-129.

Accordingly, we find that no prohibited conflict of interest would be created were you to serve as a member of the Legislature while retaining your employment as executive director of the community action agency. Please be advised that Article II, Section 8(e), Florida Constitution, would prohibit you from representing the agency before any State agency other than a judicial tribunal. We are enclosing copies of advisory opinions CEO 84-9, CEO 84-21, CEO 82-33, and CEO 81-24 for your information in this regard.

**CEO 86-27—April 3, 1986**

**CONFLICT OF INTEREST**

STATE LEGISLATOR PARTNER IN TRAVEL AGENCY
DOING BUSINESS WITH STATE AGENCIES

*To: Mr. Hurley W. Rudd, Candidate for Florida House of Representatives, Tallahassee*

**SUMMARY:**

**No prohibited conflict of interest would be created were a legislator to be a partner in a travel agency which makes travel arrangements for State agencies. Where the travel agency does no business with the Legislature, a partner in that agency may serve in the House of Representatives. Doing business with other State agencies is not sufficient to impede the full and faithful discharge of his duties in violation of Section 112.313(7)(a), Florida Statutes.**

**QUESTION:**

**Would a prohibited conflict of interest arise were you to serve in the State Legislature while remaining a partner in a travel agency which does business with other State agencies?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a partner in a travel agency that handles travel arrangements for employees of the State of Florida. You also advise that you are a candidate for a seat in the Florida House of Representatives and that you plan to do no travel-related business with the Florida Legislature.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1985).]
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1985).]

In a previous opinion, CEO 84-9, we advised that these provisions of the Code of Ethics would not prohibit a State Representative's firm from selling computer software to state attorneys and public defenders. That opinion was based upon the similar conclusions reached in opinions CEO 83-13, CEO 82-33, CEO 81-24, and CEO 78-39.

Accordingly, we find that no prohibited conflict of interest would be created were you to serve in the State Legislature while remaining a partner in a travel agency which does business with other State agencies. Please note, however, that in CEO 84-9 we advised that a State Representative would be prohibited by Article II, Section 8(e), Florida Constitution, from personally participating in the marketing of computer software systems to State agencies. Similarly, you would be prohibited from personally contacting State agencies in an effort to market the services of your travel agency.

**CEO 86-31—April 3, 1986**

**SUNSHINE AMENDMENT; CONFLICT OF INTEREST**

STATE REPRESENTATIVE LEASING PROPERTY TO
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

*To: Mr. Alvin McLain, Candidate for State Representative, Crestview*

**SUMMARY:**

**A state representative is not deemed to be doing business with his agency in violation of Section 112.313(3), Florida Statutes, where he leases property to the**

**Department of Health and Rehabilitative Services, inasmuch as the legislator's agency is the Florida Legislature. Nor is such leasing of property in violation of Section 112.313(7), Florida Statutes, as that subsection provides an exemption where the officer's agency is a legislative body which regulates strictly through the enactment of laws. The legislator would not violate Article II, Section 8(e), Florida Constitution, if he renews the lease while in office because this provision expressly prohibits only representing another person or entity for compensation during a term of office.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you to serve as a State Representative while leasing property to the Department of Health and Rehabilitative Services or negotiating a renewal of the lease?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are considering running as a candidate for the Florida House of Representatives. You further state that you lease a building to the Department of Health and Rehabilitative Services. This lease runs through December of 1989. You question whether this relationship would create a prohibited conflict of interest should you be elected to the House and whether you may negotiate a renewal of the lease while in office.

In a previous opinion, CEO 77-13, we advised that the Code of Ethics for Public Officers and Employees would not prohibit a member of the House of Representatives from leasing business property to the Department of Health and Rehabilitative Services. Based on the rationale of that opinion, we find that no prohibited conflict of interest would be created should you serve in the House while leasing property to the Department of Health and Rehabilitative Services.

Regarding the renewal of the lease, Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

The term "represent" is defined in the Code of Ethics as follows:

> "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of an agency on behalf of a client.

The plain reading of these provisions expressly prohibits a legislator from representing another person or entity for compensation before the Department of Health and Rehabilitative Services. However, the prohibition of the Constitution is expressly limited to representing "another" person or entity. Clearly, therefore, you would not be prohibited from representing yourself in negotiating a renewal of the lease for the property in question.

Accordingly, we find that no prohibited conflict of interest would be created were you to lease property to the Department of Health and Rehabilitative Services while serving in the House of Representatives or were you to renew the lease while in office.

**CEO 86-39—May 15, 1986**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE SERVING ON BOARD OF DIRECTORS OF NONPROFIT CORPORATION RECEIVING STATE AND FEDERAL FUNDING

*To: Mr. Eugene M. Steinfeld, Attorney for Broward County Legislative Delegation, Fort Lauderdale*

**SUMMARY:**

**No prohibited conflict of interest would be created were a state representative to serve on the board of directors of a nonprofit corporation which receives state and federal funding to provide services to the elderly. Precedent opinions are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were a State Representative to serve on the Board of Directors of a nonprofit corporation which receives State and Federal funding to provide services to the elderly?**

Your question is answered in the negative.

In your letter of inquiry you advise that State Representative Jack Tobin has been asked to serve on the board of directors of a nonprofit corporation which acts as the board of directors of a county area agency on aging. The sole purpose of the nonprofit corporation and of the area agency on aging is to provide for services to the older population of the county.

You further advise that the nonprofit corporation and the area agency function under the Older Americans Act to operate projects with federal funds allocated by the Department of Health and Rehabilitative Services, as well as projects which are funded by State grants. In a telephone conversation with our staff, you advised that directors of the nonprofit corporation receive no compensation for their service.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1985).]

This provision prohibits a public officer from having certain types of employment and contractual relationships which present him with a conflict of interest. However, in previous opinions we have advised that noncompensated service as an officer or director of a nonprofit corporation does not constitute employment or a contractual relationship. *See* CEO 83-70, CEO 82-10, CEO 80-32, and CEO 77-55. In addition, in two opinions, CEO 85-86 and CEO 82-92, we have advised that the Code of Ethics would not prohibit a State legislator from being employed as executive director of a nonprofit corporation receiving State funds.

Accordingly, we find that no prohibited conflict of interest would be created were the subject State Representative to serve on the board of directors of the nonprofit corporation.

**CEO 87-2—January 29, 1987**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE PARTNER IN TRAVEL AGENCY
DOING BUSINESS WITH LEGISLATURE

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**A prohibited conflict of interest would be created were a State Representative to be a partner in a travel agency which makes travel arrangements for members and employees of the Legislature traveling on official business. While Section 112.313(3), Florida Statutes, prohibits a legislator from doing business with his agency, Section 112.313(12)(f) creates an exception where the total amount of the subject transaction does not exceed $500. CEO's 86-27, 76-175, 80-1, 80-13, and 85-71 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created under the Code of Ethics for Public Officers and Employees were the travel agency in which you are a partner to continue to make travel arrangements for members and staff of the Senate and joint committees while you serve in the House of Representatives?**

Your question is answered in the affirmative, subject to the exception noted below.

In a previous opinion request you advised that you were a partner in a travel agency that handles travel arrangements for the employees of the State of Florida. You also advised that you were a candidate for a seat in the Florida House of Representatives and that you planned to do no travel-related business with the Florida Legislature.

In that opinion, CEO 86-27, we concluded that the Code of Ethics for Public Officers and Employees would not preclude your travel agency from doing business with other State agencies, although you would be prohibited from personally contacting those agencies in an effort to market the services of your travel agency. In a number of previous opinions we have advised that the Code of Ethics for Public Officers and Employees would not prohibit a State legislator's involvement in a business entity selling goods or services to State agencies other than the Legislature. *See* CEO 84-9, CEO 86-27, CEO 83-13, CEO 82-33, CEO 81-24, and CEO 78-39.

You recently were elected to serve in the House of Representatives and now question whether your travel agency can handle travel arrangements for the Senate and for joint committees of the Legislature.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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. [Section 112.313(3), Florida Statutes (1985).]

This section prohibits a public officer from being a partner in a business entity which is doing business with his public agency. Since your agency as a State Representative is the Legislature, your travel agency thereby would be prohibited from making travel arrangements for the members and employees of the Senate and the various joint committees who are traveling on official business.

In previous opinions we have advised that a travel service would not be doing business with a public agency when officials and employees of that agency personally paid for their official travel and were reimbursed later by their agency. After further consideration of this interpretation, however, we are of the opinion that this rationale allows an individual to do indirectly what he is prohibited from doing directly and thereby circumvents the intent of the statute. Therefore, to the extent that this opinion requires the reversal of previously issued advisory opinions, the following opinions are hereby reversed: CEO 76-175, CEO 80-1, CEO 80-13, and CEO 85-71.

Please note that the Code of Ethics contains several exceptions to the prohibition of Section 112.313(3), Florida Statutes, including an exemption where:

> The total amount of the subject transaction does not exceed $500. [Section 112.313(12)(f), Florida Statutes (1985)].

This provision has been interpreted to exempt a single transaction in an amount not exceeding $500. *See* CEO 86-80.

We also would call your attention to the following provision of the Code of Ethics:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit or exemption for himself or others. This section shall not be construed to conflict with s. 104.31. [Section 112.313(6), Florida Statutes (1985)].

As in CEO 85-71, we would caution you also that your solicitation of private travel business from legislative members and employees could constitute a violation of this provision.

Accordingly, we find that a prohibited conflict of interest would be created were your travel agency to make travel arrangements for members and staff of the Senate and joint committees traveling on official business except to the extent that the total amount of a particular transaction does not exceed $500.

**CEO 87-24—April 23, 1987**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE OWNING LIQUOR LICENSE
VOTING ON LEGISLATION RELATING TO LIQUOR INDUSTRY

*To: The Honorable Dick Locke, State Representative, District 26, Inverness*

**SUMMARY:**

> **A state representative who owns a liquor license is not prohibited by Section 112.3143, Florida Statutes, from voting on legislation relating to the liquor industry. However, a voting conflict requiring disclosure would be created if the**

**legislator were to vote on particular legislation which would inure to his special benefit. CEO's 81-12 and 77-129 are referenced.**

**QUESTION:**

**Would a voting conflict of interest be created were you, a state representative who owns a liquor license, to vote on legislation relating to the liquor industry?**

Your question is answered in the negative, except in certain circumstances as noted below.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and that you serve on the House Committee on Regulated Industries and Licensing. You further advise that you recently won a State liquor license in a lottery, and you question whether a conflict of interest would be created were you to vote on legislation relating to the liquor industry.

Section 286.012, Florida Statutes (1985), provides:

> No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143.

Additionally, Section 112.3143(2)(a), Florida Statutes (1985), provides:

> Except as provided in subsection (3), no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall within 15 days after the vote occurs, disclose the nature of his 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.

In our view these provisions of law allow a State officer who has a conflict of interest the discretion to choose to abstain from voting or to choose to vote and file the required memorandum. The existence of a voting conflict should be disclosed on CE Form 8A, Memorandum of Voting Conflict for State Officers, which should be filed with the person responsible for recording the minutes of the meeting.

A voting conflict of interest exists under Section 112.3143(2)(a), Florida Statutes, if you vote upon a measure which inures to your special private gain or the special gain of any principal by whom you are retained. In previous advisory opinions, we have advised that whether a measure inures to the "special" gain of an officer or his principal will turn in part on the number of persons who stand to benefit from the measure. If the class of persons is large, a "special" gain will result only if there are circumstances unique to the officer or principal, under which the officer or principal would stand to gain more that the other members of the affected class. Where the class of persons benefited is extremely small, the possibility of special gain is much more likely. In CEO 81-12, for example, we advised that if a State Representative whose law firm represented a particular housing authority were to vote upon general legislation which would affect all housing authorities, there would be no "special" gain to a principal by whom he was retained. However, we also advised that if he were to vote upon special legislation inuring only to the benefit of the authority represented by his law firm, that legislation would inure to the special gain of his principal.

Similarly, in CEO 77-129, we found that a voting conflict of interest would not be created where a legislator voted on condominium legislation which affected his clients as it did all condominium owners, because such vote would not inure to the "special" private gain of the legislator or his clients. We advised that a voting conflict of interest would be created only if particular legislation

would be of special benefit to the legislator's clients due to their circumstances being unique as compared with all other condominium owners.

Accordingly, we find that no voting conflict of interest would exist were you to vote on general legislation affecting members of the liquor industry in a similar manner. However, we find that a voting conflict of interest would be created were you to vote on liquor industry legislation which would inure to your "special" benefit.

**CEO 87-47—June 11, 1987**

**CONFLICT OF INTEREST; VOTING CONFLICT**

STATE REPRESENTATIVE INVESTING IN
PORTABLE CLASSROOM BUILDING COMPANY

*To: The Honorable T. K. Wetherell, State Representative, District 29*

**SUMMARY:**

**Generally, no prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7), Florida Statutes, were a State Representative and vice president of a community college to be an investor, officer, and director of a corporation that builds and finances portable classroom buildings. The corporation could do business with the community college by sealed competitive bid if the requirements of Section 112.313(12)(b), Florida Statutes, are met. Further, no voting conflict of interest would be created under Section 112.3143, Florida Statutes, were the State Representative to vote on appropriation matters for agencies with which the corporation will be seeking to do business. Any gain received by the corporation as a result of these votes would be too remote and speculative to constitute "special gain" within the contemplation of Section 112.3143, Florida Statutes.**

**QUESTION 1:**

**Would a prohibited conflict of interest be created were you, a State Representative and a vice president of a community college, to be an investor, officer, and director of a corporation that builds and finances portable classroom buildings?**

This question is answered in the negative, subject to the exception noted below.

In your letter of inquiry you advise that you serve as a member of the Florida House of Representatives and that you are employed by Daytona Beach Community College as a Vice President. As a member of the House of Representatives, you chair the Appropriations Education Subcommittee, which is involved directly in drafting the appropriations bill with respect to public schools, community colleges, and universities within the State.

You also advise that you are considering becoming a major stockholder, officer, and director in a corporation that builds and finances portable classroom buildings for public schools, community colleges, and universities in this state and in other states. If you become associated with the corporation, it will not do business in your home county but will bid on contracts in other counties. As an officer of the corporation, it will not be your responsibility to solicit business from State agencies. Finally, you advise that the Legislature historically has not distinguished between permanent and portable structures in education funding and that you do not anticipate such a distinction in the future.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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. [Section 112.313(3), Florida Statutes (1985).]
>
> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1985).]

In CEO 82-33 we found that these provisions of the Code of Ethics would not prohibit a state representative from being employed by an insurance company seeking to contract with the Florida Housing Finance Agency. In CEO 78-39 and CEO 77-6, we advised that a state representative would not be prohibited from involvement with a corporation which would perform construction work for various State agencies. Based on the rationale of these opinions, we find that neither Section 112.313(3) nor Section 112.313(7)(a) would prohibit your involvement in the corporation while serving as a member of the House of Representatives.

As a Vice President of the Community College, both Section 112.313(3) and Section 112.313(7)(a), Florida Statutes, would prohibit the corporation from selling to the Community College—your "agency" as that term is defined in Section 112.312(2), Florida Statutes. We note that you have advised that if you become associated with the corporation, it will not do business in your home county. However, the Code of Ethics provides an exemption to the prohibitions of Sections 112.313(3) and (7) where:

> The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:
>
> 1. The official or his spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;
> 2. The official or his spouse or child has in no way used or attempted to use his influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
> 3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Department of State, if he is a state officer or employee, or with the Clerk of the Circuit Court of the county in which the agency has its principal office, if he is an officer or employee of a political subdivision, disclosing his, or his spouse's or child's, interest and the nature of the intended business. [Section 112.313(12)(b), Florida Statutes]

Therefore, the corporation could do business with the Community College through a system of sealed competitive bidding so long as you comply with the three requirements of this exemption.

For your information, the disclosure required by this exemption should be made on CE Form 3A, Interest in Competitive Bid for Public Business.

We note that you have advised that if you become involved with the corporation, you will not be responsible for soliciting business from State agencies. Therefore, we see no problem with Article II, Section 8(e), Florida Constitution, which prohibits you from personally representing another person or entity for compensation before any State agency other than judicial tribunals. *See* CEO 84-9 and CEO 82-33.

Accordingly, we find that no prohibited conflict of interest with your duties as a State Representative would be created were you to be an investor, officer, and director of a corporation that builds and finances portable classroom buildings. Further, the corporation may do business with the Community College which you serve as Vice President if that business is transacted by sealed, competitive bid and if the requirements of Section 112.313(12)(b), Florida Statutes, are met.

**QUESTION 2:**

> **Would a voting conflict of interest be created were you, a State Representative and an investor, officer, and director of a corporation that builds and finances portable classroom buildings, to vote on appropriation matters for agencies with which the corporation will be seeking to do business?**

This question is answered in the negative.

Regarding voting conflicts of interest for State officials, the Code of Ethics provides:

> Except as provided in subsection (3), no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143(2)(a), Florida Statutes (1985).]

Under this provision, you would be required to file a memorandum of voting conflict if you vote on a measure which inures to your special gain or to the special gain of a principal by whom you are retained.

In previous opinions we have found no "special" gain to exist when the circumstances were such that any gain or loss to the public official, or one by whom he was retained, was too remote or speculative. *See* CEO 85-77 and CEO 85-87. You have advised that the Legislature has not distinguished between permanent and portable structures in its educational funding. In addition, we note that appropriations to educational agencies would not directly benefit the corporation with which you would be associated. Each school district, community college, and university, after receiving its appropriation, still would have to determine which company it would purchase from, presumably through a competitive bid process. Therefore, appropriations to these agencies could benefit the corporation or could benefit competing businesses. Under these circumstances, we find that any gain which might be received eventually by the corporation as a result of appropriation measures is too remote and speculative to enable us to conclude that the corporation would derive any "special" gain.

Accordingly, we find that no voting conflict of interest would be created were you to become associated with the corporation and to vote on appropriation matters for agencies with which the corporation will be seeking to do business.

**CEO 87-49—June 11, 1987**

**CONFLICT OF INTEREST; VOTING CONFLICT**

STATE REPRESENTATIVE VICE PRESIDENT OF ORCHESTRA ORGANIZATION SEEKING STATE FUNDING FOR PERFORMING ARTS HALL

*To: The Honorable Mary Ellen Hawkins, State Representative, District 75, Naples*

**SUMMARY:**

**No prohibited conflict of interest would be created were a state representative to request the legislature to appropriate funds for the construction of a performing arts hall for a nonprofit orchestra organization which she serves as vice president. As noncompensated service as an officer of a nonprofit corporation does not constitute employment or a contractual relationship, Section 112.313(7), Florida Statutes, would not be violated. As the representative has not been retained by the nonprofit corporation, she would not be required to file a memorandum of voting conflict under Section 112.3143, Florida Statutes, after voting on an appropriation for the construction of the hall. CEO's 83-70 and 77-129 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to request the Legislature to appropriate funds for the construction of a performing arts hall for a nonprofit orchestra organization which you serve as vice president?**

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry, you advise that you serve as a member of the Florida House of Representatives. You also advise that you serve as vice president of a nonprofit orchestra organization, the directors of which have raised funds for the construction of a performing arts hall to be used by the orchestra and other local cultural groups. You advise that you do not receive any remuneration for your work in connection with the orchestra or the hall. You have made personal donations to the orchestra and the hall, and have purchased all of your tickets to orchestra performances and fund raising events. You also advise that you accompanied some board members, architects, and other professionals on a weekend trip to inspect a performing arts center in Mexico City at your own expense.

Finally, you advise that you have been asked to request the Legislature to appropriate sufficient funds to enable construction of the hall to begin. Last year, the Legislature appropriated funds for the planning of the project. Both appropriations were recommended by the Secretary of State, you advise.

The Code of Ethics for Public Officers and Employees provides:

> SOLICITATION OR ACCEPTANCE OF GIFTS.—No public officer, employee of an agency, 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, or candidate would be influenced thereby. [Section 112.313(2), Florida Statutes (1985).]

> UNAUTHORIZED COMPENSATION.—No public officer or employee of an agency or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer or employee 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 or employee was expected to participate in his official capacity. [Section 112.313(4), Florida Statutes (1985).]

Under the circumstances presented, it does not appear that your making this request to the Legislature would violate either of these provisions, as you have not solicited or accepted any gift, compensation, or thing of value from the orchestra organization.

The Code of Ethics also provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1985).]

This provision prohibits you from having certain types of conflicting employment or contractual relationships. However, we previously have advised that noncompensated service as an officer of a nonprofit corporation does not constitute employment or a contractual relationship. *See* CEO 83-70 and the opinions cited therein. Therefore, we find that this provision of the Code of Ethics does not apply to your situation.

The Code of Ethics further provides:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit or exemption for himself or others. This section shall not be construed to conflict with s. 104.31. [Section 112.313(6), Florida Statutes (1985).]

The term “corruptly” is defined to mean

> done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties. [Section 112.312(7), Florida Statutes (1985).]

In CEO 77-129, an opinion concerning a State Representative, whose law firm represented condominium associations, participating in condominium legislation, we stated:

> While we are not in a position to judge, in an advisory opinion, your intent with regard to such legislation, we note generally that a legislator necessarily works with legislation that may impinge on his personal financial interests; the very nature of his position is such that he must provide effective representation of his constituents' interest on all issues coming before the Legislature. Where a legislator has participated in legislation on a social or economic issue that he honestly feels is in the best interest of the people of this state, neither is his intent wrongful nor are his actions inconsistent with the proper performance of his public duty.

Finally, Section 112.3143(2)(a), Florida Statutes, provides as follows:

> Except as provided in subsection (3), no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall within 15 days after the vote occurs, disclose the nature of his 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.

This provision requires you to file a memorandum of voting conflict if you vote upon a measure which inures either to your special private gain or to the special gain of a principal by whom you are retained. Under the circumstances you have presented, it does not appear that an appropriation by the Legislature for the performing arts hall would inure to your private gain, especially as you receive no compensation for your work in connection with the orchestra or the hall. For this reason also it does not appear that you have been "retained" by the nonprofit organization. *See* CEO 83-70. Therefore, you would not be required to file a memorandum of voting conflict should you be called upon to vote on an appropriation for the construction of the performing arts hall.

Accordingly, we find that no prohibited conflict of interest or voting conflict of interest exists where you have been asked to request the appropriation of funds for the construction of a performing arts hall for a nonprofit orchestra organization which you serve as vice president.

**CEO 88-15—March 16, 1988**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE SERVING ON ADVISORY BOARD TO CORPORATION CONTRACTING WITH DEPARTMENT OF CORRECTIONS

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to serve on an advisory board to a corporation which is contracting with the Department of Corrections. Previous opinions CEO 84-21 and CEO 87-47 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to serve on an advisory board to a corporation which is contracting with the Department of Corrections?**

Your question is answered in the negative.

In your letter of inquiry and subsequent correspondence you advise that you serve as a member of the Florida House of Representatives and as Chairman of the House Committee on Corrections, Probation and Parole. You also advise that you have been asked to serve on an advisory board to a corporation which is involved in contractual prison projects with the Department of Corrections. The advisory board is responsible for advising the board of directors of the corporation on any company proposal or projects brought to the advisory board. Advisory board members receive a stipend for each meeting, you advise, but they receive no other compensation to your knowledge. Finally, you advise that neither the Committee on Corrections nor the Legislature is involved in these contractual matters; the Legislature appropriates funds to carry out the mission of the Department of Corrections but the Department is responsible for administering all of its contracts.

The Code of Ethics for Public Officers and Employees provides in relevant part:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1987).]
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1987).]

In a previous opinion, CEO 84-21, we advised that the Code of Ethics would not prohibit a State Representative who served as Chairman of the House Subcommittee on Prison Overcrowding from being employed as a consultant by a company doing business with the Department of Corrections. Similarly, we advised in CEO 87-47 that a State Representative who chaired the Appropriations Education Subcommittee would not be prohibited from investing in a portable classroom building company which would do business with public schools, community colleges, and universities in this State. For the reasons expressed in those opinions and in the opinions referenced therein, we find that no provision of the Code of Ethics would prohibit your serving on the advisory board to this corporation.

We also find applicable the rationale of these opinions regarding the Sunshine Amendment's prohibition against a legislator personally representing an entity for compensation during term of office before a State agency other than judicial tribunals (Article II, Section 8(e), Florida Constitution). Under the circumstances you have presented, it does not appear that your service on the advisory board to the corporation would contemplate any representation of the corporation before the Department of Corrections.

Accordingly, we find that no prohibited conflict of interest would be created were you to serve on an advisory board of a corporation which is involved in contractual prison projects with the Department of Corrections.

**CEO 88-68—October 19, 1988**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE
EMPLOYED AS EXECUTIVE DIRECTOR OF NONPROFIT CORPORATION
REPRESENTING INTERESTS OF LANDOWNERS

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**The Code of Ethics for Public Officers and Employees does not prohibit a state representative from being employed as the executive director of a nonprofit corporation which has been formed to represent the interests of landowners within an area of the district which he represents. Article II, Section 8(e), Florida Constitution, would prohibit a state representative from representing his employer before state agencies other than judicial tribunals, but would not prohibit him from representing his employer before local governmental bodies. As the representative would be paid as an employee on an ongoing basis to represent his**

**employer's interests before governmental agencies, it is suggested that he refrain from contacting state agencies even in his legislative capacity regarding matters which would directly benefit members of the corporation, in which his employer has expressed an interest, or about which he may be contacting local agencies.**

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees or the Sunshine Amendment to the Florida Constitution prohibit you, a State Representative, from being employed as the executive director of a nonprofit corporation which has been formed to represent the interests of landowners within an area of the District which you represent?**

Your question is answered in the negative, subject to the condition noted below.

Through your letter of inquiry and telephone conversations with our staff, we have been advised that you have been offered the position of executive director with a nonprofit corporation composed of a number of major property owners located within an area of the District which you represent as a member of the Florida House of Representatives. You advise that the goals and objectives of the nonprofit corporation include guiding and assisting governmental bodies in the planning, funding, and construction of an adequate infra-structure network within the area to the year 2010; providing for sound environmental planning and the adequate and realistic protection of sensitive ecological systems within the area, while balancing rights of private property ownership; establishing and maintaining sound communication networks with governmental officials, private and civic associations, and the media in an effort to promote the corporation's positions; and establishing direct liaison with individual property owners in the area to promote membership and involvement with the corporation.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1987).]
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)(2), Florida Statutes (1987).]

We previously have advised that this provision of the Code of Ethics would not prohibit a state legislator from being employed as a city attorney or as counsel for a special taxing district. *See* CEO 75-197. Similarly, we have advised that a state representative would not be prohibited from being employed by an engineering firm where his employment would involve soliciting various city and county governments as clients for the firm, and that a state representative may be employed as a consultant by a private correctional facility corporation where his role would be to assist in locating sites for correctional facilities, primarily involving contacts with city and county governments. *See* CEO 83-13 and CEO 84-21. Based on the rationale of these opinions, we find that Section 112.313(7) does not prohibit your employment with the non-profit corporation.

The Sunshine Amendment to the Florida Constitution also contains a limitation on a legislator's private employment.

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. [Article II, Section 8(e), Florida Constitution.]

Under this provision we have advised that a state representative would be prohibited from personally participating in the marketing of computer software systems to state attorney and public defender offices, and that a state senator should not personally represent his corporation in seeking to have the corporation provide services to a state hospital. *See* CEO 84-9 and CEO 81-24. However, as cities, counties, and other local governmental bodies are not state agencies, we concluded in CEO 83-13 that the state representative could be employed by the engineering firm to solicit business from cities and counties and in CEO 84-21 that the state representative could be employed as a consultant by a company doing business with the Department of Corrections where his role would involve contacts with city and county governments. Similarly, we conclude that Article II, Section 8(e), would not limit your ability as an employee of the nonprofit corporation to contact personally city, county, and other local governmental entities in behalf of the nonprofit corporation.

The Sunshine Amendment's prohibition clearly was not intended to preclude a legislator from representing his constituents' interests through contacting State agencies, as it expressly prohibits only representations of another "for compensation." However, where a legislator is being compensated as an employee on an ongoing basis to represent his employer's interests before governmental agencies, we find it extremely difficult to draw a line distinguishing representation in a legislative capacity of these interests as being constituent matters, as there is at least the appearance of being compensated for contacts with State agencies regardless of whether the legislator formally indicates that he is acting in his legislative capacity. Therefore, we suggest if you accept employment as executive director of the nonprofit corporation, that you refrain from contacting State agencies regarding matters which would directly benefit members of the corporation, in which the corporation has expressed an interest, or about which you may be contacting local agencies as executive director.

Accordingly, subject to the restriction and the suggestion noted above, we find that neither the Code of Ethics for Public Officers and Employees nor the Sunshine Amendment to the Florida Constitution would prohibit you from being employed as the executive director of the nonprofit corporation while remaining a member of the House of Representatives.

**CEO 88-71—October 19, 1988**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE CONTRACTING WITH
DEPARTMENT OF CORRECTIONS TO
PROVIDE PHARMACEUTICAL SERVICES

*To: The Honorable Everett A. Kelly, State Representative, District 46, Tavares*

**SUMMARY:**

**No prohibited conflict of interest would be created were a State Representative to contract with the Department of Corrections to provide pharmaceutical services. A State Representative is not deemed to be doing business with his agency in violation of Section 112.313(3), Florida Statutes, when he contracts with state agencies other than the Legislature. Also, such a contract for services is not in violation of Section 112.313(7)(a), Florida Statutes, as Section 112.313(7)(a)2 provides an exemption where an officer's agency is a legislative body which regulates strictly through the enactment of laws.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to contract with the Department of Corrections to provide pharmaceutical services?**

Your question is answered in the negative.

In your letter of inquiry you advise that you serve as a member of the Florida House of Representatives and as Chairman of the House Committee on Corrections, Probation and Parole. You also advise that you are considering contracting with the Department of Corrections to provide pharmaceutical services.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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. [Section 112.313(3), Florida Statutes (1987).]
>
> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1987).]
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1987).]

Section 112.313(3) prohibits a public officer from acting in a private capacity to sell services to his own agency. This provision would not apply in this instance as your agency is the Florida Legislature. Section 112.313(7)(a) prohibits a public officer from having a contractual relationship with an agency which is subject to the regulation of his agency. However, Section 112.313(7)(a)2 exempts conflicts under this provision for members of legislative bodies where the regulatory power is exercised strictly through the enactment of laws.

Accordingly we find that no prohibited conflict of interest would be created were you to contract with the Department of Corrections to provide pharmaceutical services.

**CEO 89-05—March 2, 1989**

**SUNSHINE AMENDMENT**

DISCLOSURE OF LIABILITY ON NOTE
WHERE PROCEEDS OF LOAN NOT RECEIVED
BY DISCLOSING OFFICIAL

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**Where an elected constitutional officer signed a note and was jointly and severally liable for the balance, he must disclose the note on his financial disclosure forms under Article II, Section 8(a) and (h), Florida Constitution, even though the loan proceeds were used and the loan was repaid by a partnership in which he had no interest. The amount of the liability reported where liability is joint and several should be equal to the total amount due on the note.**

**QUESTION:**

**Under Article II, Section 8(a) and (h), Florida Constitution, is a public official required to disclose a note he signed as a liability on his financial disclosure forms, when the loan proceeds were used and the loan was repaid by a partnership in which he had no interest?**

Your question is answered in the affirmative.

In your letter of inquiry, you advised that _____ serves as the _____. You also advise that his wife entered into a limited partnership with her brother and sister in April of 1972 and that this partnership continuously has engaged in business since its inception. The Sheriff has no interest in the partnership, other than through his family relationship to the partners. On September 30, 1981, the partnership borrowed $300,000 from a bank in Alabama. The bank required the Sheriff, as husband of one of the partners, to sign the note. A copy of the note is enclosed with your letter of inquiry, and it is evident from that copy that the Sheriff's wife did not sign. It also appears that the husband of another partner also signed the note instead of his wife.

This note was reduced in principal by $200,000 on April 2, 1982, and was paid completely on February 7, 1984. The note no longer exists as a legal obligation of anyone mentioned above.

This note was not listed as a liability on the Sheriff's 1982 Form 6, "Full and Public Disclosure of Financial Interests." This is because the Sheriff sought the advice of his certified public accountant at the time of the 1982 disclosure, and the accountant opined that disclosure was not necessary since the Sheriff held no interest in the partnership. The accountant further opined that if the liability is disclosed, a corresponding asset would also need to be disclosed, which would be a loan receivable from the partnership. This would result in no change in the Sheriff's net worth.

We must disagree with the accountant's advice. It is our opinion that the Sheriff should have listed this note as a liability on his Form 6 in 1982 and on his financial disclosure forms for any other period during which he was liable in the note.

Article II, Section 8, of the Florida Constitution requires all elected constitutional officers to file full and public disclosure of each asset and liability in excess of $1,000. One of the purposes served by this disclosure requirement is to inform the public of potential conflicts of interest the official may face as a result of his financial interests, whether in the form of obligations others may owe him (assets) or obligations he may owe to others (liabilities). Although "liability" is not defined under Article II, it is defined in Section 112.313(11), Florida Statutes, as follows:

> 'Liability' means any monetary debt or obligation owed by the reporting person to another person, except for credit card and retail installment accounts, taxes owed, indebtedness on a life insurance policy owed to the company of issuance, contingent

> liabilities, or accrued income taxes on net unrealized appreciation. Each liability which is required to be disclosed by s. 8, Art. II of the State Constitution shall identify the name and address of the creditor.

Since the Sheriff signed the note in his individual capacity, he and the two other co-signers are jointly and severally liable for the entire amount of the note under Florida law. Section 673.118(5), Florida Statutes. Since Alabama also has adopted the Uniform Commercial Code, presumably he would be personally liable for the entire balance under Alabama law, also. *See* 15A Am Jur 2d, *Commercial Code*, s.1 (1976). It does not appear from the face of the note that this liability was contingent. *See* CEO 86-40. Therefore, he must disclose the full value of the note as a personal liability for any applicable disclosure periods.

Our explanatory notes to Form 6, under "Liabilities," state that if a person is jointly responsible for payment of a liability, he need only list his pro rata share of the indebtedness. If an individual is jointly *and* severally liable, however, he is individually liable for the entire amount of the debt and must list the entire amount as a liability. Since the concept of joint and several liability may not be widely understood, we plan to revise the explanatory note on Form 6 to state that persons jointly and severally liable must disclose the full value of their debt.

An "asset" has been defined in CEO 78-1 as anything which can be sold to be applied to one's debts. We have not been provided with any information that your client made a loan to the partnership or had any other tangible or intangible property which relates to this note so as to be listed as an asset.

Accordingly, we are of the opinion that the value of the note should have been disclosed as a liability during applicable disclosure periods.

**CEO 89-06—March 2, 1989**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE WORKING WITH LAW FIRM
TO MARKET COLLECTION AND ACCOUNT RECEIVABLE SERVICES

*To: The Honorable Anne Mackenzie, State Representative, District 95 (Fort Lauderdale)*

**SUMMARY:**

**Neither the Sunshine Amendment nor the Code of Ethics for Public Officers and Employees would prohibit a state representative from marketing the collection and account receivable services of a law firm to health care providers, such as hospitals created as special districts by special act of the Legislature. The Sunshine Amendment, in Article II, Section 8(e), Florida Constitution, prohibits a legislator from personally representing another for compensation before state agencies other than judicial tribunals, but does not prohibit representations before private entities or local government entities, such as special districts. Although Section 112.313(7), Florida Statutes, prohibits public officers from having certain conflicting types of employment or contractual relationships, Section 112.313(7)(a)2 exempts members of legislative bodies which exercise their regulatory power through the enactment of laws or ordinances from conflicts arising out of that regulatory power.**

**The Sunshine Amendment would not prohibit a state representative from participating in the development of a response to a request for proposals for collection and account receivable services by a state agency on behalf of a law firm, provided that the state representative does not represent the firm before the state agency. As Article II, Section 8(e), is directed at prohibiting representations before state agencies, it does not prohibit a legislator from participating in the**

**development of a response to a request for proposals issued by a state agency. As the regulatory power of the Legislature would be exercised through the enactment of laws, Section 112.313(7) would not preclude participating in the development of the law firm's response.**

**Finally, neither the Sunshine Amendment nor the Code of Ethics would prohibit a state representative from participating in the development of a response on behalf of the law firm to a request for proposals from a political subdivision or other local government agency or from representing the firm for compensation before the political subdivision or local government agency.**

**QUESTION 1:**

**Are you, a State Representative, prohibited by the Sunshine Amendment or the Code of Ethics for Public Officers and Employees from marketing the collection and account receivable services of a law firm to health care providers, such as hospitals which have been created as special districts by special act of the Legislature?**

This question is answered in the negative.

In your letter of inquiry you advise that you serve as a member of the House of Representatives and that you have been offered a position with a law firm to develop and implement a comprehensive marketing program for collection and account receivable matters with large institutions and business entities. In addition to generating new business, your responsibilities would include expanding existing client utilization of the firm's services. Existing clients of the firm include retail businesses, financial institutions, health care providers, and various professional service providers.

You further advise that certain of the health care providers which would be the subject of your activities are hospitals which have been created as special districts by special acts of the Legislature. You anticipate that the firm also may wish to respond to various requests for proposals from State or local governments which seek private sector assistance to manage their collection and account receivable matters.

As you are aware, the Sunshine Amendment in Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

By its terms, this limitation applies only to State agencies. As a result, we advised in previous opinion CEO 83-13 that a state representative could be employed by an engineering firm to solicit clients which would include various city and county governments. Similarly, in CEO 84-21 we advised that a state representative could be employed as a consultant by a corporation in work involving contacts with city and county governments.

Private health care providers, of course, are not State agencies; neither are hospitals created as special districts by special act of the Legislature, which are considered to be "political subdivisions." *See* Section 1.01(9), Florida Statutes. As noted by the Florida Supreme Court,

> Section 8(e) was designed specifically to prevent those who have plenary budgetary and statutory control over the affairs of public agencies from potentially influencing agency decisions (or giving the appearance of having an influence) when they appear before the agencies as compensated advocates for others. [*Myers v. Hawkins*, 362 So. 2d 926, 930 (Fla. 1978).]

Although the Legislature does have control over political subdivisions, such as special districts, through the enactment of laws, it is clear that the Legislature does not have the same budgetary control over local government agencies as it does over State agencies through the Appropriations Act. Therefore, we find that the Sunshine Amendment would not prohibit you from marketing the services of the law firm to health care providers, including hospitals created by special act of the Legislature.

Within the Code of Ethics for Public Officers and Employees, Section 112.313(7)(a), Florida Statutes, prohibits public officers from having certain types of conflicting employment or contractual relationships, as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

Together with this prohibition is the following exemption:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1987).]

This exempts members of legislative bodies which exercise their regulatory power through the enactment of laws or ordinances from conflicts which otherwise might arise out of that regulatory power. Therefore, in previous opinions we have advised that as long as a legislator's employer does not contract with the Legislature, the employer can contract with other State and local agencies. *See* CEO 81-24, CEO 82-33, CEO 83-13, CEO 84-9, and CEO 84-21 in this regard. As the Legislature's regulatory power over hospitals and hospital districts is exercised through the enactment of laws, this exemption clearly applies to your situation.

Accordingly, we find that neither the Sunshine Admendment nor the Code of Ethics for Public Officers and Employees would prohibit you from being employed to market the collection and account receivable services of a law firm to health care providers, including hospitals created as special districts.

**QUESTION 2:**

> **Would the Sunshine Amendment or the Code of Ethics prohibit you from participating on behalf of the law firm in the development of a response to a request for proposals for collection and account receivable services by a State agency, provided that you do not represent the firm before the State agency?**

This question is answered in the negative.

In our view Article II, Section 8(e), only prohibits representation before a State agency and does not prohibit a legislator from performing work under a contract which may be entered into with a State agency. In CEO 82-33, we advised that a state representative would not be prohibited from assisting as an employee of a mortgage insurance company in the performance of a contract between the company and a State agency.

Similarly, we conclude that your participation in preparing a response to a request for proposals from a State agency which does not entail representing another before that agency would not be prohibited by Article II, Section 8(e). As the Legislature exercises its regulatory

power over State agencies through the enactment of laws, it is clear that Section 112.313(7) also would not prohibit your participation in preparing responses to requests for proposals from State agencies.

Accordingly, we find that neither the Sunshine Amendment nor the Code of Ethics would prohibit you from participating in behalf of the law firm in the development of a response to a request for proposals by a State agency, provided that you do not represent the firm before the agency.

**QUESTION 3:**

**Does the Sunshine Amendment or the Code of Ethics prohibit you from participating in behalf of the law firm in the development of a response to a request for proposals from a political subdivision or other local government agency for collection and account receivable services or from representing the firm for compensation before such a political subdivision or local government agency in connection to the response?**

This question also is answered in the negative.

As we advised above, Article II, Section 8(e), does not prohibit a legislator from representing another before political subdivisions or other agencies of local government. In addition, it does not prohibit such in-office work as might be required to obtain a contract with the agency or to perform that contract. As we also noted above, Section 112.313(7) does not prohibit a legislator's employer from contracting with local government agencies.

Accordingly, we find that neither the Sunshine Amendment nor the Code of Ethics would prohibit you from participating on behalf of the law firm in the development of a response to a request for proposals from a political subdivision or other local government agency or from representing the firm for compensation before agencies of local government in connection with the response.

**CEO 89-18—April 13, 1989**

**CONFLICT OF INTEREST; VOTING CONFLICT; SUNSHINE AMENDMENT**

STATE REPRESENTATIVE OWNING COMPANY WHICH
OPERATES CONCESSIONS AT PUBLIC AIRPORTS

*To: Ms. Debra L. Romanello, Attorney (Tampa)*

**SUMMARY:**

**No prohibited conflict of interest would be created were a company of which a State Representative is the president and majority shareholder to subcontract with a prime contractor for the operation of part of the concessions at a public airport owned and operated by a public agency which has been created by special act of the Legislature, or to participate in the submission of the prime contractor's proposal in response to a request for proposals for concessions at the airport. Because the company would not be doing business with the Legislature and because the Legislature's regulatory power over the Port Authority is exercised through the enactment of laws, neither Section 112.313(3) nor Section 112.313(7), Florida Statutes, would be violated.**

**The Representative would be required by Section 112.3143, Florida Statutes, to file a memorandum of voting conflict only if he voted on general legislation or a local bill which inured to the special private gain of the Representative or his company, as neither the public agency owning the airport nor the public airport**

**would be considered to be a "principal by whom he is retained." The Representative would not be prohibited by Article II, Section 8(e), Florida Constitution, from representing his company or the prime contractor before the agency or the airport in connection with the request for proposals, as neither the agency nor the airport is a State agency.**

**QUESTION 1:**

**Would a prohibited conflict of interest be created were a company of which a State Representative is the president and majority shareholder to subcontract with a prime contractor for the operation of part of the concessions at a public airport owned and operated by a public agency which has been created by special act of the Legislature, or to participate in the submission of the prime contractor's proposal in response to a request for proposals for concessions at the airport?**

This question is answered in the negative.

In your letter of inquiry you advise that Mr. James T. Hargrett, Jr., serves as a member of the House of Representatives and as Chairman of the Committee on Public Transportation. The primary focus of the Committee is on the development of incentives to encourage greater use of mass transit of all types, the support of planning and funding for major airport and seaport developments, and the establishment of a method for interconnecting mass transit modes with seaports, airports, and downtown centers.

You also advise that the Representative is the president and majority stockholder in a company which operates retail concessions at public airports. His company is a potential subcontractor for concession services with a prime contractor which is seeking to contract for certain concessions at the Jacksonville International Airport. The Airport is owned and operated by the Jacksonville Port Authority, which was created by Chapter 63-1447, Laws of Florida. The Representative's company is participating in developing and submitting a proposal in response to a request for proposals issued by the Port Authority for concessions at the Airport. The company is seeking to qualify as a disadvantaged business enterprise under the Port Authority's program for disadvantaged businesses.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee of his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. 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.
>
> [Section 112.313(3), Florida Statutes (1987).]

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full

> and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1987).]
>
> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes (1987).]

Section 112.313(3) prohibits a member of the Legislature from selling any services to the Legislature, but not from selling to agencies of government other than the Legislature. *See* CEO 87-2. Under Section 112.313(7)(a), we have advised that as long as a legislator's employer does not contract with the Legislature, the employer can contract with other State and local agencies. *See* CEO 81-24, CEO 82-33, CEO 83-13, CEO 84-9, and CEO 84-21. As the Legislature's regulatory power over the Port Authority is exercised through the enactment of laws, the exemption of Section 112.313(7)(a)2 clearly applies here.

Accordingly, we find that no prohibited conflict of interest would be created were the company of the subject Representative to subcontract with the prime contractor for the operation of part of the concessions at the Airport. As the company may operate concessions at the Airport, there would be no provision in the Code of Ethics which would prohibit the company from participating in the submission of a proposal in response to the request for proposals issued by the Port Authority.

**QUESTION 2:**

> **Would a prohibited conflict of interest or voting conflict of interest be created were the State Representative to participate in general legislation or local bills affecting the Port Authority or Airport by authorship, vote, or debate, or as Chairman or a member of the Committee on Public Transportation?**

Regarding voting conflicts of interest for members of the Legislature, the Code of Ethics provides:

> Except as provided in subsection (3) [which pertains only to local public officers], no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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.[Section 112.3143(2)(a), Florida Statutes (1987).]

Under this provision a State Representative is required to file a memorandum of voting conflict within 15 days after voting on a measure which inures either to his special private gain or to the special gain of a principal by whom he is retained. We are unable to provide specific guidance about whether a voting conflict would arise in considering a particular bill without knowing the nature of that bill and its effect upon the Representative's interests or the interests of his company. However, we believe the following general remarks will be of some assistance.

Under the circumstances you have described, we are of the opinion that the key question in considering whether a voting conflict might arise regarding a bill is whether the measure would inure to the special gain of the Representative or his company, rather than to the special gain of the Port Authority or the Airport. This is because, assuming his company contracts to provide concessions at the Airport, neither the Airport, the Port Authority, nor the prime contractor would be a "principal" by whom the Representative would be retained. We previously have advised that a person who has only a contractual relationship with a public official is not a "principal" of that official. *See* CEO 80-49.

You have raised the possibility that general legislation affecting all public airports may be considered by the Representative's committee, as well as local bills directed only to the Port Authority or its Airport. In our view, it is not likely that general legislation affecting all public airports would inure to the "special gain" of the Representative or his company. In CEO 77-129 we advised that whether a measure inures to the special gain of an officer will turn in part on the size of the class of persons who stand to benefit from the measure, with "special gain" resulting where the class is large only if there are circumstances unique to the officer under which he stands to gain more than the other members of the class. On the other hand, because of the relatively narrow scope of local bills, it is more likely that a local bill may present a voting conflict. We reiterate, however, that the primary question is whether the bill would benefit the Representative or his company, rather than the Port Authority or the Airport.

There is no specific provision in the Code of Ethics which would prohibit the Representative from participating in legislation affecting the Airport or the Port Authority under the circumstances presented. Each public official should be aware of the Code's prohibition against corruptly misusing his official position to secure a special privilege, benefit, or exemption for himself or others (Section 112.313(6), Florida Statutes), as well as the prohibition against disclosing or using for private gain information not available to the general public which may be gained through his public position (Section 112.313(8), Florida Statutes). However, we would caution the Representative to be sensitive to the appearance of a potential conflict of interest with respect to any bill which would have a significant impact upon the Port Authority or the Airport when fulfilling his responsibilities as Chairman of the Committee or in otherwise participating in the legislative process.

**QUESTION 3:**

> **Would the Representative be prohibited by Article II, Section 8(e) of the Florida Constitution from representing his company or the prime contractor before the Port Authority or the Airport in connection with the request for proposals?**

This question is answered in the negative.

The Sunshine Amendment to the Florida Constitution, in Article II, Section 8(e), provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

We recently advised in CEO 89-6 that this provision does not prohibit a legislator from representing another before private entities or local government entities, such as special districts created by special act of the legislature. As the Port Authority has been created by special act, it is clear that it is not a State agency within the contemplation of the Sunshine Amendment's prohibition.

Accordingly, we find that Article II, Section 8(e) of the Florida Constitution would not prohibit the subject Representative from representing his company or the prime contractor before the Port Authority or the Airport in connection with the request for proposals.

**CEO 89-60—October 26, 1989**

**CONFLICT OF INTEREST**

SPEAKER OF HOUSE OF REPRESENTATIVES SERVING AS CHIEF ADMINISTRATIVE OFFICER OF COMMUNITY COLLEGE

*To: T. K. Wetherell, State Representative, 29th District (Daytona Beach)*

**SUMMARY:**

**The Code of Ethics for Public Officers and Employees would not prohibit the Speaker of the House of Representatives from being employed as the chief administrative officer of a community college. CEO 81-14 and CEO 79-59 are referenced.**

**QUESTION:**

**Does any provision of the Code of Ethics for Public Officers and Employees prohibit you from serving as the Speaker of the Florida House of Representatives while being employed as the chief administrative officer of a community college, if you were to perform your legislative duties while on leave without pay from the community college?**

Your question is answered in the negative.

In your letter of inquiry, you advised that you are a member of the Florida House of Representatives. You inquire whether you may be employed as chief administrative officer of a community college were you to serve as Speaker of the House of Representatives. During the time you would perform your legislative duties, you advise, you would be on leave without pay from your position with the community college.

The only provision of the Code of Ethics for Public Officers and Employees that may be applicable to your question is Section 112.313(7)(a), Florida Statutes, which provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

In connection with this prohibition, Section 112.313(7)(a)2, Florida Statutes, provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Under these provisions of the Code of Ethics, we previously have advised that a member of the Legislature may be employed as an administrator of a State university or community college (CEO 79-59) and that a State Representative may be employed by a State university (CEO 81-14). Similarly, we have advised that the Code of Ethics would not prohibit a State legislator from being employed as executive director of a nonprofit corporation receiving State funds. *See* CEO 85-86

and CEO 82-92. We believe the rationale of these opinions is applicable here, with the result that your employment by a communtiy college would not present a prohibited conflict of interest with your responsibilities as a legislator.

We do not believe that this result should differ because you contemplate serving as Speaker of the House of Representatives. Whether serving as Speaker or in another capacity within the House, your public duties relate to the enactment of legislation affecting the interests of the State, its governmental agencies, and its people. Although your ability to influence the legislative process would increase while serving as Speaker, your responsibility to your constituents and the State as a whole remains identical and therefore, within a conflict of interest context, any conflict would not be magnified by the position you would hold within the Legislature.

Nor do we believe that holding the position of chief administrative officer of a community college necessarily presents a prohibited conflict of interest with the public responsibilities of a legislator or Speaker. We assume that the duties of such a position would not require you to lobby the Legislature in behalf of the community college, as we note the prohibition of Article II, Section 8(e), Florida Constitution, against a legislator personally representing another person or entity for compensation before any State agency other than a judicial tribunal. Under Section 240.319(3)(1), Florida Statutes, each board of trustees of a community college is responsible for determining the compensation and conditions of employment of its personnel. Therefore, it appears that the board of trustees of the college would be responsible for determining whether you may be able to fulfill the responsibilities of the college's chief administrative officer while serving as Speaker of the House of Representatives.

Accordingly, we find that no prohibited conflict of interest would be created were you to serve both as Speaker of the House of Representatives and as chief administrative officer of a community college.

**CEO 90-04—January 24, 1990**

**SUNSHINE AMENDMENT**

FORMER STATE REPRESENTATIVE SERVING
AS GENERAL COUNSEL TO GOVERNOR

*To: Peter M. Dunbar, General Counsel, Office of the Governor (Tallahassee)*

**SUMMARY:**

**The "Sunshine Amendment," in Article II, Section 8(e), Florida Constitution, does not prohibit a former member of the Florida House of Representatives from holding the position of General Counsel to the Governor insofar as his duties require him to review legislation, to advise the Governor on legislative matters, and to supervise members of the Governor's staff who are registered to lobby the Legislature, without requiring him to personally appear before the Legislature. Nor would he be restricted from advising the Governor on any matters upon which the Governor wishes information, requests advice, or seeks an opinion.**

**Based upon CEO 81-57, Article II, Section 8(e), does not prohibit a former legislator from appearing before a committee or subcommittee of the Legislature in his capacity as General Counsel to the Governor when requested to do so by the chairman of the committee or subcommittee where authorized by legislative procedures. Nor would he be prohibited from appearing before an individual member of the Legislature at the member's request in his capacity as General Counsel pertaining to a legislative matter of interest to the Governor, to the extent that he would be providing a bona fide, good faith response to a request for information on a specific subject, not solicited directly or indirectly. Because party membership is legally irrelevant under the terms of Article II, Section 8(e),**

**the answer to this question does not depend on what party controls each House of the Legislature or holds committee or subcommittee chairmanships.**

**Article II, Section 8(e), does not prohibit a former legislator from responding as General Counsel for the Governor to questions and inquiries from members of the media relating to the Governor's positions or policies on matters pending in the Florida Legislature.**

**QUESTION 1:**

**Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the Florida House of Representatives, from holding the position of General Counsel to the Governor, if the duties of the position require you on behalf of the Governor to review and advise him on legislation and to supervise staff members who are registered to lobby, but do not require you to personally appear before the Legislature?**

This question is answered in the negative.

In your letter of inquiry you advise that, as the Governor's General Counsel, you are assigned a wide variety of responsibilities, including administrative and supervisory responsibility for the Governor's Office of Legal Affairs, the Governor's Office for Legislative Affairs, the Office of the Victims' Rights Coordinator, the Crime Prevention Law Enforcement Study Commission, and the Spill Response Task Force. Each of these commissions, offices, and policy units has an executive director or coordinator who is directly under your supervision but who is responsible for the day-to-day activities of that particular unit. It is also your responsibility to advise and counsel with the Governor on all matters under your supervision.

As one of the Governor's Senior Staff members, you often are called upon by members of the media and by others to comment on the Governor's opinions and positions on various matters, including his views with regard to legislation. The lobbying activities for the Governor's Office and for the Departments under the Governor are handled by the respective legislative affairs directors or coordinators, each of whom is a registered lobbyist. You personally have not registered to lobby and do not appear unsolicited before any member of the Legislature or before any legislative committee or subcommittee.

When you are asked to be present at a committee or to come to a legislator's office to respond to issues or questions, you do so. In making such an appearance, you keep a separate log in your office which tracks each request from the legislative member. The log indicates who requested your appearance, the matter upon which you were asked, and the location at which the meeting or hearing took place. You have a general letter from the Speaker of the House, the President of the Senate, and the Republican leaders in both Houses requesting that you make yourself continually available to the members of the House and Senate to give them information and assistance as it relates to the Governor's opinions and recommendations. Notwithstanding these letters, you have not relied on them as the authority for any of your appearances, and an individual request for each occasion is a prerequisite to your appearance.

Our guide in advising you on this and the following five questions is the "Sunshine Amendment" of the Florida Constitution, which provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. [Article II, Section 8(e), Florida Constitution.]

As a former member of the Legislature, you are prohibited by this provision from personally representing another person or entity for compensation before the Legislature for a period of two years following the date on which you left office.

Effective July 6, 1989, this prohibition has been incorporated into the provisions of the Code of Ethics for Public Officers and Employees as Section 112.3141(1)(c), Florida Statutes. See

Chapter 89-380, Section 1, Laws of Florida. As the statutory prohibition merely reiterates the language used in the "Sunshine Amendment," however, we see no reason why the interpretation of the statute would vary from that of the "Sunshine Amendment." Similarly, because the identical language is used in both the Constitution and in the statute, we need not address in this opinion the question of to what extent the statute would be applicable to one who left the Legislature before the effective date of the statute.

We previously have considered only once the question of how Article II, Section 8(e), applies to a legislator who leaves his position in the Legislature for employment with the Executive Branch, in rendering opinion CEO 81-57. There, we concluded that the "Sunshine Amendment" would prohibit a former legislator from accepting employment as a division director of a State department where that employment would require him to engage in lobbying activities before the Legislature in behalf of the division within two years after his leaving the Legislature. However, we also noted that the prohibition is only against "personally" representing another person or entity. On that basis, we found that the former legislator could be employed as division director were the duty of representing the division's interests before the Legislature to be transferred to another person in the department during the two-year period.

Your first question, therefore, was directly addressed in our opinion CEO 81-57. Insofar as your duties as General Counsel to the Governor require you to review legislation, to advise the Governor about legislative matters, and to supervise members of the Governor's staff who are registered to lobby, but do not require you to personally appear before the Legislature, you are not "personally" representing the Governor or the Office of the Governor before the Legislature.

Accordingly, we find that Article II, Section 8(e), Florida Constitution, does not prohibit you from holding the position of General Counsel to the Governor insofar as your duties require you to review legislation, to advise him on legislative matters, and to supervise members of the Governor's staff who are registered to lobby the Legislature, without requiring you to personally appear before the Legislature.

**QUESTION 2:**

> **Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the Florida House of Representatives who is serving as General Counsel to the Governor, from advising the Governor on any matters upon which he wishes information, requests advice, or seeks opinions?**

This question is answered in the negative.

Article II, Section 8(e), prohibits a former legislator from being employed to lobby the Legislature within a two-year period after leaving the Legislature. As we viewed this prohibition in CEO 81-57,

> the provision was intended to prevent influence peddling and the use of public office to create opportunities for personal profit through lobbying once an official leaves office. In the context of the Legislature, the provision seeks to preserve the integrity of the legislative process by ensuring that decisions of members of the Legislature will not be made out of regard for possible employment as lobbyists.

It is clear that the prohibition was not intended to restrict interactions between a former legislator and his new employer, but rather only the interactions between a former legislator and his former colleagues. The nature and scope of the relationship between the former legislator and his employer or client is irrelevant, so long as that relationship does not entail compensation for personally lobbying the Legislature in behalf of the employer or client.

Accordingly, we find that Article II, Section 8(e), does not restrict you from advising the Governor on any matters upon which the Governor wishes information, requests advice, or seeks an opinion.

**QUESTION 3:**

> **Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the Florida House of Representatives who is serving as General Counsel to the Governor, from appearing before a committee or subcommittee of**

**the Legislature when requested to do so by the chairman of the committee or subcommittee?**

This question is answered in the negative.

In CEO 81-57, we also were asked whether the "Sunshine Amendment" would prohibit the former legislator from accepting employment as division director of a State department where that employment would not require him to engage in lobbying activities before the Legislature in behalf of the division, but where he might be requested by the Legislature to appear before a legislative committee or subcommittee as a witness or for informational purposes. We found that such informational appearances at the request of a chairman would not constitute lobbying and would not fall within the intent of the Sunshine Amendment's prohibition, stating:

> Were the provision to be interpreted otherwise it would have the effect of preventing the Legislature from requesting former legislators to appear and present testimony or other information, thus hampering the Legislature in the legitimate exercise of its constitutional responsibilities.

In addition, we noted that Section 11.061, Florida Statutes, requires the registration of non-legislative State employees who seek "to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance" before the Legislature or any committee, but exempts from registration persons who appear before a committee or subcommittee at the request of the committee or subcommittee chairman as a witness or for informational purposes.

Accordingly, based upon CEO 81-57 we find that Article II, Section 8(e), does not prohibit you from appearing before a committee or subcommittee of the Legislature in your capacity as General Counsel to the Governor when requested to do so by the chairman of the committee or subcommittee.

In answering this question, we do not mean to imply that the request to appear before a committee or subcommittee must be by invitation of its chairman. The Legislature clearly possesses the constitutional authority to determine its procedures; this Commission has no authority to decide whether those procedures fall within the scope of the authority granted the Legislature by the Florida Constitution, although we do have the authority to determine whether particular conduct is violative of Article II, Section 8(e). So long as the procedures utilized to request your appearance before a committee or subcommittee are consistent with all applicable provisions of the Florida Constitution, it is our opinion that your appearance in response to such a request would not be prohibited by Article II, Section 8(e). In other words, you have asked whether you may appear at the invitation of a committee or subcommittee chairman, and our response follows from our understanding that it is appropriate for a chairman to do so under existing procedures of both Houses of the Legislature.

**QUESTION 4:**

**Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the Florida House of Representatives, from appearing before an individual member of the Legislature at the member's request?**

To the extent that your appearance before the member would be in your capacity as General Counsel and would pertain to a legislative matter of interest to the Governor, this question is answered in the negative, subject to the limitations discussed below.

As a matter of constitutional interpretation, generally, there are two ways through which it may be concluded that a particular provision of the constitution does not apply in a particular case. The express language of the constitutional provision may not be applicable, for one or more reasons. Alternatively, there may be another provision of the constitution which provides an implied limitation on the scope of the first provision.

In construing Article II, Section 8(e), the express language of the prohibition gives us only seven areas for interpretation. First, was the affected person a "member of the legislature or statewide elected officer"? Second, is that former officer undertaking to "represent" someone or some entity? Third, is the former officer "personally" undertaking such a representation? Fourth, is the former officer representing "another person or entity"? Fifth, is the representation "for

compensation"? Sixth, is the representation "before the government body or agency of which the individual was an officer or member"? Seventh, is the representation occurring within "a period of two years following vacation of office"?

The first, sixth, and seventh criteria clearly are met here. You are a former member of the House of Representatives whose contacts are with members of the Legislature on matters of legislative concern within two years after leaving office. We also conclude that the third criterion is met when you appear in your capacity as General Counsel regarding a legislative matter of interest to the Governor before a member of the Legislature at the member's request. Under the circumstances presented, you would be appearing "personally" rather that through any intermediary.

The fifth element requires that the representation be undertaken "for compensation." Interpreting this phrase, we have advised that the reimbursement of travel, food, and lodging expenses, without more, does not constitute the receipt of "compensation" for purposes of the Sunshine Amendment's prohibition. *See* CEO 80-41, CEO 83-16, and CEO 84-114. However, we do not believe that this phrase allows us to distinguish between persons whose full time employment includes responsibilities for lobbying the Legislature, part-time employees responsible for lobbying the Legislature, and persons who are hired as independent contractors to lobby the Legislature in behalf of one or more clients, as in all of these instances the lobbying activity is performed "for compensation." Were we to interpret this phrase otherwise, we would have to conclude that even private lobbying interests could hire former legislators to lobby for them, so long as they were employees rather than independent contractors. Here, you are compensated as an employee for your responsibilities as General Counsel, so your appearance before an individual legislator in your capacity as General Counsel would be "for compensation."

With respect to the fourth criterion, we are of the opinion that in the present context the Governor (or the Office of the Governor) constitutes "another person or entity" within the contemplation of the Sunshine Amendment. In CEO 81-57 we concluded that the Sunshine Amendment's prohibition includes the representation of both public and private sector entities and that there are substantial reasons for not making such a distinction.

Although we recognize that in representing a governmental entity before the Legislature one ultimately is representing the interests of the people whom that governmental unit represents, we also recognize that public agencies represent a variety of interests, some of which compete with the interests of other public entities for the Legislature's attention. While the cities may want a particular bill to include a specific provision, the counties may not feel that such a provision is in their best interests. Although a local taxing authority may want certain powers included in its special act, the city or county in which the authority is located may have a different preference. These competing, but public, interests are represented before the Legislature, with each seeking the best representation available.

As expressed in Article II, Section 8, the overriding purpose of the Sunshine Amendment is to assure the people's right to secure and substain the public trust exercised by public officials against abuse. We do not believe that the public trust is enhanced by a decision which would permit a legislator to leave the Legislature and set up a lobbying office through which he would personally represent cities, counties, or special taxing districts for a fee. In effect, we would be saying that a former legislator may lobby for whatever compensation he can obtain, so long as he limits his clientele. As noted in CEO 81-57, we believe that there is a market for public sector lobbyists as well as for those who lobby for private sector interests.

Clearly, your position and responsibilities as General Counsel for the Governor are very different from those of a lobbyist in private practice. However, under the criteria provided in the Sunshine Amendment, we do not believe that your situation may be distinguished from that of a former legislator who wishes to open a lobbying firm to represent only governmental agencies, in such a way as to allow you to continuously and personally engage in lobbying activities on behalf of the Governor.

Nevertheless, we are of the opinion that bona fide, good faith responses to requests for information on specific subjects by legislators, not having been solicited directly or indirectly by the former legislator, do not constitute "representation" for purposes of the second criterion noted above. In this respect, we are of the opinion that one is not necessarily "representing" his employer before the Legislature when responding to a specific request for information about that employer from an individual legislator. We are aware that such an interpretation may lead to the potential for abuse, resulting in continuous lobbying activities in the guise of requests for information. However, we believe that the possibility that this interpretation may create a loophole

in the prohibition of the Sunshine Amendment is severely limited by the requirements that such contacts be bona fide, good faith responses, that they pertain to requests for information on a specific subject, and that they not be solicited directly or indirectly by the former legislator.

In deciding whether contact with an individual member constitutes a bona fide, good faith response to an inquiry for information, we will examine all the circumstances surrounding the contact with the legislator. For example, we do not believe that continuously being requested to be available to individual members of the Legislature would constitute a bona fide, good faith response to a request for information on a specific subject. Nor do we believe that stalking the halls of the Legislature in the hope that an inquiry may result would fall within this exception, in contrast to, for example, simply receiving an unsolicited telephone call from a legislator seeking an answer to a particular question.

Similarly, in determining whether a response is bona fide or in good faith, there may be circumstances where it would be appropriate to review the nature of the former legislator's employment which led to the contact with the individual legislator. Although we do not overrule CEO 81-57 and we do not believe that full time employment by a public agency provides sufficient justification to exempt a former legislator's lobbying activities in behalf of that agency, it is possible that the nature of the former legislator's employment could be a factor which would be relevant in determining whether the Sunshine Amendment was violated in a particular case. In other words, we can conceive of circumstances where employment with a public agency more naturally would result in an unsolicited inquiry from a legislator than employment by a private sector entity.

Accordingly, we find that Article II, Section 8(e), does not prohibit you from appearing before an individual member of the Legislature at the member's request in your capacity as General Counsel pertaining to a legislative matter of interest to the Governor, to the extent that you would be providing a bona fide, good faith response to a request for information on a specific subject, not having been solicited directly or indirectly by you.

**QUESTION 5:**

> **Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the Florida House of Representatives who is serving as General Counsel to the Governor, from responding to questions and inquiries from Republican members of the Legislature at times when the Legislature is controlled by a Democratic majority and no Republican members of the Legislature hold any committee or subcommittee chairmanships?**

We are firmly committed to the proposition that ethics in government applies equally to all, regardless of political affiliation. No provision in the "Sunshine Amendment" or in the Code of Ethics contains any reference to political parties, except for Section 112.321(1), Florida Statutes, which seeks to ensure that our decisions are not based on party affiliation by mandating balanced appointments to this Commission according to political party membership. Therefore, as a matter of law, party membership and control of the Legislature or of the Office of Governor must be irrelevant to our decisions.

Accordingly, as this question is essentially identical to your fourth question, above, we find that Article II, Section 8(e), does not prohibit you from responding to questions and inquiries from Republican members of the Legislature at times when the Legislature is controlled by a Democratic majority and no Republican members of the Legislature hold any committee or subcommittee chairmanships, to the extent that your appearance before the member would be in your capacity as General Counsel and would pertain to any legislative matter of interest to the Governor and to the extent that you would be providing a bona fide, good faith response to a request for information on a specific subject, not having been solicited directly or indirectly by you.

**QUESTION 6:**

> **Does Article II, Section 8(e), Florida Constitution, prohibit you, a former member of the Florida House of Representatives who is serving as General Counsel to the Governor, from responding to questions and inquiries by members of the media relating to the Governor's positions or policies on matters pending in the Florida Legislature?**

This question in answered in the negative.

As we noted in our response to your second question, above, the prohibition of the "Sunshine Amendment" is directed at interactions between a former legislator and his former colleagues, rather than at other interactions which he may have as a result of his employment after leaving the Legislature. In responding to inquiries from members of the media about the Governor's legislative policies or positions, your actions would not constitute the personal representation of the Governor or the Office of the Governor before the Legislature.

Accordingly, we find that Article II, Section 8(e), does not prohibit you from responding as General Counsel for the Governor to questions and inquiries from members of the media relating to the Governor's positions or policies on matters pending in the Florida Legislature.

**CEO 90-08—January 24, 1990**

**SUNSHINE AMENDMENT; CONFLICT OF INTEREST; VOTING CONFLICT OF INTEREST**

LEGISLATOR SEEKING EMPLOYMENT AS PRESIDENT AND CEO OF NONPROFIT CORPORATION REPRESENTING INTERESTS OF PRIVATE COLLEGES AND UNIVERSITIES

*To: The Honorable T. K. Wetherell, State Representative, 29th District (Daytona Beach)*

**SUMMARY:**

**Article II, Section 8(e), Florida Constitution, would not prohibit a State Representative from serving as president and CEO of a nonprofit corporation formed to promote private higher education in Florida, where he would not personally represent the corporation before any State agency. No prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, by this contractual relationship based on the corporation's being subject to the regulation of the Legislature. Section 112.313(7)(a)2, Florida Statutes, provides an exemption for conflicts of interest arising from regulatory authority exerted by the Legislature through the enactment of laws. Section 112.313(7)(a) also prohibits any employment which would create a continuing or frequently recurring conflict or impede the full and faithful discharge of public duties. No prohibited conflict of interest would be created under this provision so long as the subject Legislator has no role in the organization's efforts to lobby the Legislature, in addition to not personally engaging in lobbying activities. However, a voting conflict under Section 112.3143(2)(a), Florida Statutes, could exist, requiring the filing of a memorandum of conflict, where a measure under consideration represents a special private gain to the corporation.**

**QUESTION 1:**

**Would the Sunshine Amendment to the Florida Constitution prohibit you, a State Representative, from serving as president of a nonprofit corporation formed to represent the interests of private Florida colleges and universities?**

This question is answered in the negative.

In your letter of inquiry, you advise that you are considering a position as president and chief executive officer of a nonprofit corporation organized to support issues of interest to private colleges and universities in Florida. You also serve as a member of the Florida House of Representatives, where you currently serve as Chairman of the House Appropriations Committee;

additionally, you advise that you will become the Speaker of the House of Representatives. Your proposed employment contract with the private corporation provides that it is not dependent on your representing the corporation before any State agency and will not impose requirements on you which would cause you to violate any statutory or ethical provision, including the requirements of Chapter 112, Florida Statutes, and Article II, Section 8(e), Florida Constitution. Your proposed duties would include management and operation of the corporation, representation of the corporation at all appropriate professional meetings, and service as spokesman for private higher education where it would not conflict with your legislative duties. You advise that under this contract you will be compensated on a fixed basis, which is not conditioned on any specific appropriation or other action of the Legislature. You inquire first whether your acceptance of this position would violate any provision of the Sunshine Amendment to the Florida Constitution.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

In CEO 82-33, we advised that this provision would not be violated were a State Representative to be employed by an insurance company under contract to a State agency, where the subject Representative's duties in the performance of the contract would not involve any contact with the members or staff of the agency. See also CEO 81-12. You advise that your employment contract expressly provides that the president and CEO will not represent the corporation before any State agency. Where any required contact with State agencies is undertaken by other officers or representatives of the corporation, no violation of this provision is indicated. Furthermore, application of this provision would not change were you to hold leadership posts within the Legislature such as chairman of a committee or Speaker.

Accordingly, so long as you do not represent the corporation before State agencies other than judicial tribunals, we find that Article II, Section 8(e), Florida Constitution, does not prohibit you from serving as president and CEO of a nonprofit corporation organized to promote private higher education in Florida while you serve as a member of the Florida House of Representatives.

**QUESTION 2:**

> **Would a prohibited conflict of interest be created under the Code of Ethics for Public Officers and Employees were you to serve as president and CEO of a nonprofit corporation formed to promote private higher education in Florida?**

This question is answered in the negative, subject to the conditions noted below.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes.]

The first part of this provision would prohibit you from being employed by, or having a contractual relationship with, a business entity which is subject to the regulation of the Legislature. You advise that the corporation which is your proposed employer from time to time has interests in matters before the Florida Legislature. Under the circumstances presented, we are of the opinion that the corporation is subject to the regulatory power of the Legislature. However, the Code of Ethics contains the following exemption from this provision for members of legislative bodies:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee shall not be prohibited by this subsection or be deemed a conflict. [Section 112.313(7)(a)2, Florida Statutes.]

In CEO 81-12, this exemption was applied to permit the law firm of a State Representative to represent a city housing authority. The situation you describe also would come within this exemption, where the only regulatory authority of the Legislature over the corporation or its members is through the enactment of laws. As in Question 1, there is no distinction in the exemption based on the office held within the legislative body. Therefore, under the facts presented the application of this exemption would not change were you to serve as either Chairman of the House Appropriations Committee or as Speaker of the House.

Although Section 112.313(7)(a)2, Florida Statutes, exempts from Section 112.313(7)(a) conflicts of interest arising out of a regulatory relationship between your employer and the Legislature, the second part of this prohibition further precludes you from having employment that would create a continuing or frequently recurring conflict of interest or that would impede the full and faithful discharge of your public duties as a Legislator. In this regard, we must consider whether the appearance of representatives of the corporation or its member institutions before the Legislature, or the necessity to act on issues of interest to the corporation, would create this type of conflict.

In CEO 89-29, we considered whether a city commissioner could be employed by an organization that was expected to appear before his agency on a regular basis to advocate its position on a variety of issues. In that opinion, we found that the commissioner's private employment was permissible so long as it did not encompass activities related to lobbying his agency, and we specified the types of activities which we considered to be related to lobbying. We find the rationale of that opinion to be applicable here, prohibiting you from engaging in lobbying activities personally and also in any activities related to lobbying. This would include not only actual contact with legislators through physical attendance at legislative meetings, submission of written materials, and personal contact with legislators in an effort to encourage the passage, defeat, or modification of any measure before the Legislature, as part of your employment responsibilities, but also directing the activities of those who will contact the Legislature, participating in setting the strategies of whom to contact and what to say, and assisting in preparing amendments to documents in support of the corporation's position. In other words, it is our view that your employment with the corporation should be completely separated from the lobbying activities of your employer.

You state in your letter of inquiry that your employment contract at this time is unexecuted and subject to modification and that you are prepared to place additional conditions on the employment should we deem it appropriate. Your draft contract with the corporation specifies that you will not represent the corporation before any State agency or engage in any conduct which would violate Chapter 112, Florida Statutes. We are of the opinion that it would be helpful if the contract would specify the limitations on your involvement in the lobbying activities of the organization using language similar to the above paragraph. This would avoid even the appearance that there is any conflict created between your activities as a legislator and your employment with the corporation. In our view, these restrictions would not preclude your participation in corporate activities leading to a decision to approach the Legislature concerning an issue. However, once such a decision is made, your employment should not include any activities related to accomplishing the goals of the corporation before the Legislature.

Although not raised in your letter of inquiry, you also may wish to consider instances where matters may arise for a vote of the Legislature which could potentially benefit the corporation which employs you. Under Section 112.3143(2)(a), Florida Statutes, a State officer cannot be prohibited from voting in his official capacity on any matter. However, if the measure being voted upon would inure to his special private gain or the special gain of a principal by whom he is retained, the officer is required to file a memorandum of voting conflict.

In CEO 89-19, we advised that no voting conflict of interest would be created were a county commissioner to vote on general measures which affect a large class of persons, though the public utility employing him also might realize an incidental benefit. However, a voting conflict would exist if a measure benefited the utility specially. In CEO 81-12, we advised that whether a measure

inures to the "special" gain of a principal will turn in part on the number of persons who stand to benefit from the measure. Where the class of persons is large, a "special" gain will result only if there are circumstances unique to the principal under which the principal would stand to gain more than the other members of the affected class. See also CEO 77-129.

In applying this restriction to measures which potentially could benefit your proposed employer, a determination would have to be made as to whether a particular measure represented this type of special private gain, as opposed to a more general measure such as a General Appropriations Act which could contain items of interest to the corporation. However, the presence of a special benefit must be evaluated in the context of a specific vote rather than in terms of general proscriptions. Therefore, you may wish to request an additional opinion if you envision a particular bill which may present a potential voting conflict.

Accordingly, subject to the conditions noted above, we find that no prohibited conflict of interest would exist under the Code of Ethics for Public Officers and Employees were you to serve as president and CEO of a corporation formed to represent the interests of private higher education in Florida while you also serve as a member of the House of Representatives.

**CEO 90-10—January 24, 1990**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY HEALTH CARE MANAGEMENT FIRM

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**Neither the Code of Ethics nor Article II, Section 8, of the Florida Constitution prohibits a State Representative who is Chair of the Committee on Finance and Taxation from employment as a sales consultant with a health care management firm. The Representative may prepare proposals on behalf of the health care firm in response to requests for proposals from various hospitals without violating the Code of Ethics, provided that she does not use her position to gain information which is not available to the general public or otherwise misuse her public position in preparing the proposals. Under Section 112.3143(2), Florida Statutes, the Representative should file a memorandum of voting conflict after voting on matters which involve a special private benefit to either her or her employer.**

**QUESTION 1:**

**Does the Code of Ethics for Public Officers and Employees or Article II, Section 8, of the Florida Constitution prohibit you, a State Representative who serves as Chair of the House Committee of Finance and Taxation, from employment as a sales consultant with a health care management firm or from preparing proposals in response to requests for proposals by hospitals on behalf of this firm?**

Your question is answered in the negative.

In your letter of inquiry, you advise that you are a member of the Florida House of Representatives and serve as Chair of the Committee on Finance and Taxation. You have been offered a position as a sales consultant with a health care management firm which contracts with hospitals to provide for the delivery and administration of emergency medical care services. If you were to accept this position with the firm, your responsibilities would involve contacting hospitals throughout the State regarding the services which the firm provides. In addition, your

responsibilities would include certain special assignments, such as working with specific hospitals in the area of trauma center designation or in the establishment of proposed residency programs.

Some of the health care providers which you would contact in this position would be special districts established by special acts of the Legislature. You also anticipate that the firm may wish to respond to requests for proposals (RFP) from hospitals in regard to services provided by the health management firm.

You further advise that it is possible that various proposals to fund trauma care or emergency medical care services may be presented to you in your capacity as Chair of the Finance and Taxation Committee. These proposals usually would involve the imposition of statewide fees or taxes to fund trauma care or emergency medical care, although a proposal could involve a districtwide fee, tax, or levy which would benefit a particular hospital or district. Such a hospital or district conceivably could be a client of the health management firm.

In regard to your employment as a sales consultant with the health management firm, neither Article II, Section 8(e), of the Florida Constitution nor the Code of Ethics for Public Officers and Employees would prohibit you from accepting this position. As we stated in CEO 89-6, Article II, Section 8(e), does not prohibit a State Representative from representing another for compensation before private entities or political subdivisions of the State which are not State agencies. For the same reasons enunciated in CEO 89-6, we believe that hospital districts are not State agencies; therefore the prohibition of Article II, Section 8(e), does not apply. Article II, Section 8(e), would prohibit you, however, from contacting any State agency, such as the Department of Health and Rehabilitative Services, on behalf of either your employer or any hospital contracting with your employer.

The provision of the Code of Ethics applicable to potentially conflicting employment, Section 112.313(7)(a), Florida Statutes, would not prohibit you from working for the firm, as Section 112.313(7)(a)(2) exempts from the prohibitions of this Section members of legislative bodies which exercise their regulatory authority merely through the enactment of laws. See CEO 89-6. As you are a member of a legislative body which regulates hospital districts and business entities only through the enactment of laws, your proposed employment would be exempted from any potential prohibition under Section 112.313(7)(a).

Based on the above rationale, it does not appear that the Code of Ethics or Article II, Section 8, of the Florida Constitution would prohibit you from participating in the development of a response to a request for proposals regarding emergency medical care delivery and administrative services to health care providers as part of the duties of your position with the health care firm. Since the hospital districts are not State agencies, Article II, Section 8(e) would not prohibit you from participating in developing the responses to requests for proposals with private and local government entities. See CEO 89-6.

As a caveat, we direct your attention to the following provisions of the Code of Ethics:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s.104.31. [Section 112.313(6), Florida Statutes.]
>
> DISCLOSURE OR USE OF CERTAIN INFORMATION.—No public officer or employee of an agency shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity. [Section 112.313(8), Florida Statutes.]

These provisions would prohibit you from using your official position to gain access to information regarding hospital districts which would not be available to the general public, and from otherwise using your official position in a manner inconsistent with the proper performance of your public duties in order to assist your employer in the preparation of a proposal. In order to avoid even the appearance of favoritism, we suggest that you continue scrupulously to separate your public role from your private employment in your contacts with public and private entities which may be affected by legislation.

Accordingly, we find that neither Article II, Section 8(e), Florida Constitution, nor the Code of Ethics for Public Officers and Employees would prohibit you from employment as a sales consultant with the health care management firm or from preparing proposals on behalf of the firm.

**QUESTION 2:**

> **If you were to accept employment with the health care management firm, would you be prohibited from voting on general legislation providing funding for emergency medical care delivery and administrative services or on special legislation which would provide funding to a specific hospital district?**

In regard to your voting on general legislation which would provide funding for emergency medical care delivery and administrative services, Section 112.3143(2)(a), Florida Statutes, states:

> Except as provided in subsection (3), no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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.

This statutory provision does not prohibit you from voting on any measure. If a measure should involve a special private gain to either you or the health care management firm which employs you, however, you would need to disclose that fact by filing a memorandum of voting conflict with the Clerk of the House within 15 days following the vote. We have promulgated CE Form 8A, Memorandum of Voting Conflict, which may be used in making this disclosure.

As a general rule, a measure which affects all hospitals or hospital districts equally, whether or not they contract with your employer, probably would not require you to file a memorandum of voting conflict. If the measure involves only a specific hospital or group of hospitals, all of which contract with your employer, and the funding measure would affect your employer's contract with the hospital or hospitals, then you may need to file such a memorandum. See, generally, CEO 81-12, Question 3. In addition, if a measure involves a hospital or hospitals which have no contract with your employer, but the measure would assist you in obtaining a contract with that or those hospitals, then you may be required to file a memorandum of voting conflict. The question of whether or not you will need to file this memorandum is better addressed in the context of the specifics of a particular vote, since the facts and circumstances surrounding each measure may differ. Therefore, we suggest that if you are in doubt as to whether you may need to file a memorandum of conflict in regard to a particular vote, you contact our staff for guidance or seek a further opinion.

Accordingly, we find that you are not prohibited from voting on general or special legislation which would provide funding for emergency medical care delivery and administrative services and that you need not file a memorandum of voting conflict unless you vote upon a measure which involves a special private gain to you or to the health care management firm which would employ you.

**CEO 90-23—March 8, 1990**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY CITY AS
EXECUTIVE DIRECTOR OF SPORTS AND CONVENTION AUTHORITY

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**Section 112.313(7)(a), Florida Statutes, would not be violated if a State Representative were to be employed by a city as the executive director of the sports and convention authority. Although Section 112.313(7)(a) prohibits an official from having a contractual relationship with an entity regulated by his agency, Section 112.313(7)(a)2 states that when the officer's agency is a legislative body whose regulation over the entity is strictly through the enactment of laws, the contractual or employment relationship shall not be deemed a conflict. In addition, although Article II, Section 8(e), Florida Constitution, prohibits a state representative from personally lobbying the Legislature or representing someone before State agencies, it does not appear that the executive director would be involved in these activities. CEO 90-10 is referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to accept a position with a city as the Executive Director of the Sports and Convention Authority?**

Your question is answered in the negative.

In your letter of inquiry, you advise that you have been asked to consider appointment by the Miami City Commission to the position of Executive Director of the Sports and Convention Authority, which is a paid position with the City. The Sports and Convention Authority promotes sports and attempts to arrange for sporting events to occur in the Miami area. For example, the Authority has long term plans to attract a baseball team to the area, is considering the possibility of building a baseball stadium, and promotes the Miami arena and Orange Bowl in an attempt to get different sporting events in these locations.

In regard to your question, Section 112.313(7)(a), Florida Statutes, provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee. . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

In addition, Section 112.313(7)(a)2, Florida Statutes, states:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Although Section 112.313(7)(a) prohibits contractual relationships with agencies which are subject to the regulation of the officer's agency, Section 112.313(7)(a)2 states that when the officer's agency is a legislative body and the regulation it exercises is through the enactment of laws, the employment relationship shall not be deemed a conflict. Therefore, Section 112.313(7)(a) would not appear to prohibit your employment by the City. See CEO 90-8 and CEO 90-10.

In addition, Article II, Section 8(e), Florida Constitution, prohibits a member of the Legislature from personally representing an entity for compensation before any State agency other than judicial tribunals. This constitutional provision also prohibits you from lobbying the Legislature until two years following your vacation from office, even when lobbying in behalf of a public employer. See CEO 90-4. Therefore, you clearly would be prohibited from lobbying the Legislature on behalf of the City or representing the City before State agencies. You have not indicated, however, that your duties as Executive Director would involve this type of activity.

We note that Article II, Section 5(a), Florida Constitution, prohibits dual-office holding. However, as we lack the authority to issue opinions regarding Article II, Section 5(a), such opinions must be sought from the Attorney General.

We also bring to your attention Section 112.3143(2)(a), Florida Statutes, which provides:

> Except as provided in subsection (3), no public officer is prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his 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.

If you vote on any measure which inures to the special private gain of your employer, you will need to disclose the nature of your interest in the manner required by this Section.

Accordingly, based on the information you have provided, we find that the Code of Ethics for Public Officers and Employees would not be violated by your proposed employment as Executive Director of the Sports and Convention Authority.

**CEO 90-59—September 7, 1990**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE OWNING CONSTRUCTION COMPANY
PARTICIPATING IN CITY AND COUNTY AFFORDABLE HOUSING PROGRAMS

*To: (Name withheld at person's request.)*

**SUMMARY:**

**No prohibited conflict of interest would be created under the Code of Ethics for Public Officers and Employees were a State Representative to be the majority stockholder of a company that builds residential housing and participates in affordable housing programs operated by a city and a county. CEO 77-6, CEO 78-39, CEO 82-33, and CEO 87-47 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created were you, a State Representative, to be the majority stockholder in a company that builds residential housing and participates in affordable housing programs operated by a city and a county?**

Your question is answered in the negative.

In your letter of inquiry you advise that you serve as a member of the Florida House of Representatives. You also advise that you are the majority stockholder in a company that builds residential housing and is participating in an affordable housing program operated by the community development department of a city in your district. The county also is developing such a program; you expect to participate in that program, as well.

You advise that any person or developer may participate in the programs if they meet the criteria. Funding comes from the city or county, with possible supplements from federal funds. In addition, the city and county may receive some State funding from time to time.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes.]

This provision prohibits a public officer from having a contractual relationship with a business entity or an agency that is subject to the regulation of his agency. However, as we have noted in several opinions, Section 112.313(7)(a)2 provides that when the agency is a legislative body and the regulatory power exercised by that body is strictly through the enactment of laws, then the contractual relationship is not prohibited.

In past opinions, we have concluded that a State Representative may have employment or a contractual relationship with a business entity or agency where the authority of the Legislature is expressed through the enactment of laws. For example, in CEO 77-6, we found no conflict where a legislator was a consultant to a family business that performed work for governmental agencies. Similarly, in CEO 87-47, we advised that a State Representative would not be prohibited from being an investor, officer, and director in a corporation that did business with school districts, colleges, and universities. See also CEO 82-33 and CEO 78-39.

Accordingly, we find that no prohibited conflict of interest would be created were you, a State Representative, to be the majority stockholder in a company that builds residential housing and participates in affordable housing programs operated by a city and a county.

**CEO 90-72—October 23, 1990**

**GIFT DISCLOSURE**

APPLICABILITY OF GIFT DISCLOSURE LAW
TO TRIPS PROVIDED TO AN ELECTED OFFICIAL

*To: The Honorable Tom C. Brown, State Senator, District 10 (Daytona Beach)*

**SUMMARY:**

**An elected public officer is required by Section 112.3148, Florida Statutes, to disclose the gift of a trip paid for by others in whole or in part and related to his public service, the value of which exceeds $100, unless paid for by his or another governmental agency. Any trip received by the officer that is related to his public service and is paid for in whole or in part by a person or entity other than a governmental agency, the value of which exceeds $100, should be disclosed, regardless of whether the officer has provided any services as a quid pro quo for the trip.**

**QUESTION:**

**Are you, a State Senator, required to disclose the gift of a trip paid for by others in whole or in part, the value of which exceeds $100?**

Your question is answered in the affirmative, subject to the exceptions noted below.

The Code of Ethics for Public Officers and Employees contains two types of provisions concerning gifts to public officials—prohibitions against accepting gifts under certain circumstances and disclosure requirements for those gifts that can be accepted. The prohibitions appear in Section 112.313(2), Florida Statutes, which prohibits the solicitation or acceptance of anything of value based upon any understanding that the official action of the public officer would be influenced, and in Section 112.313(4), Florida Statutes, which prohibits the acceptance of any compensation, payment, or thing of value when the official knows, or with the exercise of reasonable care should know, that it was given to influence an official action in which he was expected to participate. In addition, it appears that Section 112.313(6), Florida Statutes, which prohibits the corrupt use of official position to secure a special benefit for oneself or another, would prohibit the use of an official's public position to solicit gifts for the official. As your question concerns disclosure only, however, we will assume that none of these prohibitions would be applicable.

Gift disclosure by elected public officers and certain appointed officers is governed by the following provision:

> Each elected public officer and each appointed public officer who is required by law, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of his financial interests shall file a statement containing a list of all contributions received by him or on his behalf, if any, and expenditures from, or disposition made of, such contributions by such officer which are not otherwise required to be reported by chapter 106, with the names and addresses of persons making such contributions or receiving payment or distribution from such contributions and the dates thereof. The statement shall be sworn to by the elected public officer as being a true, accurate, and total listing of all of such contributions and expenditures. [Section 112.3148(2)(a), Florida Statutes.]

For purposes of this disclosure requirement, the term "contribution" is defined as follows:

> 'Contribution' means any gift, donation, or payment of money the value of which is in excess of $100 to any public officer or to any other person on the public officer's behalf. Any payment in excess of $100 to a dinner, barbecue, fish fry, or other such event shall likewise be deemed a 'contribution.' However, a gift representing an expression of sympathy and having no material benefit or a bona fide gift to the officeholder by a relative within the third degree of consanguinity for the personal use of the officeholder shall not be deemed a 'contribution.' This section does not apply to complimentary parking privileges bestowed upon a legislator by an airport authority, or to honorary memberships in social, service, or fraternal organizations presented to an elected public officer merely as a courtesy by such organizations. [Section 112.3148(1)(c), Florida Statutes.]

Until 1989 these disclosure requirements had been adopted by the Legislature as Section 111.011, Florida Statutes. Therefore, in order to answer your inquiry it is appropriate to review the history and interpretations of the gift disclosure laws applicable to elected officials.

In 1975, the Legislature adopted the limited financial disclosure law that appears in Section 112.3145, Florida Statutes. Section 112.3145(3)(d) required officials subject to the law, including all State and local elected officers, to list all persons, business entities, or other organizations from whom they received a gift or gifts from one source, the total of which exceeded $100 in value during the disclosure period (the previous calendar year). "Gifts disclosed pursuant to s. 111.011" were not required to be listed.

At that time, Section 111.011, Florida Statutes, required elected officials semi-annually to file a sworn statement listing all "contributions" received by them or on their behalf, with the names and addresses of persons making such contributions and the dates thereof. The term "contribution" was defined in that section to mean "any gift, donation, or payment of money the value of which is in excess of $25 to any elected public officer or to any other person on his behalf." The statute provided that it was to be liberally construed so as to require full financial disclosure of all receipts of contributions received by public officers during their terms of office and that it was cumulative to the other provisions of Part III of Chapter 112. Knowing and willful failure to comply with the disclosure law was made a second degree misdemeanor.

In 1976, reporting under Section 111.011 was changed to an annual basis. Also in 1976, the Legislature amended the Code of Ethics in Chapter 112 to define the term "gift" restrictively, to include only real property or tangible or intangible personal property. As so amended, the limited disclosure law in Chapter 112 clearly was intended not to require the reporting of services provided to officials gratuitously. We subsequently recognized this in our opinions CEO 78-40 (free legal representation not a "gift"), CEO 78-41 (transportation to football games by private plane not a "gift"), and CEO 85-50 (ground transportation not a "gift," although meals and tangible mementoes would constitute gifts).

The following year, 1977, the Sunshine Amendment (Article II, Section 8, Florida Constitution) went into effect, requiring elected constitutional officers to file full and public financial disclosure. However, that constitutional provision did not include any requirements for gift disclosure.

Until 1982, officials who filed full financial disclosure under the Sunshine Amendment also were required to file the limited statement of financial interests under Section 112.3145. In that year, Section 112.3144 was added in order to eliminate the filing of two different financial disclosure statements. As a result, elected constitutional officers who filed full disclosure were no longer required to file the limited disclosure statement; their only gift disclosure was that required by Section 111.011.

In 1983 the gift disclosure requirement of Section 112.3145, no longer applicable to elected constitutional officers, was amended to exempt "gifts required to be disclosed pursuant to s. 111.011." In 1988, the $25 reporting threshold under Section 111.011 was increased to $100, matching the reporting threshold for persons required to file the limited disclosure statement.

Effective July 6, 1989, the Legislature repealed Section 111.011, adopting in its stead Section 112.3148, Florida Statutes. See Chapter 89-380, Laws of Florida. Section 112.3148 uses language identical to that of Section 111.011 in requiring elected officials to file a sworn statement listing all "contributions" received by them or on their behalf, with the names and addresses of persons making such contributions and the dates thereof. The term "contribution" also is defined identically. The new section still provides that it is to be liberally construed so as to require full financial disclosure of all receipts of contributions received by public officers during their terms of

office and that it is cumulative to the other provisions of Part III of Chapter 112. See Section 112.3148(4), Florida Statutes.

There are three significant changes between the language of Section 111.011 and the language of Section 112.3148, none of which are relevant to your inquiry. First, the number of public officers required to file under the law was increased, by requiring persons elected to district offices to file and by requiring appointed officers subject to filing full and public disclosure to file the gift disclosure statement. See Section 112.3148(1)(a) and (2) (a), Florida Statutes. Secondly, the second degree misdemeanor penalty was deleted, making a violation of the new section punishable in the same manner as any other violation of the Code of Ethics. See former Section 111.011(4), Florida Statutes. Thirdly, persons who give contributions to elected public officers were required to provide the officer with informational statements about those contributions by February 28th following the year in which the contribution was given. See Section 112.3148(3), Florida Statutes.

As there do not appear to have been any judicial decisions construing former Section 111.011, the only precedent is a series of opinions of the Attorney General. In AGO 74-167 the Attorney General advised that gratuitous hotel accommodations, meals, and transportation had to be reported when their value exceeded $25, stating:

> In view of the apparent purpose of the statute—to compel disclosure of all gifts and donations which might tend to influence an elected public officer—I have no doubt that it includes all gifts and donations of a value in excess of twenty-five dollars, irrespective of their form, including such items as hotel or room accommodations, meals, and transportation furnished gratuitously to an elected public officer.

However, the Attorney General's opinion notes, when accommodations, meals, or transportation were furnished to an official who had been invited to appear and speak before an audience, those types of expenditures were not reportable because they are not considered to be gratuitous. (In AGO 73-386 the Attorney General had advised that payments to public officials for speech honoraria, being a quid pro quo instead of a gratuitous payment, did not have to be reported.)

In AGO 75-82, the Attorney General advised that the reasonable value of office space and utilities provided gratuitously to a legislator for use as a district legislative office should be reported as a contribution. Although noting the argument that such contributions ultimately would inure to the benefit of the State, because a legislator's expenses for office space and utilities would be reimbursable by the State, the Attorney General replied that "such is the case with many lodging and transportation services furnished gratuitously to elected public officials." Subsequently, AGO 75-121 advised that office space furnished to a legislator by a county under the authority of a special act did not have to be reported as a "contribution," on the ground that the purpose of the disclosure law—to compel disclosure of all gifts and donations which might tend to influence an elected public officer—would not be served by disclosure.

AGO 75-151 advised that where hunting privileges and the right to build and use a hunting camp on the land of another are provided gratuitously to an elected public officer, such privileges and use of land should be reported as a contribution. In reaching that decision, the Attorney General emphasized the apparent purpose of the statute and his earlier conclusion that all gifts and donations of a value exceeding $25 should be reported, irrespective of their form.

As construed for 14 years by the Attorney General, the gift disclosure law required the reporting of trips provided to an elected public officer, including accommodations, meals, and transportation, when their value exceeded the statutory threshold. The identical operative language was transferred to Section 112.3148. We acknowledge that the term "gift" is defined restrictively in Section 112.312(9), Florida Statutes. However, the law requires the disclosure of "any gift, donation, or payment of money . . . to any public officer or to any other person on the public officer's behalf," not merely the disclosure of any "gift." "Donation" has been defined as "1. The act of giving something to a fund or cause. 2. A gift or grant; contribution." [*The American Heritage Dictionary*, 2d College Ed. (1985).] As it is commonly understood that services may be donated to a fund or cause, it appears that a trip, paid for by another, would constitute a "donation." In addition, "contributions" to be disclosed include payments to any other person on the public officer's behalf. Where a trip is provided to a public officer, the entity providing the trip will be making payments to others for lodging, meals, and transportation in behalf of the officer.

Our research of the legislative history of Chapter 89-380 (CS/SB 132, 140, and 150) has disclosed no evidence of any intent on the part of the Legislature to restrict the interpretation or

applicability of the law at the time of its transfer. Moreover, the present law continues to expressly state:

> This section shall be liberally construed so as to require full financial disclosure of all receipts and expenditures by public officers of contributions received by them during their terms of office. This section is cumulative to other provisions of this part. [Section 112.3148(4), Florida Statutes.]

Particularly in light of this statement of legislative intent, we see no reason to conclude that the present gift disclosure law should be interpreted more restrictively than its predecessor.

As noted above, AGO 75-121 advised that office space furnished to a legislator by a county under the authority of a special act did not have to be reported as a "contribution," on the ground that the purpose of the disclosure law—to compel disclosure of all gifts and donations which might tend to influence an elected public officer—would not be served by disclosure. We are of the opinion that trips paid for by a governmental agency, whether the public officer's agency or another, need not be reported. In addition, given that the purpose of this law is to compel disclosure of contributions that might tend to influence an official, we conclude that trips that are not related to the official's public service also need not be reported.

By "related to the official's public service," we do not mean to exclude, for example, trips paid for by a lobbyist during which no legislative business is discussed. Rather, we believe that the emphasis of the law is on requiring the disclosure of trips that are provided to an official because of his public service. A trip paid for by a person who has or anticipates having business before the official's agency should be disclosed, as such a trip would be related to his public service in the sense of having been provided to him because of his public service. To the extent that the same trips were not paid for by the lobbyist before the offical took office, such a trip would be related to the official's public service. On the other hand, trips paid for by the official's private employer solely in connection with the duties of his private employment or trips paid for by a personal friend who has no conceivable business before the official's agency would not be reportable, as they would not be related to the official's public service.

In our view, the disclosure of trips provided to an official, with the exceptions described above, eliminates the problems inherent in having to weigh the comparative values of any quid pro quo that may have been given by the official. Further, the disclosure of these trips serves the purpose of the disclosure law by allowing the people to evaluate the nature and extent of trips which might tend to influence their public officials.

Accordingly, we find that, as an elected public officer, you are required to disclose each trip that is paid for by others in whole or in part and is related to your public service, the value of which exceeds $100, unless the trip is paid for by a governmental agency.

**CEO 90-73—October 23, 1990**

**GIFT DISCLOSURE**

APPLICABILITY OF GIFT DISCLOSURE LAW
TO TRIPS OF AN ELECTED OFFICIAL

*To: The Honorable Norman Ostrau, State Representative, District 96 (Plantation)*

**SUMMARY:**

**An elected public officer is required by Section 112.3148, Florida Statutes, to disclose any trip valued at over $100 that is paid for in whole or in part by another if the trip is related to his public service, unless the trip is paid for by his or another governmental agency. Therefore, a trip taken by the official that serves a public purpose should be reported if the expenses for the trip are paid by a private entity; if paid for by the official's agency or by another governmental entity, the**

**trip need not be reported. Where the official takes a trip at the expense of another but with the agreement that he later will make reimbursement for the full cost of the trip, the trip should be reported if its value is over $100, it is paid for by a private entity, and it is related to his public service. The statute also requires the official to disclose the share of his expenses on a trip paid by another where he and the other person have agreed to split the cost of the trip in approximately equal portions, with each paying for different costs incurred by both as part of the trip, if the expenses of the trip paid by the other person on the official's behalf exceed the $100 threshold and if they are related to his public service. However, for example, if the official is taking the trip with a personal friend who has no conceivable business before the official's agency, the portion of his expenses paid for by his friend would not be reportable, as they would not be related to his public service.**

**QUESTION 1:**

**Are you, a State Representative, required under Section 112.3148, Florida Statutes, to disclose a trip, the value of which exceeds $100, where there is a public purpose served by your going on the trip and where the expenses of the trip are paid by the Legislature, by another governmental entity, or by a private entity?**

The Code of Ethics for Public Officers and Employees contains two types of provisions concerning gifts to public officials—prohibitions against accepting gifts under certain circumstances and disclosure requirements for those gifts that can be accepted. The prohibitions appear in Section 112.313(2), Florida Statutes, which prohibits the solicitation or acceptance of anything of value based upon any understanding that the official action of the public officer would be influenced, and in Section 112.313(4), Florida Statutes, which prohibits the acceptance of any compensation, payment, or thing of value when the official knows, or with the exercise of reasonable care should know, that it was given to influence an official action in which he was expected to participate. In addition, it appears that Section 112.313(6), Florida Statutes, which prohibits the corrupt use of official position to secure a special benefit for oneself or another, would prohibit the use of an official's public position to solicit gifts for the official. As your questions concern disclosure only, however, we will assume that none of these prohibitions would be applicable.

Gift disclosure by elected public officers and certain appointed officers is governed by the following provision:

> Each elected public officer and each appointed public officer who is required by law, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of his financial interests shall file a statement containing a list of all contributions received by him or on his behalf, if any, and expenditures from, or disposition made of, such contributions by such officer which are not otherwise required to be reported by chapter 106, with the names and addresses of persons making such contributions or receiving payment or distribution from such contributions and the dates thereof. The statement shall be sworn to by the elected public officer as being a true, accurate, and total listing of all of such contributions and expenditures. [Section 112.3148(2)(a), Florida Statutes.]

For purposes of this disclosure requirement, the term "contribution" is defined as follows:

> 'Contribution' means any gift, donation, or payment of money the value of which is in excess of $100 to any public officer or to any other person on the public officer's behalf. Any payment in excess of $100 to a dinner, barbecue, fish fry, or other such event shall likewise be deemed a 'contribution.' However, a gift representing an expression of sympathy and having no material benefit or a bona fide gift to the officeholder by a relative within the third degree of consanguinity for the personal use

of the officeholder shall not be deemed a 'contribution.' This section does not apply to complimentary parking privileges bestowed upon a legislator by an airport authority, or to honorary memberships in social, service, or fraternal organizations presented to an elected public officer merely as a courtesy by such organizations.

In another opinion adopted this day, we have concluded that any trip, the value of which exceeds $100, that is paid for in whole or in part by another and that is related to an official's public service must be disclosed unless the trip is paid for by the official's or another governmental agency. Therefore, any trip which you have taken or will take that is paid by the Legislature or by another governmental entity need not be disclosed. With respect to trips that are paid for by a private entity, the most significant question is not whether there is a public purpose served by your going on the trip, but rather is whether the trip is related to your public service.

By "related to your public service," we explained in the other opinion, we do not mean to exclude, for example, trips paid for by a lobbyist during which no legislative business is discussed. Rather, we indicated, the emphasis of the law is on requiring the disclosure of trips that are provided to an official because of his public service. Therefore, a trip paid for by a person who has or anticipates having business before the Legislature should be disclosed, as such a trip would be related to your public service in the sense of having been provided to you because of your public service. To the extent that the same trips were not paid for by the lobbyist before you took office, such a trip would be related to your public service. On the other hand, trips paid for by your private employer solely in connection with the duties of your private employment or trips paid for by a personal friend who has no conceivable business before the Legislature would not be reportable, as they would not be related to your public service.

As this question addresses trips you may take for which a public purpose would be served by your going on the trip, it appears that such trips would be related to your public service and therefore should be reported if paid for by a private entity; if paid for by the Legislature or by another governmental entity, the trip need not be reported. Your question is answered accordingly.

**QUESTION 2:**

**Are you required under Section 112.3148, Florida Statutes, to make any disclosure where you reimburse the provider of a trip for the cost of the trip at a later date?**

In your letter of inquiry you question whether and to what extent disclosure should be made if you reimburse the provider of a trip at a later date. Particularly, you ask whether the use of the provider's money interest free for the period of time until reimbursement is made should be considered a gift and, if so, how should such a gift be valued? You also inquire about what would be considered a reasonable time for reimbursement.

Having concluded that for purposes of Section 112.3148 any trip paid for by a governmental entity need not be disclosed, we find that if you take a trip that is paid for by a governmental agency you need not report the trip, regardless of whether you reimburse the agency for your expenses. If the trip is paid for by a private entity and is related to your public service, as described in our response to your first question, the trip should be reported, even if you make reimbursement for the full cost of the trip. If the trip is not related to your public service, it need not be reported.

In the past, we have advised that nothing in the disclosure laws prohibits a public official from adding an explanatory note on the disclosure form in order to assure that the information reported is complete, accurate, and not misleading. Section 112.3148(2)(a) requires the disclosure of expenditures from or the disposition made of contributions received by the public officer, including the names and addresses of persons receiving payment or distribution from such contributions and the dates thereof. Although the terms of this disclosure requirement would not be applicable to reimbursement of the cost of a trip (unless reimbursement were made out of funds received as a "contribution" under the statute), we are of the opinion that it would be entirely appropriate to note on the disclosure form the fact that you had reimbursed the provider of the trip for its cost and the date of reimbursement.

Accordingly, we find that where you take a trip at the expense of another, even with the agreement that you will make reimbursement for the full cost of the trip, the trip should be reported if it is related to your public service and if it is not paid for by a governmental entity.

**QUESTION 3:**

**Are you required under Section 112.3148, Florida Statutes, to disclose the share of your expenses on a trip paid by another where you and the other person have agreed to split the cost of the trip in approximately equal portions, with each paying for different costs incurred by both as part of the trip?**

You further question whether and to what extent disclosure should be made if you go on a trip with another person and the cost of the trip is split, with each paying approximately an equal portion. You provide as an example a situation where you go on a hunting trip with another individual with each of you paying your own air fare, but you pay for the rental car and lodging while the other person pays for meals, the cost of hunting licenses, ammunition, etc., so that each of you pays approxomately an equal portion of the trip. Under these circumstances, you ask whether you must report as a gift your share of those expenses paid by the other person.

Again, as we have concluded that for purposes of Section 112.3148 any trip paid for by a private person or entity and related to your public service should be disclosed and that any quid pro quo you may provide for the trip is irrelevant to the disclosure issue, it follows that expenses of the trip paid by the other person on your behalf should be reported if they exceed the $100 threshold and if they are related to your public service. As explained in our response to your first question, if you are taking the trip with a personal friend who has no conceivable business before the Legislature, the portion of your expenses paid for by your friend would not be reportable, as they would not be related to your public service. As we advised with respect to your second question, we are of the opinion that if the trip is reportable it would be entirely appropriate to note on the disclosure form the fact that you had paid an equal share of the expenses of the trip for the other person while on the trip.

Accordingly, we find that you are required under Section 112.3148, Florida Statutes, to disclose the share of your expenses on a trip paid by another where you and the other person have agreed to split the cost of the trip in approximately equal portions, with each paying for different costs incurred by both as part of the trip, only if the expenses paid for by the other person are related to your public service and exceed $100. Otherwise, the expenses need not be disclosed.

**CEO 91-01—January 30, 1991**

**CONFLICT OF INTEREST**

STATE SENATOR EMPLOYED AS CONSULTANT
FOR LEGISLATIVE AND EDUCATIONAL ACTIVITIES
OF ASSOCIATION LOBBYING LEGISLATURE

*To: The Honorable William G. Myers, State Senator, District 27 (Stuart)*

**SUMMARY:**

**A State Senator is prohibited by Section 112.313(7), Florida Statutes, from contracting with a professional association that lobbies the Legislature to speak to its professional groups regarding legislative issues, to contribute articles on legislative issues to the association's publications, and to advise its executive committee and board of governors regarding legislative and political education activities of the association. Such employment would create a continuing or frequently recurring conflict of interest or impede the full and faithful discharge of**

**public duties, as the content of his advice and presentations will be derived from information gained by virtue of his public position and will relate to issues upon which he will be called to act.**

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees prohibit you, a State Senator, from contracting with a professional association that lobbies the Legislature to speak to its professional groups regarding legislative issues, to contribute articles on legislative issues to the association's publications, and to advise its executive committee and board of governors regarding legislative and political education activities of the association?**

Your question is answered in the affirmative.

In your letter of inquiry you advise that you have been asked to work for a professional association which lobbies the Legislature in an effort to enhance its legislative and political education activities. Your duties would involve the following.

First, you would assist the association in legislative and political education projects; this primarily would involve educational presentations to groups requesting speakers through the association. You advise that, as an experienced legislator, you would share your legislative insights and experiences in the political process before these groups in a purely educational role. You would not advocate for the association, but rather would discuss primarily legislative issues in a purely informative manner.

Secondly, you would contribute to the publication of at least two articles per year (before and after the legislative session) for the association's publications. These would be on legislative issues related to the profession to educate the readership about the session and its outcome.

Thirdly, you would serve from time to time upon request as a liaison with component groups of the association and other organizations of the profession, primarily as an educational lecturer to those groups.

Finally, you would serve in an advisory capacity to the association's executive committee and board of governors upon request regarding legislative and political education activities of the association. Essentially, you would be providing the committee and board insight and advice regarding the political process. However, your role would cease once a decision were made, since none of the activities of your proposed employment would encompass lobbying activities on behalf of the association, directing the actions of association staff or others in regard to contacting the Legislature on specific issues, or otherwise accomplishing the association's goals before the Legislature.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes.]

This provision prohibits a public officer from having employment or a contractual relationship that will create a continuing and frequently recurring conflict between his private interests and his public duties, or that would impede the full and faithful discharge of his public duties.

This prohibition "establishes an objective standard which requires an examination of the nature and the extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which 'tempts dishonor.'" *Zerweck v. State Commission on Ethics*, 409 So.2d 57, 61

(Fla. 4th DCA 1982). Thus, under this law our concern must lie with whether the public official's employment creates a situation that would "tempt dishonor," rather than with whether the official is capable of withstanding that temptation and performing his official duties with integrity.

We recognize that all employers in this state are affected by the laws enacted by the Legislature. Further, we recognize that some employers contribute to and join organizations which seek to represent their common interests before the Legislature. Still other employers, including many public agencies, professional associations, and large corporations, maintain a lobbying presence at each legislative session in order to advance their interests. As the members of our Legislature are expected to serve as citizen-legislators on a part-time basis and must be employed elsewhere to support themselves and their families, each of these situations presents the potential for conflicts of interest.

We have concluded that Section 112.313(7)(a) does not prohibit a legislator from having any employment whatsoever with an organization that engages in lobbying the Legislature. In such an instance, we have examined the nature and duties of the legislator's employment to determine whether that employment would present a prohibited conflict of interest.

In CEO 90-8, we found that a State Representative could be employed as executive director of an organization founded to support issues of interest to private colleges and universities in the State, so long as his duties as an employee of the organization did not involve personally engaging in lobbying activities and did not encompass any activities related to lobbying. There, the Representative's proposed duties included managing and operating the organization, representing the organization at professional meetings, and serving as a spokesman for private higher education to the extent that it would not conflict with his legislative duties. We concluded that restricting the Representative's involvement in his employer's lobbying activities would not preclude him from participating in activities leading to the employer's decision to approach the Legislature concerning an issue, but that once such a decision were made, his employment should not include any activities related to accomplishing the goals of his employer before the Legislature. We repeat our view that a legislator's employment should be completely separated from the lobbying activities of his employer to avoid a violation of Section 112.313(7)(a).

Unlike the employment duties involved in CEO 90-8, however, the subject matter of your proposed employment arises out of your public position and relates directly to issues that may be expected to come before you in your official capacity. Although you advise that you will not participate in the lobbying activities of the association, the content of your advice and presentations will be derived from information gained by virtue of your public position and will relate to issues upon which you will be called to act. Under these circumstances, we are of the opinion that your proposed employment with the association would present a continuing or frequently recurring conflict of interest and would impede the full and faithful discharge of your public duties.

In our view, this conclusion is buttressed by the policies underlying several other provisions of the Code of Ethics. Section 112.313(8), Florida Statutes, is directed at prohibiting public officials from using information gained by reason of their public positions and not available to the general public for their personal gain or benefit. Section 112.313(6), Florida Statutes, prohibits a public official from using his official position to secure a special privilege or benefit for himself. Section 112.313(4), Florida Statutes, is intended to prohibit a public officer from accepting any compensation when there is reason to know that it is being given to influence his official action. Although we do not conclude that your proposed employment would violate any of these provisions, we note that the proposed employment relates to and involves information gained from your public service. Further, we note that you were approached by the association because of your public position; the proposed agreement with the association is addressed to you in your official capacity and expressly states that your "expertise and experience as a member of the Florida Legislature will serve to greatly enhance" the association's goal of enhancing its legislative and political education activities. Finally, although it appears clear that this employment is being offered in part because of your professional background and experience, the association's offer makes it equally clear that your public position is an influential factor in the offer.

We are of the opinion that the official duties of a legislator legitimately include efforts to educate groups of citizens on legislative policy issues affecting them, whether these issues arise from past legislative sessions or may be expected to occur in the future. There is certainly nothing inconsistent with the proper performance of legislative duties when a legislator meets with professional organizations and associations about legislative issues of interest to them. Moreover, where the legislator agrees with the positions espoused by the group as being the best public policy for his constituents and the State as a whole, there is nothing improper about the legislator's

discussing upcoming lobbying priorities and strategies with the group. All these activities are properly part of politics and leadership in a representative form of government.

The Code of Ethics makes it clear that a public officer is not to gain personally from activities related to his official position:

> It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts exist. [Section 112.311(1), Florida Statutes.]

Accordingly, we find that a prohibited conflict of interest would be created under the Code of Ethics for Public Officers and Employees were you to accept the proposed contract with the professional association.

**CEO 91-08—January 30, 1991**

**CONFLICT OF INTEREST**

STATE REPRESENTATIVE PRINCIPAL OF CORPORATION
DEVELOPING COUNTY DETENTION FACILITIES

*To: The Honorable R. Z. Safley, State Representative, District 50 (Palm Harbor)*

**SUMMARY:**

> **No prohibited conflict of interest exists under the Code of Ethics for Public Officers and Employees where a State Representative is an officer and shareholder of a corporation that is engaged in the business of developing detention facilities that would be operated and managed by the sheriff or the chief correctional officer of a county. Under Section 112.313(7)(a)2, Florida Statutes, when the official's agency is a legislative body and the regulatory power exercised by that body is strictly through the enactment of laws, then employment or contractual relationships with agencies or business entities that may be regulated by the legislative body are not prohibited. As the Representative will not represent the corporation before the Department of Corrections, the prohibitions of Article II, Section 8(e), Florida Constitution, and Section 112.3141(1)(c), Florida Statutes, against representing another person or entity for compensation before State agencies other than judicial tribunals, would not be violated.**

**QUESTION:**

> **Does a prohibited conflict of interest exist where you, a State Representative, are an officer and shareholder of a corporation that is engaged in the business of developing detention facilities that would be operated and managed by the sheriff or the chief correctional officer of a county?**

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives; among other committee assignments, you serve as a member of the House Corrections Committee and its Prison Construction and Operations Subcommittee. You also advise that you are an officer and a shareholder of a corporation that is engaged in the business of

developing detention facilities that would be operated and managed by the sheriff or the chief correctional officer of a county and that would be made available for use by federal agencies.

It is expected that the federal agencies would pay a per diem rate to the corporation for each federal prisoner housed in the facility. The corporation in turn would pay a per diem to the sheriff or the county for the management of the facility, retaining a portion of the federal payments to amortize the costs of constructing the facility. A certain number of beds within the facility would be available for use by the sheriff or the county. Title to the facility would be transferred to the county in approximately 10 years.

You advise that county detention facilities are subject to the regulation and oversight of the State Department of Corrections, pursuant to Section 951.23, Florida Statutes. The Department is authorized to adopt and enforce rules that prescribe minimum standards and requirements for the construction, maintenance, and operation of county detention facilities and has done so through Chapter 33-8, Florida Administrative Code.

You will not represent the corporation before the Department regarding the facilities to be developed, you advise, although other employees of the firm may have such contacts. You do anticipate having numerous contacts with representatives of the Department regarding legislative issues pending before the Corrections Committee, and you expect that legislation may come before the Committee that will address Section 951.23 in the general sense of being applicable to all county detention facilities.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes.]

This provision prohibits a public officer from having employment or a contractual relationship with a business entity or an agency that is subject to the regulation of his agency. However, as we have noted in several opinions, Section 112.313(7)(a)2 provides that when the agency is a legislative body and the regulatory power exercised by that body is strictly through the enactment of laws, then the employment or contractual relationship is not prohibited.

Under these provisions, we have concluded that a State Representative, who was serving as Chairman of the House Subcommittee on Prison Overcrowding, could be employed as a consultant by a corporation in the business of constructing and managing correctional facilities in order to assist the corporation in locating sites for facilities and making the necessary contacts with city and county governments. See CEO 84-21. In CEO 87-47 we advised that a State Representative who chaired the Appropriations Education Subcommittee would not be prohibited from investing in a portable classroom building company which would do business with public schools, community colleges, and universities. In CEO 88-15, we advised that the Chairman of the House Committee on Corrections, Probation, and Parole could serve on an advisory board to a corporation that was involved in contractual prison projects with the Department of Corrections.

In each of these instances, we found that the pertinent regulatory authority of the Legislature was expressed through the enactment of laws. Similarly, here, the regulatory authority of the Legislature regarding correctional facilities has been exercised through the enactment of laws, and the exemption for legislative bodies provided in Section 112.313(7)(a)2 is applicable.

You have advised that you will not be representing the corporation before the Department of Corrections. Therefore, the requirements of Article II, Section 8(e), Florida Constitution, and Section 112.3141(1)(c), Florida Statutes, which prohibit legislators from representing another person or entity for compensation before State agencies other than judicial tribunals, will be met. Finally, for general information regarding voting conflicts of interest, we direct your attention to CEO 87-24 (State Representative on Committee on Regulated Industries and Licensing owning liquor license and voting on legislation relating to liquor industry).

Accordingly, we find that no prohibited conflict of interest exists where you, a State Representative, are an officer and shareholder of a corporation that is engaged in the business of

developing detention facilities that would be operated and managed by the sheriff or the chief correctional officer of a county.

**CEO 91-09—January 30, 1991**

**GIFT DISCLOSURE**

REQUIREMENT THAT DONOR PROVIDE STATEMENT
OF GIFTS GIVEN TO PUBLIC OFFICIAL

*To: Mark Herron, Attorney (Tallahassee)*

**SUMMARY:**

**A person who has given a gift exceeding $100 to an elected public officer during 1990 is required to provide a statement describing the gift, its value, and the donor by February 28, 1991, as provided in Section 112.3148(3), Florida Statutes (1989). Although Section 112.3148 was substantially amended by Chapter 90-502, Laws of Florida (effective January 1, 1991), Section 20 of that act operates as a saving clause with respect to the donor's statement required by Section 112.3148(3), as well as with respect to the gift disclosure statements that would have been required for 1990 gifts had not Chapter 90-502 been adopted.**

**QUESTION:**

**Must a person who has given a gift exceeding $100 to an elected public officer during 1990 provide a statement describing the gift, its value, and the donor by February 28, 1991, as provided in Section 112.3148(3), Florida Statutes (1989)?**

Your question is answered in the affirmative.

Section 112.3148, Florida Statutes (1989), contains the gift disclosure requirements applicable to elected public officers and certain other officers. Section 112.3148(3) provides:

> Every person who gives a contribution to an elected public officer or to any other person on the elected public officer's behalf shall, on or before February 28 of the year following the giving of the contribution, provide the elected public officer with a statement indicating the name of the person giving the contribution, the person's address, a description of the contribution and the monetary value of the contribution.

Pursuant to Chapter 89-380, Section 4, Laws of Florida, as amended by Chapter 89-537, Section 2, Laws of Florida, this subsection was to take effect January 1, 1991.

In the meantime, however, during special session in 1990 the Legislature adopted Chapter 90-502, Laws of Florida, which became law on January 1, 1991. This Chapter substantially rewrote Section 112.3148 and did not retain the language quoted above. If this were the extent of the relevant language in Chapter 90-502, we could end our inquiry at this point and conclude that the law requiring donors' statements to be provided by February 28, 1991 was superseded by Chapter 90-502 and never went into effect. As you have observed, the issue is not that clear.

Section 20 of Chapter 90-502 provides:

> This act applies to all gifts, honoraria, or honorarium expenses received or paid on or after January 1, 1991, unless received pursuant to an agreement entered into prior to that date, in which event the law in effect at the time the agreement was entered into

> shall apply. Any report that is required with respect to a contribution given before January 1, 1991, must be made according to the requirements applicable thereto.

As we understand this provision, any gift (or "contribution," as defined under the previous law) that was received during 1990 will be treated in accordance with the law in effect prior to January 1, 1991 as if that law had not been repealed or substantially altered. Similarly, any gift that will be received after January 1, 1991, pursuant to an agreement entered into prior to that date, will be treated in accordance with the law in effect prior to January 1, 1991. Any other gifts, honoraria, or honorarium expenses received or paid on or after January 1, 1991, will be governed by the provisions of Chapter 90-502.

Pursuant to the language quoted above, any "report" that would have been required regarding a contribution given before January 1, 1991, still must be made. Although the document to be provided by a person who gave a gift to an elected public officer was designated as a "statement" under Section 112.3148(3), we do not find this difference in terminology to be significant. Even the "contribution" disclosure that was required under Section 112.3148(2) was designated as a "statement." Nor do we see any other indication in the language of Chapter 90-502 to wholly repeal the requirement of a donor's statement regarding gifts given in 1990.

In our view, the express language of Section 20 operates as a saving clause with respect to the donor's statement required by Section 112.3148(3), as well as with respect to the gift disclosure statements that would have been required had not Chapter 90-502 been adopted. It does not constitute the revival of a repealed statute by implication, which is prohibited by Section 2.04, Florida Statutes (a statute which has been repealed by a second statute is not revived by the passage of a third statute that repeals the second statute, absent express language to that effect in the third statute), because there has been no third statute applicable here.

Accordingly, we find that a person who has given a gift exceeding $100 to an elected public officer during 1990 is required to provide a statement describing the gift, its value, and the donor by February 28, 1991, as provided in Section 112.3148(3), Florida Statutes (1989).

**CEO 91-14—March 7, 1991**

**GIFT DISCLOSURE**

DISCLOSURE OF USE OF BILLBOARD PROVIDED
TO STATE REPRESENTATIVE TO ADVERTISE DISTRICT OFFICE

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**A State Representative is required to disclose as a gift on Commission on Ethics Form 7 the free use of billboard space provided by a national, outdoor advertising company on which is placed a sign informing citizens that their State Representative is available to help with their questions or concerns. Under Chapter 90-502, Laws of Florida, any gift that was received during 1990 will be treated in accordance with the law in effect prior to January 1, 1991. Also, any gift received after January 1, 1991, pursuant to an agreement entered into prior to that date, as is the case here, will be treated in accordance with the law in effect prior to January 1, 1991.**

**Section 112.3148, Florida Statutes (1989), contains the law applicable before January 1, 1991. As the donation of billboard space by the advertising company would be related to the Representative's public service, it should be reported on Form 7 for each period of time when the value of having the sign on a billboard at**

**a particular location exceeded $100, based upon the rate normally charged by the company for its billboard space.**

**QUESTION:**

**Are you, a State Representative, required to disclose as a gift the free use of billboard space provided by a national, outdoor advertising company on which is placed a sign informing citizens that their State Representative is available to help with their questions or concerns?**

In your letter of inquiry and a telephone conversation with our staff, you have advised that you serve as a member of the Florida House of Representatives. You also have advised that in 1990 a national, outdoor advertising company offered to run a non-political public service announcement for your district office on a space available basis (in other words, on its unbought or unused spaces) if you would pay for the sign to be painted. When the space on the billboard where your sign was located would be sold, the sign would be moved to a vacant location until that space was sold, and so forth. Your office paid for the painting of a sign informing citizens that their State Representative is available to help with questions or concerns, and the company placed it at one billboard location. During the last half of 1990, the sign was taken down and placed at a second location, where it currently remains.

You advise that this practice has increased activity in your office, as constituents call in more frequently to get answers to questions or to ask for help with a problem. The advertising company is not registered as being represented before the Legislature, you advise, and the company has not lobbied you within the preceding 12 months. You question whether the use of the billboard space should be disclosed as a gift, as this is a service directly related to your office and not to you, personally.

Due to the recent revisions of the gift law by the Legislature at the end of 1990, the law applicable to your question depends on when the use of the billboards was offered and provided. Chapter 90-502, Laws of Florida, which became law on January 1, 1991, substantially revises State law regarding gifts. Section 20 of the act provides:

> This act applies to all gifts, honoraria, or honorarium expenses received or paid on or after January 1, 1991, unless received pursuant to an agreement entered into prior to that date, in which event the law in effect at the time the agreement was entered into shall apply. Any report that is required with respect to a contribution given before January 1, 1991, must be made according to the requirements applicable thereto.

Under this "grandfather" provision, any gift (or "contribution," as defined under the previous law) that was received during 1990 will be treated in accordance with the law in effect prior to January 1, 1991. Similarly, any gift that will be received after January 1, 1991, pursuant to an agreement entered into prior to that date, will be treated in accordance with the law in effect prior to January 1, 1991. Any other gifts, honoraria, or honorarium expenses received or paid on or after January 1, 1991, will be governed by the provisions of Chapter 90-502.

Therefore, the use of billboard space during 1990 will be treated in accordance with the law in effect prior to January 1, 1991. As it appears that any use of the company's billboard space for your district office sign will be pursuant to an agreement entered into prior to that date, the use of this space after January 1, 1991, also will be treated in accordance with the law in effect prior to January 1, 1991, and we need not consider the impact of the new gift law. However, because the company's offer involves advertising the services of your public office, we are of the opinion that the current agreement would be grandfathered in only during your present term of office. If you are reelected and the company repeats its offer for the use of billboard space, we suggest that you seek another opinion under the law in effect at that time.

Section 112.3148, Florida Statutes (1989), contains the law applicable before January 1, 1991. It requires gifts ("contribution" is the operative term used in the statute) received during 1990 to be disclosed on Commission on Ethics Form 7 no later than July 1, 1991. Gifts received during 1991 pursuant to an agreement made before January 1, 1991, should be disclosed on Form 7 no later than July 1, 1992.

Section 112.3148 (2)(a) (1989) requires the official to "file a statement containing a list of all contributions received by him or on his behalf . . . ." The term "contribution" is defined in Section 112.3148 (1)(c) to mean "any gift, donation, or payment of money the value of which is in excess of $100 to any public officer or to any other person on the public officer's behalf."

In opinion CEO 90-72, we advised that Section 112.3148 (1989) requires the disclosure of a trip provided to an official because of his public service, such as a trip paid for by a person who has or anticipates having business before the official's agency. However, we noted, given that the purpose of the law is to compel disclosure of contributions that might tend to influence an official, we concluded that trips that are not related to the official's public service need not be reported.

In CEO 90-73 (question 1), we advised that a State Representative should disclose a trip exceeding $100 in value that is paid for by a private entity, where there is a public purpose served by the Representative's going on the trip. We noted that a trip paid for by a person who has or anticipates having business before the Legislature should be disclosed, as such a trip would be related to the Representative's public service in the sense of having been provided to him because of his public service. As the question involved trips for which a public purpose would be served by the Representative's attendance, we concluded that the trips would be related to his public service and therefore should be reported.

Similarly, we conclude here that the donation of billboard space by the advertising company would be related to your public service. As you have indicated, the use of billboard space is directly related to your office.

Accordingly, we find that the donation of billboard space should be reported on Form 7 for each period of time when the value of having your sign on a billboard at a particular location exceeded $100. As there should be an ascertainable rate normally charged by the company for its billboard space, that rate should be used to calculate the value of the space.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 7, 1991, and RENDERED this 11th day of March, 1991.

**CEO 91-39—July 19, 1991**

**GIFT DISCLOSURE**

DISCLOSURE OF USE OF BILLBOARD PROVIDED
TO STATE REPRESENTATIVE TO ADVERTISE DISTRICT OFFICE

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**A State Representative is not prohibited under the gift law from accepting the free use of billboard space provided by an outdoor advertising company on which is placed a sign informing citizens that their State Representative is available to help with their questions or concerns. The use of billboard space offered in 1991 is governed by Chapter 90-502, as amended by Chapter 91-292. Because the advertising company offering the billboard is not a political committee, a committee of continuous existence, a lobbyist, or the partner, firm, employer, or principal of a lobbyist, the offer and use may be accepted.**

**Membership in an association employing a lobbyist does not make the member the principal of the lobbyist unless the member exercises substantial control over the operations and the policies of the association. The offer of use of the billboard does not come within the Section 112.312(9)(b)1, Florida Statutes, exception to the definition of reportable "gift" since that section is intended to apply to the recipient's private or personal employment or business and not to his**

**or her public service. As a gift, the acceptance of billboard space should be reported on Form 9.**

**QUESTION:**

**Are you, a State Representative, prohibited from accepting the free use of billboard space provided by an outdoor advertising company as a gift on which is placed a sign informing citizens that their State Representative is available to help with their questions or concerns?**

In your letter of inquiry and a telephone conversation with our staff, you have advised that you serve as a member of the Florida House of Representatives. You also have advised that an outdoor advertising company offered to run a nonpolitical public service announcement for your district office on a space available basis (in other words, on its unbought or unused spaces). You advise that at such time as the space on the billboard where your sign is located is sold, the sign would be moved to a vacant location until that space is sold. You also advise that the unsold boards are valued at $100 per board per month during political races.

You relate that the advertising company is not itself registered as being represented before the Legislature; however, the industry does have a lobbyist. You question whether you may accept the billboard space as a gift and, if so, whether it is reportable on your gift disclosure form.

As we noted in CEO 91-14, due to the recent revisions of the gift law by the Legislature at the end of 1990, the law applicable to your question depends on when the use of the billboards was offered and when it was or is provided. Chapter 90-502, Laws of Florida, which became law on January 1, 1991, substantially revised State law regarding gifts. Section 20 of the act provides:

> This act applies to all gifts, honoraria, or honorarium expenses received or paid on or after January 1, 1991, unless received pursuant to an agreement entered into prior to that date, in which event the law in effect at the time the agreement was entered into shall apply. Any report that is required with respect to a contribution given before January 1, 1991, must be made according to the requirements applicable thereto.

Under this "grandfather" provision, any gift (or "contribution," as defined under the previous law) that was received during 1990 will be treated in accordance with the law in effect prior to January 1, 1991. Similarly, a gift received after January 1, 1991, but pursuant to an agreement entered into prior to that date, will be treated in accordance with the law in effect prior to January 1, 1991. Our opinion as to the use of billboard space during 1990, as well as the use of billboard space pursuant to an agreement entered into before January 1, 1991, is set forth in CEO 91-14. Any other gifts, honoraria, or honorarium expenses received or paid on or after January 1, 1991, will be governed by the provisions of Chapter 90-502, as amended by Chapter 91-292.

Under Chapter 90-502, as amended, the use of billboard space would constitute a "gift," as it would be considered a service having an attributable value. A "gift" is defined in Chapter 90-502, as amended by section 3 of Chapter 91-292, Laws of Florida, as follows:

> (a) "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:
>
> 1. Real property.
> 2. The use of real property.
> 3. Tangible or intangible personal property.
> 4. The use of tangible or intangible personal property.
> 5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex or national origin.

6. Forgiveness of an indebtedness.
7. Transportation, lodging, or parking.
8. Food or beverage, other than that consumed at a single sitting or event.
9. Membership dues.
10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
11. Plants, flowers, or floral arrangements.
12. Services provided by persons pursuant to a professional license or certificate.
13. Other personal services for which a fee is normally charged by the person providing the services.
14. Any other similar service or thing having an attributable value not already provided for in this section.

(b) "Gift" does not include:

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the recipient's employment or business.
2. Contributions or expenditures reported pursuant to chapter 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.
3. An honorarium or an expense related to an honorarium event paid to a person or his spouse.
4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.
5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
6. Food or beverage consumed at a single sitting or event.
7. The use of a public facility or public property, made available by a governmental agency, for a public purpose.

(c) For the purposes of paragraph (a), "intangible personal property" means property as defined in s.192.001(11)(b).

The use of the billboard does not come within the Section 112.312(9)(b)1 exception to the definition of "gift." We find that that section was intended to apply to the recipient's private or personal employment or business and not to his or her public service. Nor do we find that the offer of free use of advertising space as a public service is a prohibited gift pursuant to Section 112.3148(4), which provides:

> A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s.106.011, or from 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 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 a 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.

Because the advertising company is not a political committee, a committee of continuous existence, a lobbyist, or the partner, firm, employer, or principal of a lobbyist, you may accept the gift even if it has a value in excess of $100. If its value exceeded $100 during a calendar quarter, the gift should be disclosed by the end of the following calendar quarter on Commission on Ethics Form 9, Quarterly Gift Disclosure. We also find that membership by an entity in an association generally does not make the entity the principal of a lobbyist who lobbies for the association, even though that entity's interests are being represented by the lobbyist, unless the entity exercises substantial control over the operations and the policies of the association. We caution that this may not be the result where there is such a substantial identity between the entity and the association as to make the one the alter ego of the other.

Under the new gift law, the general rules for valuing a gift are as follows:

> The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is provided shall be used . . . . Except as otherwise specified in this section, a gift shall be valued on a per occurrence basis. [Section 112.3148(7)(a) and (i), Florida Statutes, as amended by Chapter 90-502, Section 8, Laws of Florida.]

In our view, the gift you receive from the advertising company does not constitute "personal services provided by the donor," as what you receive is not simply an act done personally by an individual for your benefit. Although the company obviously provides the labor involved in putting up and taking down your sign from the billboard, you also receive the use of the billboard during the period of time when the sign is located there. We are of the opinion, however, that in order to value the gift on a per occurrence basis, each occurrence would be the period of time during which the sign was displayed at a particular billboard location. Therefore, the value of the gift should be determined based upon the actual cost to the advertising company of putting up the sign, of keeping it there for the period of time it is up, and of taking it down.

Accordingly, the donation of billboard space in 1991 and thereafter is a gift that should be reported on Form 9 for each period of time, during which the value of the use of that billboard at that particular location exceeded $100, based upon the cost to the advertising company. If the advertising company removes the sign during 1991 or thereafter and re-erects it at a new location, the use of the billboard space at the new location during 1991 and thereafter would constitute a "gift" to be disclosed on Form 9 by the end of the calendar quarter following any calendar quarter during which its value exceeded $100, based upon the cost to the advertising company.

**CEO 91-53—September 13, 1991**

**GIFT DISCLOSURE**

LEGISLATIVE DELEGATION RECEIVING
TELEPHONE SERVICE FROM COUNTY

*To: The Honorable Ron Glickman, Chairman, Hillsborough County Legislative Delegation (Tampa)*

**SUMMARY:**

**Telephone service and equipment provided by Hillsborough County to members of the local legislative delegation for a public purpose and used in their District offices constitutes a "gift" as defined by Section 112.312(9)(a), Florida Statutes, and amended by Chapter 90-502, Laws of Florida. Although Section 112.3148(4) prohibits the acceptance of gifts valued in excess of $100 from principals of lobbyists who lobby the reporting individual's agency, and where three individuals are registered as legislative lobbyists on behalf of Hillsborough County, Section 112.3148(6)(b) would permit the acceptance of the gift from the County because a public purpose can be shown for the gift. As a gift, the telephone service and equipment must be reported by each member of the delegation annually, under Section 112.3148(6)(d).**

**QUESTION:**

**Is the telephone service and equipment that Hillsborough County provides to members of the Hillsborough County legislative delegation a gift which must be reported pursuant to Section 112.3148, Florida Statutes?**

Your question is answered in the affirmative.

In your letter of inquiry you advise that Hillsborough County has provided telephone service and equipment to members of the legislative delegation from that county for over 20 years. With the enactment of Chapter 90-502, Laws of Florida, which substantially changed gift acceptance and reporting requirements for public officers and certain employees in the State of Florida, you wish to fully comply with the requirements imposed by law. You advise that the County has provided the legislators with telephone lines and equipment, including installation and change orders, and that the State pays for the costs of any calls made on the Suncom long-distance telephone network. You further advise that the costs for telephone service and equipment are eligible to be paid from the intradistrict expense money that the Legislature provides each member, and that the State, not the member personally, would pay the expense if the County did not provide it. Finally, it is your view that this service provides the legislators with immediate access to state and county telephone networks, enhances the legislators' ability to communicate with their constituents and vice versa, and clearly serves a public purpose. You believe that this benefit accrues to the State because it provides Hillsborough legislators with the flexibility to use the intradistrict allowance for other office expenses. Each member of your delegation questions whether this service is, in fact, a gift which must be disclosed pursuant to the Code of Ethics for Public Officers and Employees.

Section 112.312(9), Florida Statutes, as amended by Chapter 90-502, Laws of Florida, provides in relevant part:

> 'Gift,' for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:
>
> 3. Tangible or intangible personal property.
> 4. The use of tangible or intangible personal property.
> 13. Other personal services for which a fee is normally charged by the person providing the services.
> 14. Any other similar service or thing having an attributable value not already provided for in this section.

We are of the view that the telephone equipment and services which are given to each member of the legislative delegation by Hillsborough County would come under the definition of a "gift" as provided above. The question then becomes one of whether the gift can be accepted by members of the delegation, who are "reporting individuals" as defined by Section 112.3148(2)(d), Florida Statutes.

Section 112.3148(4), Florida Statutes, provides:

> A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from 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 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 provision prohibits a reporting individual from accepting a gift valued in excess of $100 from a lobbyist who lobbies the reporting individual's agency or from a principal of such a lobbyist. We are advised that three individuals who lobby the Legislature on behalf of Hillsborough County are registered with the Legislative Lobbyist Registration program administered by the Joint Legislative Management Committee. Although it could be argued that the telephone service and equipment are accepted by the legislators on behalf of the State since the State would pay for the equipment

and service if the County did not provide it, Section 112.3148(4) does not really address this situation as it would require the legislators only to maintain custody of the equipment and service until it could be transferred to the State. However, Section 112.3148(6)(b), Florida Statutes, provides in relevant part:

> Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of $100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, or a school board if a public purpose can be shown for the gift; . . . .

The need for the public to be able to communicate by telephone with elected State officials is clear, as is the need for legislators to be able to communicate with their constituents and other public officials. We are therefore of the view that a public purpose is served by the provision of telephone equipment and services by Hillsborough County to members of the local legislative delegation, and the "gift" may be accepted by the members of the delegation.

In valuing the gift for purposes of reporting it, we assume that the County pays for telephone service and equipment on a monthly basis. Therefore, each month of service would constitute a separate gift and should be valued by the County on a monthly basis. Pursuant to Section 112.3148(6)(c), Florida Statutes, the County would be required to itemize the gifts it has provided to each legislator and their costs and provide each member of the delegation with a statement by March 1st of each year. Where a month's service is valued at less than $100, it would not have to be reported by either the County or the legislator. The legislator then would report the receipt of such gifts by July 1 for the previous calendar year, as provided in Section 112.3148(6)(d).

Your question is answered accordingly.

**CEO 91-54—September 13, 1991**

**SUNSHINE AMENDMENT**

STATE REPRESENTATIVE OR LAW FIRM PARTNER
REPRESENTING CLIENTS BEFORE STATE AGENCIES

**SUMMARY:**

**The Sunshine Amendment (Article II, Section 8(e), Florida Constitution) and Section 112.3141(c), Florida Statutes, prohibit a legislator from personally representing a client before State agencies other than judicial tribunals. Aside from this restriction, a legislator would be permitted to personally represent a client for compensation where the client was suing the State agency before a judicial tribunal, but the legislator would be prohibited from representing the client before a State agency in administrative proceedings pursuant to Chapter 120, Florida Statutes. The partner of the legislator would be permitted to represent the client before State agencies in either judicial or administrative forums. Water management districts are considered to be local agencies, and thus the legislator would be permitted to personally represent a client before a water management district in either judicial or administrative proceedings. The opinion references CEO 84-6, CEO 83-25, CEO 81-12, CEO 78-2, CEO 77-168, CEO 77-46, and CEO 77-22.**

**QUESTION:**

**Does Article II, Section 8(e), Florida Constitution, prohibit you, a State Representative and attorney, from suing State agencies on behalf of clients of your law firm?**

Your question is answered in the negative, subject to the conditions noted below.

In your letter of inquiry you advise that you are a member of the Florida House of Representatives and an attorney. You question whether you would be permitted under the Sunshine Amendment and the Code of Ethics for Public Officers and Employees to sue a State agency on behalf of a client of your law firm. You also question whether your partner may represent a client in a legal action against a State agency. You further advise that prospective agencies include the Department of Natural Resources, the Department of Environmental Regulation, a water management district, and possibly other State agencies under the control of the executive branch or Governor and Cabinet. Finally, you question whether you may represent a client in an administrative proceeding where you challenge agency action pursuant to Chapter 120, Florida Statutes.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

This portion of the "Sunshine Amendment" also has been implemented through substantially similar language in Section 112.3141(1)(c), Florida Statutes.

A number of opinions have interpreted the Sunshine Amendment in the context of legislators/attorneys representing clients before government agencies. In CEO 84-6, we opined that this provision would not be violated were a State Representative to personally participate as an attorney in litigation and settlement negotiations against the State. However, in CEO 78-2, we opined that the language of Article II, Section 8(e), Florida Constitution, did not permit a legislator to personally represent as an attorney a client in formal administrative proceedings against a State agency pursuant to Chapter 120, Florida Statutes. See also CEO 81-12. Based upon the foregoing, it is our opinion that the Sunshine Amendment and Section 112.3141(1)(c), Florida Statutes, would permit you to personally represent as an attorney clients who are suing State agencies in judicial tribunals, but that you would not be able to personally represent for compensation clients who seek to challenge agency action pursuant to Chapter 120, Florida Statutes.

With regard to the agencies before which you may represent clients, you have advised that included may be the Department of Natural Resources, the Department of Environmental Regulation, a water management district, and possibly other State agencies under the control of the executive branch or Governor and Cabinet. With the exception of water management districts, all of the foregoing agencies are State agencies. Although there are no opinions directly on point which discuss whether a legislator may personally represent a client before a water management district, we previously have determined that the governing board members of the State's five water management districts are "local officers" for purposes of financial disclosure requirements. See CEO 77-46. Additionally, we have determined that legislators may personally represent clients before other agencies which would not be considered to be State-level agencies. See CEO 77-22, concerning a legislator representing a client before a county commission, and CEO 83-25, where a legislator represented a client before a county water authority. Therefore, we believe that the Sunshine Amendment and Section 112.3141(1)(c), Florida Statutes, would not prohibit you from personally representing clients before a water management district, as a water management district is not considered to be a State agency.

Concerning whether your partner could represent clients before State agencies, the Commission has previously determined that the Sunshine Amendment does not prohibit the partners or law firms of legislators from personally representing clients before state agencies. See CEO 77-168, where we advised that a legislator could not personally represent a client suing the State under the Environmental Protection Act of 1971, but that Article II, Section 8(e), Florida Constitution, did not prohibit a partner or other counsel associated with the legislator/attorney from

representing a client where the legislator was prohibited from doing so. Our opinion in CEO 81-12 is also relevant to this issue.

Accordingly, you may personally represent clients in litigation involving State agencies where the proceedings are before judicial tribunals, but you may not represent clients before State agencies in administrative proceedings. Water management districts are considered to be local agencies and therefore not subject to this restriction. There would be no prohibition against your partner representing clients before State agencies in either judicial or administrative proceedings.

**CEO 91-57—October 25, 1991**

**GIFT DISCLOSURE**

DISCLOSURE OF LEGISLATOR'S TRIPS
PAID FOR BY VARIOUS OTHER ENTITIES

*To: The Honorable Art Simon, State Representative, District 116 (Miami)*

**SUMMARY:**

**Under Sections 112.3148 and 112.3149, Florida Statutes, a legislator should disclose on the quarterly gift disclosure form as a gift a trip he took to participate in an official series of conferences on NATO and the European Community, where his airfare was provided by a business publication, and where NATO provided room, board, and intercity transportation in Europe. With regard to a speaking engagement in New Orleans, his airfare, registration, and hotel room need not be disclosed as expenses related to an honorarium event because the organization paying the expenses is not a lobbyist or the principal of a lobbyist. Where the legislator represented the State on an official trade mission to Brazil, and where the Florida Department of Commerce paid for the legislator's travel expenses, the trip would constitute a gift from a department of the executive branch which had a public purpose, which he could accept but must disclose on his annual gift disclosure form for the applicable reporting period.**

**QUESTION 1:**

**Whether participation in an official conference sponsored by NATO, the European Community, and the U.S. State Department, where the costs of the trip were paid for by a business publication and NATO, is a gift or honorarium expense which must be disclosed pursuant to Chapter 112, Part III, Florida Statutes?**

Your question is answered in the affirmative as their being a gift.

In your letter of inquiry, you advise that you were selected to participate in an official series of conferences on NATO and the European Community (EC), which took place in Brussels at NATO and EC Headquarters as well as at governmental offices and foreign embassies in other European cities. You further advise that the program was sponsored by NATO in conjunction with the EC and U.S. State Department. You advise that you were selected as a participant by the Southern Center for International Studies, a nonprofit educational institution located in Atlanta, Georgia, upon the recommendation of the editor of the *International Business Chronicle*. You also advise that the *International Business Chronicle* (IBC) provided round-trip air transportation between Miami and London for yourself and the editor of the publication and that IBC obtained the tickets free of charge from the airline. Your other expenses, namely room and board and intercity transportation in Europe, were provided by NATO. You relate that the trip provided a benefit in that you had an opportunity to learn about social, political, economic, and military trends in Europe and the potential for expansion of investment and trade between the EC and Florida. The trip also

provided you with an opportunity to meet and interact with representatives from other southern states on issues pertaining to international trade and commerce in the southeastern United States. Finally, you relate that none of the foregoing was solicited by you, and you question whether this was a gift or constitutes expenses related to an honorarium event.

Section 112.312(9)(a), Florida Statutes, provides in relevant part:

> "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:
>
> 7. Transportation, lodging, or parking.
>
> 8. Food or beverage, other than that consumed at a single sitting or event.
>
> 14. Any other similar service or thing having an attributable value not already provided for in this section.
>
> "Gift" does not include:
>
> 3. An honorarium or an expense related to an honorarium event paid to a person or his spouse.
>
> 6. Food or beverage consumed at a single sitting or event.

With regards to honoraria, Section 112.3149, Florida Statutes, provides:

> Solicitation and disclosure of honoraria.—
>
> (1) As used in this section:
>
> (a) 'Honorarium' means a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his behalf, as consideration for:
>
> 1. A speech, address, oration, or other oral presentation by the reporting individual or procurement employee, regardless of whether presented in person, recorded, or broadcast over the media.
>
> 2. A writing by the reporting individual or procurement employee, other than a book, which has been or is intended to be published.
>
> The term "honorarium" does not include the payment for services related to employment held outside the reporting individual's or procurement employee's public position which resulted in the person becoming a reporting individual or procurement employee, any ordinary payment or salary received in consideration for services related to the reporting individual's or procurement employee's public duties, a campaign contribution reported pursuant to chapter 106, or the payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event for a reporting individual or procurement employee and spouse.

Section 112.3149(5) allows lobbyists and certain others to pay an official's expenses related to an honorarium event and requires them to provide the official with a statement within 60 days after the event describing the expenses provided each day and the total value of the expenses provided for the honorarium event. Pursuant to Section 112.3149(6), the official is required to disclose these honorarium event related payments by July 1 of each year and attach to his disclosure form a copy of each statement received by him during the preceding calendar year.

Concerning your participation in the NATO and EC conference, there is no indication in your letter of inquiry that you made any speech or oral presentation at this conference. Therefore, we conclude that your travel and related expenses to participate in this event constituted gifts, not expenses related to an honorarium event.

Having determined that this trip was a gift, we must next consider whether this trip was a gift which you could accept, and what, if any, reporting requirements are applicable. Section 112.3148(4), Florida Statutes, provides:

> A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from 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 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 provision prohibits a reporting individual from accepting a gift valued in excess of $100 from a lobbyist who lobbies the reporting individual's agency or from the principal of such a lobbyist. We are advised that neither *International Business Chronicle* nor NATO are lobbyists or principals of lobbyists who lobby the Florida Legislature. Accordingly, there appears to be no prohibition against accepting the round-trip airfare which IBC provided to you, nor any prohibition against your accepting the room, board, and intercity transportation you received from NATO while in Europe for the conference.

Pursuant to Section 112.3148(8)(a), Florida Statutes, you are required to disclose the receipt of these gifts, if they exceeded $100 in value, on the last day of the calendar quarter that follows the calendar quarter in which they were received. This disclosure should be made on our Form 9, Quarterly Gift Disclosure, with the Secretary of State.

In valuing the round-trip airline ticket you received from IBC, you advise that IBC received your ticket free of charge from the airline and that you and the IBC editor flew on a "standby/space available" basis. Section 112.3148(7), Florida Statutes, describes the principles to be applied in valuing gifts and provides as a general rule that the value of a gift is to be determined using actual cost to the donor. However, Section 112.3148(7)(d) specifically provides:

> Transportation shall be valued on a round-trip basis unless only one-way transportation is provided. Round-trip transportation expenses shall be considered a single gift. Transportation provided in a private conveyance shall be given the same value as transportation provided in a comparable commercial conveyance.

Given the emphasis and specificity in this provision on valuing transportation at commercial rates, we are of the opinion that transportation provided to an official should be valued at commercial rates regardless of the actual cost to the donor. Although your ticket was provided free of charge to IBC, we are of the view that you should disclose this item as a gift from IBC and that it should be valued at the full cost of the fare for a comparable flight pursuant to Section 112.3148(7)(d).

With regard to the expenses provided by NATO, transportation would be valued in accordance with Section 112.3148(7)(d), as provided above. Lodging on consecutive days would be valued as a single gift pursuant to Section 112.3148(7)(e). Any meals which were provided to you by NATO would not need to be disclosed as a gift as long as they were consumed at a single sitting or event.

Accordingly, your participation in this official conference should be disclosed as a gift for purposes of Section 112.3148, Florida Statutes.

**QUESTION 2:**

> **Whether a speaking engagement in New Orleans before the Southern Growth Policies Board constituted an honorarium event or a gift?**

Your question is answered in the affirmative as to an honorarium event.

In your letter of inquiry and in supplemental information you provided to our staff, you advise that you travelled to New Orleans on May 23, 1991, for a speaking engagement before the Southern Growth Policies Board, where you served as both moderator and commentator for an hour-long session entitled "State Initiatives in Latin America." Specifically, you state that you made a lengthy presentation on Florida's recently enacted legislation pertaining to the promotion of international trade and commerce. You advise that the primary focus of this meeting was to

evaluate the potential impact of the "Enterprise of the Americas" legislation on the economies of the southeastern states. You also advise that you attended and participated in all of the other scheduled meetings and question and answer sessions held on Friday, May 24th, before returning to Miami.

We are advised that the Southern Growth Policies Board, a publicly supported tax-exempt organization, paid for your airfare, registration, and hotel room, and that you were in New Orleans for less than 24 hours. You question whether your receipt of these expenses should be disclosed under the gift provisions of Section 112.3148, or the honorarium provisions contained in Section 112.3149, Florida Statutes.

As indicated in our response to Question 1, the definition of "gift" excludes expenses related to an honorarium event. Section 112.312(9)(b)3, Florida Statutes. The definition of "honorarium" contained in Section 112.3149(1)(a), defines the term as a "speech, address, oration, or other oral presentation . . . ." You have not indicated that the Southern Growth Policies Board is a political committee as defined by Chapter 106, Florida Statutes. In checking with the Legislative Lobbyist Registration Office, we are advised that this entity is not registered as a principal who lobbies the Legislature. Therefore, there is no indication that the Southern Growth Policies Board would be an entity from which you would be prohibited from accepting an honorarium pursuant to Section 112.3149(3), Florida Statutes.

Moreover, Section 112.3149(5), Florida Statutes, allows you as a reporting individual to accept expenses related to an honorarium event, even from entities which are prohibited from providing an honorarium to you. We interpret Section 112.3149(1)(a)2, Florida Statutes, as limiting what constitutes an expense related to an honorarium event to include the payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event. Transportation expenses between Miami and New Orleans would fall under this provision, as would the one night of lodging you received from the Southern Growth Policies Board. Therefore, you may accept these expenses. However, because the Southern Growth Policies Board is not one of the persons or entities prohibited from giving you an honorarium, you are not required to report these expenses on the annual gift and honorarium event expenses disclosure form you will file by July 1 of next year. Section 112.3149(6), Florida Statutes.

With regard to the conference registration fee provided to you by the Southern Growth Policies Board, we are advised that this $75 fee was assessed against participants to cover the costs of their meals and conference materials. We are of the view that this expense would be considered to be an "expense related to an honorarium event," which is specifically excluded from the definition of a "gift" in Section 112.312(9)(b)3, Florida Statutes. It would not need to be disclosed as an honorarium event related expenses because it was not provided by a lobbyist or lobbying entity. Also, even if it were a "gift," it would not be reportable because its value did not exceed $100.

Question 2 is answered accordingly.

**QUESTION 3:**

**Whether your participation in an official protocol mission to Brazil on behalf of the State of Florida constituted an honorarium event or official State business which would be non-reportable?**

This trip would constitute a gift from a department of the executive branch, which had a public purpose.

You advise that you participated in an official protocol mission to Sao Paulo, Brazil, on behalf of the State of Florida at the request of the Governor and the Secretary of the Florida Department of Commerce, where you opened Florida's new foreign office. In addition to inspecting the new office, you accompanied an official trade mission under the auspices of the Department of Commerce and met with Brazilian and American business leaders, bankers, government officials, and educators. You also met with trade and tourism representatives working for Florida in Brazil, participated in various official briefings and press conferences on behalf of the State of Florida, and represented the State in a protocol meeting with the Governor of the State of Sao Paulo. You advise that the benefit of the trip was to provide oversight of official Department of Commerce programs in Brazil and that it provided you with an opportunity to evaluate the efficacy of new trade promotion initiatives in Sao Paulo. You further advise that you were asked to lead this mission due

to your chairmanship of the House Commerce Committee and your fluency in Portuguese. You relate that the Department of Commerce provided your hotel accommodations, meals, and ground transportation, subject to State per diem restrictions. Your round-trip airfare was provided complimentary to the Department by the airline, as a group of tickets were purchased for the trade mission and the airline provided the Department with several free tickets. You question whether this trip constituted an honorarium or would be classified as non-reportable official State business.

We can find no basis to conclude that this trip constituted an honorarium event. There is no indication that you made any speech, address, oration, or other oral presentation while on the trip, although it is clear that you met with Brazilian and American business and political leaders while in Sao Paulo. We do not interpret the honorarium provisions to cover situations where the reporting official participates in official briefings or meetings.

The issue, then, is whether this trip would be reportable as a gift or would constitute official State business which requires no disclosure other than the travel vouchers filed pursuant to Section 112.061, Florida Statutes. Notwithstanding the "quid pro quo" concept contained in the definition of "gift" in Section 112.312(9)(a), Florida Statutes, we are of the view that at a minimum, disclosure should be the goal for the reporting official who receives any of the listed items contained in the definition of "gift." Therefore, in the absence of clear evidence to the contrary, we are going to assume when we are rendering opinions on gifts that the reporting individual has not given "equal or greater consideration" in exchange for the gift. We adopt this view because of our reluctance to issue opinions valuing the reporting individual's services, which is extremely difficult to do in the context of an advisory opinion, as well as our belief that the public is better served by disclosure of the receipt of gifts by reporting individuals. We also believe that this view is in accord with the legislative intent behind the enactment of Chapter 90-502, Laws of Florida, as amended, where it is stated in the enacting language that:

> . . . the Legislature believes that it is in the public interest to have strict, clear and enforceable standards concerning the ethical conduct of all public officials, and
>
> . . . the Legislature believes that it is in the public interest to go beyond disclosure requirements and to prohibit certain individuals from giving gifts to public officers and employees, . . . .

We believe that the best way that we can render meaningful advisory opinions while effectuating the legislative intent behind the enactment of this exceedingly complex statute is to assume, in most instances, that the item is a "gift" if it is included in the list contained in Section 112.312(9)(a), Florida Statutes. If it is included in that list, then our next question will be whether it is one that can be accepted by the reporting individual.

In this situation, we are of the view that your trip to Sao Paulo, Brazil, was a "gift" for purposes of Section 112.312(9)(a), Florida Statutes. Therefore, we turn to the issue of whether it could have been accepted by you, and if so, what reporting requirements are applicable.

Section 112.3148(6)(b), Florida Statutes, provides:

> Notwithstanding the provisons of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of $100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, or a school board if a public purpose can be shown for the gift; and a reporting individual or procurement employee who is an officer or employee of a governmental entity supported by a direct-support organization specifically authorized by law to support such governmental entity may accept such a gift from such direct-support organization.

It is very clear to us that there was a public purpose behind the trip to Brazil provided to you by the Florida Department of Commerce. In addition to the information you have provided to us, you also state that the trip was in furtherance of an important public purpose for the State of Florida. In support of this contention, you relate that Brazil has recently become the number one trading partner with the State of Florida and, given the effect of liberalized trade policies, there is a great potential for further expansion of this economic activity. Additionally, Brazil has become a primary new source of foreign investment in Florida, especially Dade County. Likewise, Brazil has

emerged as the primary source of new foreign tourism to Florida, and finally, the economy of the State of Sao Paulo is greater than that of either Argentina or Mexico. Based upon these factors, the Governor and the Legislature agreed to the establishment of a Trade and Tourism Promotion Office in Sao Paulo. In this regard, the Department of Commerce requested certain public officials to actively participate in the official opening of the new foreign office. The participation of these officials assured that the formal opening would be given the widest possible attention in Brazil. In light of the foregoing, we agree that a public purpose was served by this gift to you from the Department of Commerce.

As your voucher for reimbursement of traveling expenses indicates that you received $527.97 for your per diem and lodging expenses while on the trip, it is clear that the value of this trip exceeded $100, and it therefore must be reported as a gift from the Department of Commerce on the annual gift reporting form required under Section 112.3148(6)(d) for the applicable reporting period. However, where you received reimbursement for actual meal expenses, we would not consider that to be a gift because it presumably paid for your food or beverage consumed at a single sitting. Section 112.312(9)(b)6, Florida Statutes. Therefore, these meals need not be listed as gifts.

With regard to your travel, you have advised that Varig Airlines provided the Department of Commerce with several complimentary tickets and that you traveled using one of these free tickets. Under these circumstances, we also view this free airfare as a gift to you from the Department of Commerce. In disclosing this item, it should be valued at the full cost of the fare for a comparable flight pursuant to Section 112.3148(7)(d), Florida Statutes.

Your inquiry is answered accordingly.

**CEO 91-68—December 6, 1991**

**GIFT ACCEPTANCE/DISCLOSURE**

STATE REPRESENTATIVE RECEIVING ADMISSION TO AUTOMOBILE RACES FOR PURPOSE OF MEETING LEADERS OF BUSINESSES AND PROMOTING THEIR RELOCATION TO HIS DISTRICT

*To: The Honorable Dick Graham, State Representative, District 28 (DeLand)*

**SUMMARY:**

**A State Representative is not prohibited under the gift law from accepting admissions to automobile races where the speedway's owner is a principal or employer of a lobbyist, provided the value of all admissions accepted for a particular race does not exceed $100. Under Section 112.3148, Florida Statutes, the admissions are not tickets having a face value, and thus their value is to be determined through proration of costs among persons invited to particular races. CEO's 91-39 and 91-45 are referenced.**

**QUESTION:**

**Are you, a State Representative, prohibited by the gift law from attending races at the Daytona International Speedway for the purpose of encouraging the relocation of businesses to Volusia County?**

Your question is answered in the negative, subject to the condition noted below.

In your letter of inquiry, in telephone conversation between your legislative assistant and our staff, and in communication arranged by your legislative assistant between our staff and representatives of the entities described herein, we are advised that you serve as a member of the Florida House of Representatives. We are advised further that you periodically are requested by the Volusia County Business Development Corporation (VCBDC) to attend races at the Daytona

International Speedway for the purpose of meeting with representatives of businesses and promoting relocation of those businesses to Volusia County. The rest of the Volusia County legislative delegation, along with members of local governmental bodies in the County, also are invited to attend races for the same purpose. The business prospects are brought to the races by VCBDC.

The most expensive ticket to a race run in June costs $55. The most expensive ticket to the Daytona 500, which is run in February, costs $100 or more. Those invited to a race by VCBDC are provided a pass which admits them to a suite at the racetrack. The passes have no face value, cannot be purchased by the general public, and can be used only by an invited official and persons accompanying him. Usually, an official is given two passes to a race: one for himself and one for his companion. The suite does not offer the best seating at the racetrack for viewing races. Food and drink, catered at the expense of VCBDC, are provided in the suite. There is no paid parking at the speedway. The business contact in the suite involves informal conversation between those viewing the race there.

VCBDC "leases" the suite from the speedway's owner, International Speedway Corporation, for a token consideration of one dollar. The lease term is one year, and renewal is possible upon the agreement of both parties. Under the lease, VCBDC is to use the suite to promote the attraction of businesses to the County. VCBDC can use the suite during races and at other times. Specifically, the corporation (as do lessees of comparable suites) gets 75 admission passes to the suite which are good for 11 event days in a calendar year. The actual cost that the speedway's owner charges for leasing suites comparable to the corporation's suite is $40,000 per year.

A document submitted with your opinion request, entitled "RULES AND REGULATIONS FOR DAYTONA INTERNATIONAL SPEEDWAY, SUITE 'P,'" provides in part that "The Volusia County Business Development Corporation (VCBDC) and the Daytona International Speedway are proud to have you as their guest for this special racing event. We are fortunate to have this beautiful, new Suite to use during these events to promote business and industry in Volusia County." A letter to you from the executive director of the corporation commenting on the document provides in part, "These rules and regulations are established by the Volusia County Business Development Corporation and only pertain to our suite. The other suites have the opportunity to set their own guidelines for their guests."

VCBDC is a nonprofit organization concerned with attracting businesses to Volusia County. It has eight board members, none of whom is affiliated with the speedway. Any person can become a member of the corporation by paying dues. It is your present understanding that the corporation does not employ a legislative lobbyist and has not done so for at least the past year, and it is not a member of any associations which employ or so employed a lobbyist. The corporation is not a political committee or a committee of continuous existence. The corporation came into existence in 1984 and is a not-for-profit, tax-exempt entity under the Internal Revenue Code. All of the corporation's funds are spent on its programs, which include the production of a County data profile, the production and dissemination of brochures and information about the County and its business amenities, advertising the County as a desirable location for business, entertaining prospects who might locate businesses in the County, and making or promoting a video about the County.

The corporation has eight directors and three ex officio directors, all of whom are business people. There is no overlap between the corporation's directors and the speedway's owner's directors, there are no overlapping employees, and the only business between the speedway and the corporation is the lease of the suite. The majority (approximately 70%) of the corporation's funding comes from Volusia County and the cities within the County. The balance of the corporation's funding is from yearly membership dues. There are two types of membership. "Ambassador" membership, similar to a chamber of commerce membership, costs $1,000 per year. General membership costs $250 per year. There are approximately 55 ambassadors and approximately 45 general members. Membership is generally open to all persons or business entities. The speedway's owner is an ambassador member of the corporation, without paying $1,000 annually because the value of the speedway suite provided to the corporation is reckoned by the corporation to be worth at least $1,000 annually. The speedway's owner does employ legislative lobbyists.

Section 112.3148(4), Florida Statutes, provides in relevant part:

> A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political

> committee or committee of continuous existence, as defined in s. 106.011, or from 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 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.

Section 112.312(9), Florida Statutes, defines "gift" and provides exclusions from the definition. That section provides in relevant part:

> (a) 'Gift,' for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:
> 1. Real property.
> 2. The use of real property.
> 3. Tangible or intangible personal property.
> 4. The use of tangible or intangible personal property.
> 5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
> 6. Forgiveness of an indebtedness.
> 7. Transportation, lodging, or parking.
> 8. Food or beverage, other than that consumed at a single sitting or event.
> 9. Membership dues.
> 10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
> 11. Plants, flowers, or floral arrangements.
> 12. Services provided by persons pursuant to a professional license or certificate.
> 13. Other personal services for which a fee is normally charged by the person providing the services.
> 14. Any other similiar service or thing having an attributable value not already provided for in this section.
>
> (b) 'Gift' does not include:
> 1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the recipient's employment or business.
> 2. Contributions or expenditures reported pursuant to chapter 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.
> 3. An honorarium or an expense related to an honorarium event paid to a person or his spouse.
> 4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.
> 5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
> 6. Food or beverage consumed at a single sitting or event.
> 7. The use of a public facility or public property, made available by a governmental agency, for a public purpose.
>
> (c) For purposes of paragraph (a), 'intangible personal property' means property as defined in s. 192.001(11)(b).

Section 112.3148(2)(b), Florida Statutes, defines "lobbyist". That section provides:

> 'Lobbyist' means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his agency. With respect to an agency that has established, by rule, ordinance, or law, a registration or other designation process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term 'lobbyist' includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law.

Due to the totality of circumstances presented in your scenario, the close relationship between the corporation and the speedway's owner, and the language of the document quoted above, we find that the admissions would constitute an indirect gift to you from the speedway's owner (a principal or employer of a lobbyist who lobbies your agency) or a joint gift from the corporation and the speedway's owner. As such, the admissions may be accepted by you only if their value does not exceed $100.

Section 112.3148(7), Florida Statutes, provides for valuation of a gift as follows, in relevant part:

> (a) The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is provided shall be used. If additional expenses are required as a condition precedent to eligibility of the donor to purchase or provide a gift and such expenses are primarily for the benefit of the donor or are of a charitable nature, such expenses shall not be included in determining the value of the gift.
>
> (c) If the actual gift value attributable to individual participants at an event cannot be determined, the total costs shall be prorated among all invited persons, whether or not reporting individuals or procurement employees.
>
> (h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

Since the passes have no face value, the admissions should be valued in accordance with Section 112.3148(7)(h), "on a daily or per event basis." Therefore, the value of admissions to a particular event should be determined by prorating the $40,000 cost of the suite among all race days or events and all persons invited thereto. Under your scenario, 75 passes x 11 event days = 825 admissions per year. Thus, the $40,000 actual cost of the suite divided by 825 = $48.48 per admission. Therefore, you may accept the admissions, even though the donor is the principal or employer of a lobbyist," as long as the value of the total number of admissions received by you for a particular day or event does not exceed $100. Under Section 112.3148(5)(b), Florida Statutes, the speedway's owner, as the employer of a lobbyist, is required to report the gift of the admissions on CE Form 30, Donor's Quarterly Gift Disclosure.

In finding that the admissions are "gifts" within the meaning of the new gift law, we do not view your advocacy, during a race, to recruit businesses to your district as consideration equal to or greater than the value of the gift—a quid pro quo which would take the admissions out from under the definition of a gift—because the advocacy is rendered as part of your public service as a legislator rather than in your purely private capacity. See CEO 91-45. Further, the admissions are not exempt from the definition of "gift" as "salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the recipient's employment or business," because such compensation was intended by the Legislature to relate to the private employment or business of a public officer rather than to his public position. See CEO 91-39. In addition, the admissions would not be excluded from the definition of "gift" as "honoraria" or "expenses related to

honorarium events" because an honorarium is predicated on a written or oral presentation, and conversational advocacy during a race would not constitute such a presentation.

Accordingly, we find that you are not prohibited by the gift law from attending races at the Daytona International Speedway for the purpose of encouraging the relocation of businesses to Volusia County, so long as the value of the total number of admissions to a particular race or event accepted by you does not exceed $100.

**CEO 92-3—January 24, 1992**

**SUNSHINE AMENDMENT**

FORMER STATE REPRESENTATIVE MONITORING LEGISLATIVE MEETINGS AND OBTAINING INFORMATION FROM LEGISLATIVE STAFF

*To: Frank S. Messersmith, Former State Representative (Tallahassee)*

**SUMMARY:**

**A former State Representative is prohibited from attending and monitoring legislative committee meetings or sessions and from asking questions about a proceeding or proposed legislation from a legislative staff member, even for informational purposes only, when done in behalf of another for compensation during the two years after leaving office. Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a), Florida Statutes, prohibit a member of the Legislature from personally representing another person or entity for compensation before the Legislature for a period of two years after leaving office. The term "represent" is defined in Section 112.312(22), Florida Statutes, to include physical attendance in an agency proceeding and personal communications with the officers or employees of an agency, which would be involved in attending and monitoring legislative committee meetings or sessions and in asking questions about a proceeding or proposed legislation from a legislative staff member, even for informational purposes only.**

**QUESTION 1:**

**Are you, a former State Representative, prohibited from attending and monitoring legislative meetings in behalf of another, for compensation?**

This question is answered in the affirmative.

In your letter of inquiry you advise that you formerly served as a member of the Florida House of Representatives. You question whether you are prohibited from attending and monitoring legislative meetings in behalf of another, for compensation, for two years after leaving office.

The Sunshine Amendment provides in relevant part:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. [Article II, Section 8(e), Florida Constitution.]

This prohibition is incorporated within the Code of Ethics for Public Officers and Employees, in identical terms, as Section 112.313(9)(a)3, Florida Statutes (1991) (formerly, Section 112.3141(1)(c), Florida Statutes).

You advise that attending and monitoring the proceedings of meetings does not entail any identification of a client by you or require you to discuss the issue with a legislator. Even to the extent that this simply involves attending publicly noticed legislative committee meetings or

sessions of a legislative house in order to advise your client of what occurred at the meetings, however, we conclude that such an activity would constitute the representation of another before the Legislature.

For purposes of Article II, Section 8(e), and Section 112.313(9)(a)3, the terms "represent" and "representation" are defined to mean:

> . . . actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client. [Section 112.312(22), Florida Statutes (1991), formerly Section 112.312(17), Florida Statutes.]

Although attending legislative meetings would not involve writing letters, filing documents, or personal communications with legislative personnel, the definition of "representation" also specifically includes "actual physical attendance on behalf of a client in an agency proceeding." We conclude that attending and monitoring legislative meetings would constitute actual physical attendance in a legislative proceeding.

We recognize that it can be argued that the phrase "in an agency proceeding" contemplates a degree of participation in the proceeding, with an intent to influence the agency's action, as opposed to simply sitting as a member of the audience at a meeting or hearing in order to observe the proceedings, just as any member of the public is entitled to do. Further, had the definition used the phrase "at an agency proceeding," it would have more clearly encompassed the action of observing the agency proceeding.

However, especially when contrasted with the other two activities that comprise this definition, both of which expressly entail communicative actions, whether written or oral, it appears to us that attendance at a legislative meeting to observe the proceedings falls within the definition of "represent." If the intent were to prohibit only activites that involved a form of active communication from the former officeholder, the definition's inclusion of "personal communications," "the writing of letters," and "the filing of documents" would have sufficed, and the addition of "actual physical attendance . . . in an agency proceeding" would have been unnecessary. Instead, the definition specifically mentions attendance as a additional form of representation and, therefore, must have been intended to refer to action other than writing letters, filing documents, or personal communication. Such an interpretation is not meaningless, as we can envision instances where actual physical attendance without any form of active personal communication can have the effect of representing the intentions or interests of another person or entity.

Accordingly, we find that you are prohibited from attending and monitoring legislative meetings on behalf of another for compensation during the two-year period after leaving office as a State Representative.

**QUESTION 2:**

> **Are you, a former State Representative, prohibited from asking questions about a proceeding or proposed legislation from a legislative staff member for informational purposes only, in behalf of another for compensation?**

This question is answered in the affirmative.

You also question whether you are prohibited from asking questions about a proceeding or proposed legislation from a legislative staff member for informational purposes only, as long as this does not involve a legislator. As noted above, the definition of "represent" specifically includes "personal communications made with the officers or employees of any agency on behalf of a client." Because asking questions from a legislative staff member would constitute personal communications with an employee of your former agency and because your questions would be on behalf of another, this action would constitute representing another before the Legislature.

Asking questions for informational purposes only may not necessarily involve any communication intended to influence legislative action, but it appears to us that this is a blanket

prohibition, designed to preclude a former agency official from being compensated for actions in behalf of another that involve the agency. In addition, we note that many questions, in the guise of asking for "information," actually could be intended to communicate a client's position or affect legislation.

Accordingly, we find that you are prohibited from asking questions about a proceeding or proposed legislation from a legislative staff member even if for informational purposes only, in behalf of another for compensation during the two-year period after leaving office as a State Representative.

**CEO 92-4—January 24, 1992**

**CONFLICT OF INTEREST**

STATE SENATOR REPRESENTING CONSTITUENTS
IN LEGAL MATTERS

*To: The Honorable Rick Dantzler, State Senator, 13th District, (Winter Haven)*

**SUMMARY:**

**An attorney-legislator is not specifically prohibited by the Code of Ethics for Public Officers and Employees from representing, as an attorney, persons who initially contact him in his capacity as a legislator. However, the legislator is cautioned to be mindful of Section 112.313(6), Florida Statutes, and may wish to continue his practice of referring such cases to other attorneys in other firms. CEO's 75-27 and 91-54 are referenced.**

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees prohibit you, a State Senator, from representing or referring to other attorneys in the firm where you practice, clients who initially contacted you in your capacity as a State Senator?**

Your question is answered in the negative.

In your letter of inquiry and in subsequent correspondence with our staff, you advise that you are a State Senator and an attorney. You advise further that you are a salaried associate in a law firm and that you do not earn a percentage of the fees for any cases you bring into the firm, but that your year-end bonuses may reflect cases you have brought into the firm. You relate that you often are contacted by constituents who perceive that they need the assistance of a legislator, but occasionally, perhaps several times a month, it turns out that they really need the assistance of an attorney. You advise that it has been your practice to refer these matters to other attorneys outside of the law firm where you are an associate, but you question whether this is appropriate or necessary under the Code of Ethics for Public Officers and Employees.

The question you have posed is not one that is clearly addressed by Chapter 112, Part III, Florida Statutes. The only statutory provision which restricts a legislator-attorney in his representation of clients is Section 112.313(9)(a)3, Florida Statutes, which provides in pertinent part:

> No member of the legislature shall personally represent another person or entity for compensation during his term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

This provision prohibits you from representing clients for compensation before State agencies. See CEO 91-54 and the opinions referenced therein for a discussion of the applicability of this statute to a legislator-attorney.

However, nothing in the information you have provided indicates that the typical situation you describe has a legal problem involving a State agency. Instead, you advise that these persons are generally of limited means with various legal problems. The examples you have provided include a person with a cause of action against a building contractor; a person whose drinking water well had been ruined due to excavation work on adjacent property; a person who was being sued in a quiet title action; a person with a child support order entered against him which he was unable to pay; persons with complaints about professional services rendered by other lawyers; persons who believe they have been the victims of job discrimination; and a person involved in a mobile home park landlord-tenant dispute. Moreover, it is your belief that many of these persons may experience difficulty in hiring an attorney to represent them.

In CEO 75-28, we advised a State Representative that a prohibited conflict of interest was not created where the law firm with which he was associated was retained to represent a city. It was the Commission's view then that such employment did not create a continuous or constantly recurring conflict between his private interests and his public duties. The operative language is now contained in Section 112.313(7)(a), Florida Statutes, which provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This statute prohibits a public officer or employee from having an employment or contractual relationship with a business entity which is subject to the regulation of, or is doing business with, his agency. It also prohibits the officer or employee from having an employment or contractual relationship which creates a continuing or frequently recurring conflict between the officer's or employee's private interests and the performance of his public duties.

The first portion of Section 112.313(7)(a), Florida Statutes, is not applicable to the situation you describe because there is no indication that you have any type of employment or contractual relationship with a business entity which is doing business with the Florida Legislature or is subject to its regulation. Although you have indicated that you are consulted by constituents several times a month on matters which ultimately turn out to be legal problems, there is no indication that your employment as an attorney poses a continuing or frequently recurring conflict with your responsibilities as a State Senator. Thus, we are not inclined to view the second portion of Section 112.313(7)(a), Florida Statutes, as prohibiting you from representing constituents in legal matters.

The only other provision of the Code of Ethics which may have any applicability is Section 112.313(6), Florida Statutes, which provides:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

This provision prohibits a public officer or employee from using or attempting to use his official position to secure a special privilege, benefit, or exemption for himself or others, where his actions are undertaken with a wrongful intent for the purpose of obtaining some benefit resulting from his actions which are inconsistent with the proper performance of public duties.

We are generally reluctant to address this provision in the context of an advisory opinion because it necessitates an examination of intent. However, it is appropriate that we make you aware of this statute and caution you to let it guide your conduct. Thus, if you used your position as a State Senator to solicit and obtain clients for your law practice, and if somehow you acted with

a wrongful intent and in a manner which was inconsistent with the proper performance of your public duties, it is conceivable that you could run afoul of Section 112.313(6), Florida Statutes. However, nothing in the information you have submitted indicates that you are in any way soliciting clients or acting with any wrongful intent. Evidently, these persons first contact you in locations other than your law office. After listening to their problems, you conclude that they need the assistance of an attorney, not a lawmaker, and you provide them with the names of other attorneys in the area who may be able to represent them.

While there is no requirement in the Code of Ethics which mandates that you or the other attorneys in the firm where you practice refuse to take these clients, your present method of handling this situation certainly protects you from any allegation of misuse of public position. The practice of referring these cases to lawyers in other firms, even those cases which may generate awards of legal fees, also serves to protect you from any suspicion that you may have acted with any impropriety.

We would recommend that you also contact the Florida Bar as it would be better able to provide you with guidance under its interpretations of the Rules of Professional Conduct applicable to members of the Florida Bar. There may also be rules of conduct applicable to members of the Florida Senate that would be useful as well.

Your question is answered accordingly.

**CEO 93-24—July 15, 1993**

**CONFLICT OF INTEREST**

STATE SENATOR PERSONALLY REPRESENTING
COMPANY BEFORE JOINT UNDERWRITING ASSOCIATION

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**A prohibited conflict of interest would not be created were a State Senator's firm to provide insurance consulting services to a company seeking to do business with the Residential Property and Casualty Joint Underwriting Association, including the Senator's personal representation of the company before the Association. The Senator would not have an employment or a contractual relationship with an agency or business entity subject to the regulation of his agency (the Legislature) within the meaning of Section 112.313(7)(a), Florida Statutes, and the Senator's firm's activities are not linked to his legislative position such that a continuing or frequently recurring conflict or impediment to duty would be created. Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, would not be violated by the Senator's personal representation of the company before the Association because the Association is not a "state agency." CEOs 91-8, 91-1, and 87-43 are referenced.**

**QUESTION:**

**Would a prohibited conflict of interest be created by your firm's provision of insurance consulting services to a company seeking to do business with the Residential Property and Casualty Joint Underwriting Association, including your personal representation before the Association's board of directors and committees on behalf of the company, where you serve as a State Senator?**

Under the facts set forth in this opinion, your question is answered in the negative.

By your letter of inquiry, we are advised that you are a State Senator serving on the Senate Committee on Commerce, which has jurisdiction over legislation pertaining to insurance and the Department of Insurance. We also are advised that you are not an officer, director, and majority shareholder of a corporation which has been engaged in various aspects of the insurance business since 1960. Among other things, you relate, your firm acts as an agent and consultant for various domestic and foreign insurance and reinsurance companies, markets insurance policies to local insurance agents and potential insureds, and, acting as a reinsurance broker, seeks and obtains reinsurance for the insurers it represents.

In response to the impact Hurricane Andrew had on the residential property and casualty insurance market in Florida, you relate, the Legislature passed Committee Substitute for House Bill 33-A (Chapter 92-345, Laws of Florida), which created the Residential Property and Casualty Joint Underwriting Association. You relate that the Association was created to provide an insurance source for applicants who are unable to obtain residential property and casualty insurance in the voluntary market and that all insurers authorized to write residential property and casualty insurance in Florida are required to be members of the Association. The Association, pursuant to Chapter 92-345 (as amended by Chapter 93-401, Laws of Florida), you advise, is operated under the supervision of a thirteen-member board of governors which consists of five members designated by the insurance industry, the insurance consumer advocate appointed under Section 627.0613, Florida Statutes, five consumer representatives appointed by the Insurance Commissioner, and two insurance industry representatives appointed by the Insurance Commissioner. A board member may be removed only for cause, you advise. Further, you relate that the operations of the Association are financed by annual assessments upon its members and by premium and investment income and that the Association does not receive public funds to finance its operations. In addition, you advise that Chapter 92-345 created Section 627.351(6)(j), Florida Statutes, which provides that the Association "is not a state agency, board, or commission" and that " . . . for the purposes of s.199.183(1), the [Association] shall be considered a political subdivision of the state and shall be exempt from the corporate income tax and the insurance premium tax."

We are advised further that the Association presently is considering the designation of brokers, insurers, and reinsures to obtain and provide reinsurance coverage to the Association, and that a wholly-owned subsidiary of your corporation, a licensed reinsurance intermediary, has entered into a consulting agreement with another reinsurance broker which intends to seek to do business with the Association. You advise that this broker/brokerage firm ("company") is seeking to be appointed "Broker of Record" for the Association, in order to work to locate insurance or reinsurance firms willing to provide coverage to the Association. You relate that, as consultant to the company, your firm (and you personally) would come, among other things, provide input, background information, advice, and technical assistance to the company regarding the Association and the Florida insurance market in general; consult and confer with the members of the Association's board of directors and committees on behalf of the company; consult with domestic insurers regarding the Association; and contact direct writers of reinsurance to market reinsurance of the Association to them.

You inquire whether the situation described above would be prohibited by the Code of Ethics for Public Officers and Employees (specifically Section 112.313(7), Florida Statutes) or by Article II, Section 8(e), Florida Constitution.

Section 112.313(7) and Article II, Section 8(e) provide in relevant part respectively:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
>
> (a) 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 is an officer or employee. . .; 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 private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties.
>
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly

> through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.
>
> SECTION 8. 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:
>
> (e) . . . . No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

In addition, Section 112.313(9)(a)3, Florida Statutes, a parallel provision to Article II, Section 8(e), provides in relevant part:

> No member of the Legislature shall personally represent another person or entity for compensation during his term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

We find that the first clause of Section 112.313(7)(a), Florida Statutes, is not implicated under your scenario because any "regulatory power" that your public agency (the Legislature) would have over any of the business entities or agencies involved would be "strictly through the enactment of laws," as specified in Section 112.313(7)(a)2, Florida Statutes. See, for example, CEO 91-8. Further, under your scenario, you do not have an employment or a contractual relationship with an agency or business entity which is doing business with the Legislature—your public agency.

Under the second clause of Section 112.313(7)(a), we find no prohibited conflict. As the members of the Legislature are expected to serve as citizen-legislators on a part-time basis and must be employed elsewhere to support themselves and their families, each private employment or business endeavor of a legislator presents the potential for conflicts of interest. Accordingly, we examine the nature and duties of the legislator's private employment or endeavor to determine whether it would present a prohibited conflict of interest. In CEO 91-1, we found that a prohibited conflict of interest would be created under the second clause of Section 112.313(7)(a) were a State Senator to contract with a professional association that lobbies the Legislature to speak to the association's professional groups regarding legislative issues, to contribute articles on legislative issues to the association's publications, and to advise the association's executive committee and board of governors regarding legislative and political education activities of the association. In that opinion, as well as in other opinions cited within it, we expressed our concern that a legislator's private endeavors not involve lobbying the Legislature or encompass activities related to lobbying. Further, in that opinion, the subject matter of the Senator's proposed employment arose out of his public position and related directly to issues that might have been expected to come before him in his official capacity. Your situation is fundamentally different than that in CEO 91-1 in that you will be lobbying the Association and not the Legislature and in that your firm's insurance consulting expertise arises independent of your legislative position, from a long business history of providing insurance and insurance-related services.

Regarding the representation during term of office provisions, the crucial inquiry is whether you personally would be engaging in the representation before a state agency. Therefore, we find, without the need for further discussion of he meaning of these provisions, that representation by employees of your firm (as opposed to representation by you personally) would not be prohibited, even before state agencies, by Article II, Section 8(e) or by Section 112.313(9)(a)3.

In addition, we are persuaded, due to our reasoning set forth in CEO 87-43, that the Association is not a "state agency." In fact, except for its limited designation as a political subdivision of the State pursuant to Chapter 92-345, Laws of Florida (for purposes of its exemption from intangible personal property taxation under Chapter 199, Florida Statutes), the Association does not appear to be a governmental entity at all. We find that, like the Florida Joint Underwriters Association discussed in CEO 87-43 and except for its limited "political subdivision" designation, the Association is a non-governmental entity made up of private insurance companies which, under requirements of law, must participate in and be members of the Association. Therefore, we find

that the two provisions do not prohibit your personal, compensated representation before the Association.

However, we remind you that the Department of Insurance is a "state agency" for purposes of Article II, Section 8(e) and Section 112.313(9)(a)3. Therefore, these provisions prohibit you from personally representing your company or clients of your company before the Department of Insurance or any other State-level agency, while you are in office. Please note that "represent," as defined in Section 112.312(22), Florida Statutes, means actual physical attendance in an agency proceeding, writing letters and filing documents, and personal communications with the officers and employees of the agency.

Your question is answered accordingly.

**CEO 93-28—September 2, 1993**

**CONFLICT OF INTEREST; VOTING CONFLICT**

STATE SENATOR'S COMPANY'S SUBSIDIARY PROVIDING COLLECTION SERVICES TO INSURANCE RECEIVER

*To: (Name withheld at the person's request.)*

**SUMMARY:**

**A prohibited conflict of interest does not exist under Sections 112.313(7)(a) and 112.313(3), Florida Statutes, where the subsidiary of a company of a State Senator provides collection services to court-appointed receivers of insolvent domestic insurance companies. The services are not being provided to the Legislature (the Senator's public agency), Section 112.313(7)(a)2, Florida Statutes, is applicable to negate any conflict doe to "regulation," the provision of services arises out of the Senator's business expertise rather than from his public position, and the provision of services does not involve lobbying the Legislature.**

**No voting conflict requiring disclosure or other prohibited conflict would be created were the Senator to participate in legislation affecting the Department of Insurance or domestic insurance companies as long as the legislation does not inure to the special private gain of the Senator, his company, or its subsidiary.**

**Shareholders, officers, agents, or employees of the Senator's company or its subsidiary, other than the Senator himself, are not prohibited by Article II, Section 8(e), Florida Constitution, or Section 112.313(9)(a)3, Florida Statutes, from personally representing the Senator's company or its subsidiary before the Department of Insurance. CEOs 93-24, 91-8, 91-1, 89-18, 81-6, and 77-168 are referenced.**

**QUESTION 1:**

**Does a prohibited conflict of interest exist where you, a State Senator, are an officer, director, and shareholder of a company whose wholly-owned subsidiary provides collection services to court-appointed receivers of insolvent domestic insurance companies?**

Your question is answered in the negative.

By your letter of inquiry and accompanying materials, we are advised that you are a member of the Florida Senate, serving the 16th District, first elected in 1991. We are advised further that you are a shareholder, director, and officer of a corporation which wholly owns a subsidiary which

provides collection services to court-appointed receivers of insolvent domestic (Florida) insurance companies. A given receiver, who may or may not be an employee of the Florida Department of Insurance, you relate, receives direction form the court and the Department. In addition, you advise that the subsidiary's compensation for collection services is governed by a standard "Provider Contract," an example of which you enclosed with your letter of inquiry.

Sections 112.313(3) and 112.313(7)(a), Florida Statutes, appear to be the only provisions of the Code of Ethics for Public Officers and Employees which need to be addressed under this inquiry. Those statutes provide:

> DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his spouse or child, or any combination of them, has material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to his own agency, if he is a state officer or employee, or to any political subdivision of any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators 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.
>
> [Section 112.313(3), Florida Statutes.]

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . .; 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 private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes.]

Section 112.313(3) prohibits your purchasing services for your public agency from any business entity of which you, your spouse, or child is an officer, partner, director, or proprietor or in which you or your spouse or child, or any combination thereof, has a material interest. It further prohibits your acting in a private capacity to provide services to your agency.

The first clause of Section 112.313(7)(a) prohibits your holding a contractual relationship with a business entity or an agency which is subject to the regulation of, or which is doing business with, your public agency, and its second clause prohibits your holding a contractual relationship that will create a continuing or frequently recurring conflict between your private interests and the performance of your public duties or that would impede the full and faithful discharge of your public duties.

We find that a prohibited conflict of interest does not exist under Section 112.313(3) because the services provided by your company's subsidiary are being provided to various court-appointed receivers of insolvent domestic insurance companies and not to your agency (the Legislature). See, for example, CEO 89-18 (Question 1).

Under the first clause of Section 112.313(7)(a), we find no prohibited conflict. It is apparent from the scenario that neither your company (an entity with which you have a contractual relationship), its subsidiary, nor the receivers are doing business with the Legislature, and none of these entities or persons is "regulated" by the Legislature within the meaning of Section 112.313(7)(a) due to the language of Section 112.313(7)(a)2, Florida Statutes, which provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

*See*, for example, CEO 81-6, CEO 91-8, and CEO 93-24.

In examining questions regarding members of the Legislature under the second clause of Section 112.313(7)(a), we have expressed our concern that a legislator's private endeavors not involve lobbying the Legislature, not encompass activities related to lobbying, and not arise out of or directly relate to issues that might be expected to come before him in his official capacity as a legislator. Your scenario does not encompass lobbying the Legislature; your private provision of services to receivers arises from your business expertise and skills, not from your public position; and the subject matter of your private work does not appear to relate directly to issues that might come before you in your official capacity. See CEO 93-24 and CEO 91-1. Therefore, we find no prohibited conflict under the second clause of Section 112.313(7)(a).

**QUESTION 2:**

> **Would a prohibited conflict of interest or a voting conflict of interest be created were you to participate by authorship, vote, or debate in legislation affecting the Department or affecting domestic insurance companies?**

The voting conflicts law portion of the Code of Ethics applicable to your inquiry provides:

> No state public officer is prohibited from voting in his official capacity on any matter. However, any state public officer voting in his official capacity upon any measure which would inure to his special private gain; which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained; or which he knows would inure to the special private gain of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143(2), Florida Statutes.]

This provision would not prohibit your voting on any matter. However, it would require your filing of a memorandum regarding a vote which would inure to your special private gain and regarding a vote which you know would inure to the special private gain of your company or its subsidiary. Thus, unless legislation affecting the Department or domestic insurance companies also specially affects you personally, your company, or its subsidiary, such legislation would not be a matter requiring your filing of a memorandum. In addition, assuming that a matter or measure affects you, your company, or its subsidiary, the gain from it would not be "special" within the meaning of the voting conflicts law if the class affected by it were large. See CEO 89-18 (Question 2).

Section 112.313(6), Florida Statutes, is the only other provision of the Code of Ethics which is arguably applicable to your second inquiry. Section 112.313(6) provides:

> MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s.104.31.

For purposes of this provision, the term "*corruptly*" is defined as follows:

> '*Corruptly'* means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties. [Section 112.312(9), Florida Statutes.]

Findings under this section are difficult to make in the context of an advisory opinion because a determination of intent must be made utilizing all of the factual detail and nuances of an evidential situation. However, since it is the public duty of a legislator to participate fully regarding legislation and since legislation (particularly a general act) usually affects many people or concerns, we find it hard to conceive of a situation in which a legislator's authorship, vote, or debate regarding legislation would run afoul of this provision, unless the legislation primarily or significantly benefited the legislator or a person or entity with whom he had an economic or familial affiliation, or unless there were a complete absence of any public purpose for the legislation.

This question is answered accordingly.

**QUESTION 3:**

> **Does Article II, Section 8(e), Florida Constitution, prohibit shareholders, officers, agents, or employees of the subsidiary, or of your corporation, other than yourself, from personally representing the subsidiary or your corporation before the Department or its agents in connection with obtaining or performing the subsidiary's contracts with court-appointed receivers?**

This question is answered in the negative.

In addition to the facts described above, you advise that you have never communicated, either through discussions or correspondence, with any employee of the Department of Insurance regarding the subsidiary's contract with the Department. When it has been necessary to discuss performance of the work with officials of the Department, you advise, your corporation has always been represented by its attorney or employees so that you may avoid any personal contact with staff of the Department.

Article II, Section 8(e) provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

We applaud the measures that you state you have taken to avoid violating Article II, Section 8(e). Neither this constitutional provision nor its statutory parallel [Section 112.313(9)(a)3, Florida Statutes] would prohibit persons other than yourself from engaging in the personal representation described in your question, as long as they are not themselves members of the Legislature. See CEO 77-168.

**CEO 94-38—September 1, 1994**

**GIFT ACCEPTANCE AND DISCLOSURE**

LEGISLATORS RECEIVING CERTAIN ITEMS FROM
VARIOUS GOVERNMENTAL AGENCIES

*To: (Name withheld at the person's request.)*

**SUMMARY:**

> **Although Section 112.312(12)(b)7, Florida Statutes, excepts from the definition of a "gift" the "use of a public facility or public property, made available by a**

**governmental agency, for a public purpose," in light of the disclosure requirements imposed by Section 112.3148(6), Florida Statutes, that language does not exempt as gifts telephone services and equipment or parking privileges provided to legislators by various governmental agencies. Thus, the acceptance and disclosure of those items is governed by Section 112.3148, Florida Statutes. CEO 91-53 is referenced.**

**QUESTION:**

**Is the receipt by members of the Hillsborough County legislative delegation of telephone service and equipment from Hillsborough County, parking passes from the Hillsborough County Aviation Authority, and parking passes from the Tampa Sports Authority, considered to be "gifts" governed by the acceptance and disclosure provisions of Section 112.3148, Florida Statutes?**

Your question is answered in the affirmative for each of those items.

In your letter of inquiry you advise that Hillsborough County provides telephone services to members of the area's legislative delegation and, in accordance with the advice we rendered to the members of your delegation in CEO 91-53, delegation members report the receipt of those services valued at over $100 for any given month on CE Form 10 by July 1st of each year. You also advise that members of the delegation receive annual parking passes from the Hillsborough County Aviation Authority and from the Tampa Sports Authority, both of which permit the holder to park without charge at the airport or at various sporting events. Because of a 1991 amendment to the definition of "gift" contained in Chapter 91-292, Laws of Florida, you question whether the receipt of any of these items still comes within the definition of a gift which would be governed by the acceptance and disclosure requirements of Section 112.3148, Florida Statutes.

Section 112.312(12), Florida Statutes, provides in relevant part:

> (a) 'Gift,' for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf or a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:
>
> 3. Tangible or intangible personal property.
>
> 4. The use of tangible or intangible personal property.
>
> 5. Transportation, lodging, or parking.
>
> 13. Other personal services for which a fee is normally charged by the person providing the services.
>
> 14. Any other similar service or thing having an attributable value not already provided for in this section.
>
> (b) 'Gift' does not include:
>
> 7. The use of a public facility or public property, made available by a governmental agency, for a public purpose.

In addition, Section 112.3148(6)(a), Florida Statutes, provides:

> Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board may give, either directly or indirectly, a gift having a value in excess of $100 to any reporting individual or procurement employee if a public purpose can be shown for the gift; and a direct-support organization specifically authorized by law to support a governmental entity may give such a gift to a reporting individual or procurement employee who is an officer or employee of such governmental entity.

As we stated in our previous opinion, we view the County's provision of telephone equipment and services to members of its legislative delegation as a gift, which the legislators may accept but must disclose annually pursuant to Section 112.3148(6)(d), Florida Statutes. We do not view the language contained in Section 112.312(12)(b)7 as excluding from the definition of a "gift" the County's provision of telephone services and equipment to the legislative delegation. Nor do we believe that the provision of parking passes by the Aviation Authority or by the Sports Authority would be excluded from being considered to be "gifts" because of this language.

We construe narrowly the language contained in Section 112.312(12)(b)7 to exclude as a "gift" only those situations where a governmental agency allows a reporting individual (or procurement employee) to use the agency's facilities for some public purpose. For example, if the County were to permit a local legislator to use the County Commission chambers for a "town hall" type meeting in order to meet with constituents and exchange ideas, we would interpret Section 112.312(12)(b)7 to exclude the legislator's receipt of the use of that facility as a gift necessitating disclosure pursuant to Section 112.3148, Florida Statutes.

We do not view this definitional exclusion as omitting from Section 112.312(12) **every** item or privilege which some governmental agency might bestow upon a reporting individual or procurement employee. Otherwise, such an interpretation would render Section 112.3148(6) virtually meaningless and would contravene the Legislature's intent in enacting a statutory scheme by which certain enumerated governmental agencies may give gifts with a value in excess of $100 to reporting individuals and procurement employees, which must have a public purpose, and which must be disclosed by both the donor and the donee. To interpret Section 112.312(12)(b)7 otherwise would weaken the extensive gift acceptance and disclosure legislation enacted in late 1990, and we as a Commission are disinclined to assist in undercutting that scheme with the suggested interpretation.

Thus, with regard to the legislative delegation's receipt of telephone services from Hillsborough County, the reasoning of CEO 91-53 applies.

As for the airport parking passes provided to legislators by the Hillsborough County Aviation Authority, these passes are "gifts" which Section 112.3148(6), Florida Statutes, would permit the Aviation Authority to give to the legislators whether or not the Authority retains or employs a lobbyist who lobbies the Legislature. However, the giving of and receipt of these parking passes is conditioned upon there being a public purpose served by the Authority giving the pass to a legislator and in the legislator's acceptance of it. See Rule 34-13.320(2)(a), Florida Administrative Code. In this regard, we note that a public purpose would be served by the legislator's use of the pass when traveling on official legislative business, because the Legislature (and ultimately State taxpayers) would ultimately reimburse the legislator for his traveling expenses pursuant to Chapter 112.061, Florida Statutes, but for the receipt of these parking privileges. As for the valuation of the airport parking pass for gift reporting purposes, Rule 34-13.500(6), Florida Administrative Code, states:

> 'Per occurrence' as stated in Section 112.3148(7)(i), F.S., means each separate occasion in which a donor gives a gift to a donee. The provisions of this subsection may be illustrated by the following example:
>
> EXAMPLE: If X Airport Authority gives Reporting Individual B ("B") a parking pass enabling B to park at the airport free of charge, each occasion B uses the pass she has received a gift. If she parks there for one day, she has received one gift; if she

parks there for three consecutive days each month for twelve months, she has received twelve separate gifts.

Therefore, based upon the statute and upon our rules implementing Section 112.3148, only those uses of a pass resulting in parking expenses in excess of $100 per occurrence would be reported by the legislator on his CE Form 10.

We also note that prior to the 1991 exclusion for the use of public facilities and property for a public purpose, the General Counsel of the House of Representatives had opined (in Opinion 91-09, January 29, 1991) that a parking permit provided by the County Aviation Authority to delegation members would not be exempted as being a gift from a governmental entity having a public purpose, because the Aviation Authority was a special district not included among the types of governmental agencies allowed to provide such gifts. Apparently in response to this opinion, Chapter 91-292 amended the list of types of agencies that could provide gifts having a public purpose to include "an airport authority." This amendment would not have been necessary if it were generally understood that the exclusion for the use of public facilities and property for a public purpose applied to the Aviation Authority's parking permits, we believe.

As for the annual parking pass provided to legislators by the Tampa Sports Authority, we note that those governmental agencies authorized by Section 112.3148(6)(a) to give gifts with a value in excess of $100 do not include sports authorities. Therefore, Section 112.3148(6) is inapplicable, and other provisions contained in Section 112.3148 govern the giving and receipt of gifts in that situation. You advise that the Tampa Sports Authority does not employ or retain a lobbyist who lobbies the Legislature. Therefore, the Tampa Sports Authority is not prohibited from giving a gift with a value in excess of $100 to a legislator, and the legislator is not prohibited from accepting it. However, the legislator would be required to report quarterly on CE Form 9 any gifts received from the Sports Authority which have a value in excess of $100. See Section 112.3148(8), Florida Statutes. Here, you have indicated that the Tampa Sports Authority has valued the annual parking pass at $100. However, consistent with our Rule 34-13.500(6), Florida Administrative Code, we believe that the value of the parking pass would be calculated per occurrence of its use. Because parking for the pro football games held at the stadium costs $10 per game and parking for other events generally costs $5, it seems unlikely that the per occurrence use of the parking pass would exceed $100. For that reason, the legislator likely would not be required to disclose the receipt of the parking pass from the Tampa Sports Authority.

**CEO 95-001—January 30, 1995**

**SUNSHINE AMENDMENT; FINANCIAL DISCLOSURE**

DISCLOSURE OF PROMISSORY NOTE
SIGNED BY GENERAL PARTNER

*To: The Honorable Locke Burt, State Senator, 16th District, Ormond Beach*

**SUMMARY:**

**A State Senator was not required to disclose his proportionate share of indebtedness under a promissory note executed by him in his capacity as a general partner. While, under the Uniform Partnership Act, general partners are jointly liable for contractual debts and obligations of the partnership, such liability appears to be contingent upon a creditor first exhausting the assets of the partnership, and "contingent" liabilities are not required to be reported. CEO's 89-5 and 86-40 are referenced.**

**QUESTION:**

> **Were you, a Member of the State Senate [an elected constitutional officer required to file full and public disclosure of your financial interests], required to list on your Full and Public Disclosure of Financial Interests (CE Form 6), as a liability, a loan in which you executed the promissory note as a general partner of a general partnership?**

Your question is answered in the negative.

By your letter of inquiry, materials accompanying your letter of inquiry, and by additional correspondence and materials sent to us by your counsel in your behalf, we are advised that you serve as a Member of the Florida Senate, from District 16, and that as such you are required to file full and public disclosure of your financial interests pursuant to Article II, Section 8, Florida Constitution. In addition, you have enclosed a copy of a promissory note dated August 29, 1989, in the amount of $2,900,000.00, whereby a general partnership of which you are a general partner borrowed funds from a bank. You, along with two other persons, signed the note as general partners, your designation as a "general partner" being typewritten on the note. The printed language at the beginning of the note states that the liability under the note is "joint and several." You advise further that you did not report the note on your financial disclosure form because you believe that the liability evidenced by the note is a contingent liability because, as you represent, "[you] are not a co-maker of the note" and "[your] liability is contingent upon the bank exhausting the assets of the partnership." Among the materials provided by your counsel is a guaranty agreement, also dated August 29, 1989, in which you, along with the other two partners, agreed to guarantee the payment of partnership obligations to the bank.

Article II, Section 8, of the State Constitution requires all elected constitutional officers to file full and public disclosure of their financial interests by July 1st of each year. Among other information, the disclosure is to show net worth, identify each asset and liability in excess of $1,000, and list the value of each asset and liability in excess of $1,000. For making these disclosures, the Commission on Ethics has promulgated CE Form 6, Full and Public Disclosure of Financial Interests.

Section 112.312(14) defines the term "*liability*" as follows:

> [A]ny monetary debt or obligation owed by the reporting person to another person, except for credit card and retail installment accounts, taxes owed, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, or accrued income taxes on net unrealized appreciation. Each liability which is required to be disclosed by s. 8, Art. II of the State Constitution shall identify the name and address of the creditor. [Emphasis supplied.]

The current instructions accompanying CE Form 6 state that "[a] 'contingent liability' is one that will become an actual liability only when one or more future events occur or fail to occur, such as pending or threatened litigation or where you are liable only as a guarantor, surety, or endorser on a promissory note," and state that "if you are a 'co-maker' on a note payable and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability."

In CEO 86-40, we found that a county commissioner's guaranty of his corporation's loan from a bank was contingent liability not requiring disclosure. In that opinion, we deferred to the general law governing negotiable instruments and adopted the reasoning that a guarantor, surety, or indorser is liable on a debt only upon a third person failing to carry out his obligation to make payment. In CEO 89-5, we found that a sheriff should have disclosed a liability where he signed a note in his individual capacity and where it did not appear from the face of the note that the liability was contingent.

Your situation is distinguishable from both of these opinions. Since your signature on the note is accompanied by the designation "general partner" and since you did not sign the note in your

individual capacity (did not sign without the designation "general partner"), we must look to the general law governing partners and partnerships to determine whether you are personally liable under the note and whether any such liability is "contingent" or not.

Under the general law governing partnership you (as an individual) are jointly liable for the debt. *See* Section 620.63, Florida Statues, which provides:

> Nature of partner's liability.--All partners are liable:
>
> (1) Jointly and severally for everything chargeable to the partnership under ss. 620.62 and 620.625.
>
> (2) Jointly for all other debts and obligations of the partnership; but a partner may enter into a separate obligation to perform a partnership contract.

Section 620.63, Florida Statutes, is part of the Uniform Partnership Act (UPA) which has been adopted by Florida and by most other states. While there is no case from a Florida court that discusses whether, under the UPA, the liability of a general partner on a contractual obligation (i.e., a note) is contingent or not, there is substantial UPA case law from other states that recognizes that such liability is contingent upon the creditor first proceeding without satisfaction against the partnership itself. *See* Head v. Henry Tyler Construction Corporation, 539 So. 2d 196 (Ala. 1988), which states:

> The general common law rule is that partnership contracts create only a joint liability among the partners. The partners are not individually liable for partnership contacts, unless assets of the partnership are inadequate to pay the partnership debts or there is not effective remedy without resort to the property of individual partners. [citations omitted.] The Uniform Partnership Act, Section 15(b), provides that partners are jointly liable for all debts and obligations of a partnership, except those arising from a tort or breach of trust. This is a codification of the common law rule.
>
> * * * * * * * * * * *
>
> The major impact of making partners not merely jointly liable but also severally liable is that if a creditor chooses to bring an action against one of the partners, that partner is liable for all of the partnership debts, regardless of whether the creditor first attempted to recover the debt from the partnership or prove that the partnership had no assets. Several liability is "[l]iabity separate and distinct from liability of another to the extent that an independent action may be brought without joinder of others." [citations omitted.] The individual liability associated with partners that are jointly liable is not separate and distinct for the liability of all the partners jointly. Rather, the individual liability arises only after it has been shown that the partnership assets are inadequate. No direct cause of action may be maintained against the individual partners until the above condition is met. Several liability, on the other hand, imposes no such conditions precedent before one can be held individually liable. [Head at 197, 199.]

For this view, accompanied by its detailed reasoning and analysis, that partners are only jointly, and thus secondarily, liable for contractual obligations (i.e., loans/notes) under the UPA, *see also* Catalina Mortgage Company, Inc. v. Monier, 800 P. 2d 574 (Ariz. 1990), "[i]f a partnership's debt is contractual in nature, common law requires creditors to resort to and exhaust partnership assets before reaching the partners' individual assets" and "[a]s adopted in most states, the Uniform Partnership Act (UPA) preserves this common law rule"; Wayne Smith Construction Company, Inc. v. Wolman, Duberstein & Thompson, 604 N.E. 2d 157 (Ohio 1992), "partners are not primarily liable for the contractual obligations incurred by their firm" and "[a] partnership creditor in proceedings in execution of a judgement against the partnership must first exhaust partnership property before resorting to the personal assets of partners"; and Seventy-Three Land, Inc. v. Maxlar Partners, 637 A. 2d 202 (N.J. Super. A.D. 1994), "[t]ort creditors may proceed against

partners, who are jointly and severally liable, without first proceeding against the partnership; contract creditors may not proceed against partners, who are jointly liable, until after exhausting partnership assets," "[t]he distinction may be explained, if not entirely justified, by the opportunity contract creditors have to require as part of the contract that partners waive their right to insist that the creditor exhaust partnership assets before resorting to partner assets, an opportunity not available to tort creditors," "[t]he Act [ UPA] places partners in a position more vulnerable than stock holders but less vulnerable than guarantors of payment," "[p]artners are liable for partnership contract debts, but their assets are not at risk until it is shown that the partnership cannot discharge the debt," and "[p]artners are therefore like guarantors of collection as distinguished from guarantors of payment."

Further, there is little reason to believe that a Florida court, in construing the UPA (a model act designed to make uniform the laws of the different states), would arrive at a conclusion different from the courts of the several states cited above.

Since Section 620.62 refers to wrongful or tortious conduct and Section 620.625 addresses the misapplication of funds by a partner, neither of which encompass the borrowing of money via a promissory note, your liability on the note would appear to be joint rather than several. Joint liability applies, notwithstanding the printed language at the beginning of the note which states "jointly and severally," because Section 673.118(2), Florida Statutes (1989), which concerns commercial paper (negotiable instruments) such as notes, provides that "[h]and written terms control typewritten and printed terms, and typewritten control printed" and your liability under the note is based upon your liability due to your personal status as a general partner (a typewritten term or designation which controls over the printed term "severally") under Section 620.63.

Thus, we find that your were not required to disclose the loan as a liability. We note that valuing the amount of one's liability for disclosure purposes can be difficult. It will always be specific to the particular circumstances involved because it will always turn on the exact terms of the note or other obligation.

You have asked for additional guidance on how to complete the asset and net worth sections of Form 6 in situations where one is involved in a partnership. In valuing as an asset one's general partnership interest, the instructions on Form 6 state that, for partnerships, "[y]ou are deemed to own an interest in a partnership which corresponds to your interest in the capital of that partnership." By "capital," we mean the owners' equity in the business; this may be reflected on the partnership's balance sheets as a separate capital account for each partner.

In calculating one's net worth, we believe that it would be inappropriate to simply add the value of one's partnership interest as disclosed in the asset portion of the form and then subtract the reported value of liabilities related to the partnership. This would distort one's net worth, by making it appear unduly low, because the partnership's liabilities would be subtracted twice--when valuing the asset (share of equity in the partnership) and again when subtracting the liabilities. We attempted to clarify this in the instructions on Form 6, which provide:

> NOTE: In order to avoid a net worth figure that unrealistically portrays your liabilities, these kinds of joint liabilities should be calculated somewhat differently than they were calculated for Part B [liabilities]. Joint liabilities with one or more other persons for which you are 'jointly and severally liable,' should be included in your calculations based upon your percentage of liability as if it were only joint liability (rather than the total amount, as reported in Part D [a typographical error that should read Part B]), with the following exception. . . . Business-related loans that were taken into account when valuing your interest in the business as an asset in Part A should not be included again as liabilities.

Thus, the valuation of your interest in the partnership should be your share of the equity, or capital, of the partnership. Assuming that the subject loan was carried on the partnership's books and has been subtracted out in calculating the capital of the partnership, then even if you were required to disclose the loan as a liability you should not subtract out the value of your joint share of the loan again in figuring your net worth--simply add the value of your interest in the partnership together with your other assets and liabilities to calculate your net worth.

Accordingly, we are of the opinion that you were not required to disclose the note as a liability during applicable disclosure periods.

**CEO 95-021—August 31, 1995**

**CONFLICT OF INTEREST**

STATE SENATOR CHAIRING BANKING AND INSURANCE COMMITTEE
AND SERVING AS DIRECTOR OF INSURANCE COMPANY

*To: The Honorable John Grant, State Senator, 13th District, Tampa*

**SUMMARY:**

**A State Senator's service on a domestic insurance company's board of directors, for which he receives a minimal stipend amounting to less than one percent of his annual income, would not create a prohibited conflict of interest with his duties as a Senator and as Chairman of the Senate Banking and Insurance Committee. The company is not doing business with the Legislature and is subject to its regulation only through legislative action, and the Senator's duties do not involve personally engaging in lobbying activities and do not encompass any activities related to lobbying. Therefore, Section 112.313(7)(a), Florida Statutes, does not prohibit him from serving as a director of the company. Nor would the stipend constitute a gift, as all other outside directors receive the same stipend. CEOs 77-129, 80-7, 81-12, 90-8, 91-1, and 91-8 are referenced.**

**QUESTION:**

**Does a prohibited conflict of interest exist where you, a State Senator who chairs the Banking and Insurance Committee, serve on the board of directors of an insurance company?**

Your question is answered in the negative.

In your letter of inquiry you advise that, in addition to being involved in the private practice of law, you serve on the boards of numerous for-profit and non-profit organizations. One of the boards on which you sit is that of a small domestic insurance company, which pays you a minimal stipend amounting to less than one percent of your annual income. Although you indicate that you file appropriate conflict statements pursuant to Senate Rules and Section 112.3143(2), Florida Statutes, when voting on legislation which could directly or indirectly have any affect on this insurance company, you question whether this situation creates a conflict of interest prohibited by the Code of Ethics for Public Officers and Employees.

The Code of Ethics provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1993).]

The first part of Section 112.313(7)(a) prohibits you from having an employment or contractual relationship with a business entity which is regulated by your agency. The second part of Section 112.313(7)(a) prohibits you from having an employment or contractual relationship which creates a continuing or frequently recurring conflict between your private interests and the performance of your public duties, or which impedes the full and faithful discharge of your public duties.

Your "agency" for purposes of the Code of Ethics is the Legislature, whose regulatory powers extend generally over every business entity in the State. However, members of legislative bodies are given a limited exemption from the application of Section 112.313(7)(a) by subparagraph (7)(a)2, which states:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or deemed a conflict.

Thus, in a number of opinions, we have found that this provision exempts conflicts of interest where a legislator had an employment or contractual relationship with a business entity which could be affected by legislation enacted by the Legislature. *See* CEO 77-129, involving a State Representative whose law firm represented condominium associations and who participated in condominium legislation; CEO 80-7, involving a State Representative whose law firm represented a bank and who participated in banking legislation; CEO 81-12, involving a State Representative whose law firm represented a housing authority and who participated in legislation affecting the housing authority; and, more recently, CEO 91-8, involving a State Representative who served on the House Corrections Committee and was also an officer and shareholder in a corporation engaged in the business of developing detention facilities. Based on the rationale of these opinions, we conclude that your service as a director of the insurance company does not violate the first part of Section 112.313(7)(a).

In CEO 91-01, we advised that a continuing or frequently recurring conflict or impediment to the full and faithful discharge of public duties would be created, in violation of the second part of Section 112.313(7)(a), if a State Senator were to contract with a professional association that lobbied the Legislature to speak to its professional groups regarding legislative issues, to contribute articles on legislative issues to the association's publications, and to advise its executive committee and board of governors regarding legislative and political education activities of the association. There, we determined that the subject matter of the Senator's proposed employment arose out of his public position and related directly to issues that might be expected to come before him in his official capacity. In other opinions, such as CEO 90-8, we have concluded that a member of the Legislature could be employed by an organization that engages in lobbying the Legislature so long as the member's duties do not involve personally engaging in lobbying activities and do not encompass any activities related to lobbying.

Here, you have advised that the insurance company does not retain a regular full-time lobbyist, although from time to time it has retained lobbyists for specific needs. The company is a member of the Florida Insurance Council, which does lobby the Legislature, you advise. However, you state that neither you nor any other director are retained to lobby the Legislature, that your duties as a director have absolutely no relationship or involvement in the lobbying process, that any lobbying is a part of the administrative functions of the company, and that there is not interface between the directors and any lobbying efforts. Therefore, we conclude that, as your serving as a director of the insurance company does not encompass any activities related to lobbying, that service would not pose a continuing or frequently recurring conflict or impediment to your public duties, in violation of the second part of Section 112.313(7)(a).

Finally, there may be a question about whether the stipend you receive for serving as a director is simply a gift to you. You advise that the stipend you receive is identical to that received by all other outside directors of the company. Under Section 112.312(12)(a), Florida Statutes, a

"gift" must be something "for which equal or greater consideration is not given. . . ." Our Rule 34-13.210(3)(b), Florida Administrative Code, specifically provides that one of the factors to be examined in determining whether a gift has been provided is "[w]hether persons performing similar services for the benefit of the donor received a comparable gift from the donor." Therefore, we conclude that the stipend you receive from the insurance company does not constitute a gift.

The opinions referenced above also discuss other ethics provisions of which you should be aware, including provisions within the "Sunshine Amendment" and its statutory counterpart which prohibit you from personally representing for compensation and entity before a state agency; the misuse of public position prohibition, Section 112.313(6), Florida Statutes; and the voting conflicts law, Section 112.3143(2), Florida Statutes. While these provisions may apply in specific circumstances, they do not preclude you from serving as a director of the insurance company while chairing the Banking and Insurance Committee.

Accordingly, we find that your compensated service on a domestic insurance company's board of directors would not create a prohibited conflict of interest with your duties as a State Senator and as Chairman of the Senate Banking and Insurance Committee.

**CEO 95-025—August 31, 1995**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT;**
**VOTING CONFLICT OF INTEREST**

STATE REPRESENTATIVE EMPLOYED BY COMMUNITY COLLEGE
TO COORDINATE FUNDRAISING ACTIVITIES OF COLLEGE FOUNDATION

*To: Mr. Mark Herron, Attorney (Tallahassee)*

**SUMMARY:**

**The code of Ethics for Public Officers and Employees would not prohibit a community college from employing a State Representative to coordinate the fundraising activities of the college's direct-support organization. The proposed employment would not violate Section 112.313(7), Florida Statutes. Nor would Article II, Section 8(e), Florida Constitution, or Section 112.313(9)(a)3, Florida Statutes, be implicated, since the legislator will not "represent" the college before any State agency or the Legislature. Section 112.3143(2), Florida Statutes, may require her disclosure of votes which inure to the special private gain of her employer, but would not require her abstention from any vote. Section 112.3148(3), Florida Statutes, would not be implicated by her solicitations on behalf of the college and its direct-support organization, since it is not envisioned that she will receive any personal benefit as a result of her efforts on the college's behalf.**

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees prohibit a legislator from being employed by a community college to coordinate the fundraising activities of the college's direct-support organization?**

Your question is answered in the negative.

In your letter of inquiry, you represent that you have been authorized to seek this formal opinion on behalf of Tallahassee Community College (TCC), which is contemplating employing State Representative Marjorie Turnbull as its Director of Institutional Development. In that capacity, she would coordinate the fundraising activities of the TCC Foundation, a direct-support

organization created pursuant to Section 240.331, Florida Statutes, which is "organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to, or for the benefit of, a community college in this state." It is proposed that if so employed, this individual's responsibilities would include obtaining funds through grants, gifts, donations and otherwise from public and private sources. One potential source of grant funding would be grants obtained from State agencies.

We are further advised that although working for the benefit of the TCC Foundation, this individual will be an employee of TCC, not the TCC Foundation. It is anticipated that she would be compensated on a fixed basis, which would not be conditioned upon nor contingent upon how much money she raises for the TCC Foundation by grant or otherwise.

You represent that this individual would have no personal contact with any agency of State government with respect to her duties at TCC or the TCC Foundation, consistent with the requirements of Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes. Nor will she "represent" TCC or the TCC Foundation before any agency of State government as that term is defined in Section 112.312(22), Florida Statutes. You further represent that her employment responsibilities will not encompass activities relating to lobbying the Legislature on behalf of TCC, although she may participate in the decision-making process of whether to approach the Legislature concerning an issue.

As a State Representative, we are advised, this individual currently serves on the House Committee on Higher Education and the Select Committee on Educational Facilities. In that capacity, she may be required to vote on matters affecting Florida's community college system or community college direct-support organizations. As a member of the Legislature, she will be called upon to vote on the annual general appropriations act, which may include specific line items directed towards TCC as well as general appropriations to the Division of Community Colleges or the Department of Education to be allocated to all the community colleges, including TCC. It is anticipated that she would participate in the debate and vote on such measures. In light of the foregoing, you question the applicability of the Code of Ethics for Public Officers and Employees to this proposed employment situation.

Section 112.313(7)(a), Florida Statutes, states:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—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 is an officer or employee . . . ; 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 private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1993).]

In connection with this prohibition, Section 112.313(7)(a)2, Florida Statutes, provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Construing these provisions under similar circumstances, we previously have advised that the Speaker of the House could serve as chief administrative officer of a community college (CEO 89-60), that a legislator could be employed as an administrator of a State university or community college (CEO 79-59), and that a State Representative could be employed

by a State university (CEO 81-14). We have also construed these provisions to permit a State legislator's employment as executive director of a nonprofit corporation receiving State funds. *See* CEO 85-86 and CEO 82-92. Therefore, based upon the rationale of these cited opinions, we do not believe that this legislator's employment by TCC would present a conflict of interest prohibited by Section 112.313(7), Florida Statutes.

With regard to Article II, Section 8(e), Florida Constitution, and its statutory companion, Section 112.313(9)(a)3, Florida Statutes, these restrictions prohibit a legislator from personally representing an entity for compensation before any State agency other than judicial tribunals. They also prohibit a legislator from lobbying the Legislature until two years after leaving office, even when lobbying on behalf of a public employer. See CEO 90-23 and CEO 90-4. Inasmuch as you have represented that the proposed employment will not involve "representation" of TCC or the TCC Foundation before any agency of State government or the Legislature, we would not expect her employment to violate either Article II, Section 8(e), Florida Constitution, or Section 112.313(9)(a)3, Florida Statutes.

The applicable portion of the voting conflict law states:

> No state public officer is prohibited from voting in his official capacity on any matter. However, any state public officer voting in his official capacity upon any measure which would inure to his special private gain; and which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained; or which he knows would inure to the special private gain of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his 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. [Section 112.3143(2), Florida Statutes (1993).]

Where the legislator votes on a matter that inures to the special private gain of her employer, TCC, or its direct-support organization, the TCC Foundation, she will need to disclose the nature of her interest in the manner required by Section 112.3143(2), Florida Statutes. This statutory provision does not require abstention from voting by State public officers, such as members of the Legislature.

Finally, we would suggest that TCC and the legislator review Section 112.3148(3), Florida Statutes, which states:

> A reporting individual or procurement employee is prohibited from soliciting any gift, food, or beverage from a political committee or committee of continuous existence, as defined in s. 106.011, or from 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, food, or beverage 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 subsection of the gift law prohibits reporting individuals, such as the legislator, from soliciting any gift, food, or beverage from lobbyists who lobby the Legislature, or from any partner, firm, employer, or principal of such a lobbyist, where the gift, food, or beverage is for the personal benefit of the legislator, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee. In CEO 91-52, we opined that this provision would not be violated where a city councilwoman solicited funds for a nonprofit organization seeking to establish a bird sanctuary and nature center at a city park. Similarly, the legislator would not run afoul of this or other provisions within Section 112.3148, Florida Statutes, as long as she received no personal benefit as a result of her solicitations on behalf of TCC or the TCC foundation.

Accordingly, we find that the Code of Ethics for Public Officers and Employees would not prohibit a community college's employment of a legislator who will coordinate the fundraising activities of the college's direct-support organization.

**CEO 96-002—January 29, 1996**

**GIFT ACCEPTANCE AND DISCLOSURE**

LEGISLATOR RECEIVING SKYBOX TICKETS FOR BASKETBALL PLAYOFF GAME FROM COUNTY CHAIRMAN

*To: The Honorable Bill Sublette, Member, Florida House of Representatives, District 40 (Orlando)*

**SUMMARY:**

**Consistent with CEO 95-36, a legislator received a gift with a value in excess of $100, where he accepted two tickets to an NBA playoff game, given to him by a county chairman. Although the tickets, which provided seating in the county's skybox at the municipal arena, were provided without cost to the county or its chairman, their valuation is controlled by the principles contained in Section 112.3148(7), Florida Statutes, and Rule 34-13.500, Florida Administrative Code. Specifically, the tickets are valued based on the cost of admission to persons with similar tickets. Therefore, Section 112.3148(4) prohibited the legislator from "knowingly" accepting a gift with a value in excess of $100 from the principal of lobbyists who lobby the Florida Legislature. However, under the circumstances, it cannot be concluded that such a gift was "knowingly" accepted.**

**QUESTION:**

**Are two tickets to an NBA playoff game, given to you, a member of the House of Representatives, by a county chairman, considered to be gifts subject to the provisions of Section 112.3148, Florida Statutes, where the tickets had no face value and were provided without cost to the county or its chairman?**

Under the circumstances presented, your question is answered in the affirmative.

Through your initial letter of inquiry and other correspondence, we are advised that you received two tickets from the Orange County Chairman to NBA Playoff Game 7, held on May 25, 1995 in the Orlando Arena. The tickets provided seating in the County's skybox, were marked $-0-, and were reportedly provided without cost to either the Chairman or the County. Under these circumstances, you question whether the tickets were "gifts" subject to the provisions of Section 112.3148, Florida Statutes.

Under the statutory definition of a "gift," Subsection 112.312(12)(a)10 includes "[e]ntrance fees, admission fees, or tickets to events, performances, or facilities." Thus, we conclude that the tickets you received fall within this statutory definition and were "gifts." However, the real issue you have asked us to confront is the treatment of these tickets pursuant to Section 112.3148, Florida Statutes. Whether a gift can legally be accepted, and concomitantly, whether it must be reported, frequently depends on the gift's valuation. As for its acceptance, Section 112.3148(4) states:

> 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 political committee or committee of continuous existence, as defined in s.106.011, or from 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 a 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.

Section 112.3148(4) prohibits a legislator from knowingly accepting a gift from a lobbyist who lobbies the Legislature, or from the partner, firm, employer, or principal of such a lobbyist, where he knows or reasonably believes that the gift has a value in excess of $100. Although the Orange County Chairman is not registered as a legislative lobbyist pursuant to Section 11.045, Florida Statues, the lobbyist registration maintained by the Joint Legislative Management Committee lists several lobbyists who are registered to represent Orange County before the Legislature. Thus, it is our view that Orange County would be considered the principal of lobbyists who lobby the Legislature and that Section 112.3148(4) would prohibit your acceptance of a gift with a value in excess of $100 from the County through its Chairman.

We also observe that Section 112.3148(6) is inapplicable to your inquiry. That provision generally allows certain governmental entities and direct-support organizations to give gifts with a value in excess of $100 to reporting individuals and procurement employees under specific conditions. However, here, the statutory condition that a public purpose be served by both the giving and receipt of a gift is not met. As noted in our Rule 34-13.320(2)(b), Florida Administrative Code:

> Where the gift involves attendance at a spectator event and is given by a governmental entity, and were the donee has no direct supervisory or regulatory authority over the event, persons participating in the event, or the governmental entity which gave the tickets to the donee, there is no public purpose shown for the giving of, or the receipt of, the gift.

Thus, Section 112.3148(6) is not applicable.

Valuation of the tickets you received is our next consideration, and we recently confronted that issue in CEO 95-36. There, Orange County, as the donor of identical tickets for the current NBA season, sought our guidance on their valuation even though the County receives them from the City at no cost. We concluded, applying the various valuation principles included in Section 112.3148(7), Florida Statutes, and Rule 34-13.500, Florida Administrative Code, that the tickets should be valued at the cost of admission to persons with similar tickets. Thus, the value of each ticket to a Magic game in the County's skybox *this season* is $105.

After we rendered CEO 95-36, County staff represented that tickets comparable to those you received for Game 7 of the 1995 NBA Playoffs cost $100 each. Thus, in being given two tickets by the County Chairman, you received a gift with a value in excess of $100 from the principal of lobbyists who lobby the Legislature. While acceptance of such a gift is prohibited by Section 112.3148(4), we note that the statute includes qualifying words such as "knowingly accepting" and "knows or reasonably believes." Under the circumstances, it can hardly be concluded that you acted "knowingly" or "reasonably believed" that you were accepting a gift worth over $100 from the principal of lobbyists. This is evident from the correspondence which accompanies both your opinion request and that of the County. In fact, we note that before seeking its opinion, County staff incorrectly advised recipients of Magic tickets to disclose them on CE Form 10 ("Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event Related Expenses") and to indicate that their value was "indeterminate." Therefore, we cannot say that your acceptance of these tickets, under the circumstances presented, violated Section 112.3148(4), Florida Statutes.

Several other issues merit discussion. First, Section 112.3148(8) requires the quarterly disclosure of gifts you received having a value in excess of $100. Although Section 112.3148(8)(a)2 does not require the disclosure of gifts prohibited by Section 112.3148(4), here, we have concluded that because you did not "knowingly" accept a gift with a value in excess of $100 from the principal of a lobbyist who lobbies the Legislature, your receipt of the two Magic tickets was not a gift prohibited by Section 112.3148(4), Florida Statutes. Therefore, you should disclose the May 1995 receipt of those two tickets on our CE Form 9 for the calendar quarter ending September 30, 1995.

Second, after we rendered CEO 95-36, we were advised that you had sent the County a personal check in the amount of $210 as reimbursement for the tickets, as it was your stated policy not to accept gifts in any form. Although "compensation provided by the donee to the donor shall be deducted from the value of the gift in determining the value of the gift," pursuant to Section 112.3148(7)(b), Florida Statutes, we are reluctant to conclude that because you (over)reimbursed the County in December 1995, you did not receive a gift in May 1995. Generally, we are of the view that such compensation should occur nearly simultaneously to the giving of the gift.

Accordingly, the two tickets you received form the County Chairman in May 1995, which admitted you to the County's skybox in the Orlando Arena for NBA Playoff Game 7, was a "gift" with a value in excess of $100 that was not prohibited by Section 112.3148(4), Florida Statutes.

**CEO 96-004—January 29, 1996**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT;**
**VOTING CONFLICT OF INTEREST**

STATE SENATOR CONTEMPLATING FUTURE EMPLOYMENT OPPORTUNITIES
IN HEALTH CARE INDUSTRY

*To: Mr. Mark Herron, Attorney (Tallahassee)*

**SUMMARY:**

**The Code of Ethics for Public Officers and Employees would not prohibit a State Senator from becoming employed by a corporation involved in the health care industry. The proposed employment would not violate Section 112.313(7)(a), Florida Statutes, since the Legislature's regulation of that industry is strictly through the enactment of laws. The Senator has represented that he would not represent the corporation before any level of State government, so there is no indication that the Sunshine Amendment (Article II, Section 8(e), Florida Constitution) nor its statutory counterpart, Section 112.313(9), Florida Statutes, would be implicated. Any voting conflicts of interest that may develop require disclosure, not abstention, and the Senator is prepared to comply with the requirements imposed by the voting conflict, Section 112.3143(2), Florida Statutes. Finally, none of the information reviewed insinuates the clear potential for violations of Section 112.313(6) or 112.313(8), and none are presumed. However, the Senator is advised to keep separate his private interests form his public responsibilities, thereby avoiding allegations of misuse of position or disclosure or use of certain information.**

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees prohibit a State Senator from becoming employed by a corporation which focuses on market research and business development of various health care clients?**

Your question is answered in the negative.

In your letter of inquiry, you represent that you have been authorized to seek this formal opinion on behalf of Alberto Gutman, a member of the Florida Senate. You advise there and in supplemental correspondence that the Senator is contemplating future employment opportunities and that one such opportunity involves employment by a corporation which focuses on market research and business development of various health care clients. In considering employment with this action, it is anticipated that his responsibilities would encompass market research and analysis, development of health care provider networks, and analysis of financial information for the purpose of making recommendations concerning establishment and development of the company in various market areas. You further represent that the Senator would be a salaried employee, with performance-based incentives included in his compensation package. You further assert that the Senator would not represent the corporation before any agency of the State of Florida and that he would not be responsible for permit or licensing applications at any level of government.

We are advised that, as a State Senator, his current committee assignments include Banking and Insurance; Commerce and Economic Opportunities; Ways and Means, Subcommittee C; and the Select Committee on Social Services Reform. You also acknowledge that as a State Senator, he may be called to vote upon legislation affecting his professional interests.

In light of the foregoing, you question the applicability of the Code of Ethics for Public Officers and Employees to his prospective employment situation.

Section 112.313(7)(a), Florida Statutes, states:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--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 . . .; 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. [Section 112.313(7)(a), Florida Statutes (1995).]

In connection with this prohibition, Section 112.313(7)(a)2, Florida Statutes, provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, the employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Construing these provisions under similar circumstances, we previously have advised that a State Senator chairing the Banking and Finance Committee could serve as a director of an insurance company (CEO 95-21); and that a State Representative serving on the House Corrections Committee could be an officer and shareholder of a corporation engaged in the business of developing detention facilities (CEO 91-8). It is our view that the rationale of these opinions would also be applicable to the Senator, and that his prospective employment opportunity, as described, would not violate Section 112.313(7)(a), Florida Statutes.

Public discourse in Florida has long debated the competing models of “part-time” or “citizen” legislatures whose members are encouraged to have outside employment versus “full-time” or “professional” legislatures which eliminate their members’ private employment pursuits. Notwithstanding this debate, Florida’s constitution and laws presently preserve the notion of a “citizen” legislature, and only those outside employment opportunities that contravene the conflict of interest statutes are prohibited. Here, where Section 112.313(7)(a)2 expressly permits legislators to be employed by a business entity even though the Legislature regulates that entity through the enactment of laws, we cannot construe the statute to be violated in this instance.

With regard to Article II, Section 8(e), Florida Constitution, and its statutory counterpart, Section 112.313(9)(a)3, Florida Statutes, these restrictions prohibit a State Senator from personally representing an entity for compensation before any State agency other than judicial tribunals. They also prohibit a State Senator from personally lobbying the Legislature until two years after leaving office, even when lobbying on behalf of a public employer. Inasmuch as you have represented that the Senator's proposed employment will not involve "representation" of the corporation before any agency of State government, we would not expect his employment to violate either Article II, Section 8(e), Florida Constitution, or Section 112.313(9)(a)3, Florida Statutes, as long as he abides by these proscriptions.

The applicable portion of the voting conflict law states:

> No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, 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. [Section 112.3143(2), Florida Statutes (1995).]

Where the Senator votes on a matter that inures to the special private gain or loss of the employing corporation or its parent organization or subsidiary, he will need to disclose the nature of his interest in the manner required by Section 112.3143(2), Florida Statutes. However, it is noted that this statutory provision does not require abstention from voting by State public officers, such as State Senators.

Another area that must be addressed is the prohibition contained in Section 112.313(6), Florida Statutes, against using one's public position for personal gain or benefit where one's actions are undertaken with the wrongful intent and in a manner which is inconsistent with the proper performance of public duties. Similarly, Section 112.313(8), Florida Statutes, prohibits a public officer from disclosing or using certain information not available to the general public and obtained through his public position for either his personal gain or benefit or for that of some other person or business entity. Nothing we have reviewed concerning the Senator's potential employment implicates either provision, and particularly with regard to Section 112.313(6), we generally are unable to determine in the context of an advisory opinion whether this provision will be violated since it requires an examination of intent. Nonetheless, we observe that both Section 112.313(6) an 112.313(8) are susceptible to the appearance of abuse where ones uses his perceived influence or information not widely available to obtain personal pecuniary benefits. Therefore, the Senators should be cautioned to use the utmost care in protecting his public position from allegations of impropriety, and to ensure that he keeps separate his private business endeavors from his public responsibilities.

**CEO 96-022—August 29, 1996**

**CONFLICT OF INTEREST; SUNSHINE AMENDMENT;
VOTING CONFLICT OF INTEREST**

STATE SENATOR CONTEMPLATING BUSINESS OPPORTUNITIES
WITH DENTAL CARE PROVIDER

*To: Mr. Mark Herron, Attorney (Tallahassee)*

**SUMMARY:**

**Based upon the rationale of CEO 96-4, the Code of Ethics would not be violated where a State Senator has an employment or contractual relationship with a business entity involved in dental practice administration. The same restrictions discussed in CEO 96-4 would also apply.**

**QUESTION:**

**Does the Code of Ethics for Public Officers and Employees prohibit a State Senator from becoming a employed by or consulting with a dental practice administration company?**

Your question is answered in the negative.

By letter you advise that you are seeking this opinion on behalf of Alberto Gutman, a member of the Florida Senate. You represent that the Senator is considering employment opportunities different from those which were addressed in CEO 96-4. He is now interested in consulting with or becoming employed by a publicly traded corporation which is involved in dental practice administration. You relate that this company may enter the dental managed care business, serving as a provider under the Medicaid program and to various HMO's, PPO's, insurance companies, and other State-regulated entities. Additionally, the company may apply for a license from the Florida Department of Insurance to operate a prepaid dental health plan.

You represent that health care entities and practitioners are subject to the regulation of the Florida Legislature, as are dental managed care organizations. Additionally, the scope of Florida's Medicaid program is determined by the Legislature, which funds the program through the general appropriatons process. Acknowledging the potential applicability of various provisions of the Code of Ethics for Public Officers and Employees which were discussed in our previous opinion to the Senator, you question whether his relationship with the dental practice administration company would compromise any of these constitutional or statutory proscriptions.

We see no basis to distinguish the factual situation presented here from that presented in CEO 96-4. Based upon the rationale of that opinion, we conclude that the Code of Ethics for Public Officers and Employees would not be violated where a State Senator consults with or is employed by a dental practice administration company. The Senator is admonished to conduct himself in light of the restrictions discussed in CEO 96-4, which are also applicable here.

**CEO 98-08—April 16, 1998**

**GIFT ACCEPTANCE/DISCLOSURE**

LEGAL DEFENSE FUND ESTABLISHED TO BENEFIT STATE LEGISLATOR

*To: Name Withheld at Person's Request (Lake City)*

**SUMMARY:**

**A legal defense fund may be established to assist a State legislator with the payment of his legal expenses, but contributions to the fund would be considered "gifts" for purposes of Section 112.3148, Florida Statutes. The fund would be prohibited by Section 112.3148(4), Florida Statutes, from accepting contributions in excess of $100 from political committees, individuals who lobby the Legislature and their partners, firms, employers, or principals. Contributions made to it by others who are not included in the group of prohibited donors could be accepted, and those contributions that exceed $100 would have to be reported on the legislator's CE Form 9 pursuant to Section 112.3148(8), Florida Statutes. CEO's 91-37 and 91-24 are referenced.**

**QUESTION:**

**How would the gift law contained in Section 112.3148, Florida Statutes, treat contributions made to a fund established to assist a legislator with his personal legal expenses?**

Your question is answered as follows.

In your letter of inquiry, you relate that you are a member of the Florida Legislature and you question whether and how the gift law contained in Section 112.3148, Florida Statutes, would treat a legal defense fund established to assist with the payment of your legal expenses. You indicate that the fund would be established by someone other than yourself or another public official and that person would solicit contributions and direct legal disbursements to the attorneys on your behalf. No other details concerning the fund were provided with you letter.

The definition of a "gift" in Section 112.312(12)(a), Florida Statutes, provides:

> "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or *by another on the donee's behalf,* or *that which is paid or given to another for or on behalf of a donee, directly or indirectly, or in trust for the donee's benefit* or by any other means, for which equal or greater consideration is not given, including:
>
> ...
>
> 3. Tangible or intangible personal property.
>
> ... .[E.S.]

In CEO 91-37, we opined that cash contributions to help underwrite a city councilman's newsletter to his constituents would constitute "gifts" for purposes of the gift law, even though "cash" was not explicitly listed in the definition of a "gift." In that opinion, we also noted that the city

councilman would be prohibited by Section 112.3148(3), Florida Statutes, from soliciting contributions from political committees or from lobbyists who lobbied the city, and he was prohibited from accepting any contribution in excess of $100 from political committees or from lobbyists who lobbied the city. Contributions in excess of $100 from persons who were not considered to be "lobbyists" were permissible and were to be reported in accordance with Section 112.3148(8), Florida Statutes, on the city councilman's Quarterly Gift Disclosure form, CE Form 9.

Applying the rationale of that opinion to the situation you have described, donations to a legal defense fund established for your benefit would constitute "gifts" to you. Inasmuch as Section 112.3148(4), Florida Statutes, prohibits you or any other person on your behalf from knowingly accepting, directly or indirectly, gifts from certain donors where the value of the gift exceeds $100, the legal defense fund would be prohibited from accepting donations in excess of $100 from political committees, from lobbyists who lobby or have lobbied the Legislature within the 12 months preceding the gift, and from the partner, firm, employer, or principal of such lobbyists. Under the statutory definition of "gift," there is no distinction between a gift given directly to you and a gift given to someone else for your benefit. Therefore, the fund could not accept contributions in excess of $100 from those prohibited donors identified in Section 112.3148(4). Although those donors could contribute up to $100 to the fund, they would be required to disclose their contributions between $25 and $100 on the Donor's Quarterly Gift Disclosure form, CE Form 30, and may also have lobbyist expenditure reporting obligations pursuant to Section 11.045, Florida Statutes.

Contributions to the fund by others who are not political committees, lobbyists, or their partners, firms, employers, or principals could be accepted, and those contributions that exceed $100 would have to be reported on your Quarterly Gift Disclosure form, CE Form 9.

In rendering this opinion, we are not unmindful that there exists precedent at the Federal level that has permitted government officials to establish legal defense funds that accept contributions to assist with the official's legal expenses. In the case of the Presidential Legal Expense Trust, established in June 1994 by President and Mrs. Clinton, the terms of that Trust permitted it to accept contributions from individual U.S. citizens (but not Federal employees, corporations, labor unions, partnerships, political committees, or other entities). Contributions were limited to $1,000 per eligible individual per year and, because of Federal restrictions, the Clintons were not allowed to solicit donations to the Trust. Trust documents stated that the named trustees would not engage in the solicitation of donations either. This Trust was dissolved at the end of 1997 and a new trust, known as The Clinton Legal Expense Trust, subsequently was established by former Senator David H. Pryor of Arkansas. It is different from the first trust in several respects; most notably, its trustees have the authority to solicit or use agents to solicit donations.[1]

Returning to the facts at hand, we express no opinion on the issue of others soliciting donations to your legal defense fund as we have not been provided with sufficient detail to evaluate any proposed conduct against Section 112.3148(3), Florida Statutes, which prohibits you and other reporting individuals from soliciting gifts for your personal benefit from political committees, from lobbyists, and from the partners, principals, employers, and firms of lobbyists. However, we are of the view that the statute should not be construed to allow a reporting individual to authorize others to do that which he himself is prohibited by law from doing.

In CEO 91-24, we noted that although Federal law permitted the creation of "blind trusts," there was no such provision in State law that would permit the State Comptroller to own stocks in businesses whose subsidiaries were regulated by the Florida Department of Banking and Finance. Similarly, there is no express provision under Florida law that would permit the establishment of a trust to circumvent the prohibitions of Section 112.3148, Florida Statutes.

Accordingly, we find that a legal defense fund could be established to assist a State legislator with his personal legal expenses, but the fund would be prohibited from accepting certain

[1] Documents describing the Presidential Legal Expense Trust and The Clinton Legal Expense Trust were obtained from staff of the U.S. Office of Government Ethics.

donations in excess of $100 and the legislator would be required to disclose other contributions that exceed $100.

## INDEX TO ADVISORY OPINIONS

(Commission on Ethics)

### A



### B

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**V**

**ADVISORY OPINIONS**

**of the**

**HOUSE GENERAL COUNSEL**

**Relating to**

**MEMBERS OF THE LEGISLATURE**

**of the State of Florida**

**December 7, 1990, through October 29, 1999**

**HCO 90-01—December 7, 1990**

*To: The Honorable Carlos L. Valdes, Representative, 112th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have inquired as to the applicability of HB 31-A, adopted by the Florida Legislature on November 20, 1990, to the following set of facts:

> You have been invited to attend the American Leadership Conference in Washington, D.C., on December 14-16, 1990 at the Sheraton Washington Hotel. The conference is intended as an international event at which leaders of several countries will share ideas and discuss issues of mutual concern to the leaders of the various countries. The conference will be sponsored by the American Constitution Committee and CAUSA International. Air travel, lodging, and meals will be provided to you should you choose to attend.

As HB 31-A does not become effective until January 1, 1991, it would have no legal impact on your ability to accept or your obligation to report the acceptance of the payment of expenses relating to your attendance of the conference. However, it is my understanding that you wish me to advise you as to what the consequences would be under the legislation, notwithstanding the fact that it has not yet become law.

It is my understanding that neither the American Constitution Committee or CAUSA International employ persons or otherwise contract with persons to lobby the Florida House of Representatives. Under the legislation, therefore, there would be no prohibition on either organization paying for your expenses or on your receiving such expenses.

Although no prohibition would exist for the receipt of such expenses, the payment of travel and lodging would be reportable as a gift from the sponsoring organizations. You would be required to report the date the gift was given, describe the gift, name the donors, and report the value of the air fare and lodging. Meals would not be considered a gift and would therefore not be reportable.

**HCO 90-02—December 12, 1990**

*To: The Honorable Sam Mitchell, Representative, 7th District, Chipley*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked me to comment on the application of HB 31-A which passed during the November 1990, Special Session, to the following statement of facts:

> During the month of January 1991, you would organize a hunting trip to your district for various members of the Florida Legislature. Members attending would be required to pay for their own lodging and transportation to your district. Meals and beverages would be provided to the members and to other persons participating in the event, including various constituents of yours. You would order and prepare the food on behalf of all the participants, but payment for the food and beverages would be made by a third party who would accept contributions from lobbyists and others for the payment of the food and beverage. You would be receiving no payment for the food preparation or for other incidental services you provide; those services would be provided by you as your contribution to the event.

The only issue which is raised by this request is whether the payment by lobbyists for food and beverages would constitute a gift to you or to other members of the Legislature. It is my opinion that the answer to that question is that the payment would not constitute a gift which is either prohibited or reportable. I note that:

1. Payment by the lobbyists will be to a third party who is not a government official and that the payment to the vendors will be made by that independent third party.

2. You will receive no payment for your services, including the preparation of food and making other arrangements for the members attending.

3. The only benefit you will personally be receiving is the provision of your food and beverage, which is the same benefit being received by all participants.

In defining the term gift, HB 31-A specifically exempted from the definition "food or beverage intended to be consumed at a single sitting or event." Although the lobbyists would actually be providing money, rather than food or beverage, to a third person for the purchase of the food and beverage, the actual item received by the Legislators would be the food and beverage. The money is going to a third party and none of that money will be paid to you by the third party. This would appear to be no different than a lobbyist purchasing a meal for a Legislator from a restaurant. While you do not specify whether the various lobbyists would be present, I would note that a requirement that the donor be present in order for the food and beverage exemption to apply was specifically rejected by the Joint Advisory Committee on Ethics. It is therefore my opinion that the issue of whether the lobbyists would be present or not is irrelevant to a determination of the legality of their providing food and beverages to the participants in the hunt.

I would point out, however, that it would be a violation were you to solicit donations from any lobbyists of any amount for the payment of the food and beverages to be provided. Solicitation of food and beverage, as well as of gifts, is prohibited.

Finally, I would suggest that you provide each of the governmental participants with a list of those persons providing the food and beverage, so that it is clear that you are not providing the food and beverage as a gift from you. It is my opinion that if it were the understanding of the officials present at the hunt, that you were paying for the food and beverage, and it was being paid by a lobbyist, the payment by the lobbyist would be a gift to you in violation of the newly enacted state law.

**HCO 90-03—December 18, 1990**

*To: The Honorable Willie Logan, Jr., Representative, 108th District, Opa-locka*

*Prepared by: Thomas R. Tedcastle, House General Counsel and Patrick L. Imhof, Staff Director of the Office of the Speaker pro tempore*

You have asked me to comment, in your position as Chairman of the Conference of Black State Legislators, on the application of HB 31-A which passed during the November 1990, Special Session. Your first question on the applicability of that act states:

> The Conference currently has a Foundation whose primary purposes are related to research and education. In light of the provisions of the new ethics package recently signed into law, can the Conference continue to raise money through the Foundation to support its charitable purposes? If so, are there any limitations on the sources or amounts of money which can be raised on behalf of the Foundation?

Pursuant to s. 112.3148, F.S., as amended by HB 31-A, a legislator is prohibited from soliciting a gift from a political committee or committee of continuous existence as defined in s. 106.011, F.S., a lobbyist who is required to be registered as a lobbyist under the rules of the House of Representatives or the partner, firm, employer, or principal of the lobbyist, where the gift is for the personal benefit of the legislator or any member of his immediate family.

In this case, a legislator would not be prohibited from soliciting a gift if it is for the benefit of a charitable organization.

This section also prohibits a legislator from knowingly accepting, either directly or indirectly, a gift from the above persons, if he knows or reasonably believes that the gift is over $100. A legislator may accept such a gift, however, if it is on behalf of a charitable organization or governmental entity. If a gift is accepted on behalf of a charitable organization, it should be transferred to that organization as soon as reasonably possible.

Please note that all gifts received by a legislator, except for gifts from relatives, which are over $100 must be reported in a statement to the Secretary of State on the last day of each calendar quarter. The statement is required to include: a description of the gift, the value of the gift, the name and address of the person giving the gift, and the date of the gift.

Your second question on the applicability of HB 31-A asks:

> The Conference traditionally has hosts for social gatherings of Conference members and sometimes business meetings of the Conference. Under the provisions of the new Ethics law, are these hosted events prohibited? If not, under what circumstances can the Conference accept these type of invitations?

As noted above, a legislator is prohibited from soliciting a gift from a political committee or committee of continuous existence as defined in s. 106.011, F.S., a lobbyist who is required to be registered as a lobbyist under the rules of the House of Representatives or the partner, firm, employer, or principal of the lobbyist, where the gift is for the personal benefit of the legislator or any member of his immediate family. I would point out that under this provision, it would be a violation were you to solicit donations from any lobbyists of any amount for the payment of these events as the solicited items would be primarily for the benefit of Florida legislators. This would include any food and beverages which are to be provided.

However, a “host” who is one of the prohibited group could offer to supply food and beverages which are to be consumed at a single sitting or event. Food and beverage of this type are exempted from the definition of gift under HB 31-A.

If a hosted event has entertainment and other gifts in addition to any food and beverage, then the $100 prohibition would apply. If the actual cost to the participants cannot be determined, then the total cost of the nonexempt gifts is prorated among all of the invited persons.

Any person who is not a member of the prohibited group could be solicited or could offer to host your event. Please note that any gift which is not food and beverage to be consumed at a single sitting and is over $100 must be reported as noted above.

You have also asked a question concerning the applicability of the new Open Government rules to meetings of the Florida Conference of Black State Legislators, specifically you ask:

> With respect to Conference meetings, how do the new Open Government rules adopted by the House of Representatives affect meetings of the Conference? Specifically, may the conference meet in private to consider business solely related to the internal affairs of the Conference?

Rule 5.19 governs open meetings between Members of the House of Representatives. The rule requires, subject to order and decorum, that each Member provide reasonable access to members of the public to any meeting between the Member and two or more other Members of the House of Representatives or the Senate. The members of the public must have requested admission and the meeting must have been prearranged for the purpose of agreeing to take formal legislative action on pending legislation or amendments at that meeting or a subsequent meeting.

If your meeting of the Conference is solely for the purposes of the operation or other internal affairs of the Conference, then it would not have to be open to the public pursuant to Rule 5.19. However, it is my opinion that, unless absolutely necessary, you should allow reasonable access to the meetings of the Conference.

Please note that any Senate member should determine the applicability of the Senate rules to your meetings as well.

**HCO 91-01—January 8, 1991**

*To: The Honorable Richard S. Graham, Representative, 28th District, DeLand*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an opinion as to the application of HB 31-A, enacted in 1990, to the following set of facts:

> You, and other members of the Volusia Delegation, have been provided a special long-distance line by Volusia County which enables constituents to call your office without being charged for long distance service. While you do not know the value of the service, you believe that it may cost in excess of $100 per month for the county to provide the line. It is also your understanding that Volusia County is engaged in lobbying the Florida House of Representatives from time to time, on behalf of the citizens of the county.

In essence, your question can be divided into two parts: 1) Is the provision of the special long distance line a gift to you as envisioned in the definition of gift within HB 31-A? 2) If the provision of the service is a gift, is it a prohibited gift, or a reportable gift under the act?

The second part of the question is clearly answered by the direct language of the bill. Section 112.3148(6)(b), F.S., as enacted in HB 31-A provides, in pertinent part, " . . . a reporting individual . . . may accept a gift having a value in excess of $100 from . . . a county, if a public purpose can be shown for the gift . . ." In that the provision of the service would be for the purpose of enhancing your ability to communicate with your constituents, and their ability to communicate with you, there is clearly a public purpose for providing the long-distance line to you for official purposes. Therefore, whether or not the service is a gift with a value over $100, you may accept the gift from Volusia County.

The first part of the question, however, is somewhat more difficult to answer. While it is my opinion that telephone services are among the personal services intended to be included within the definition of "gift" found in s. 112.312, F.S., it is not clear that the gift is to you, rather than to your constituents or the State of Florida. It would appear that the phone service provides a benefit to your constituents, in that it saves them from having to pay the additional cost of a long-distance call when wishing to contact your district office. Likewise, your office is saved the additional expenses which would result from you and your staff having to make long-distance calls to your constituents. As the cost of telephone service is generally paid from the intradistrict expense allowance which is provided by the Legislature to each member, the costs would be payable out of state dollars, rather than personal dollars, if the county did not provide the gift. While this payment does provide you with the flexibility to use your intradistrict allowance for other optional office expenses, such benefit would also appear to be to the state rather than to you. It could, therefore, be reasonably argued that the provision of the service is a gift to the state, which is received by you. Such gifts are specifically not subject to the provisions of HB 31-A. It is my opinion that the service would not qualify as a covered gift, but would suggest to you that the question is a close one on which the Ethics Commission might reasonably disagree. If the decision as to whether you will accept the service is dependent on a determination as to whether the gift must be reported, rather than on whether it is prohibited, I would advise that you seek a definitive opinion from the Ethics Commission, but that you may reasonably rely upon this opinion prior to the issuance of the opinion of the Ethics Commission.

If on the other hand, you would receive the service whether or not reportable, as long as it is not prohibited, I can advise you that the service is clearly not prohibited. I would suggest, however, that notwithstanding a strong argument that the provision of the telephone service by Volusia County is not a "gift" to you as a member of the Legislature, it is my advice, that you take the more conservative approach, and report the receipt of the gift on an annual basis by July 1 of each calendar year for the preceding calendar year. Based upon the assumption that the service is paid for by the county on a monthly basis, each month of service would be a separate gift and should be valued by the county on a monthly basis. Pursuant to s. 112.3148(6)(c), F.S., the county would be required by March 1 of each year to itemize for you the gifts it has provided and the cost for the service. If in any month, the service costs less than $100, that month's service would not be a reportable gift, and need not be included in the report of either the county or you.

**HCO 91-02—January 7, 1991**

*To: The Honorable C. Fred Jones, Representative, 42nd District, Auburndale*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an opinion as to the applicability of HB 31-A to the following set of facts:

> A representative of Florida Power Corporation, on behalf of the National Association of Manufacturers (NAM), has extended an invitation to you to address

> the annual NAM Public Affairs Committee meeting to be held on Monday, January 21, 1991 in Marco Island. To assist you in appearing at the meeting, NAM would pay your travel expenses to Marco Island from your home district, one night's lodging, and travel from Marco Island to Tallahassee, where you will be attending committee meetings for the remainder of that week. NAM will also reimburse you for other out-of-pocket expenses.

As you have been requested to speak at the annual meeting, the speaking engagement would qualify as an honorarium event and the expenses related thereto as honorarium expenses. Therefore, the provisions of s. 112.3149, F.S., as opposed to s. 112.3148, F.S., would provide the applicable prohibition and reporting requirements relating to the payment and receipt of expenses.

Pursuant to s. 112.3149, F.S., as enacted by HB 31-A, you may receive reasonable expenses related to the event, including payment for travel, lodging, food and beverages from any person, including a person who employs a lobbyist. You may not however, accept payment of other expenses from such a person. However, as to persons who do not employ a lobbyist, such as NAM, unless the payment is made indirectly on behalf of an organization such as Florida Power Company, who does employ a lobbyist, such persons may pay any expenses; they are not limited to transportation, lodging, food and beverage. While the facts do not clearly establish that the payment would be an indirect payment made on behalf of Florida Power Corporation, the fact that the invitation was extended by Florida Power Corporation could create such an inference. Absent further information which clearly establishes that NAM acted independent of Florida Power Corporation in deciding to invite you to address the members of NAM in Marco Island, it would, therefore, be my opinion, that to avoid any appearance of impropriety, you should consider payment by NAM an indirect payment by Florida Power Corporation.

Notwithstanding my suggestion that you treat the payment by NAM as an indirect payment by Florida Power Corporation, with the limited exception of the payment of "other out-of-pocket expenses," the facts do not constitute a situation in which you would be receiving an illegal gift or honorarium. You may accept the transportation, the lodging, and food and beverages provided during your transportation to, your stay in, and your transportation from Marco Island from NAM.

Although you may accept the payment of the expenses, if the expenses are paid by or on behalf of an organization which employs a lobbyist, such as Florida Power Corporation, the donor would be required to give you a detailed statement of the expenses within 60 days following the event. You would be required to publicly file a statement of receipt of those expenses, together with the statement provided to you by Florida Power Corporation by July 1, 1992. No reporting of expenses relating to an honorarium event paid by a person not employing a lobbyist is required.

**HCO 91-03—January 9, 1991**

*To: The Honorable Luis C. Morse, Representative, 113th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

I have reviewed your letter of January 2, 1991, concerning an invitation which you have received from the government of Nicaragua to visit Nicaragua at the expense of the government. You ask me to advise you as to the legality of the trip. I interpret this letter as a request pursuant to HB 31-A for an opinion as to the applicability of s. 112.3148, F.S., to the offer and receipt of the trip.

Pursuant to the provisions of HB 31-A, travel and lodging expenses and other expenses, other than food or beverage consumed at a single sitting or event, which would generally be incurred in the trip to Nicaragua, would be considered a "gift" subject to the provisions of s. 112.3148, F.S., as amended by HB 31-A. Assuming that the expenses are being paid by the government of Nicaragua, an entity which does not employ a lobbyist to lobby before the Florida House of Representatives, you would be permitted to accept the gift. However, as the gift would be provided during the first quarter of 1991, you would be required to publicly disclose receipt of the trip as a gift on forms to be filed no later than June 30, 1991.

**HCO 91-04—January 10, 1991**

*To: The Honorable Carlos L. Valdes, Representative, 112th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

I have reviewed your letter concerning an invitation which you have received from the government of Nicaragua to visit Nicaragua at the expense of the government. You ask me to advise you as to the legality of the trip. I interpret this letter as a request pursuant to HB 31-A for an opinion as to the applicability of s. 112.3148, F.S., to the offer and receipt of the trip.

Pursuant to the provisions of HB 31-A, travel and lodging expenses and other expenses, other than food or beverage consumed at a single sitting or event, which would generally be incurred in the trip to Nicaragua, would be considered a "gift" subject to the provisions of s. 112.3148, F.S., as amended by HB 31-A. Assuming that the expenses are being paid by the government of Nicaragua, an entity which does not employ a lobbyist to lobby before the Florida House of Representatives, you would be permitted to accept the gift. However, as the gift would be provided during the first quarter of 1991, you would be required to publicly disclose receipt of the trip as a gift on forms to be filed no later than June 30, 1991.

**HCO 91-05—January 23, 1991**

*To: The Honorable Vernon Peeples, Representative, 72nd District, Punta Gorda*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an opinion pursuant to HB 31-A to the following factual situation:

> Your spouse has won a trip for two to Lake Tahoe during a fundraiser for the Medical Center Foundation, a Seventh Day Adventist organization. The trip, which was donated by a local travel agency, was a door prize rewarded in a random drawing at the fundraiser. Your wife has asked you to accompany her on the trip.

Based upon the facts as stated, it is my opinion that the provisions of HB 31-A are in no way implicated. In that the award of the prize to your wife resulted from a random drawing, it is clear that there was no intent to give you, directly or indirectly, a gift. Therefore, even if the prize would constitute a gift under the provisions of the act, it would not constitute a gift to you, but rather, a gift to your wife. The only gift which might be determined to be a gift to you is the decision by your wife that you should accompany her on the trip. As such, if you are receiving a gift, it would be a gift to you from your wife. Gifts from relatives are specifically excluded from the reporting or prohibition on receipt provisions of HB 31-A.

**HCO 91-06—January 23, 1991**

*To: The Honorable Kathy Chinoy, Representative, 20th District, Jacksonville*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an opinion pursuant to HB 31-A to the following factual situation:

> Your spouse has been invited to a meeting at the La Costa Resort and Spa from Thursday, January 31, through Sunday, February 3, 1991 in San Diego, California, in connection with Summit Pharmaceuticals, a division of CIBA-GEIGY Corporation. Your husband has asked you to accompany him on the trip.

Based upon the facts stated, it is my opinion that the provisions of HB 31-A are in no way implicated. In that the invitation to your husband to attend states that a room has been reserved for him and his adult guest, it is clear that there was no intent to give you, directly or indirectly a gift. The invitation does not specify that your husband invite you as his guest, but rather leaves the decision to him to designate the guest of his choice. Therefore, even if the provision of travel, lodging and other expenses would constitute a gift under the provisions of the act, it would not constitute a gift to you, but rather, a gift to your husband. The only gift which might be determined to be a gift to you is the decision by your husband that you should accompany him on the trip. As such, if you are receiving a gift, it would be a gift to you from your husband. Gifts from relatives are specifically excluded from the reporting or prohibition on receipt provisions of HB 31-A.

**HCO 91-07—January 31, 1991**

*To: The Honorable Jack N. Tobin, Representative, 88th District, Coconut Creek*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an opinion as to the applicability of HB 31-A to the practice of linkage institutes providing travel and other expenses for legislators and other public officials when traveling to the foreign linkage partners. The linkage institutes are co-administered by university-community college partnerships and operate within the Department of Education.

Generally, travel and lodging expenses would be considered a “gift” subject to the provisions of s. 112.3148, F.S., except where such expenses are paid in conjunction with an honorarium event. Assuming that the officials would not be invited to give speeches and presentations at the foreign locations, the expenses would be a gift.

While the latest edition of *Lobbying in Florida* does not list any lobbyists as specifically representing the linkage institutes, I am aware that several of the lobbyists for the State University System and for community colleges do lobby for the interests of the institutes they are associated with. It is, therefore, my opinion that the linkage institutes would be considered as principals who employ lobbyists. As such, they would be prohibited, absent a specific exemption, from providing any gift with a value in excess of $100 to a legislator or other public official in Florida.

Section 112.3148(6)(a), F.S., provides that certain governmental agencies may provide gifts in excess of $100 without regard to whether they are represented by lobbyists. These entities are limited to cities, counties, school boards, legislative and judicial branch entities, and departments or commissions of the executive branch. It is my opinion that the more limiting language inserted in reference to the executive branch is to be strictly construed. It is

my understanding that a linkage institute, although operated within the Department of Education, is not considered to be a part of the Department of Education. It is, therefore, my opinion that a linkage institute is prohibited from paying the expenses of a public official related to travel made on behalf of the linkage institute, except for an employee of the linkage institute or of the university or community college which administers the institute.

**HCO 91-08—January 29, 1991**

*To: The Honorable Michael Edward Langton, Representative, 15th District, Jacksonville*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an opinion as to whether you are prohibited by HB 31-A from soliciting gifts from various corporate officials or corporations represented by lobbyists to be given to Japanese government officials when you visit Japan as part of a governmental official exchange trip. You note that Japanese culture or custom includes the exchange of gifts.

HB 31-A prohibits the solicitation of gifts for your personal benefit or for the benefit of another reporting individual. As the recipients of such gifts would not be reporting individuals under HB 31-A, you would not be prohibited from soliciting gifts for such persons.

**HCO 91-09—January 29, 1991**

*To: The Honorable William Thomas Mims, Representative, 45th District, Lakeland*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an opinion pursuant to the application of HB 31-A to the following set of facts:

> You are provided a parking permit by the Hillsborough County Aviation Authority, a special district under Florida law. The permit allows you to park at the Tampa Airport without charge when traveling on state business. The permit has no face value; it is not available for a set fee.

The payment of parking charges, or the waiver of such charges, would constitute a gift under the provisions of HB 31-A. The gift, however, is the waiver of the charges, rather than the permit itself, as the permit value is dependent on whether and how frequently it is used.

As the Hillsborough County Aviation Authority is a principal which employs a lobbyist, the Authority is prohibited from giving a gift having a value over $100. While a particular exemption is given for a county to provide a gift in excess of $100, such exemption does not extend to special districts, such as the Hillsborough County Aviation Authority. The issue, therefore, is how to value the waiver of parking fees.

The waiver would be valued at the amount of fee waived, per occurrence. (Section 112.3148(7), Florida Statutes, as created by HB 31-A.) Although the term “per occurrence” is not defined, it is my opinion that parking on consecutive days would be considered a single occurrence. Therefore, if the fee accumulated for parking on consecutive days exceeds $100, the waiver of such fee would constitute a prohibited gift, which could result in the imposition of a penalty on both you and the Authority by the House of Representatives. Of course, to the extent you provide compensation, the value would be reduced. Thus, as long as you paid the amount which exceeds $100, no violation would occur.

In issuing this opinion, I understand that the ultimate beneficiary is the State of Florida, which would be required to reimburse you for the reasonable expenses incurred by you when parking at the airport for state business. It could be argued, therefore, that the acceptance of the gift is the acceptance of a gift on behalf of a governmental entity, which is specifically permitted by s. 112.3148(4), F.S. I believe, however, that such an interpretation was not intended, and that notwithstanding the fact that any costs incurred by you may be reimbursed by the Florida Legislature, waiver of such costs would still constitute a gift to you prohibited under the act.

**HCO 91-10—January 29, 1991**

*To: The Honorable George A. Crady, Representative, 13th District, Yulee*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked that I issue an advisory opinion concerning the applicability of HB 31-A to the following factual situation:

> You have been invited to participate in the Third Annual Legislative Workshop of the National Marine Manufacturers Association. Your expenses for attendance at the two-day program would be paid, including travel, lodging, food and beverage. The invitation has been extended by a lobbyist for the association.

The issue which must be decided in advising you as to the applicability of HB 31-A is whether the payment of the expenses would be a gift or would be excluded from the definition of gift as expenses related to an honorarium event. If the latter, the expenses would be permitted, but must be reported in accordance with the provisions of s. 112.3149(5),(6), F.S. If a gift, payment of the expenses in excess of $100 would be prohibited.

Pursuant to s. 112.3149(1)(a), F.S., the term "honorarium" includes payment for "a speech, address, oration, or other oral presentation." It is my opinion that the term is intended to include events such as legislative workshops as they would involve oral presentations by the participating public officials. It would appear from the facts, as stated, therefore, that the event to which you have been invited would qualify as an honorarium event.

I note from the attached program, that the attendees are expected to attend the Miami Boat Show. Payment of any required admission charge to the boat show, or waiver of such payment, would constitute a prohibited from of "honorarium." I also note that the program anticipates that attendees remain in Miami all day Saturday, although no program is planned for that day. The payment of lodging expenses for Saturday night, therefore, may also not be considered "reasonable expenses" which may be paid for you as allowable honorarium event expenses, unless the cost of lodging on Saturday would be less than the additional cost of travel on Saturday as opposed to travel on Sunday. However, as you are expected to speak on Friday, travel to Miami on Thursday, lodging for Thursday and Friday nights, and return travel on Saturday would clearly qualify.

**HCO 91-11—January 29, 1991**

*To: The Honorable Everett A. Kelly, Representative, 46th District, Tavares*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I provide you an advisory opinion as to the applicability of HB 31-A to the following factual situation:

> Citizens in your legislative district are planning a fundraising barbecue to be held in your honor. Profits will be payable to Habitat for Humanity. Although tickets will sell for only $5.00, organizers, including a former state senator wish to solicit "seed" money in the form of contributions from lobbyists and others which may exceed $100.

While the provision of "seed" money, which I understand to be nonrefundable seed money, would constitute a gift as the term is defined in HB 31-A, the gift would be for charity and not for the benefit of a reporting individual. Thus, the gift may be given and accepted. Likewise, gifts intended for the benefit of a charitable organization may be solicited by any person, including a former senator, a present senator, or even the honored public official.

While the honor bestowed upon Representative Kelly would certainly be greatly appreciated by him, it has no "attributable" value, and thus is not a gift within the meaning of HB 31-A.

**HCO 91-12—February 1, 1991**

*To: The Honorable Richard S. Graham, Representative, 28th District, DeLand*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an opinion as to the applicability of HB 31-A as adopted in 1990 to the following factual situation:

> You have been invited by the Volusia County Business Development Corporation to attend various events at the Daytona Speedway. You, and other local legislators, county commissioners, and city council members would meet with representatives of the development group and would assist them in greeting potential business prospects for the community. Your spouse is also welcome to attend. I am informed that the tickets for the particular events at which your presence has been requested have a value of less than $50 per ticket. A ticket to other events to which you have not been invited and which you will not be attending may have a value in excess of $50. You have informed me that the corporation is represented from time to time by a lobbyist appearing before the Legislature. I have been further informed that the suite in which you would be sitting is donated by the Daytona Speedway to the corporation. The Speedway is also represented before the Florida Legislature.

The cost of a gift is determined on a per occurrence basis, and thus, even if a gift, tickets to each event would constitute separate gifts. However, multiple tickets to a single event would constitute a single gift. In that you would be provided with no more than two tickets per event, and the cost per event for two tickets would not exceed $100, the gift can be provided without implicating the provisions of HB 31-A. You may accept the tickets without violating any provision of HB 31-A.

Because the value of the items provided is less than $100 per occurrence, I do not reach the issue of whether the tickets would constitute a gift from either the Volusia County Development Corporation or an indirect gift from the Daytona Speedway. In that it is my understanding that this is an annual attempt to attract business to the community to which local public officials will be invited in the future, you may wish to seek an advisory opinion from the Commission on Ethics as to whether the tickets would constitute a gift if conducted at an event such as the Daytona 500, where the value of the tickets may exceed $100.

**HCO 91-13—February 6, 1991**

*To: The Honorable Joseph Arnall, Representative, 19th District, Jacksonville*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have inquired as to whether, in accordance with the provisions of HB 31-A, an individual citizen may charter a plane for the purpose of flying the St. Johns County Legislative Delegation round trip between their districts and Tallahassee. The members would be addressing the Governor and Cabinet while in Tallahassee and would return on the same day.

It is my opinion that the provision of such transportation would constitute a "gift," as now defined in s. 112.312(9)(a), F.S. Although you would be speaking to the Cabinet, it is my interpretation that the term "honorarium event" includes only those speaking engagements for which you have been invited to speak to an organization or other group by that organization or group. It is my understanding that the Governor and Cabinet have not invited you to address them. Thus, the payment of the travel expenses would not qualify under the exemption provided in s. 112.312(9)(b)3., F.S., as expenses related to an honorarium event.

Having determined that the transportation is a "gift," there are several other questions which must be answered before it can be determined whether acceptance of the gift would be reportable, prohibited, or neither. You must first determine the value of the gift, and secondly the status of the donor.

In valuing the gift, the transportation would be valued at the cost of a round trip flight on a commercial airline. If the cost of such transportation is less than $100, the gift would not be subject to the limitations imposed under HB 31-A. Should the cost exceed $100, you would subtract from that cost the value of any consideration provided to the donor. While the value of your services as a private individual may qualify as consideration, to the extent such services are provided as a part of your legislative responsibilities, no deduction would be allowed, as you are already compensated for those services.

If the gift has a value in excess of $100, you would be prohibited from receiving the gift if the donor is a lobbyist or a lobbyist's principal, or if the gift is given on behalf of such a person. If the gift has a value in excess of $100 and is given by, and on behalf of, a person other than a lobbyist or his principal, the gift could be received by you, but would be reportable on a quarterly basis in accordance with the provisions of s. 112.3148(8)(a), F.S.

**HCO 91-14—February 7, 1991**

*To: The Honorable Patricia A. Muscarella, Representative, 51st District, Clearwater*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I provide you with an opinion as to the applicability of HB 31-A, as passed in 1990, to the following factual situation:

> You have been invited by the American Council of Young Political Leaders to visit the Soviet Union as a delegate of the organization. Funding for the trip is provided by the organization from funds appropriated by Congress to the United States Information Agency. The trip will last approximately two weeks, beginning on February 15, 1991.

The cost of the trip would constitute a gift under s. 112.312(9)(a), F.S., subject to the provisions and limitations of s. 112.3148, F.S. However, as the donor is not a lobbyist or the principal of a lobbyist who lobbies the Florida Legislature, the expenses may be legally provided to you as described above. You would, however, be required to publicly disclose receipt of the gift no later than June 30, 1991, in accordance with the provisions of s. 112.3148(8), F.S.

**HCO 91-15—February 7, 1991**

*To: The Honorable Joseph Arnall, Representative, 19th District, Jacksonville*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an opinion as to the applicability of the provisions of HB 31-A, as passed in 1990, to the following factual situation:

> You will be sharing a house with a registered lobbyist during session. You will be paying your pro rata share of rent, utilities, furniture rental, and other incidental expenses.

In redefining the term "gift" for the purposes of ethics laws, the Legislature specifically exempted items for which equal or greater consideration is paid by the donee. Therefore, to the extent you pay your pro rata share of all expenses, including rent, there would be no "gift" provided to you by the lobbyist with which you would be sharing living quarters. Such living arrangements under the circumstances recited would not result in any violation of ethics laws under the provisions of HB 31-A.

**HCO 91-16—February 11, 1991**

*To: The Honorable Carlos L. Valdes, Representative, 112th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for my opinion as to the applicability of HB 31-A, as passed in 1990, to an offer by Dade County to make space available to the Hispanic Caucus to be used for meeting purposes.

The provision of space for meeting purposes would constitute the use of real property and is therefore within the definition of "gift" provided in s. 112.312(9), F.S. It should be noted, however, that pursuant to s.112.3148(6), F.S., Dade County may provide the gift, regardless of value. The county would be required, however, to annually report the value of each gift provided having a value in excess of $100, and other information, to each recipient of the gifts, and the recipient must also report annually the receipt of such gifts.

While not specifically asked, it is my interpretation of s. 112.3148, F.S., that the cost of the space should be pro rated to each of the members of the Hispanic Caucus.

**HCO 91-17—March 15, 1991**

*To: The Honorable David Flagg, Representative, 24th District, Gainesville*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by HB 31-A (1990), to the practice of the University of Florida of making football tickets available to certain public officials. As I understand the practice, the University of Florida:

1. Provides two free tickets to each public official choosing to accept their offer to both the homecoming game and the Florida-Florida State game when played in Gainesville (the game will be at the University of Florida in the 1991 season);

2. Offers each public official the opportunity to purchase two tickets to each of the remaining home games and to the Florida-Georgia game at face value, without requiring the public official to become a member of Gator Boosters; and

3. Offers each public official the opportunity to purchase two additional season tickets at face value plus a contribution to Gator Boosters of $300 per season ticket.

The policy of providing such tickets has been approved by the Board of Regents.

In responding to your question, it is important to understand that football tickets are "gifts" under the definition adopted by the Legislature in enacting HB 31-A. Likewise, the University of Florida would be considered the principal of a lobbyist for the purpose of limitations imposed under s. 112.3148, F.S. Although the University of Florida may qualify as a governmental entity as it may be considered as part of an executive branch department of state government, direct support organizations, such as Gator Boosters, are not within the exception for limitations on providing gifts to public officials, except for the purpose of providing gifts or other support to officials of the entity supported by the direct support organization.

Pursuant to s. 112.3148(7)(h), F.S., tickets are to be valued at face value on a per event or daily basis. In testimony received by the Joint Advisory Committee on Ethics from the executive director of the Florida Commission on Ethics, the members were informed that it was the policy of the commission to consider tickets to separate football games separate gifts; the language contained in s. 112.3148, F.S., appears to have continued that policy. As the face value of each ticket is $18.00, if you accepted the offer of the University of Florida to accept the complimentary tickets, you would be receiving two gifts of $36.00 each. Even if the amount should be consolidated into one gift, the value would still be below $100, and would not result in your violating the provisions of s. 112.3148, F.S.

The offer to permit you to obtain tickets to the remaining games, if you pay $54 per seat, raises a somewhat different issue. While you would be paying face value for the remaining tickets, you would be provided, in essence, two season tickets without having to become a member of the Gator Boosters. The cost of the membership which would entitle a person to purchase two season tickets in the area where legislators would be provided tickets would be $300 per seat or $600 for the six game season. The question arises, therefore, whether the Gator Booster charge of $50 per seat per game should be added to the face value of the ticket where season tickets are provided. The answer appears to be in the negative.

s. 112.3148(7)(a), F.S., as created by HB 31-A, provides in part:

> If additional expenses are required as a condition precedent to eligibility of the donor to purchase or provide a gift and such expenses are primarily for the benefit

> of the donor or are of a charitable nature, such expenses shall not be included in determining the value of the gift.

Contributions to Gator Boosters, Inc., are considered charitable contributions under federal law. Thus the required payment of Gator Booster dues by the University of Florida, if required, would qualify as the type of additional expense which is specifically excluded from determining the value of the gift.

While the payment or waiver of membership dues is a "gift" under s. 112.312, F.S., it is my opinion that that definition would apply only where the donee actually became a member of the organization or entity, or received all of the benefits of membership, without payment of dues or with the payment of his dues by another. It is my understanding from conversation with representatives of the University of Florida, that public officials purchasing season tickets without payment of dues do not become members of Gator Boosters and that they do not receive the other benefits that are provided to members of Gator Boosters. It is my opinion that permitting the public official to purchase the tickets without obtaining membership in Gator Boosters does not constitute a gift under the provisions of HB 31-A.

Finally, providing public officials with the option of becoming members of the Gator Boosters and purchasing additional tickets at full face value is clearly not a gift. Section 112.312(9)(a), F.S., exempts from the definition of a gift, that for which equal or greater compensation is paid. As the value of the item provided (season tickets and membership in Gator Boosters) is identical to the amount paid, equal consideration is provided from the donee to the donor.

I hope that this opinion fully responds to your concerns. Because the offer will be made to each member of the Florida House of Representatives, and a similar offer may be made by other state universities, I am considering your request for opinion as a request from each member. By copy of this letter, I am providing the same opinion to each Member of the House for their reliance in accordance with the provisions of s. 112.3148(10), F.S.

**HCO 91-18—March 14, 1991**

*To: The Honorable Irlo Bronson, Representative, 77th District, Kissimmee*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I advise you as to the applicability of HB 31-A, as adopted during the 1990 Organizational Session to the following situation:

> You, a Member of the Florida House of Representatives, wish to host a hunting outing on your property. You will invite other Members of the Florida House of Representatives to attend. You, or companies owned by you, will pay for a portion of the expenses, including an offer of accommodations on your property. Other expenses would be paid by the individual Member.

Because the expenses are not paid by a lobbyist or someone who employs a lobbyist, you may provide, and other Members may accept, an invitation to hunt and stay on your property. However, to the extent that the expenses per individual exceed $100, the gift from you to each of the other Members must be reported.

In valuing the gift, lodging on your property is valued at $29 per night. Food and beverage is not considered a gift; the value of the food and beverage would not be considered in determining the overall value of the gift. Additionally, as the hunting will be

done on property owned by you, you need not include any cost for the hunting privilege, unless you regularly charge a fee for hunting on your property.

**HCO 91-19—April 3, 1991**

*To: The Honorable Jeffrey C. Huenink, Representative, 58th District, Clearwater*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an advisory opinion as to the applicability of the provisions of HB 31-A, as passed in the November 1990 Special Session, to the following situation:

> You have been chosen to host a delegation from Australia of Australian political leaders when they visit Tallahassee. You would be performing this duty as a member of the American Council of Young Political Leaders. In order to defray the cost of hosting the visit to Tallahassee, you would solicit donations on behalf of the Council from various sources, including legislative lobbyists.

As you would be soliciting gifts for another person's benefit and on behalf of a charitable organization, there would be no violation of HB 31-A, resulting from such solicitation, whether or not the potential donor is a lobbyist. The provisions on solicitation are strictly limited to solicitation for your personal benefit or for the benefit of another reporting individual. The guests from Australia, who would be the beneficiaries of such solicitation, would not be "reporting individuals" under the definitions of HB 31-A.

In soliciting such gifts, however, you should make it clear that the solicitation is not for your personal benefit. Likewise, in providing these benefits to the Australian guests, it should be made clear that these are not gifts from you, but rather the expenses have been paid by others; a list of the donors should be provided.

**HCO 91-20—April 10, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of HB 31-A, as passed during November of 1990 to the following factual situation:

> You serve as a member of the Governing Board of Parkway Regional Hospital, and in that capacity, you have been invited, along with all other members of the board, to attend a weekend retreat in Nassau. Expenses for the retreat for you and your spouse will be paid by the Hospital.

In defining the term "gift" for the purpose of ethics laws, HB 31-A, specifically excludes anything of value for which equal or greater consideration is provided. In that the retreat is paid for by the hospital in return for your service on the Governing Board, it would be my opinion that your service would constitute equal or greater consideration for the retreat. As such, the payment of the expenses would not constitute a "gift" under the provisions of s. 112.3148, F.S. Accordingly, the provisions relating to the prohibition on receipt of gifts, and the requirement of reporting gifts would not apply to the payment of expenses for the retreat.

**HCO 91-21—May 8, 1991**

*To: The Honorable Everett A. Kelly, Representative, 46th District, Tavares*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked whether a Member of the Florida Legislature may solicit donations on behalf of the National Conference of State Legislatures or to private not-for-profit corporations established to assist the conference. The purpose for soliciting such contributions would be to help offset the cost of the annual meeting of the conference which is to be held in Orlando, Florida.

The only limitation on solicitation of contributions by Members of the Legislature is found in s. 112.3148(3), F.S., as adopted in Chapter 90-502, Laws of Florida (1991). The prohibition on solicitation reads as follows:

> A reporting individual [legislator] or procurement employee is prohibited from soliciting any gift, food, or beverage from . . . a lobbyist who lobbies the reporting individual's or procurement employee's agency . . . where such gift, food, or beverage 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.*

As noted by the above *underlined* language the limitation applies only where the beneficiary of the contribution is a public officer or employee in Florida.

In the question you pose, it is clear that the beneficiary of the contribution will be the National Conference of State Legislatures, not officers or employees of this state. It is therefore my opinion, that you may solicit contributions to be paid to NCSL or to its supporting nonprofit corporations, from any source, including lobbyists.

**HCO 91-22—May 8, 1991**

*To: The Honorable Jack Ascherl, Representative, 30th District, New Smyrna Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You are engaged in the insurance business, in addition to your service as a state legislator. In your private capacity, based upon your placing policies with Humana, an insurer, you have won a trip to Kentucky for you and your wife. Humana employs a lobbyist who lobbies the Florida Legislature.

In defining the term "gift," s. 112.312(9)(a), F.S., excludes from the definition those items for which "equal or greater consideration is given." Because the trip was offered to you as a reward for placing business with the company, your service as an agent would constitute the consideration for the trip. It is my opinion, therefore, that you have provided sufficient consideration for the trip, and that the specific trip mentioned does not therefore constitute a "gift" under Florida law.

This opinion is further supported by the specific exception to the term "gift" which is found in s. 112.312(9)(b)1., F.S. Specifically excluded under that provision is a benefit associated with the recipient's employment. A trip which is based on volume of sales would constitute a benefit associated with your employment. To further clarify the legislative intent in the definition of gift, that subparagraph in s. 112.312, F.S., was further amended during the 1991 Session to exclude from the definition "gifts" which are primarily associated with one's business or employment. The trip which you have been offered falls also within that exception.

**HCO 91-23—May 13, 1991**

*To: The Honorable Ray Liberti, Representative, 82nd District, West Palm Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have asked for an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited to attend the "4th on Flagler" celebration by the City of West Palm Beach. The celebration is a public event held annually on the 4th of July to celebrate Independence Day. This year's celebration, in keeping with the request of the Governor, will focus on honoring the veterans from Operation Desert Storm and other veterans of foreign wars. You and your family are invited to participate in all of the public events and you will be provided with VIP hospitality passes.

In analyzing your request, it would appear that the major portion of the invitation does not involve anything which would constitute a gift. An invitation to attend a public event at the same cost that all members of the public must pay is not a gift, as the term is used in Chapter 112. The only item which may raise concerns under s. 112.3148, F.S., is the offer of VIP hospitality passes. Unfortunately, the invitation is not specific enough to permit me to give you a definitive answer as to that issue. The question which must be answered is whether the VIP pass includes anything beyond food and beverage. If not, it also would not be a gift under the Code of Ethics. If it does, then a report would be required by both the City of West Palm Beach and you to the extent the passes have a cumulative value in excess of $100.

In either event, you may accept the passes and the invitation. You should inquire of the city as to what is provided to a person given a pass, and what the value of the pass for items other than food and beverage would be, if any.

**HCO 91-24—May 15, 1991**

*To: The Honorable Carlos L. Valdes, Representative, 112th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited to attend a cocktail reception and luncheon on May 20th by the Cuban American National Foundation. The purpose of the luncheon is to

commemorate Cuban Independence Day and to mark the tenth anniversary of the foundation. You understand that tickets to the event are purchased for $100.

It would appear from the invitation that the value which is provided is food and beverage which is to be consumed at a single sitting or event. Pursuant to s. 112.312(9)(b)6., F.S., the provision of food and beverage under such circumstances would not constitute a gift. As such, you may accept the invitation and no report of your attendance would be required.

**HCO 91-25—May 16, 1991**

*To: The Honorable Mario Diaz-Balart, Representative, 115th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of FLorida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited to attend a cocktail reception and luncheon on May 20th by the Cuban American National Foundation. The purpose of the luncheon is to commemorate Cuban Independence Day and to mark the tenth anniversary of the foundation. You understand that tickets to the event are purchased for $100.

It would appear from the invitation that the value which is provided is food and beverage which is to be consumed at a single sitting or event. Pursuant to s. 112.312(9)(b)6., F.S., the provision of food and beverage under such circumstances would not constitute a gift. As such, you may accept the invitation and no report of your attendance would be required.

**HCO 91-26—June 11, 1991**

*To: The Honorable Alzo J. Reddick, Representative, 40th District, Orlando*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), and s. 112.3149, F.S., as created by Chapter 90-502, Laws of Florida (1991), to the following factual situation:

> You have been requested by World Cup Orlando/Kissimmee-St. Cloud to present a bid proposal to the World Cup USA. The oral presentation will be made in Los Angeles. World Cup Orlando/Kissimmee-St. Cloud will pay for your air transportation and one night's lodging in Los Angeles.

In that all of the expenses that will be paid are being paid in connection with an oral presentation to be made by you, they would constitute expenses related to an honorarium event. Pursuant to s. 112.312(9)(b)(3), F.S., such expenses are specifically exempt from the definition of a gift, and thus the provisions of s. 112.3148, F.S., (relating to gifts) do not apply. However, the expenses may be subject to the provisions of s. 112.3149, F.S.

Pursuant to s. 112.3149, F.S., expenses related to an honorarium event which are paid by a lobbyist or by one who employs a lobbyist, are required to be reported within 60 days of

the event by the person paying the expenses to the recipient of the expenses. The recipient would then be required to report receipt of the expenses by July 1st of the following year. Your letter, however, does not specify whether World Cup Orlando/Kissimmee-St. Cloud employs a lobbyist to lobby before the Florida Legislature. A review of the lobbyist registration does indicate that the World Cup organization in Tampa employs a lobbyist, but no specific mention of the Orlando organization is found. You should inquire into whether the Orlando organization does employ a lobbyist or is associated with another World Cup organization which employs someone to represent the interests of the Orlando group. If the answer to these questions is no, no report is required by you or the organization. If either of the questions is answered in the affirmative, you should notify me of the factual basis for the lobbying relationship in order that I might give you a definitive opinion as to the reporting requirements.

**HCO 91-27—June 26, 1991**

*To: The Honorable Jim Davis, Representative, 64th District, Tampa*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been appointed by the Governor as a state leader to attend the "Global Leaders for the South Forum," a seminar sponsored by Bell South Corporation. Bell South has offered to pay all expenses, including travel, lodging, meals and other incidental expenses. You further advise me that the Governor's Office had offered to pay your expenses. You attended the forum based upon those assurances and now seek an opinion as to the application of the Ethics Code to educational trips such as the forum.

It is my opinion that the provision of expenses relating to the forum would constitute a gift under the provisions of s. 112.312(9), F.S. I would also assume that the amount of the gift would be in excess of $100. I would note, however, that based on prior law, the Commission on Ethics appears to have determined last week that trips of an educational nature were not required to be disclosed as gifts. Whether such a holding would apply to the expanded definition of "gifts" is unclear; I would suggest that you take the conservative course and consider the payment of expenses to constitute a gift under the law as amended in November 1990. The Governor, however, may wish to seek an advisory opinion from the Commission on Ethics in order that they may determine whether the payment of the expenses by Bell South would represent a prohibited gift, resulting in the requirement that the Executive Office of the Governor pay your expenses.

While I find no record that Bell South itself employs a lobbyist before the Florida Legislature, I would note that Bell South Mobility, which I am informed is controlled by Bell South, does employ legislative lobbyists in this state. In an abundance of caution, therefore, I would advise that you consider the provisions of s. 112.3148, F.S., relating to the prohibition of gifts in excess of $100 to apply. As such, Bell South would be prohibited from paying, and you would be prohibited from receiving, payment of your expenses.

It is my advice, therefore, that you should direct the Governor's Office to pay, as agreed, any and all identifiable expenses, such as lodging, travel, and meals, to Bell South. You should also advise the Governor's Office to inquire as to any other incidental expenses which may have been incurred by Bell South, and to pay those expenses. To the extent that incidental expenses are not identified after due diligence by the Governor's Office, it is my

opinion that failure to pay such unidentified incidental expenses would not constitute the receipt of a prohibited gift by you.

You should be further advised, however, that the payment of your expenses by the Executive Office of the Governor would constitute a reportable gift from a governmental entity. These expenses must be reported by the Governor's Office in February of 1992, and by you no later than July 1, 1992.

**HCO 91-28—June 26, 1991**

*To: The Honorable Carlos L. Valdes, Representative, 112th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited by the National Association of Latino Elected and Appointed Officials (NALEO) to attend the "Ninth Annual Conference Challenges Facing the Hispanic Agenda: A Vision of Advancement," to be held in Anaheim, California, from June 27, 1991 to June 29, 1991. NALEO will pay for your transportation and lodging, which will be of a value in excess of $100.

Pursuant to s. 112.312(9), F.S., travel and lodging are specifically included within the definition of a gift. As NALEO does not employ a lobbyist who lobbies the Florida Legislature, you may accept such a gift from NALEO, but would be required to report the gift on Form 9 no later than September 30, 1991. You should report the amount of the expenses paid, as well as the name of the donor (NALEO) and the dates on which the gift was given. It is my opinion that the lodging and travel for a conference would constitute a single gift; you should therefore report the entire cost rather than only those individual charges which exceed $100.

**HCO 91-29—July 3, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been appointed by the Speaker of the Florida House of Representatives as Florida's representative for a Council of State Governments Environmental Mission to Japan. As part of that representation, you were invited to an educational briefing in Washington to assist you in fulfilling your obligations as a representative. Because of state budget shortfalls, the Council of State Governments agreed to pay your expenses to Washington, which expenses would normally be paid by the State of Florida.

In analyzing these facts, it is clear that the payment of travel, lodging, and similar expenses constitute a "gift" under Florida law for the purposes of Chapter 112. The statute

makes no distinction between expenses paid for educational trips, as opposed to other travel, although the Florida Commission on Ethics has suggested that the prior law requiring the disclosure of gifts did not require the disclosure of certain educational trips. It is my opinion, however, that the explicit definition of "gift" now included in s. 112.312, F.S., is not subject to the interpretation provided by the Commission on Ethics in relation to prior statutes, and I am therefore advising that the payment of expenses would constitute a "gift."

As I have advised that the payment of expenses would constitute a "gift" under Florida law, the receipt of such expenses from the Council on State Governments should be reported as a gift to you from a person other than a lobbying entity. As the expenses were paid for the period of March 1 through March 8, 1991, they should have been reported on or prior to June 30, 1991. While it may be argued that the payment of such expenses is a gift to the state rather than to you as a representative, as your expenses would otherwise be reimbursable by the state, the Attorney General has not found such an argument to be persuasive when providing opinions related to prior disclosure laws. (See AGO 75-82, relating to the provision of office space and utilities to a legislator.) I would advise, therefore, that you should disclose the payment of such expenses by the Council on State Governments.

**HCO 91-30—July 10, 1991**

*To: The Honorable R. Z. Safley, Representative, 50th District, Palm Harbor*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S., as amended or created by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited to participate as a panelist at the annual convention of the Florida Cable Television Association, an organization which is represented by a lobbyist before the Florida House of Representatives. The convention will take place between July 30, 1991 and August 1, 1991. You would serve on a panel during the afternoon of July 31, 1991. The Association would pay for lodging, food and beverage, and may pay for some travel expenses, of each panelist and of his or her spouse. In conjunction with the annual convention, several functions will be offered by various associates of the Florida Cable Television Association, none of which is directly represented by a lobbyist before the Florida Legislature. Among the additional functions are:

1. a bus trip to Universal Studios, sponsored jointly by the association and an associate of the association; and

2. a tennis tournament hosted by Turner Broadcasting.

Pursuant to s. 112.3149, F.S., an organization which employs a lobbyist, may pay for the reasonable travel, lodging, food and beverage expenses of a public official invited to make an oral presentation, and of his or her spouse. However, the organization would be prohibited from paying any cash or in-kind honorarium. The prohibition to making such payments includes both "direct" and "indirect" payments.

Because each of the expenses mentioned in your letter is associated with the annual convention of the Florida Cable Television Association, it is my opinion that payment of those expenses by any person associated with the Florida Cable Television Association would constitute an indirect payment by the association. The fact that the associates do not lobby the Florida House of Representatives and that they are associate, as opposed to voting,

members of the association, does not alter this opinion. In essence, the sponsorship of the functions is a gift to the Florida Cable Television Association which is made available to you by the association. Accordingly, I believe that expenses other than reasonable travel, lodging, food and beverage, would constitute the payment of a prohibited honorarium. It is my opinion, therefore, that you would be prohibited from receiving payment of expenses related to the Universal Studios Tour or the tennis tournament.

Based upon the factual situation presented, it is my opinion that you may accept the payment of travel, food, beverage, and lodging expenses from the Florida Cable Television Association or any of its associates, during the three day event. Because you are scheduled to make a presentation on July 31, 1991, I would suggest that lodging for the evenings of July 30, 1991, and July 31, 1991, would be within the meaning of the term "reasonable expenses," but any lodging beyond those two days should be paid by you. Additionally, travel to and from the convention would be reasonable, but the payment of the travel expenses to Universal Studios would be prohibited.

Should you desire to attend the Universal Studios Tour or participate in the tennis tournament, you would be required to pay the pro rata share for those events. It is my understanding from the letter that the value of the bus trip to Universal Studios would be $5.78 per person plus an admission charge of $15.90 per person. In determining the value of the tennis tournament, you should divide the total payment of $1,000 by the number of available slots in the tournament for a pro rata cost. By making such payments, you would be permitted to participate in those functions, if you choose to do so.

**HCO 91-31—July 10, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S., as amended or created by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited to participate as a panelist at the annual convention of the Florida Cable Television Association, an organization which is represented by a lobbyist before the Florida House of Representatives. The convention will take place between July 30, 1991 and August 1, 1991. You would serve on a panel during the afternoon of July 31, 1991. The Association would pay for lodging, food and beverage, and may pay for some travel expenses, of each panelist and of his or her spouse. In conjunction with the annual convention, several functions will be offered by various associates of the Florida Cable Television Association, none of which is directly represented by a lobbyist before the Florida Legislature. Among the additional functions are:

1. a bus trip to Universal Studios, sponsored jointly by the Association and an associate of the association; and

2. a tennis tournament hosted by Turner Broadcasting.

Pursuant to s. 112.3149, F.S., an organization which employs a lobbyist, may pay for the reasonable travel, lodging, food and beverage expenses of a public official invited to make an oral presentation, and of his or her spouse. However, the organization would be prohibited from paying any cash or in-kind honorarium. The prohibition to making such payments includes both "direct" and "indirect" payments.

Because each of the expenses mentioned in your letter is associated with the annual convention of the Florida Cable Television Association, it is my opinion that payment of those expenses by any person associated with the Florida Cable Television Association would constitute an indirect payment by the association. The fact that the associates do not lobby the Florida House of Representatives and that they are associate, as opposed to voting, members of the association, does not alter this opinion. In essence, the sponsorship of the functions is a gift to the Florida Cable Television Association which is made available to you by the association. Accordingly, I believe that expenses other than reasonable travel, lodging, food and beverage, would constitute the payment of a prohibited honorarium. It is my opinion, therefore, that you would be prohibited from receiving payment of expenses related to the Universal Studios Tour or the tennis tournament.

Based upon the factual situation presented, it is my opinion that you may accept the payment of travel, food, beverage, and lodging expenses from the Florida Cable Television Association or any of its associates, during the three day event. Because you are scheduled to make a presentation on July 31, 1991, I would suggest that lodging for the evenings of July 30, 1991, and July 31, 1991, would be within the meaning of the term "reasonable expenses," but any lodging beyond those two days should be paid by you. Additionally, travel to and from the convention would be reasonable, but the payment of the travel expenses to Universal Studios would be prohibited.

Should you desire to attend the Universal Studios Tour or participate in the tennis tournament, you would be required to pay the pro rata share for those events. It is my understanding from the letter that the value of the bus trip to Universal Studios would be $5.78 per person plus an admission charge of $15.90 per person. In determining the value of the tennis tournament, you should divide the total payment of $1,000 by the number of available slots in the tournament for a pro rata cost. By making such payments, you would be permitted to participate in those functions, if you choose to do so.

**HCO 91-32—July 10, 1991**

*To: The Honorable Bruce McEwan, Representative, 38th District, Orlando*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You were requested to speak to the National Council on Compensation Insurance in April of this year in Palm Beach, Florida. As the speech was given during the legislative session, you were required to fly from Tallahassee to Orlando to make the presentation. The National Council on Compensation Insurance offered to pay your expenses for travel, lodging, and food. The National Council on Compensation Insurance employs lobbyists who lobby the Florida House of Representatives.

As the expenses incurred are related to an honorarium event, they are specifically exempted by s. 112.312(9)(b), F.S., from the definition of "gift" for the purposes of Chapter 112. They are, therefore, not subject to the $100 cap on gifts from entities which employ a lobbyist. They are, however, subject to the reporting requirements of s. 112.3149, F.S.

Pursuant to s. 112.3149, F.S., an entity which employs a lobbyist may pay the reasonable and actual expenses for travel, lodging, food, and beverages, for a public official invited to speak to the entity. The entity is required to provide the public official with a daily

itemization of those expenses paid. The report is to be provided to the public official within 60 days of the speaking engagement. The public official is required to report the payment of the expenses on an annual report to be filed with the official's public disclosure of his finances. As the speaking engagement occurred in April of 1991, you would be required to publicly disclose the payment of those expenses no later than July 1, 1992.

**HCO 91-33—July 10, 1991**

*To: The Honorable Ronald C. Glickman, Representative, 66th District, Tampa*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited by the Florida National Guard to visit Camp Blanding on July 18, 1991. You would be provided with transportation via military aircraft from Tampa to Camp Blanding and back to Tampa.

The provision of travel expenses is specifically included within the definition of a gift as that term is defined in s. 112.312, F.S. As such, the provision of air travel by the Florida National Guard would constitute a gift which is disclosable pursuant to the provisions of s. 112.3148, F.S. If the transportation is provided by the Florida National Guard, it would be disclosable as a gift from a governmental entity which employs a lobbyist. Such disclosures are made by July 1st of the year following receipt of the gift. If, on the other hand, the transportation is provided by the United States military, it would be disclosable as a gift from an entity which does not employ a lobbyist before the Florida Legislature. Reports of such gifts are to be made quarterly and would be required to be on the Form 9 report due on December 31, 1991.

In placing a value on the gift, you should be aware that it is to be valued at the cost of a commercial flight. Because the travel is not to a commercial airport, I would suggest that the value would be the cost of a commercial flight to the nearest major airport to which commercial flights are available.

**HCO 91-34—July 10, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S., as amended or created by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You were invited to speak at the joint conference of the Florida Municipal Electric Association and the Florida Municipal Power Association in Key West, Florida, on June 27, 1991. The Association will pay for lodging on the nights of June 26th and June 27th, and food and transportation will also be provided.

The payment of reasonable food, lodging, and transportation related to the giving of an oral presentation are excluded from the definition of "gift" which applies to the provisions of s.

112.3148, F.S. You may, therefore, accept the payment of such expenses without regard to the dollar value of the expenses, notwithstanding the fact that the expenses will be paid by an organization which lobbies the Florida Legislature.

Pursuant to the provisions of s. 112.3149, F.S., you may accept the payment of reasonable expenses for food, travel, and lodging, related to an honorarium event, but where such expenses are paid by an entity which employs a lobbyist, the expenses paid during 1991 must be reported by you no later than July 1, 1992.

I note from the invitation, that you have also been invited to accompany your host on a party boat fishing trip. Such expenses are not included within the reasonable expenses for food, lodging, and meals, and as such could constitute payment for the oral presentation. Section 112.3149, F.S., appears to prohibit the receipt of such payment, regardless of its value. If you attend the fishing event, you should pay your pro rata share of the expenses related to the fishing trip.

**HCO 91-35—July 17, 1991**

*To: The Honorable Debby P. Sanderson, Representative, 93rd District, Fort Lauderdale*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been invited by the Florida Retail Federation to serve as a panelist on August 21, 1991 at a meeting of the federation to be held on Amelia Island. The panel presentation is scheduled for two hours. As an inducement to have you participate on the panel, the federation has agreed to pay for your round trip air travel between Fort Lauderdale and Jacksonville. You would travel to Jacksonville and return to Fort Lauderdale on the same day.

Pursuant to s. 112.312(9), F.S., expenses related to an honorarium event, are excluded from the definition of a "gift" for the purpose of the Florida Ethics Code. As a result, such expenses are not subject to the restrictions of s. 112.3148, F.S., relating to gifts to public officials. The expenses are, however, governed by the provisions of s. 112.3149, F.S., relating to honoraria, when paid by a lobbyist or an entity which employs a lobbyist. The Florida Retail Federation employs a lobbyist.

Pursuant to the provisions of s. 112.3149, F.S., the Florida Retail Federation may pay, and you may accept, reasonable expenses for travel, lodging, food, and beverages, where the expenses are related to an oral presentation to be made by the public official. The payment of your airfare would constitute reasonable expenses, and you may therefore permit the federation to pay those expenses. The payment and receipt of such expenses must be reported in accordance with the provisions of s. 112.3149, F.S., which require disclosure to you by the federation, within 60 days of the presentation, of the expenses paid by the federation, and public disclosure by you of the receipt of the expenses no later than July 1, 1992.

You should be further advised that the acceptance of anything other than payment of transportation, lodging, food, and beverage is prohibited, regardless of the amount of the expenses. The payment of any other expenses or the giving of any other item of value would constitute the payment of an honorarium, which is prohibited where the donor employs a lobbyist.

**HCO 91-36—July 18, 1991**

*To: The Honorable Debby P. Sanderson, Representative, 93rd District, Fort Lauderdale*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> In your capacity as a member of the North Ridge Hospital Board of Directors, you will be traveling to the South Seas Plantation on Captiva Island for the board's meeting/retreat. North Ridge Hospital is owned by American Medical International (AMI), an organization which employs a lobbyist before the Florida House of Representatives. AMI will pay the expenses of all members of the board to attend the meeting/retreat. Members of the board are paid a fee for service. However, you decline the fee and direct that it be paid to a charitable organization.

In defining the term "gift" in s. 112.312(9), F.S., the Legislature included within the definition the payment of expenses for travel, lodging, food and beverages, entertainment, and similar activities which are generally provided at retreats. However, the payment of such expenses is considered a gift only where the recipient does not provide equal or greater consideration for the expenses and where the expenses do not constitute a benefit connected with the public official's private employment.

It is my opinion that where the hospital determines it appropriate to pay the expenses of all board members, it has also determined that service on the board of directors of a hospital would constitute equal or greater consideration for the payment of the expenses. As the determination of the value of your service to the hospital is a subjective determination, I believe the hospital board to be the only entity which can reasonably determine the value of that service. I would be constrained therefore to concur with the hospital's determination that the value of your services exceed or match the value of the meeting/retreat.

Additionally, in that service on the board is compensated, it is my opinion that you would be considered an employee of the hospital, notwithstanding your laudable decision to divert your income to a charitable organization. I am of the opinion, therefore, that the payment of your expenses to attend the meeting/retreat would constitute a benefit provided by your employer. As such, the expenses are also exempt from the definition of a gift under the provisions of s. 112.312(1)(b)1., F.S.

Although your attendance at the board meeting will require your active participation in discussions of board business, I do not believe that such participation would constitute the type of oral presentation envisioned under s. 112.3149, F.S., for the purpose of determining whether the event is an honorarium event.

Accordingly, I would advise that the acceptance of payment of the expenses connected with the retreat would not constitute a gift or an honorarium-related expense subject to the provisions of s. 112.3148 or 112.3149, F.S. You may, therefore, accept the payment of such expenses by AMI or its subsidiaries, for your attendance at the hospital board meeting/retreat. There would be no report required under the provisions of either s. 112.3148 or 112.3149, F.S.

**HCO 91-37—July 19, 1991**

*To: The Honorable Everett A. Kelly, Representative, 46th District, Tavares*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been invited by Florida State University to attend the FSU vs. Virginia Tech football game in Orlando, Florida, on October 12, 1991. As part of the invitation, you have been offered a complimentary game ticket and have been invited to attend the Boola Bowl Party. The cost of the football ticket is $20 and for the party is $7.00. The tickets and party will be paid for by a private foundation which is a support organization for Florida State University.

Based upon the definition of "gift" found in s. 112.312(9), F.S., it is my opinion that the provision of a ticket would constitute a gift from an entity which employs a lobbyist before the Florida House of Representatives. Although the gift is provided by Florida State University, which is a governmental entity, in that it is paid for by a direct-support organization, it would be subject to the provisions of s. 112.3148(4), F.S., rather than the provisions of s. 112.3148(6), F.S. As such, you would be prohibited from accepting tickets to the game which in the aggregate exceed $100.

It is my further opinion that the provision of a ticket to the Boola Bowl Party would constitute the provision of food and beverage at a single event, and would therefore not constitute a gift subject to the provisions of s. 112.3148, F.S.

Although you may accept the gift of the ticket to the game, should you be provided with more than one ticket, the value of the gift would be in excess of $25. As such, the entity providing the gift would be required to report to the Legislature the giving of such tickets, and such report will be available under House policies for public inspection.

**HCO 91-38—July 19, 1991**

*To: The Honorable Everett A. Kelly, Representative, 46th District, Tavares*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been asked to accept a lifetime honorary membership in the Kiwanis Club in your hometown. Membership on an annual basis has a value of $45.00.

In defining the term "gift" under s. 112.312(9), F.S. specifically excluded from the definition of gift, "[a]n honorary membership in a service or fraternal organization presented merely as a courtesy by such organization." (Section 112.312(9)(b)5., Florida Statutes). Accordingly, it is my opinion that you may accept the membership and that it would not constitute a gift subject to the reporting requirements of s. 112.3148, F.S.

**HCO 91-39—July 19, 1991**

*To: The Honorable Dennis L. Jones, Representative, 53rd District, Seminole*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You serve as a member of the Board of Trustees of the Pinellas Marine Institute (PMI), which is a member organization of the Associated Marine Institutes (AMI). PMI does not provide any payment for service on the Board of Trustees. In your capacity as a board member for PMI, you have been invited to attend the meeting of the board of AMI. The AMI board meeting will be held aboard the SS Majestic from October 31, 1991 until November 3, 1991. Your expenses will be paid by AMI.

Pursuant to the provisions of s. 112.312(9), F.S., the payment of expenses related to travel, accommodations, and meals, such as would be provided for the AMI Board of Trustees meeting, would constitute a gift under Florida law, except to the extent that you provide equal or greater consideration for the payment of expenses or where the expenses constitute a benefit related to your employment. While service on a board of trustees could constitute employment, the fact that members of the board are not compensated would indicate that an employer/employee relationship does not exist. I am, therefore, hesitant to advise you that the AMI meeting expenses would constitute an employee benefit exempt from the definition of "gift" under s. 112.312(9)(b)1., F.S., and would suggest you take the conservative approach and not consider the trip as an employee benefit. However, recognizing that the provisions are subject to differing interpretations you may wish to obtain a definitive determination as to that issue. In such case, you should submit the question to the Commission on Ethics for their consideration.

The question you have posed is also a close one in that your travel and accommodations arise out of your position as a Board of Trustees member with PMI, and not out of your position as a Member of the Florida House of Representatives. Presumably, the travel and accommodations are provided in return for your service as a member of the Board of Trustees, and thus, you do provide consideration for the trip. However, the service you provide is to PMI, and the accommodations, meals, and travel are being paid for by AMI. On the other hand, in that PMI is a member organization of AMI, it could be argued that the service you provide to PMI also benefits AMI. Additionally, in that you are invited by PMI to attend, even if AMI is paying for the expenses, it could be argued that they are paying them on behalf of PMI, in which case service on the board would constitute at least partial consideration for the expenses. Again, however, I would advise that, absent a ruling from the Commission on Ethics, you take the conservative approach and treat the payment of your expenses by AMI as a gift.

Assuming that the expenses are a gift under the provisions of s. 112.312, F.S., they would be subject to the provisions of s. 112.3148, F.S. In that AMI is not an entity which employs a lobbyist, you may accept a gift with a value in excess of $100, but you would be required to publicly disclose receipt of the gift on your March 31, 1992, Form 9 filing. In that AMI does not employ a lobbyist, no report by AMI would be required.

In summary, I would advise that although your service on the Board of Trustees for PMI could constitute an employment relationship or consideration for the payment of expenses related to the AMI Board of Trustees meeting, in that payment will be made by AMI, rather than PMI, it is my opinion that you should consider the expenses a gift. However, recognizing the closeness of the question, you may wish to seek a more definitive opinion from the

Commission on Ethics. If you treat the expenses as a gift, they must be reported on Form 9 no later than March 31, 1992.

**HCO 91-40—July 19, 1991**

*To: The Honorable Michael I. Abrams, Representative, 101st District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situations:

1. You have been invited by the Association of Voluntary Hospitals of Florida to appear at their Board of Directors meeting in Tampa to give a presentation on the proposed Health Care Commission and to participate in a day-long workshop. The meeting will be held on August 15th and 16th of 1991. The Association has offered to pay your expenses to attend the meeting.

2. You have been invited by the Florida Retail Association to make a presentation on taxation issues at a meeting of the association to be held at the Amelia Island Ritz Carlton. You would serve on a panel with other elected officials and a representative of the Governor's Office. The panel will make its presentation on August 21, 1991, from 1:30 p.m. to 3:00 p.m. in the afternoon.

3. You have been invited by the Santa Fe Health Care Board of Directors to attend a meeting of the board in Palm Coast, Florida, on September 20th and 21st, 1991.

4. You have been invited by the Florida Medical Association to attend their leadership conference in Jacksonville on January 11th and 12th, 1992, to give a presentation on the Health Care Commission and to otherwise participate in workshops. All four organizations employ a lobbyist before the Florida House of Representatives.

With respect to the invitations from the Voluntary Hospitals of Florida, the Florida Retail Federation, and the Florida Medical Association, the presentations you have been requested to make would appear to constitute an honorarium event. As such, payments related to the event are not subject to the gift requirements of s. 112.3148, F.S., but are subject to the reporting requirements and limitations of s. 112.3149, F.S., relating to honorarium-related expenses.

Pursuant to the provisions of s. 112.3149, F.S., an organization which employs a lobbyist, may not pay any honorarium or provide anything of value to the public official, except the payment of reasonable expenses for travel, lodging, food, and beverages. While the term "reasonable expenses" is not defined, absent unusual circumstances, I have generally opined that you may accept round trip travel to the event by air or other means, lodging the night prior to the presentation and on the night of the day the presentation is made, and meals and beverages on the day prior to, the day of, and the day after, the presentation is made. A detailed report of the expenses paid by the organization must be provided to you within 60 days after you give your presentation. You would be required to publicly report receipt of the expenses from the Association of Voluntary Hospitals of Florida and the Florida Retail Federation no later than July 1, 1992, and from the Florida Medical Association no later than July 1, 1993.

In regard to the invitation you have received from Santa Fe Health Care, I am unable to determine whether you are expected to make a formal presentation to the organization, or whether you are simply expected to attend the meeting and have a general conversation with

the board members. If a formal oral presentation is not anticipated, the payment of the expenses would constitute a gift which, if over $100, would be prohibited. If a formal presentation is anticipated, you may accept the payment of reasonable expenses for travel, lodging, food and beverages, as outlined in the paragraph above. The receipt of such expenses would be reportable to you within 60 days of your presentation and would be reportable by you no later than July 1, 1992.

**HCO 91-41—July 19, 1991**

*To: The Honorable Irlo Bronson, Representative, 77th District, Kissimmee*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I put in writing a verbal advisory opinion rendered to you in May 1991, as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You were invited by the Florida National Guard to travel to Panama to observe training exercises from June 27th to June 29th, 1991. Travel by air was provided by the Department of Defense via the Colorado National Guard. All other expenses were paid by the Florida House of Representatives.

Travel provided to a public official by a governmental entity other than the agency by which he is employed or in which he serves, would constitute a gift under the provisions of s. 112.312(9), F.S., subject to the limitations and reporting provisions of s. 112.3148, F.S.

As neither the United States Department of Defense or the Colorado National Guard employs a lobbyist, either organization may pay the expenses related to the Panama trip without limitation. However, the receipt of such expenses by you would result in your having to publicly disclose the receipt of such expenses on Form 9 no later than September 30, 1991.

While the payment of such expenses would not be made by the Florida National Guard, in that the invitation was made by, and the trip arranged by, the Florida National Guard, such expenses would constitute an indirect gift from the Florida National Guard. Although the Florida National Guard does employ a lobbyist before the Florida House of Representatives, as an agency of state government, the Guard may provide a gift in excess of $100. Such gift must be reported by the Florida National Guard to you no later than March 1, 1992, and must be reported publicly by you no later than July 1, 1992.

In summary, it is my opinion that you may accept payment of the travel expenses to and from Panama, but you must report them as a gift from The Department of Defense and the Colorado National Guard on Form 9 no later than September 30, 1991, and as an indirect gift from the Florida National Guard no later than July 1, 1992.

**HCO 91-42—July 19, 1991**

*To: The Honorable Miguel A. De Grandy, Representative, 110th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I put in writing a verbal advisory opinion, which I previously rendered to you, as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by CS/CS/CS/SB 1042 (1991), to the following factual situation:

> You have been invited by the National Association of Latino Elected and Appointed Officials (NALEO) to attend the "Ninth Annual Conference Challenges Facing the Hispanic Agenda: A Vision of Advancement," to be held in Anaheim, California, from June 27, 1991 to June 29, 1991. NALEO will pay for your transportation and lodging, which will be of a value in excess of $100.

Pursuant to s. 112.312(9), F.S., travel and lodging are specifically included within the definition of a gift. As NALEO does not employ a lobbyist who employs the Florida Legislature, you may accept such a gift from NALEO, but would be required to report the gift on Form 9 no later than September 30, 1991. You should report the amount of the expenses paid, as well as the name of the donor (NALEO) and the dates on which the gift was given. It is my opinion that the lodging and travel for a conference would constitute a single gift; you should therefore report the entire cost rather than only those individual charges which exceed $100.

**HCO 91-43—September 10, 1991**

*To: The Honorable Mark A. Foley, Representative, 85th District, Hypoluxo*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I put in writing an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following situation:

> The Palm Beach County Coalition, comprised of public and private organizations, which have united for the purpose of supporting a number of bills, would like to invite certain members of the House of Representatives to a Palm Beach County event hosted by the Coalition. The Coalition will pay for transportation, lodging and travel expenses.

In defining the term "gift" in s. 112.312(9), F.S., the Legislature included within the definition the payment of expenses for travel and lodging. While the payment of such expenses is exempt from the definition of "gift" where paid in connection with an honorarium event at which the public official is to make a meaningful presentation, it would appear from your letter that members would not be required to make any formal presentations at this event. As such it is my opinion that the payment of the expenses would constitute a gift subject to the provisions of s. 112.3148, F.S.

As the Coalition will be seeking to support or oppose proposed legislation, it would be considered an organization which employs lobbyists. Accordingly, the payment of travel expenses would constitute a gift, pursuant to s. 112.3148, F.S., which, if over $100, would be

prohibited. If the transportation and lodging expenses total less than $100, the gift would not be prohibited.

Under s. 112.312(9)(b)(6), F.S., food or beverage consumed at a single sitting or event is not a gift. As such, members would not be prohibited from accepting the food or beverage offered at the event.

If the hosted event has entertainment, other gifts, or admission fees in addition to food and beverage, then the $100 prohibition would apply to those additional expenses, which would be cumulative to the payment of transportation and lodging expenses. If the actual cost of such additional expenses to the participants cannot be determined, then the total cost of the nonexempt gifts is prorated among all the invited persons.

**HCO 91-44—September 24, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You serve as Florida's representative for the Council of State Governments' US-Japan Environmental Study Mission. As part of your duties as the representative, you traveled to Japan in May of 1991. A portion of the expenses was paid by the State of Florida House of Representatives, and the remainder was paid by the Council of State Governments.

Although your travel was related to fulfilling your official duties as a Member of the Florida House of Representatives, it is my opinion that the payment of your travel and lodging, and incidental expenses, by an entity other than Florida House of Representatives would constitute a gift under the provisions of s. 112.312(9), F.S. As such, the payment and receipt of those expenses would be governed by the provisions of s. 112.3148, F.S.

As the Council of State Governments does not employ a lobbyist before the Florida Legislature, the council may pay, and you may accept payment for, expenses related to your travel to Japan. There is no limitation on the amount of the expenses, but they must be publicly reported by you on Form 9 no later than September 30, 1991.

**HCO 91-45—September 25, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested that I issue a written advisory opinion, confirming an oral opinion previously rendered to you by me, as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> As a delegate and member of the Executive Board of the Southern Legislative Conference, you attended the Annual Meeting of the conference in New Orleans, Louisiana, in July of 1991. You have been invited by R. J. Reynolds to participate in a golf tournament. The cost of the tournament, including green fees, cart fees, transportation to and from the course, meals, and refreshments, was $100.

The payment of your green fees, cart fees, and transportation fees, would constitute a "gift" for the purpose of s. 112.3148, F.S.; the meals and refreshments would, however, be excluded as "food or beverage intended to be consumed at a single sitting or event." While you do not itemize the costs of each element of the tournament, as the entire cost is $100, the cost of the gift portions clearly does not exceed $100. As such, you are not prohibited from receiving such a gift from R. J. Reynolds. Additionally, as the amount of the gift does not exceed $100 and it was provided in July of 1991, no report is required. I would note, however, that had such a gift been given on or after October 1, 1991, R. J. Reynolds would be required to report having provided payment for you as the amount would appear to exceed $25.

**HCO 91-46—September 27, 1991**

*To: The Honorable Irlo Bronson, Representative, 77th District, Kissimmee*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You are considering providing your legislative assistant with additional income from your personal funds for her service as your legislative assistant. Additionally, you are considering permitting her to occupy a vacant residential building owned by you, without the requirement of her paying rent for the premises.

Under the definition of "gift" found in s. 112.313(9), F.S., the payment of money or the provision of housing would constitute a gift, except to the extent that the recipient provides equal or greater compensation for the money or housing. In that your legislative assistant is paid a full-time salary for the position she occupies, I believe you should consider that any duties performed by her during her work hours are already fully compensated by the state and thus the performance of those duties should not constitute consideration for the housing or the payment of additional money by you. Additionally, as her employer is the Florida House of Representatives, and you serve only as her supervisor, she is not considered to be providing any consideration to you, personally.

Although I have advised that under state law the payment of the money and the provision of housing would appear to constitute a gift, in almost all circumstances both of these items constitute "wages" within the meaning of the Internal Revenue Code. Inasmuch as the Legislature is not the "employer" as to these two salary supplements, you would necessarily be considered the "employer." In such an event, you would be required to deduct, withhold and remit the appropriate taxes and to make the applicable employer contributions for social security and unemployment compensation.

**HCO 91-47—October 10, 1991**

*To: The Honorable Everett A. Kelly, Representative, 46th District, Tavares*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You are provided free office space in a county building owned by Lake County which is used as a legislative office.

Pursuant to s. 112.3148(6)(a), F.S., you may accept a gift from a governmental entity, such as the Board of County Commissioners of Lake County, regardless of its value, if the gift is given for a public purpose. The use of real property, including the use of an office, would constitute a gift under the provisions of s. 112.312(9)(a)2., F.S. Providing office space for service to constituents would constitute a public purpose. Accordingly, you may accept, and the Lake County Board of Commissioners may provide, office space free of charge to you for use as your district legislative office.

As the gift is from a governmental entity, it is reportable annually, rather than quarterly. Gifts which are subject to reporting under s. 112.3148(6)(d), F.S., are exempt from reporting under s. 112.3148(8), F.S. Pursuant to the provision of s. 112.3148(6)(d), F.S., you will be required to report receipt of a gift from a governmental entity no later than July 1 of each year for the preceding year. Accordingly, you would be required to report receipt of the office space in 1991 no later than July 1, 1992. For the purpose of reporting, I would suggest that the provision of office space during 1991 should be reported as twelve separate monthly gifts, as office space is generally paid for on a monthly basis.

Additionally, I would advise you that, in accordance with the provisions of s. 112.3148(6)(c), F.S., Lake County must provide you with a detailed statement of the gift no later than March 1, 1992, which should include the value of the gift. You may wish to advise the county commission members or the county attorney of this requirement in order that they may not inadvertently fail to comply with the new reporting requirements.

**HCO 91-48—October 21, 1991**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following situation:

> You have been invited by The Condominium Owners of Florida, Inc. to speak at a meeting on October 26, 1991, in Tampa, Florida. Your transportation and lodging costs will be provided for by the corporation.

As you have been requested to speak at a meeting of The Condominium Owners, the speaking engagement would qualify as an honorarium event and the expenses related thereto as honorarium expenses. Therefore, the provisions of s. 112.3149, F.S., as opposed to s. 112.3148, F.S., would provide the applicable prohibition and reporting requirements relating to the payment and receipt of expenses.

My investigation reveals The Condominium Owners does not employ a lobbyist. Because no lobbyist is employed, and unless the payment is made indirectly on behalf of an organization which does employ a lobbyist, all your expenses may be paid and no report would be required by you or The Condominium Owners.

**HCO 91-49—November 18, 1991**

*To: The Honorable Willie Logan, Jr., Representative, 108th District, Opa-locka*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been invited, by a person who lobbies the Florida Legislature, to attend the Florida Classic Football Game on November 30, 1991, in Tampa, as his guest. You would be provided a pass to sit in a stadium suite which seats 33 people and would also be available to an additional seven people, sitting elsewhere in the stadium, for hospitality purposes. The total cost of the stadium suite, which is being subleased by the lobbyist for this game only, is $2,174. Individual tickets to the game cost $22.

In providing an opinion based upon this information, I have concluded that the cost of the tickets to the game and the additional costs for the stadium suite must be divided. Accordingly, of the $2,174, $726 represents the cost of tickets ($22 each for 33 tickets), leaving a balance of $1,448 as the value of the stadium suite. I am assuming for the purpose of this opinion, that the $1,448 does not include any cost for food or beverages.

Under the definition of gift provided in s. 112.312(9)(a)10, F.S., it is clear that a ticket to the game is a gift for purposes of s. 112.3148, F.S. Thus, at a minimum, you would be receiving a gift worth $22. The issue which must be decided, however, is whether the additional cost for the one-time rental of the stadium suite would increase the cost of the ticket.

In determining the value of a gift, s. 112.3148(7), F.S., provides that the value of a gift shall generally be the actual amount paid by the donor. However, subsection (a) excludes from the value any expense "required as a condition precedent to eligibility of the donor to purchase or provide a gift" where such expense is *primarily for the benefit of the donor*. Additionally, subsection (h) provides that a ticket shall be valued based on its face value, or on a daily or per event basis, whichever is greater.

While the valuation provisions may be subject to differing interpretations, it is my opinion that renting the stadium suite is a condition precedent to purchasing the ticket that is being offered to you. However, it is my further opinion that a one-time rental of a stadium suite, as opposed to a yearly rental, would be primarily for the benefit of those occupying the stadium suite during the single event rather than for the lessee. As such, the value of the stadium suite rental would not be excluded from the valuation under subsection (a). Further, although the face value of the ticket is only $22, it is my opinion that the daily or per event basis would include the value of the stadium suite in this case, which value would be greater than the face value of the ticket.

In valuing the cost of the stadium suite, it is my opinion that it should be divided among the 40 persons invited into the stadium suite, rather than just the 33 sitting in the stadium suite. Accordingly, the value of $1,448 would be equal to $36.20 per person.

In sum, if you accept the invitation to sit in the game, you would be receiving a gift from a lobbyist with a value of $58.20, representing $22 for the seat and $36.20 for the stadium suite admission. If you brought a guest, at the expense of the lobbyist, the value of the gift would be $116.40, which is in excess of the $100 limit permitted by law. However, the value of the gift would be reduced by any amount paid by you to the lobbyist.

Pursuant to the provisions of s. 112.3148(5)(b), F.S., the lobbyist who provides you a gift with a value over $25, must report such gift to the Legislature. As the gift would be provided in November of 1991, the report must be filed by the lobbyist no later than March 31, 1992.

**HCO 91-50—December 4, 1991**

*To: The Honorable Joseph Arnall, Representative, 19th District, Jacksonville Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been asked to attend a Republican Party function on the evening of December 11, 1991, at which a local party activist will be honored. The event will be held in Jacksonville. Because of the special session called by the Governor, you will be in Tallahassee. The Duval County Republican Party has offered to fly you and other members of the Duval County Delegation to Jacksonville for the dinner and to return you by air to Tallahassee following the event.

Pursuant to s. 112.312(9)(b)2, F.S., contributions or expenditures by a political party are not considered gifts for the purpose of the ethics code. Accordingly, the Republican Party may provide, and you may accept, the offered transportation between Jacksonville and Tallahassee. No report of the receipt of the transportation is required under s. 112.3148, F.S.

**HCO 91-51—December 18, 1991**

*To: The Honorable Joseph R. Mackey, Representative, 12th District, Lake City*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been invited to hunt on the private property of an individual who is a major stockholder and officer in a corporation which employs a lobbyist who lobbies The Florida Legislature. You have been invited to spend the night in a residence on the property.

Pursuant to s. 112.312(9), F.S., the use of real property is a gift for the purpose of s. 112.3148, F.S. However, in valuing the gift, the use of the property for hunting would appear to have no value as the donor is not spending any money for the hunting purpose (s. 112.3148(7)(a), F.S.). The lodging, because it is in a private residence, would be valued at $29.00 per night (Section 112.3148(7)(e), Florida Statutes).

Because the donor is significantly involved in an entity which employs a lobbyist, it is my opinion that the gift would constitute at least an indirect gift from an entity which employs a lobbyist. As such, you may not accept the gift if the total value exceeds $100. For the purpose of this question, it would appear that unless you stay four or more nights, you could accept the offer to hunt on the property. However, pursuant to s. 112.3148(5)(b), F.S., either the individual donor, the entity with which he is involved, or the lobbyist for the entity, must report any gift with a value over $25, unless you provide sufficient consideration to bring the value below $25. Lodging for one night would exceed $25.

**HCO 92-01—January 15, 1992**

*To: The Honorable C. Fred Jones, Representative, 42nd District, Auburndale*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S. (1991), to the following factual situation:

> The Lake Region District of Boy Scouts of America will be hosting a fund-raiser at which they wish to "roast" you and present you with a "Distinguished Citizen Award." The proceeds are given to the boy scouts. To advertise the function, the organization intends to use billboards which will likely include your picture used in a comical fashion.

While your letter is not specific, it would appear that the only things which you will be provided are food and beverage at the function, a plaque or similar item recognizing you as a distinguished citizen, and incidental publicity from your photograph appearing on the billboards.

Section 112.312(12), F.S., defines "gift" in both general and specific terms. Specifically exempted from the definition are "food and beverage consumed at a single sitting or event" and "an award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service." Accordingly, neither the meal nor the award are covered by the provisions of s. 112.3148, F.S.

Similarly, the statutory definition of gift lists several specific items as within the definition, none of which specifically address the issue of incidental publicity. A general category is also provided which reads "other similar service or thing having an *attributable value.*" While this phrase is fairly broad, it is my opinion that incidental publicity is neither a similar service or thing, nor an item with an attributable value. Accordingly, it is my opinion that you may participate as the honoree without violating the provisions of s. 112.3148, F.S.

As a further aside, I would also note that the spirit of s. 112.3148, F.S., is clearly designed not to deter a public official from assisting in raising funds for, or receiving gifts on behalf of, a charitable organization such as the Boy Scouts. I believe, therefore, that to interpret the statute as applying to the situation you raise would be contrary not only to the clear meaning of the statute, but also to its intent.

**HCO 92-02—January 15, 1992**

*To: The Honorable C. Fred Jones, Representative, 42nd District, Auburndale*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S. (1991) to the following factual situation:

> You have been invited to be the Master of Ceremonies for the Agricultural Hall of Fame banquet which is being held in conjunction with the Florida State Fair. The event will be held in Tampa on February 11, 1992. Because you will be in Tallahassee for session, the Florida Department of Agriculture has offered to fly you round trip between Tallahassee and Tampa for the event.

In defining the term "gift" in s. 112.312(12), F.S., the Legislature specifically exempted reasonable expenses paid in relation to an honorarium event, including transportation, lodging, and food or beverage. Accordingly, neither the transportation nor the meal would qualify as a gift under s. 112.3148, F.S.

Section 112.3149, F.S., prohibits the payment of any honorarium to you by an organization which employs a legislative lobbyist. The Department of Agriculture and Consumer Services would, therefore, be prohibited from paying an honorarium. Notwithstanding the prohibition on an honorarium, however, reasonable expenses for travel, lodging, and food and beverages may be paid by the department on your behalf in return for your service as the master of ceremonies. The Department would be required to provide you with an itemized list of those expenses within 60 days after the event, and you would be required to publicly disclose receipt of those expenses no later than July 1, 1993.

**HCO 92-03—January 21, 1992**

*To: The Honorable Marian V. Lewis, Representative, 81st District, North Palm Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S. (1991), to the following factual situation:

> On behalf of the Susan G. Komen Foundation, you have been asked to participate, and to invite other governmental officials to participate, in a fund raising effort for the foundation. The event is a 5K "Race for the Cure." The proceeds will be used to help pay for mammograms and for cancer research and education. As part of the invitation, the foundation will offer to provide the officials with hotel accomodations and they will be invited to a V.I.P. party with the head coach of the Miami Dolphins and his family.

Based upon the question provided, it is my opinion that both the provision of the hotel accomodations and the V.I.P. party will constitute a gift to the government officials. The hotel accomodations would be valued at their actual cost to the foundation or those sponsoring the event. From the enclosed brochure, the amount seems to be $69 to $79 per night. The party would be valued at the cost of having the Shula family attend, divided by the number of persons invited to the party. The cost of food and beverage at the party, however, would not constitute a gift as food and beverage consumed at a single event is exempt from the

definition of gift in s. 112.312(12), F.S. Finally, although your letter does not address the issue, if a waiver of the entrance fee is provided and an invitee also participates as a walker or runner, the $12 to $15 entrance fee would also be added to the value of the gift provided.

As the foundation does not employ a lobbyist before the Florida Legislature, there would be no limitation on whether a member of the Florida Legislature could accept the invitation. However, to the extent the value of the accomodations and the party exceed $100 in the aggregate to a member, they must be reported on Form 9. As to other governmental officials, I am unaware of whether the foundation employs a lobbyist for the purpose of lobbying their individual agencies. This question must be answered by them.

I have reviewed the proposed invitation and would suggest one addition. It is important that the invitation clearly state that your invitation is made on behalf of the foundation and that the foundation, rather than you, is providing the accomodations and the party.

**HCO 92-04—January 21, 1992**

*To: The Honorable Bolley L. Johnson, Representative, 4th District, Milton*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S. (1991), to the following factual situation:

> Your spouse, Judi Johnson, has been requested by the Woman's Advisory Council of the Santa Rosa Medical Center, of which she is a member, to represent the council at The Florida Breast Cancer Forum. The forum is presented by, and sponsored by, the American Cancer Society. It will be held in Orlando, Florida, on January 22, 1992. You are not personally invited to attend and will not attend.

To permit Judi's attendance, and that of other participants, the American Cancer Society has offered to pay for round-trip transportation and for lodging expenses on the evening of January 21, 1992.

In addressing this request, I must first advise as to whether the provision of round-trip transportation between Pensacola and Orlando and the overnight accommodations constitute a gift for the purposes of s. 112.3148, F.S. In reviewing the definition of "gift" as provided in s. 112.312(12), F.S., it is clear that both transportation and accommodations are within the definition. The only exception which may apply is the provision concerning the giving of "equal or greater consideration." While your spouse is performing a service for the Woman's Advisory Council of the Santa Rosa Medical Center, it is the American Cancer Society, rather than the hospital or council which is providing the payment of her transportation and accommodations. If the payment constitutes a gift from the American Cancer Society, rather than a gift from the Woman's Advisory Council of Santa Rosa Hospital, it would appear that consideration for the gift is not being given to the person providing the gift, and thus the exception would not apply.

While one could argue that the gift is actually being provided by the council rather than the cancer society, as the decision on who will attend was left to the council (see my opinions 91-05 and 91-06), because participation by a member of the council is sought by the cancer society, it would appear that the cancer society exercised some limited control over the selection of the recipient of the gift. I would recommend, therefore, that you take the conservative approach and consider the payment of expenses a gift from the American Cancer Society. Accordingly, I believe that the payment of transportation and accommodations would constitute a gift under s. 112.3148, F.S., from the American Cancer Society.

Having determined that the payment of your spouse's expenses constitutes a gift, I must now advise as to whether the gift to her would constitute an indirect gift to you. In providing an opinion on this issue, I have considered the totality of the facts presented. First, the decision that your wife would be invited was not made by the American Cancer Society, but by an employee of the Santa Rosa Medical Center. Second, your wife was invited in her capacity as a member of the advisory council, not because of her relationship to you. Third, your wife has been offered the opportunity to attend the seminar so that she could share the education she receives at the forum with the other members of the council. Fourth, other members of the council, whose spouses are not public officials, were also invited.

In adopting the provisions of s. 112.3148, F.S., the legislative committees considered provisions which would automatically provide that gifts to the spouse or minor children of a public official would constitute gifts to the public official. This approach was not adopted by the committees or the Legislature. Instead, the bill leaves to a case by case determination whether a gift to a spouse or child is an indirect gift to the public official. This approach was adopted in recognition that a spouse or child may have business, civic, and personal relationships which are separate and apart from their relationship to the public official. It is my opinion that the facts in this case demonstrate the wisdom of the legislative determination.

In summary, I am of the opinion that the payment of transportation and lodging for your spouse constitutes a gift to her, and not a gift to you. Accordingly, the American Cancer Society is not prohibited from paying the expenses, and your spouse is not prohibited from accepting the payment.

**HCO 92-05—February 3, 1992**

*To: The Honorable T. K. Wetherell, Representative, 29th District, Daytona Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., as amended by Chapter 90-502, Laws of Florida (1991), and as further amended by Chapter 91-292, Laws of Florida (1991), to the following factual situation:

> You have been invited to hunt on the private property of The Honorable Jim Smith, Secretary of State, who lobbies the Florida Legislature.

Pursuant to s. 112.312(9), F.S., the use of real property is a gift for the purpose of s. 112.3148, F.S. However, in valuing the gift, the use of the property for hunting would appear to have no value as the donor is not spending any money for the hunting purpose (s. 112.3148(7)(a), F.S.). Accordingly, you may accept his offer and no report would be required by you or the Secretary of State.

**HCO 92-06—March 5, 1992**

*To: The Honorable Lois J. Frankel, Representative, 83rd District, West Palm Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S. (1991), to the following factual situation:

> When in Tallahassee on legislative business, you have been offered lodging by Representative Elaine Gordon in a townhouse jointly owned by Representative Gordon and Roberta Fox. Ms. Fox is a registered lobbyist before the Florida House of Representatives. You pay for maid service for the townhouse and for a rental car. You generally return to Palm Beach County on weekends.

Pursuant to the definition of "gift" included in s. 112.312(12)(a)2, F.S., use of real property would constitute a gift under the provisions of s. 112.3148, F.S. Because the gift is "lodging in a private residence," it is valued at $29.00 per day for consecutive days of lodging, less any compensation provided by you for the gift, in accordance with the provisions of s. 112.3148(7)(b),(e), F.S. It is my opinion that the payment of maid services would constitute compensation for the lodging. The car rental would constitute compensation only to the extent it is used by the donor of the lodging.

Because your stay is at the invitation of Representative Elaine Gordon, it would at a minimum constitute a gift from her. Additionally, as Ms. Fox is a co-owner of the townhouse, it is my opinion that the lodging would at least constitute an indirect gift from her, as well. Assuming that the townhouse is owned by Ms. Fox and Representative Gordon in equal shares, you should consider the gift to be one-half provided by a lobbyist and one-half provided by a nonlobbyist. Accordingly, the value of the gift should be divided in half in determining whether it is a prohibited gift, under the provisions of s. 112.3148(4) and s. 112.3148(5)(a), F.S., or a reportable gift by the donor under s. 112.3148(5)(b), F.S. If the value for consecutive days of lodging does not exceed $200, therefore, the one-half value attributable to the gift from Ms. Fox would not be a prohibited gift under s. 112.3148, F.S. If the value exceeds $50, however, the one-half value would exceed $25, and would be reportable by Ms. Fox, in accordance with the provisions of s. 112.3148(5)(b), F.S.

In order for the gift to become a prohibited gift, you would have to stay at least seven days in a row. As it is your general practice to return to your legislative district on weekends, it would appear that you would not be staying with Representative Gordon and Ms. Fox for seven consecutive days. On any occasion on which you should remain in Tallahassee for seven consecutive days, or longer, you could remain in the townhouse should one-half of the value of the maid service, together with any other monetary or other consideration paid to Ms. Fox, equal or exceed the difference between the number of consecutive days times $14.50 and $100.

Because any gift to you jointly from Representative Gordon and Ms. Fox with a value in excess of $100, would also be a gift in excess of $25 from Ms. Fox, it would be reportable under the provisions of s. 112.3148(5)(b), F.S.; it would not be reportable by you under the provisions of s. 112.3148(8)(a), F.S.

This opinion confirms an oral opinion provided to you and Representative Gordon, during the 1990 Organization Session shortly after passage of Chapter 90-502, Laws of Florida (1991).

**HCO 92-07—March 27, 1992**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of ss. 112.3148 and 112.3149, F.S. (1991), to the following factual situation:

> You were invited by the National Conference of State Legislatures (NCSL) to address a subcommittee of the Judiciary Committee of the United States House of Representatives on an immigration issue. NCSL agreed to pay your reasonable expenses incurred in traveling to Washington to make the presentation on their behalf. NCSL does not employ a lobbyist before the Florida House of Representatives.

Section 112.312(12), F.S., would generally include within the definition of a "gift," the payment of expenses for traveling, lodging, food and beverage, and similar incidental expenses incurred in traveling. However, the payment of such expenses is not considered a gift where the donee provides equal or greater consideration for the payment of the expenses.

It is my opinion that where NCSL has determined it appropriate to pay your expenses related to your making a presentation on behalf of the organization, it could do so only where it also determined that the making of the presentation would constitute equal or greater consideration for the payment of expenses by NCSL. I am, therefore, of the opinion that the payment of expenses would not constitute a reportable gift under s. 112.3148, F.S. It is my recommendation, however, that you request that NCSL executives provide you with a statement confirming the value of your services as further evidence that you have provided equal or greater consideration.

I am further of the opinion that the payment of reasonable travel, lodging, food, and beverage expenses related to your Washington presentation would constitute the payment of expenses related to an honorarium. Such expenses are also exempt from the definition of "gift" under s. 112.312(12)(b)3, F.S. Although the presentation was not made to NCSL, but rather was made on their behalf, I find nothing in the law which specifically requires that the payment be made by the organization to whom the presentation is being made. Until changed by law or clarified by ruling or rule of the Commission on Ethics, therefore, I am of the opinion that the provisions of s. 112.3148, F.S., would not be implicated even if your services were not of equal or greater value.

Because the expenses were paid by NCSL, it is my opinion that the payment of travel related expenses is also not subject to the provisions of s. 112.3149, F.S., as NCSL does not employ a lobbyist before the Florida House of Representatives. Section 112.3149, F.S., requires the reporting of expenses related to an honorarium event only when paid by a lobbyist or by an entity employing a lobbyist.

This opinion confirms an oral opinion issued to you in 1991, prior to your making the presentation to Congress.

**HCO 92-08—April 24, 1992**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., to the following factual situation:

> As legal counsel to the Board of Trustees of Parkway Regional Medical Center, you have been invited by the Trustees to attend the Spring Gala Physician Dinner-Dance on May 16, 1992, as a guest of the board of trustees. The invitation is for you and your wife. Tickets to the event cost $50 per person.

Although tickets to a dinner-dance are generally within the definition of "gift" found in s. 112.312(12), F.S., because a dinner-dance includes entertainment in addition to food and beverage, I am of the opinion that the tickets provided to you as a gift or benefit related to your position as legal counsel to the hospital would be exempt from the statutory "gift" definition under the provisions of s. 112.312(12)(b)1., F.S. Accordingly, you may accept the invitation and are not required to publicly report acceptance of the tickets.

I would note that even had the tickets been within the definition of gift, as the total value did not exceed $100, you would be permitted to accept the tickets and you would not be required to report receipt of the tickets.

**HCO 92-09—June 3, 1992**

*To: The Honorable Anne Mackenzie, Representative, 95th District, Fort Lauderdale*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., to the following factual situation:

> You are provided a pass which permits you to park free of charge at an airport by an airport authority, while you are engaged in governmental business. The pass is not for sale to the general public and has no face value attributed to it.

Pursuant to s. 112.312(12), F.S., services such as transportation and parking services, are included within the definition of gift. While use of public facilities for a public purpose are exempt from the definition (see Section 112.312(b)7., Florida Statutes), it is my opinion that parking charges, even on public property, were not intended to be excluded from that definition. Accordingly, I am of the opinion that a pass offering free parking is a gift, if used. If not used, the pass has no value, and is therefore, not a gift.

In valuing the gift, as I have opined previously in HCO 91-09, you should consider parking on consecutive days to be a single gift. For reporting purposes, it is my opinion that the gift is received on the last day of the consecutive days, which is the day on which a payment would normally be paid for the parking provided.

For the purposes of s. 112.3148, F.S., an airport authority is considered a governmental entity, which may provide you a gift of any value, as long as there is a public purpose behind the gift (Section 112.3148(6)(a), Florida Statutes). Providing a public servant with parking privileges while she is engaged in governmental service, clearly meets the public purpose test, as the fees would otherwise be payable from public tax revenues. Accordingly, you may accept the gift, regardless of the value.

For reporting purposes, the airport authority is required to notify you on an annual basis of any gift it provided you with a value in excess of $100. The authority's report is due to you by March 1 of the year following the giving of the gifts. You must also report receipt of such gifts by July 1 of the year following receipt of the gifts. (Section 112.3148(6)(c),(d), Florida Statutes)

**HCO 92-10—June 9, 1992**

*To: The Honorable Ronald A. Silver, Representative, 100th District, North Miami Beach*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., to the following factual situation:

> You are provided a complimentary membership in the Aventura Marketing Council, which is a civic organization composed of business and community leaders involved in the promotion and betterment of the Aventura/Turnberry area, an area which is within your legislative district. The council does not employ a lobbyist before the Florida Legislature.

The term "gift," as used in s. 112.3148, F.S., is defined in s. 112.312(12)(a)9., F.S., to include membership dues. However, specifically exempt from the definition is "honorary memberships in a service or fraternal organization presented merely as a courtesy by such organization." Otherwise, all memberships for which dues are usually charged would constitute a gift.

Based upon the question received, and your statement that the organization is involved in "working for the betterment of the Aventura/Turnberry area," it would appear that the Aventura Marketing Council would constitute a service organization as that term is used in s. 112.312, F.S. I am unable, however, based on your letter, to determine whether your membership is honorary in nature, or whether you are intended to be a participating active member of the council. If the latter, the membership would constitute a gift which could be subject to disclosure; if the former, it would not constitute a gift.

Assuming that the membership is not an honorary membership, it would be required to be disclosed to the extent it has a value over $100, but its acceptance is permitted as the organization does not employ a lobbyist before the Florida Legislature. In valuing the membership, it is my opinion that you should consider each time dues are waived to be a single gift. For example, if dues are payable monthly, each month's dues would constitute a gift; if payable annually, the annual dues would constitute a single gift. For reporting purposes, the gift should be considered to be provided on the day which the membership dues are payable.

**HCO 92-11—June 10, 1992**

*To: The Honorable Tom Feeney, Representative, 37th District, Orlando*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., to the following factual situation:

> You were invited to speak to a committee of the American Legislative Exchange Council (ALEC) in Washington, D.C., on February 22, 1992. In return for your address, ALEC agreed to pay your reasonable travel and lodging expenses related to the presentation. ALEC is a national organization of legislators, which does not employ a lobbyist for the purpose of lobbying the Florida Legislature.

Pursuant to s. 112.312(12)(b)3., F.S., neither an honorarium nor expenses related to an honorarium event are considered to be gifts for the purposes of s. 112.3148, F.S., but are subject to the provisions of s. 112.3149, F.S. Section 112.3149, F.S., prohibits any organization which employs a lobbyist from paying an honorarium, in cash or in kind, of any amount, but does permit the payment of reasonable expenses for transportation, lodging, and food and beverages. If such expenses are paid by such an organization, the law requires that both the organization and the speaker disclose the payment of such expenses. However, in that ALEC does not employ a lobbyist before the Florida Legislature, the provisions of s. 112.3149, F.S., do not apply, and thus there is no requirement that you disclose the payment of your reasonable expenses by ALEC under Chapter 112.

**HCO 92-12—September 28, 1992**

*To: The Honorable Carlos L. Valdes, Representative, 112th District, Miami*

*Prepared by: Thomas R. Tedcastle, House General Counsel*

You have requested an advisory opinion as to the applicability of s. 112.3148, F.S., and s. 112.3149, F.S., to the following situation:

> You have been invited by the United States Hispanic Chamber of Commerce (USHCC) to participate as a panelist during the USHCC's 13th Annual National Convention and Business Opportunity EXPO to be held in Dallas, Texas, from September 28 to October 3, 1992. USHCC has offered to pay for your transportation and lodging which will have a value in excess of $100.

While travel and lodging are specifically included in the definition of a "gift" pursuant to s. 112.312(12)(a), F.S., s. 112.312(12)(b)3., F.S., specifically excludes any honorarium or expense related to an honorarium event paid to a person or his spouse. As such, the payment of the transportation and lodging by the USHCC for you to attend their meeting is not a gift that is required to be reported pursuant to s. 112.3148, F.S.

However, as you have been requested to speak at the convention, the speaking engagement and expenses related thereto would qualify as honorarium expenses. Therefore, s. 112.3149, F.S., relating to honoraria is applicable. An honorarium is payment for a "speech, address, oration or other oral presentation."

Your attendance at this meeting would qualify as an honorarium event. The USHCC may pay your "actual or reasonable transportation, lodging and food and beverage expenses related to the honorarium event." My understanding is that you intend to leave Miami for the conference on September 30 and will return on October 4, 1992. You will speak at meetings held on October 1 and October 3, 1992. The payment by the USHCC of the expenses for your transportation, lodging and food and beverage for the day before your remarks on October 1 and for the day after your second speaking engagement on October 3, 1992, would clearly qualify to allow the USHCC to pay these expenses.

I note that a review of the lobbyist registration does not reveal any lobbyist registered for the USHCC; however, I note that there is a lobbyist registered for the Hialeah Latin Chamber of Commerce and for the Latin Chamber of Commerce. You should inquire into whether the United States Hispanic Chamber of Commerce does employ a lobbyist or is associated with either of these two groups. If the answer to either of these questions is no, no report is required by either you or the USHCC to you of the reasonable expenses related to the honorarium event. If either of these questions is answered in the affirmative, you should notify me of the factual basis for the lobbying relationship so that I might give you a definitive opinion as to the reporting requirements.

**HCO 92-13—November 18, 1992**

*To: The Honorable Alzo Reddick, Representative, 39th District, Orlando*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested an advisory opinion as to the applicability of Section 112.3148, Florida Statutes, to the following situation:

> The State Governmental Affairs Council has invited you to speak at the 1992 Annual Leaders' Policy Conference to be held November 21-24 in Naples, Florida. The Council has offered to provide you with a complementary registration and to reimburse you for your lodging, travel and food expenses associated with your address to the conference.

The material you provided me indicates that the conference is sponsored by the State Government Education and Research Foundation in cooperation with the National Conference of State Legislatures. This information indicates that the State Governmental Affairs Council "is the national organization of major corporations and trade associations which works to enhance state government activities by stimulating opportunities for interaction between the public and private sectors." The program for the conference lists a number of national corporations who are the principals or employers of lobbyists in Florida. Essentially, the Council, which has no lobbyists in Florida, is an association composed of representatives of major corporations, many of which do retain lobbyists in Florida. Given this fact, I recommend that you adopt the position that the Council, even though indirectly so, is the principal or employer of a lobbyist.

Accordingly, you are prohibited from knowingly accepting an honorarium by section 112.3149(3), Florida Statutes. An "honorarium" is defined by section 112.3149(1), Florida Statutes, as the "payment of . . . anything of value, directly or indirectly , . . . as consideration for . . ." a speech. However, section 112.3149(6), Florida Statutes, permits you to accept and report the provision of expenses related to any honorarium, notwithstanding the fact that the person providing the expenses is the principal or employer of a lobbyist. Therefore, I am of the opinion that you may participate as a speaker at the conference and that you may accept reimbursement for your reasonable expenses from the Council.

The copy of the program for the conference and your memorandum to me indicates that you will be speaking on Saturday, November 21, as one of several speakers between 3:00 and 4:00 p.m.

The amount the Council may reimburse you for reasonable expenses is limited to your "actual and reasonable transportation, lodging and food and beverage expenses related to the honorarium event . . ." (Section 112.3149(1)(a), Florida Statutes). Since you will be speaking between 3:00 and 4:00 p.m. on November 21 and will be traveling to Naples from Orlando and return by automobile, it would appear to me that the reasonable transportation, lodging and food and beverage expenses associated with the event would be limited to your travel and food and beverage expenses on November 21. I believe that this view is in accord with Rule 34-13.220(3), Florida Administrative Code, the Commission on Ethics rule on this point (particularly, the cited example). I would further suggest, that you take the step of formally declining to accept waiver of the registration fee because such fees typically allow conference attendees to participate in other events held in conjunction with the conference which, in your case, would constitute acceptance of a prohibited honorarium.

You should also note that section 112.3149(6), Florida Statutes, requires that you disclose that receipt of the payment of allowable expense related to an honorarium event. The statement of honorarium expenses must be filed by July 1 of the year following the calendar year in which the expenses were paid.

**HCO 93-01—January 8, 1993**

*To: The Honorable Harry C. Goode, Jr., Representative, 31st District, Melbourne*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested an advisory opinion as to the applicability of s.112.3149, Florida Statutes, to the following situation:

> You have been invited to participate in a Legislative Symposium sponsored by the National Marine Manufacturers Association (NMMA) at the Miami Boat Show. NMMA has offered to pay your expenses associated with attending the event and those of your spouse, except for air fare. The invitation has been extended by a lobbyist for NMMA.

Section 112.3149(1)(a), Florida Statutes, defines an honorarium as:

> a payment of money or anything of value, directly or indirectly, to a reporting individual . . . or to any other person on his behalf, as consideration for:
>
> (a) A speech, address, oration or other oral presentation by the reporting individual . . . .
>
> The term 'honorarium' does not include the . . . payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event for a reporting individual.

It is may opinion that the definition of "honorarium" includes events to which public officials, such as yourself, are invited to make oral presentations. Thus, it appears, based upon the facts as stated in your request for my opinion, that you have been invited to participate in an honorarium event. Please see the attached copy of Opinion 91-10.

I note from the copy of the invitation attached to your request for my opinion that attendees are expected to attend the Miami Boat Show following the symposium on Friday, February 12 and other events later that afternoon and evening. Payment of or waiver of any required admission charge or registration fee which enables you to attend these functions or for transportation to or from these events would constitute a prohibited form of honorarium. Of course, you could pay any admission charge or required registration fee for the boat show and other events, including transportation to these events, for yourself and your spouse.

The invitation indicates that the symposium begins at at 8:00 a.m. on Friday, February 12, 1993, and concludes at 1:00 p.m. that afternoon followed thereafter by the boat show. Accordingly, I am of the opinion that the payment of your and your spouse's actual and reasonable transportation, lodging, and food and beverage expenses associated with this honorarium event would include the lodging and food and beverage for Thursday, February 11 and for Friday, February 12 and transportation to Miami and return on Thursday, February 11 and on Saturday, February 13.

You should receive a statement from NMMA which lists the name and address of the person providing for the expenses related to the honorarium event, a description of the expenses provided each day and the total value of the expenses provided for the honorarium event. Section 112.3149(5), Florida Statutes, requires the statement be sent to you not later than sixty (60) days following the honorarium event. In the event you do not receive the statement, I recommend that you contact either NMMA directly or the individual who invited you to attend and participate in the symposium to obtain the statement.

You should also note that section 112.3149(6), Florida Statutes, requires that you disclose the receipt of the payment of allowable expenses related to an honorarium event. The statement of honorarium expenses must be filed by July 1 of the year following the calendar year in which the expenses were paid.

**HCO 93-02—February 2, 1993**

*To: The Honorable Debbie Wasserman Schultz, Representative, 97th District, Davie*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the proposed presentation to you of a framed plaque engraved with you name by Southern Bell that would include your picture and an enlarged map of the district you represent. You have related to me that the presentation of this plaque was announced to you at a public event in recognition of your public and civic service. You have asked whether the receipt of this item is a gift prohibited under section 112.3148, Florida Statutes, since it is being given by the principal of a lobbyist and has a probable value in excess of $100.

The critical inquiry is determining whether the plaque that Southern Bell has announced its intention of presenting to you constitutes a gift, as that term is defined in s. 112.312(12), Florida Statutes. Paragraph (b) of the definition provides, "'Gift' does not include: . . . 4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service." Based on the statutory definition of the term "gift", it would appear that the plaque which Southern Bell has proposed to give to you is not a gift.

Accordingly, acceptance of the plaque does not constitute a prohibited gift under s. 112.3148, Florida Statutes.

**HCO 93-03—April 10, 1993**

*To: The Honorable Alzo J. Reddick, Representative, 39th District, Orlando*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion as to the applicability of section 112.3148, Florida Statutes, to the following situation:

> You have been invited to participate in an international tourism sales mission to Japan this month. The sales mission is paid for by the Department of Commerce from registration fees collected from companies participating in the sales mission to Japan. No tax revenues are to be expended in paying for the trip. Your participation in the sales mission would be to visit with Japanese tour operators and travel agents and to attend hosted events as a Florida dignitary. Most expenses for the trip are to be provide by the Department, except for some meals.

The payment by the Department of Commerce of your expenses related to your participation in the tourism sales mission to Japan constitutes a "gift" for purposes of section 112.3148, Florida Statutes. Section 112.3148(6)(a), Florida Statutes, authorizes an entity or a department of the executive branch to give a gift to a reporting individual (i.e. a legislator) having a value in excess of $100, "if a public purpose can be shown for the gift." Similarly, section 112.3148(6)(b), Florida Statutes, authorizes a reporting individual to accept a gift

having a value in excess of $100 from an entity or a department of the executive branch, "if a public purpose can be shown for the gift."

The general purposes of the Division of Tourism of the Department of Commerce are "to guide, stimulate, and promote the coordinated, efficient, and beneficial travel and leisure development of the state and its regions, counties and municipalities to visitors from this state, other states, and other countries." (Section 288.121(1), Florida Statutes, 1992 Supplement; emphasis added.) Section 288.121(2)(d)6., Florida Statutes, 1992 Supplement, authorizes the Division of Tourism:

> to plan and conduct campaigns of information . . . and publicity relating to the recreational, . . . facilities and attractions of the state . . . through and by means of . . . preparation, purchase and distribution . . . of advertising, literature and other material, including exhibits; and, . . . the holding of events activities within and without the state, including follow-up contacts by personnel of the division within or without the state, which in the judgement of the division will beneficially publicize the state. (Emphasis added.)

In addition, section 288.121(2)(i), Florida Statutes, 1992 Supplement, authorizes the Division of Tourism to charge and collect registration fees for meetings in furtherance of the powers, duties and purposes of the Division. Thus, it is clear that the conducting of a foreign sales mission to Japan by the Division serves a public purpose.

You have been asked to participate in the mission to Japan as Chairman of the Tourism and Economic Development Committee to observe the operations of the Division of Tourism and to gain a greater understanding of the operation of a public-private partnership in the field. You will also be serving as official dignitary during hosted events of the trip. As such, I am of the opinion that your acceptance of the invitation of the Department of Commerce's invitation to participate in the mission serves a public purpose within the meaning of s. 112.3148(6), Florida Statutes.

You should be aware that the Department of Commerce will be responsible, pursuant to section 112.3148(6)(c), Florida Statutes, for providing you with a statement which describes each gift you have received or will receive from the Department, its value, the date on which it was provide, and the total value of the gifts given to you by the Department during this calendar year. You should also note that section 112.3148(6)(d), Florida Statutes, requires that you disclose the receipt of a gift having a value in excess of $100 which you receive from a governmental entity. The report must be filed no later than July 1 of the year following the receipt of the gift from the governmental entity (in this instance, the report would be due no later than July 1, 1994).

**HCO 93-04—April 28, 1993**

*To: The Honorable Ben Graber, Representative, 96th District, Coral Springs*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion as to the applicability of sections 112.3148 and 112.3149, Florida Statutes, to the following situation:

> You have been invited to participate in a panel discussion at a luncheon on Saturday, June 19, 1993, during the annual meeting of the Florida Medical Group Management Association. The Association is represented by a lobbyist.

Section 112.3148, Florida Statutes, is inapplicable to this situation since that section deals with disclosure and prohibition of gifts to reporting individuals. The definition of the term "gift" specifically excludes an honorarium or expense related to an honorarium event paid to a person or his spouse. Section 112.312(12)(b)3., Florida Statutes.

Section 112.3149, Florida Statutes, is, however, applicable to this situation and prohibits you from knowingly accepting an honorarium from a lobbyist or the principal of a lobbyist. Subsection (1) of this section defines an honorarium as "the payment of . . . anything of value, directly or indirectly, . . . as consideration for . . . [a] speech . . . or other oral presentation . . ." Nonetheless, you are permitted to accept the "payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses" related to an honorarium event.

The copy of the letter to you inviting you to speak to the Association indicates the speech is to be delivered at a luncheon meeting in Orlando. You represent an area of Broward County in the House. The rules adopted by the Commission on Ethics to interpret and implement section 112.3149, Florida Statutes, provide a list of factors that must be considered in determining the reasonableness of honorarium related expenses. These include: the location at which the honorarium event is to be held; the distance the reporting individual is required to travel to attend the event; the mode of transportation utilized to travel to and from the event; the length of the presentation or speech; and, the time of day the speech or other presentation is made. Rule 34-13.220, Florida Administrative Code. From the facts in the letter you have sent me requesting my opinion in this matter and the letter of invitation to you from the Association and assuming that you will be traveling by air from Fort Lauderdale to Orlando to participate in the event, it appears that it would be reasonable for the Association to pay or provide your transportation to and from the luncheon on Saturday and your reasonable food and beverage expense during your transportation and during your stay in Orlando. In the event air connections are not available which permit your travel to and from your district on Saturday, June 19, 1993, the Association may also provide reasonable lodging for you for either the night of Friday, June 18, 1993 or Saturday, June 19, 1993 together with your food and beverage expenses for that additional period.

You should also note that section 112.3149(6), Florida Statutes, requires that you disclose your receipt of the allowable expenses related to an honorarium event. The statement of honorarium expenses must be filed by July 1 of the year following the calendar year in which he expenses were paid (in this case, the report would by due no later than July 1, 1994).

**HCO 93-05—April 29, 1993**

*To: The Honorable Miguel De Grandy, Representative, 114th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion as to the applicability of sections 112.3148 and 112.3149, Florida Statutes, to the following situation:

> You have been asked to be a workshop panelist at the annual meeting of the National Association of Latino Elected and Appointed Officials (NALEO) in Las Vegas, Nevada on June 25, 1993. NALEO has offered to provide your reasonable expenses of attending the annual meeting to participate in the workshop. NALEO does not employ a lobbyist before the Florida Legislature.

Pursuant to section 112.312(12)(b)3., Florida Statutes, neither an honorarium nor expense related to an honorarium event are considered to be gifts for the purposes of section

112.3148, Florida Statutes, but are subject to the provisions of section 112.3149, Florida Statutes. Section 112.3149, Florida Statutes, prohibits organizations which employ lobbyists from paying an honorarium, in cash or in kind, or any amount, but does permit the payment of reasonable expenses for transportation, lodging and food or beverages. If such expenses are paid by such an organization, the law requires that both the organization and the recipient disclose the payment of such expenses. Where, as here, the organization does not employ a lobbyist, the provisions of section 112.3149, Florida Statutes, do not apply, and thus there is both no prohibition on your acceptance of the payment of your expenses by NALEO to participate in the workshop at the annual meeting and no requirement under chapter 112, Florida Statutes, that you disclose the payment of your reasonable expenses by NALEO.

**HCO 93-06—April 29, 1993**

*To: The Honorable Bruno A. Barreiro, Jr., Representative, 107th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested an advisory opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> You have been invited to accompany a group of local elected and appointed officials and private individuals involved in the tourism industry to travel to Germany for the purpose of meeting with German tour operators, German travel agents and members of the German media regarding the recent episodes of criminal violence involving foreign tourists in South Florida. Air fare for the trip will be provided by a tour operator in South Florida that is not represented by a lobbyist before the Legislature. Your lodging and food and beverage expenses will be provided and paid for by you. Ground transportation in Germany will either be provided and paid for by a city commissioner of the City of Miami from her personal funds or by you. The city commissioner is not a registered lobbyist before the Legislature.

Section 112.3148, Florida Statutes, regulates the receipt of gifts by reporting individuals (i.e. legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100. Section 112.312(12), Florida Statutes, defines a "gift" to include "that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for his benefit or by any other means, for which equal or greater consideration is not given," including transportation and lodging but does not include any food or beverage consumed at a single sitting.

Accordingly, based on the facts related to me by Commissioner Mary Alonso of the City of Miami, the organizer of the delegation that is traveling to Germany, it is my opinion that for purposes of section 112.3148, Florida Statutes, the round-trip air transportation to Dusseldorf, Germany from Fort Lauderdale to be provided by Florida Network Tours, Inc. and the ground transportation in Germany, if provided by Commissioner Alonso, constitute "gifts." Since Florida Network Tours, Inc. is not the principal of a lobbyist and Commissioner Alonso is neither the principal of a lobbyist nor a lobbyist herself, you may accept these gifts of transportation. While the airfare is clearly valued at in excess of $100, I am assuming, for purposes of this opinion, that the ground transportation would also be valued in excess of $100. Obviously, since you are paying for your own lodging expenses and food and beverage expenses during the trip, they do not constitute gifts. Likewise, if you pay for your ground transportation in Germany, it also would not constitute a gift.

Section 112.3148(8)(a) requires that reporting individuals report the receipt of gifts having a value in excess of $100, with certain limited exceptions, on the last day of the calendar quarter for the previous calendar quarter (in this case, September 30, 1993). This report must describe the gift, name the person providing the gift and the date on which the gift was received.

Section 112.3148(8)(d), Florida Statutes, requires that transportation be valued on a round-trip basis, as is being provided in this situation, and that transportation in a private conveyance be valued at the same value as transportation provided in a comparable commercial conveyance. The rules adopted by the Commission on Ethics to interpret and clarify section 112.3148, Florida Statutes, provide guidance for valuing the air transportation and ground transportation involved in this trip. For purposes of valuing the airfare involved in this trip, I urge that you adopt a conservative approach and value such travel in the same manner as travel by private airplane. The rules of the Commission on Ethics require that such air transportation be valued at the comparable "unrestricted coach fare." Rule 34-13.500(4), Florida Administrative Code. You should contact one or more airlines that serve Fort Lauderdale and obtain and document a quote for such a round-trip fare to Dusseldorf, Germany and return for your day of departure and return. With regards to any ground transportation in Germany which constitutes a gift, I understand from Commissioner Alonso that the ground transportation will be by a rented van. Rule 34-13.500(4), Florida Administrative Code, requires that transportation of more than a single person in one conveyance at one time be valued as if such transportation is provided in a comparable commercial conveyance. Again, I urge that you adopt a conservative approach to the valuation of the ground transportation involved in this trip and value the ground transportation at the entire cost of the rental van, notwithstanding the fact that a number of individuals on the trip will be sharing this transportation with you.

**HCO 93-07—April 29, 1993**

*To: The Honorable Luis E. Rojas, Representative, 102nd District, Hialeah*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested an advisory opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> You have been invited to accompany a group of local elected and appointed officials and private individuals involved in the tourism industry to travel to Germany for the purpose of meeting with German tour operators, German travel agents and members of the German media regarding the recent episodes of criminal violence involving foreign tourists in South Florida. Airfare for the trip will be provided by a tour operator in South Florida that is not represented by a lobbyist before the Legislature. Your lodging and food and beverage expenses will be provided and paid for by you. Ground transportation in Germany will either be provided and paid for by a city commissioner of the City of Miami from her personal funds or paid for by you. The city commissioner is not a registered lobbyist before the Legislature.

Section 112.3148, Florida Statutes, regulates the receipt of gifts by reporting individuals (i.e. legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100. Section 112.312(12), Florida Statutes, defines a "gift" to include "that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for his benefit or by any other means, for which equal or greater consideration is not given," including transportation and lodging but does not include any food or beverage consumed at a single sitting.

Accordingly, based upon the facts related to me by Commissioner Mary Alonso of the City of Miami, the organizer of the delegation that is traveling to Germany, it is my opinion that for purposes of section 112.3148, Florida Statutes, the round-trip air transportation to Dusseldorf, Germany from Fort Lauderdale to be provided by Florida Network Tours, Inc. and the ground transportation in Germany, if provided by Commissioner Alonso, constitute "gifts." Since Florida Network Tours, Inc. is not the principal of a lobbyist and Commissioner Alonso is neither the principal of a lobbyist nor a lobbyist herself, you may accept these gifts of transportation. While the airfare is clearly valued at in excess of $100, I am assuming, for purposes of this opinion, that the ground transportation would also be valued in excess of $100. Obviously, since you are paying for your own lodging expenses and food and beverage expenses during the trip, they do not constitute gifts. Likewise, if you pay for your ground transportation in Germany, it also would not constitute a gift.

Section 112.3148(8)(a) requires that reporting individuals report the receipt of gifts having a value in excess of $100, with certain limited exceptions, on the last day of the calendar quarter for the previous calendar quarter (in this case, September 30, 1993). This report must describe the gift, name the person providing the gift and the date on which the gift was received.

Section 112.3148(8)(d), Florida Statutes, requires that transportation be valued on a round-trip basis, as is being provided in this situation, and that transportation in a private conveyance be valued at the same value as transportation provided in a comparable commercial conveyance. The rules adopted by the Commission on Ethics to interpret and clarify section 112.3148, Florida Statutes, provide guidance for valuing the air transportation and ground transportation involved in this trip. For purposes of valuing the airfare involved in this trip, I urge that you adopt a conservative approach and value such travel in the same manner as travel by private airplane. The rules of the Commission on Ethics require that such air transportation be valued at the comparable "unrestricted coach fare." Rule 34-13.500(4), Florida Administrative Code. You should contact one or more airlines that serve Fort Lauderdale and obtain and document a quote for such a round-trip fare to Dusseldorf, Germany and return for your day of departure and return. With regards to the ground transportation in Germany which constitutes a gift, I understand from Commissioner Alonso that the ground transportation will be by a rented van. Rule 34-13.500(4), Florida Administrative Code, requires that transportation of more than a single person in one conveyance at a one time be valued as if such transportation is provided in a comparable commercial conveyance. Again, I urge that you adopt a conservative approach to the valuation of the ground transportation involved in this trip and value the ground transportation at the entire cost of the rental van, notwithstanding the fact that a number of individuals on the trip will be sharing this transportation with you.

**HCO 93-08—April 30, 1993**

*To: The Honorable John Thrasher, Representative, 19th District, Orange Park*

*Prepared by: Thomas R. McSwain, House General Counsel*

Pursuant to your letter, you have requested my opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> Your administrative assistant, Mr. James C. Roy, is a member of the Mayor of Jacksonville's Base Closure Commission. The Mayor's Commission has been established to deal with the potential closure of Naval Air Station Cecil Field. Mr. Roy has been asked by the Mayor's Office to attend the regional meeting of the Base Realignment and Closure Commission in Charleston, South Carolina on

> Sunday, May 2, 1993. The City of Jacksonville has offered to pay all of Mr. Roy's expenses plus a meal allowance.

Section 112.3148, Florida Statutes, regulates the receipt of gifts by reporting individuals (legislators and legislative staff members). The section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner or the principal of a lobbyist. Section 112.312(12), Florida Statutes, defines a "gift" for purposes of section 112.3148, Florida Statutes, to include "that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for his benefit or by any other means, for which equal or greater consideration is not given," including transportation and lodging but does not include food or beverage consumed at a single sitting.

Notwithstanding this general rule, section 112.3148(6)(a) and (b), Florida Statutes, provides that a municipality may provide and a reporting individual may accept a gift having a value in excess of $100, "if a public purpose can be shown for the gift." In this instance, I am of the opinion that the attendance of your administrative assistant at the meeting, and the payment of his expenses by the City of Jacksonville, would serve a public purpose because the Base Realignment and Closure Commission's decision regarding Naval Air Station Cecil Field could have an important impact on the Duval and Clay County areas. Mr. Roy, as I understand it, will be attending the meeting in Charleston to monitor the presentation of officials from that area regarding a naval facility that, like Naval Air Station Cecil Field, is on the preliminary list being considered by the Commission for closure. By attending the meeting, he will be able to observe how the Charleston presentation is made and the Commission's reaction to it so that he may advise the Mayor's Commission regarding the presentation it will be making on behalf of Naval Air Station Cecil Field. Accordingly, you may permit your administrative assistant to attend the hearing in Charleston and the City of Jacksonville may pay his expenses associated with the meeting.

You should advise Mr. Roy that the City of Jacksonville will be responsible, pursuant to section 112.3148(6)(c), Florida Statutes, for providing him by March 1, 1994, with a statement which describes each gift (as defined by the statute and explained above) that he receives as a result of this trip from the city, its value, the date on which it was provided, and the total value of the gifts given to him by the city during this calendar year. Additionally, please remind him that section 112.3148(6)(d), Florida Statutes, requires him to disclose the receipt of a gift having a value in excess of $100 from a governmental entity. The report must be filed no later than July 1 of the year following the receipt of the gift from the governmental entity (in this instance, the report would be due no later than July 1, 1994).

**HCO 93-09—May 3, 1993**

*To: The Honorable D. Lee Constantine, Representative, 37th District, Altamonte Springs*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> You are the founder of the Charity Challenge in Altamonte Springs, Florida, a charity fund-raising event held for the previous seven years. The event is managed and conducted by Charity Challenge, Inc., a not-for-profit corporation, The corporation solicits sponsorships and donations from a number of businesses in the Central Florida community as well as participation of individuals in a variety of athletic contests. Several of the corporations which have purchased sponsorships in prior years are represented by lobbyists before the Legislature.

> The proceeds of each year's event benefit a number of charities in the Central Florida area. You are a member of the board of directors of Charity Challenge, Inc. You ask whether you may participate in the solicitation of sponsorships and donations for the 1993 Charity Challenge.

Section 112.3148, Florida Statutes, prohibits a reporting individual (i.e. a legislator) from soliciting any gift, food or beverage, from a political committee, committee of continuous existence, lobbyist or the partner, firm or principal of a lobbyist "where such gift, food or beverage is for the personal benefit of the reporting individual . . . or any member of the immediate family of a reporting individual . . . ." This section also generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. However, a reporting individual may accept an otherwise prohibited gift on behalf of a charitable entity, provided custody of the gift is not maintained by the reporting individual for any period longer than reasonably necessary to arrange for the transfer of custody and ownership of the gift. Section 112.3148(4), Florida Statutes. Likewise, a political committee, committee of continuous existence, a lobbyist or the partner, firm or principal of a lobbyist may give a gift of a value in excess of $100 to a reporting individual if the gift is accepted on behalf of a charitable organization. Section 112.3148(5), Florida Statutes. Section 112.312(12)(a), Florida Statutes, defines a "gift" for purposes of section 112.3148, Florida Statutes, as "that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly or indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including . . . [t]angible or intangible personal property."

You have related to me that you would be involved in the solicitation of corporate sponsorships for Charity Challenge, Inc., as you were prior to your election to the House of Representatives. You have also told me that you receive no personal benefit from any of the sponsorships of or donations to Charity Challenge, Inc. Charity Challenge, Inc. does, however, reimburse you for the actual cost of long distance telephone calls made on behalf of the organization and gasoline which is used during solicitations and related work as a director of Charity Challenge, Inc. Accordingly, I am of the opinion that since you receive no personal benefit from any donation to Charity Challenge, Inc., you may continue to solicit donations and sponsorships to Charity Challenge, Inc., including donations and sponsorships from corporations who are the principals of lobbyists before the Legislature.

You have related to me that donations and sponsorships which are donated to Charity Challenge, Inc. are sent directly to Charity Challenge, Inc. and are not received by you. Accordingly, the provisions of section 112.3148(4), Florida Statutes, relating to receipt of gifts by reporting individuals on behalf of a charitable organization are not implicated by the situation involving Charity Challenge, Inc.

**HCO 93-10—June 28, 1993**

*To: The Honorable Carlos Manrique, Representative, 115th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> You have been invited by the government of Costa Rica to attend an economic summit July 21-25. The purpose of the summit is to promote exports between Florida and Costa Rica. During the summit you will be meeting with Costa Rican business people and with representatives of various ministries of the Costa Rican government. The government of Costa Rica will provide your transportation on

> Lafka, the Costa Rican national airline, and pay for your lodging, transportation in Costa Rica and food and beverage expenses. The government of Costa Rica does not employ a lobbyist before the Florida Legislature.

Section 112.312(12)(a), F.S., defines the term "gift" for the purposes of section 112.3148, F.S., to include transportation and lodging that is accepted by a donee for which equal or greater consideration is not given. However, section 112.312(12)(b), F.S., excludes from the definition of a "gift" food or beverage consumed at a single sitting or event. Section 112.3148, F.S., regulates the receipt of gifts by reporting individuals (i.e. legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100.

Based upon the facts as related to me by you, I am of the opinion that the receipt by you of transportation and lodging expenses paid for by the government of Costa Rica will constitute a "gift" under s.112.312(12), F.S. Section 112.3148, F.S., permits you to accept the invitation of the government of Costa Rica to attend the economic summit and you may accept payment of your expenses by the government of Costa Rica. I would point out that my opinion is consistent with the view of my predecessor in a similar situation. See Opinion 91-04.

Section 112.3148(8)(a), F.S., requires that reporting individuals report the receipt of gifts having a value in excess of $100, with certain limited exceptions, on the last day of the calendar quarter for the previous calendar quarter (in this case, December 31, 1993). This report must describe the gift, state the monetary value of the gift, name the person or entity providing the gift and the date on which the gift was received.

**HCO 93-11—June 28, 1993**

*To: The Honorable Miguel A. De Grandy, Representative, 114th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the applicability of sections 112.3148, Florida Statutes, to the following situation:

> You have been invited by the government of Costa Rica to attend an economic summit July 21-25. The purpose of the summit is to promote exports between Florida and Costa Rica. During the summit you will be meeting with Costa Rican business people and with representatives of various ministries of the Costa Rican government. The government of Costa Rica will provide your transportation on Lafka, the Cost Rican national airline, and pay for your lodging, transportation in Costa Rica and food and beverage expenses. The government of Costa Rica does not employ a lobbyist before the Florida Legislature.

Section 112.312(12)(a), F.S., defines the term "gift" for the purposes of section 112.3148, F.S., to include transportation and lodging that is accepted by a donee for which equal or greater consideration is not given. However, section 112.312(12)(b), F.S., excludes from the definition of a "gift" food or beverage consumed at a single sitting or event. Section 112.3148, F.S., regulates the receipt of gifts by reporting individuals (i.e. legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100.

Based upon the facts as related to me by you, I am of the opinion that the receipt by you of transportation and lodging expenses paid for by the government of Costa Rica will constitute a "gift" under s.112.312(12), F.S. Section 112.3148, F.S., permits you to accept the invitation of the government of Costa Rica to attend the economic summit and you may accept payment of your expenses by the government of Costa Rica. I would point out that my opinion is consistent with the view of my predecessor in a similar situation. *See* Opinion 91-04.

Section 112.3148(8)(a), F.S., requires that reporting individuals report the receipt of gifts having a value in excess of $100, with certain limited exceptions, on the last day of the calendar quarter for the previous calendar quarter (in this case, December 31, 1993). This report must describe the gift, state the monetary value of the gift, name the person or entity providing the gift and the date on which the gift was received.

**HCO 93-12—June 28, 1993**

*To: The Honorable Elvin Martinez, Representative, 58th District, Tampa*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the application of section 112.3149, Florida Statutes, to the following situation:

> You have been invited to address the annual meeting of the Florida Conference of Circuit Judges in Ponte Vedra Beach on Tuesday, June 29, 1993, regarding recent changes to the juvenile justice system. The Conference has offered to reimburse you for your actual expenses related to transportation, lodging and meals.

Section 112.3149, F.S., prohibits the acceptance by a reporting individual (i.e. a member of the Legislature) of an honorarium or the provision of an honorarium by a lobbyist, partner of a lobbyist or the principal of a lobbyist. An "honorarium" is defined in s. 112.3149(1)(a) to include "a payment of money or anything of value, directly or indirectly, to a reporting individual . . ., as consideration for: 1. A speech, address, oration or other oral presentation by the reporting individual . . . ." However, the term does not include "the payment or provision of actual and reasonable transportation, lodging and food or beverage expenses related to the honorarium event for the reporting individual . . . and spouse." F.S. 112.3149(1)(a).

The Florida Conference of Circuit Judges retains a lobbyist before the Legislature and, accordingly is prohibited from giving an honorarium to any legislator. Similarly, legislators are prohibited from the acceptance of an honorarium from the Conference. However, the Conference may offer and you may accept the payment or provision of your "reasonable and actual transportation, lodging and food and beverage expenses related to the honorarium event." In this instance, your address to the Conference would constitute an honorarium event.

Based upon the rules adopted by the Commission on Ethics, the determination of what is reasonable with respect to an honorarium event must be determined on a case by case basis. Here, you have informed me that it was your intention to travel to Ponte Vedra Beach from your home in Tampa by automobile. Accordingly, I believe that it would be reasonable, given the distance involved and the time for your presentation and its length on June 29, for the conference to pay for or provide for the reasonable and actual expenses of your lodging for the nights of June 28 and 29, of your transportation to Ponte Vedra Beach from Tampa and return there and your food and beverage expenses during your stay in Ponte Vedra and your travel to and return from Ponte Vedra Beach.

Please note that, pursuant to s. 112.3149(5), F.S., a person who is prohibited from paying an honorarium but who provides reasonable and actual expenses to an honorarium event is required to provide a reporting individual with a statement within sixty days of the honorarium event which lists 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.

In addition, s. 112.3149(6), F.S., requires that a reporting individual who receives payment or provision of expenses related to an honorarium event to disclose annually on July 1 for the preceding calendar year the name, address, and affiliation of the person paying or providing the honorarium expenses, the date of the honorarium event, and the total value of expenses provided to the reporting individual in connection with the honorarium event. In this instance, the report for these expenses related to an honorarium event will be due no later that July 1, 1994.

The views I have expressed in this opinion are the same as those I expressed to you in our telephone conversation of June 22, 1993.

**HCO 93-13—September 2, 1993**

*To: The Honorable Luis Morse, Representative, 113th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion as to the applicability of sections 112.3148 and 112.3149, Florida Statutes, to the following situation:

> You have been invited to participate in a conference entitled "The Health Care Crisis: Public and Private Solutions: in Durham, North Carolina on September 21-23, 1993". You would participate as a panelist and make three presentations. The conference is jointly sponsored by the University of North Carolina Kenan Institute of Private Enterprise and Glaxo, Inc. Glaxo has offered to pay your expenses for travel, lodging and food and beverage associated with attending and participating in the conference. Glaxo, Inc. is represented by a lobbyist before the Florida Legislature.

Pursuant to section 112.312(12)(b)3., F.S., neither an honorarium nor expenses related to an honorarium event are considered to be gifts for the purposes of section 112.3148, F.S. Section 112.3149, F.S. prohibits organizations which employ lobbyists from paying an honorarium, in cash or in kind, of any amount. An honorarium is defined in s. 113.3149(1), F.S. "as consideration for. . . a speech, address, oration or other oral presentation by the reporting individual . . . regardless of whether presented in person recorded or broadcast over the media." Nonetheless, the definition of honorarium excludes "the payment or provision of actual and reasonable transportation, lodging and food and beverage expenses related to the honorarium event for a reporting . . . individual or spouse."

It is my opinion, based upon the facts you have related to me and the information you have sent me, that the conference to which you have been invited to participate is an honorarium event. Accordingly, you may accept the invitation extended by Glaxo to participate in the conference and to pay your actual and reasonable transportation, lodging and food and beverage expenses related to the honorarium event.

The information you have provided to me indicates that you are to make three separate presentations: one in the morning and one in the afternoon of September 22 and one on the morning of September 23. Given the times you will be speaking, I am of the opinion that it

would be reasonable, under the circumstances, for Glaxo to provide or pay for your lodging for Tuesday, September 21 and Wednesday, September 22 and for your transportation and food and beverage expenses for Tuesday, September 21, Wednesday, September 22 and Thursday, September 23.

You should receive a statement from Glaxo, Inc. which lists the name and address of the person providing for the expenses related to the honorarium event, a description of the expenses provided each day and the total value of the expenses provided for the honorarium event. Section 112.3149(5), F.S., requires the statement be sent to you not later than sixty (60) days following the honorarium event. In the event you do not receive the statement, I recommend that you contact either Glaxo, Inc. or the individual who represents them before the Florida Legislature to obtain the statement.

You should also note that section 112.3149(6), F.S., requires that you disclose the receipt of the payment of allowable expenses related to an honorarium event. The statement of honorarium expenses must be filed by July 1 of the year following the calendar year in which the expenses were paid (in this case, July 1, 1994).

**HCO 93-14—September 3, 1993**

*To: The Honorable Miguel A. De Grandy, Representative, 114th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion as to the applicability of sections 112.3148, Florida Statutes, to the following situation:

> You have been invited by the Southern Regional Council to attend a conference in Atlanta, Georgia on the weekend of September 17, 1993, for minority legislative leaders in the Southeast. You will not be speaking at the conference but rather will be an attendee at the conference. The Council has offered to provide your transportation, lodging and food and beverage expenses associated with the conference. The Council does not employ a lobbyist before the Florida Legislature.

Section 112.312(12)(a), F.S., defines the term gift for the purposes of section 112.3148, F.S., to include transportation and lodging that is accepted by a donee for which equal or greater consideration is not given. However, section 112.312(12)(b), F.S., excludes from the definition of a "gift" food or beverage consumed at a single sitting or event. Section 112.3148, F.S., regulates the receipt of gifts by reporting individuals (i.e. legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100.

Based upon the facts as you have related them to me and the information I have obtained from the Southern Regional Council, the payment of your expenses of attending the conference in Atlanta constitutes a gift for purposes of section 112.312(12), F.S. The Council is a not-for-profit entity which receives funding from a number of sources. Primary support for the Council is in the form of grants from charitable and other not-for-profit entities. None of the entities which provide income to the Council are involved in the selection of invitees to the conference. Accordingly, I am of the opinion that section 112.3148, F.S., permits you to accept the invitation of the Southern Regional Council to attend the conference sponsored by the Council at their expense.

Section 112.3148(8)(a), F.S., requires that reporting individuals report the receipt of gifts having a value in excess of $100, with certain limited exceptions, on the last day of the calendar quarter for the previous calendar quarter (in this case, December 31, 1993). This report must describe the gift, state the monetary value of the gift, name the person or entity providing the gift and the date on which the gift was received.

**HCO 93-15—October 1, 1993**

*To: The Honorable Debby Sanderson, Representative, 91st District, Fort Lauderdale*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> You have been invited to attend a professional baseball game at Robbie Stadium and sit in a private stadium suite that seats 18 people. You hold and intend to use your own tickets to the game. The suite is leased by an individual who is represented before the Florida Legislature by a lobbyist.

Section 112.3148, Florida Statutes, regulates the receipt of gifts by reporting individuals (i.e., legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess fo $100. Section 112.312(12), Florida Statutes, defines a "gift" to include "that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for his benefit or by any other means, for which equal or greater consideration is not given, including. . . entrance fees, admission fees or tickets to events, performances or facilities."

The rules of the Commisssion on Ethics provide the methodology for the valuation of seating in a skybox. The annual cost of the skybox lease must be divided by the number of persons which can be seated in the skybox and the result divided further by either the number of events held at the stadium which the lease covers or the number of events held during the preceding year which a similar lease would have covered. Rule 34-13.500(5)(c), Florida Administrative Code.

Accordingly, based upon the facts you have related to me, I am of the opinion that your acceptance of an invitation to the suite at Robbie Stadium would be a gift under the definition of that term under part III, Chapter 112, F.S. Based upon the rules of the Commission on Ethics, the value of that gift would be either $39.68, if the lease for the stadium suite includes 91 events (baseball and football events), or $44.58, if the lease for the suite includes 81 events (baseball only). In calculating the value of the invitation to the suite, I have not included any amount for the value of the ticket to the baseball game because you have previously purchased your own ticket to the game and will use that ticket to attend the game. Therefore, based upon the value outlined above, you are not prohibited from accepting the invitation to watch the game in the stadium suite.

Please allow me to point out that while you are not required to report the acceptance of any gift with a value of $100 or less, s. 112.3148(5)(b), F.S., requires a lobbyist, or the partner or principal of a lobbyist who provides a gift, to report the gift to the Joint Legislative Management Committee no later than the last day of the calendar quarter (December 31, 1993, in this instance) for gifts provided during the previous calendar quarter. The report must contain a description of the gift, its value, the name of the person making the gift and the date on which the gift was provided.

The views I have expressed in this opinion are the same as those I expressed to you in our telephone conversation of September 28, 1993.

**HCO 94-01—February 10, 1994**

*To: The Honorable James E. "Jim" King, Representative, 17th District, Jacksonville*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have written to request my opinion regarding the application of s. 112.3148, Florida Statutes, to the following situation:

> You are currently a member of the Executive Board of the Seminole Boosters, Inc. and have also served previously, from time to time, on the Board. The Boosters are a service organization associated with The Florida State University. Members of the Executive Board, are expected to attend various events related to their duties as Board members, including being part of the "official party" for athletic contests held at locations other than at the University, entertaining representatives of various football bowl game organizations, traveling on behalf of the organization's efforts to promote the University and raising funds for the University and the Boosters. You inquire whether your receipt from the Boosters of your travel expenses, lodging expenses, food and beverage expenses and other items associated with your duties and obligations as a member of the Executive Board are "gifts" within the meaning of the statute.

Section 112.3148, F.S., regulates the receipts of "gifts" by reporting individuals (i.e., legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100 from persons not prohibited from providing such a gift to a reporting individual.

Section 112.313(12)(a) defines the term "gift" for the purposes of part III of chapter 112, F.S., (which includes s. 112.3148, F.S.) to be:

> that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, <u>for which equal or greater consideration is not given</u>, including:
>
> . . .
>
> 7. Transportation, lodging or parking.
> 8. Food or beverage, other than that consumed at a single sitting or event.
>
> . . .
>
> 10. Entrance fees, admission fees, or tickets to events, performances or facilities.
>
> . . .
>
> 14. Any other similar service or thing having an attributable value not already provided for in this section. (Emphasis added.)

It is my opinion that where the Boosters determines it appropriate to pay the expenses associated with the performance by Board members of certain duties, the Boosters have similarly determined that the services provided to the Boosters by the Board members would constitute equal or greater consideration for the payment of or reimbursement of the associated expenses. As the determination of the value of services to the Boosters or the Board is inherently a subjective determination, I believe the responsible officials with the Boosters or the Board itself are the only entities which can reasonably determine the value of those services. I feel that I am constrained, therefore, to concur with the determination of either that the value of the performance of the duties and obligations of a member of the Board equal or exceed the value of the expenses that will be paid in such instances by the Boosters.

Thus, if the Boosters or Board determine that the value of your services as a member of the Board in a particular instance equals or exceeds the value of the expenses associated with your performance of those duties and obligations, the payment by the Boosters of your associated expenses would constitute consideration for your services as a Board member. Accordingly, the provisions of section 112.3148, F.S., relating to the prohibition on the receipt of gifts and the requirements for reporting gifts would not apply to the payment of or reimbursement of your expenses by the Boosters which are related to the performance of your duties and obligations as a member of the Board in such instances.

My opinion of this situation is consistent with those of my predecessor in Opinion 91-20 where then-Representative Silver served on the Governing Board of a hospital and had been invited to attend a weekend retreat as a member of the Board and in Opinion 91-36 where Representative Sanderson served on the Board of Directors of a Hospital that was having a retreat.

**HCO 94-02—March 7, 1994**

*To: The Honorable Anne Mackenzie, Representative, 99th District, Fort Lauderdale*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> You have been selected as co-chair of the Florida Host Steering Committee for the 1994 Southern Women in Public Service Conference that will be held in Tampa, Florida from June 5 through June 7. The Conference is held annually and is sponsored by the John C. Stennis Center for Public Service at the University of Mississippi and the Mississippi University for Women. The purpose of the conference is to improve the quality and character of government at all levels by bringing women into leadership positions. You inquire as to whether you may solicit donations from corporate sponsors for the purpose of underwriting the costs of holding the conference. All funds raised from donations will be paid to the sponsoring organizations, the Stennis Center and the Mississippi University for Women.

Section 112.3148(3), F.S., prohibits any reporting individual (i.e. legislators):

> from soliciting a gift, food or beverage from a political committee, committee of continuous existence, as defined in s. 106.11, or from a lobbyist . . . , or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, where

> such gift, food, or beverage is for the personal benefit of the reporting individual . . . another reporting individual . . . , or any member of the immediate family of the reporting individual . . . . (Emphasis added.)

From the underlined language, it is clear that the prohibition on solicitation of a gift only applies where the beneficiary of the contribution is the reporting individual or a member of his or her immediate family.

In the present situation, it is clear that the beneficiary of any contribution will be the Stennis Center, the Mississippi University for Women or the Southern Women in Public Service Conference, not any reporting individual in this state. Therefore, I am of the opinion that you may solicit contributions to be paid to the Stennis Center or the Mississippi University for Women from corporate sponsors, including those who are principals of lobbyists or who employ a lobbyist before the Legislature. I would add that my opinion in this situation is similar to that of my predecessor in Opinion 91-21 which involved the solicitation of contributions to the National Conference of State Legislators.

**HCO 94-03—March 17, 1994**

*To: The Honorable J. Keith Arnold, Representative, 73rd District, Fort Myers*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested an advisory opinion as to the applicability of Section 112.3148, Florida Statutes, to the following factual situation:

> You have been invited by the Democratic National Committee to attend a party fund raiser to be held in Miami, Florida on the evening of March 21, 1994. The President of the United States will be featured as the guest speaker. Tickets to the event sell for $1,500 each, most of which represents a donation to the Democratic Party. You will be paying for your own travel and lodging, but the Democratic Party will provide you with a complimentary ticket to the event.

Pursuant to Section 112.312(12)(b), which defines “gift” for the purposes of Section 112.148, Florida Statutes, a contribution or expenditure by a political party does not constitute a gift. Accordingly, the provision of a ticket to the event given to you by the Democratic Party is not a gift under chapter 112.

**HCO 94-04—May 12, 1994**

*To: The Honorable J. Alex Villalobos, Representative, 112th District, Miami*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion as to the applicability of section 112.3148, Florida Statutes, to the following situation:

> Florida International University has offered to provide you office space for your legislative district office at their University Park campus. You ask whether you may accept the offer to use the space for this purpose and what reporting requirements will apply if you accept the offer. Florida International University is represented before the Legislature by a lobbyist.

Section 112.312(9)(a)2., F.S., includes within the definition of a "gift" the use of real property. Section 112.3148, F.S., regulates the receipt of gifts by reporting individuals (i.e., legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner, or the principal of a lobbyist. Nevertheless, subsection (6) of s. 112.3148, F.S., permits a reporting individual to accept a gift in excess of $100 from a department of the executive branch, "if a public purpose can be shown for the gift." Florida International University is a part of the executive branch of state government. Providing office space for service to a legislator's constituents unquestionably consitutes a public purpose. Accordingly, I am of the opinion that you may accept, and Florida International University may provide, office space for your use as your legislative district office free of charge. My opinion in this situation is consistent with that of my predecessor in Opinion 91-47.

As the gift in this instance is from a governmental entity, you are required to report, not later than July 1 of each year, the receipt of a gift in excess of $100 from a governmental entity during the preceding calendar year. The report must provide the name of the person providing the gift (the University, in this case), the date or dates on which the gift was given (I recommend you list the entire period or term of occupancy of the office space during the calendar year.), and the total value of the gifts received. You are required by s. 112.3148(6)(d), F.S., to attach any report received by you pursuant to paragraph (c) of this section. Paragraph (c), in this case, requires the University to provide you a report, by March 1 of each year for the preceding calendar year, which describes the gift, the date on which the gift was provided, and the total value of the gift provided.

**HCO 94-05—June 13, 1994**

*To: The Honorable Allen Boyd, Representative, 10th District, Monticello*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion regarding the applicability of section 112.3149, Florida Statutes, to the following situation:

> You have been invited to speak at the annual meeting of the Florida Institute of Certified Public Accountants (FICPA) in Washington, D.C. on Thursday June 23, 1994. The FICPA has offered to pay the costs of travel, lodging and meals for you and Mrs. Boyd. The FICPA is represented before the Legislature by a lobbyist.

Section 112.3149, Florida Statutes, prohibits you from knowingly accepting an honorarium from a lobbyist or the principal of a lobbyist. Subsection (1)(a) of this section defines an "honorarium" as "the payment of . . . or anything of value, directly or indirectly, . . . as consideration for . . . [a] speech . . . or other oral presentation . . . ." Nonetheless, you are permitted to accept the "payment or provision of actual and reasonable transportation, lodging and food and beverage expenses" related to an honorarium event on behalf of yourself and your spouse. Accordingly, I am of the opinion that you may accept the invitation to speak to the FICPA annual meeting and their offer to pay your and your spouse's "reasonable and actual transportion, lodging and food and beverage expenses" associated with delivering the speech.

The rules adopted by the Commission on Ethics to interpret and implement section 112.3149, Florida Statutes, provide a list of factors that must be considered in determining the reasonableness of honorarium related expenses. These include: the location at which the honorarium event is to be held; the distance the reporting individual is required to travel to attend the event; the mode of transportation utilized to travel to and from the event; the

length of the presentation or speech; and, the time of day the speech or other presentation is to be made. Rule 34-13.220, Florida Administrative Code.

From the facts you have related to me by phone and from the copy of the letter inviting you to give the speech to the FICPA annual meeting and assuming you and your spouse will be traveling by air to and from Washington to participate in the event, it appears it would be reasonable for the FICPA to pay or provide your and your spouse's transportation to Washington on Wednesday, June 22, 1994, your and your spouse's lodging on the nights of June 22 and 23, 1994, and your and your spouse's return transportation on June 24, 1994, together with your and your spouse's reasonable and actual food and beverage expenses for those days.

Please note that, pursuant to section 112.3149(5), Florida Statutes, a person who is prohibited from paying an honorarium but who provides reasonable and actual expenses to an honorarium event is required to provide a reporting individual (i.e., a legislator) with a statement within sixty days of the honorarium event which lists 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.

In addition, section 112.3149(6), Florida Statutes, requires that you disclose your receipt of the allowable expenses related to an honorarium event on July 1 of each year for the preceding calendar year. The statement of honorarium expenses must specify the name, address, and affiliation of the person paying or providing the honorarium expenses, the date of the honorarium event, and the total value of the expenses provided in connection with the honorarium event. In this instance, the report for these expenses related to an honorarium event will be due no later than July 1, 1995.

**HCO 94-06—July 21, 1994**

*To: The Honorable Bolley L. Johnson, Speaker*

*Prepared by: Thomas R. McSwain, House General Counsel*

You have requested my opinion concerning the application of s. 112.3148, Florida Statutes, to the following situation:

> You have been invited to a hospitality suite at the 1994 Annual Meeting of the National Conference of State Legislatures by a lobbyist before the Legislature. The suite is being sponsored by the lobbyist issuing the invitation and several other lobbyists and will be open for four evenings during the annual meeting. Food and beverages will be served in the hospitality suite.

Section 112.3148, F.S., regulates the receipts of "gifts" by reporting individuals (i.e., legislators). This section generally prohibits the acceptance by reporting individuals of gifts having a value in excess of $100 from a lobbyist, his partner or the principal of a lobbyist. It requires the disclosure by a reporting individual of the receipt and acceptance of any gift having a value in excess of $100 from persons not prohibited from providing such a gift to a reporting individual.

Section 112.313(12), F.S., defines the term "gift" for the purposes of part III, chapter 112, F.S. (including s.112.3148, F.S.). Subparagraph (b)6. excludes from that definition, "food or beverage consumed at a single sitting or event."

Accordingly, I am of the opinion that you may visit the hospitality suite during the annual meeting of the conference and may accept, if you like, any food or beverage served there.

Any food or beverage you consume in the hospitality suite at the annual meeting is not a "gift," as that term is defined for the purposes of s.112.3148, F.S.

**HCO 95-01—January 3, 1995**

*To: The Honorable Shirley Brown, Representative, 69th District, Sarasota*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion as to the applicability of sections 112.3148 and 112.3149, Florida Statutes, to the following situation:

> Women in Government is an educational forum for women legislators in the United States. Women in Government obtains corporate grants to defray its costs. Women in Government offers scholarships to women legislators to either be a guest at the forums or to be a speaker at the forums. Women in Government does not employ a lobbyist and does not lobby the Florida Legislature. Women in Government has offered you and other women legislators a scholarship either to attend a forum or to speak at a forum.

You want to know whether or not you can accept a scholarship to attend a forum or whether or not you can accept a scholarship to speak at a forum.

The issue of whether or not you can accept a scholarship to attend a forum is addressed by the gift provisions in chapter 112, Florida Statutes. A scholarship to a forum or seminar which you attend meets the definition of a gift in section 112.312(12), Florida Statutes. Such a gift by the Women in Government is not prohibited since the donor of the gift is not a political committee, a committee of continuous existence, a lobbyist, or the partner, firm, employer, or principal of a lobbyist and does not lobby the Florida Legislature. If the value of the scholarship exceeds $100, you must report the gift on your quarterly gift disclosure. This report is due on the last day of a calendar quarter for gifts received in the previous calendar quarter. Thus, you may accept the scholarship to attend a Women in Government forum as long as you report it on your quarterly gift disclosure.

The issue of whether or not you can accept a scholarship to speak at a forum of Women in Government is addressed by the honorarium provisions in chapter 112, Florida Statures. An "honorarium" is defined in section 112.3149(1)(a), Florida Statutes as:

> (a) "Honorarium" means a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his behalf, as consideration for:
>
> 1. A speech. . . .

The definition continues and excludes the provision of actual and reasonable transportation, lodging and food and beverage expenses related to the honorarium event.

Since Women in Government is not a political committee, a committee of continuous existence, a lobbyist, or the employer, principal, partner or firm of a lobbyist, you may accept an honorarium from them for a speech at a forum. Even if the scholarship included payment in addition to payment for reasonable transportation, lodging, and food and beverages related to your speech, you could accept the scholarship and it is not required to be reported. See HCO Opinion 92-12.

Also, it should be noted that you may not solicit an honorarium from anyone if the event is related to your public office or duties.

**HCO 95-02—January 3, 1995**

*To: The Honorable Debby P. Sanderson, Representative, 91st District, Fort Lauderdale*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion as to the applicability of section 112.3148, Florida Statutes, to the following factual situation:

> You and several other legislators were invited to attend a meeting of the American Legislative Exchange Council (ALEC) in Washington, D.C., on December 9, 1994. ALEC wants to pay for the travel and lodging expenses related to the meetings.

The definition of gift under section 112.312(12)(a), Florida Statutes, incudes transportation and lodging expenses. Since ALEC is not a political committee, a committee of continuous existence, a lobbyist or the partner, firm, employer, or principal of a lobbyist, and does not lobby the Florida Legislature, this gift may be accepted. Since the value of the transportation and lodging exceeds $100, you must report the gift on your quarterly gift disclosure. This report is due on the last day of a calendar quarter for gifts received in the previous calendar quarter. Thus, you may accept the offer from ALEC to pay for the travel and lodging as long as you report it on your quarterly gift disclosure.

**HCO 95-03—January 3, 1995**

*To: The Honorable John Cosgrove, Representative, 119th District, Miami*

*The Honorable Ben Graber, Representative, 96th District, Coral Springs*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion as to the application of section 112.3149, Florida Statutes, to the following set of facts:

> The George Washington University has asked you to serve as a core faculty member. In such capacity you would participate in planning sessions, regional training programs for new legislators and various other programs around the country. The University would pay for your travel and expenses and would also pay $400 per day for project-related work. You have asked whether or not you can accept this $400 per-day stipend.

Your question is answered in the affirmative.

Section 112.3149(1)(a), Florida Statutes, defines “honorarium” as “a payment of money or anything of value, directly or indirectly to a reporting individual . . . as consideration for:

1) A speech, address, oration or other oral presentation by the reporting individual. . . .

2) A writing by the reporting individual. . . ."

The term honorarium excludes payment for services related to employment held outside your public position as a legislator.

It appears that the stipend as a faculty member is related to your public position and that it is payment for a speech, address, oration, or other oral presentation and consequently it should be treated as an honorarium.

Since George Washington University is not a political committee or committee of continuous existence, a lobbyist or the employer, principal, partner, or firm of a lobbyist (as verified by the lobbyist registration office of the JLMC), you may accept the honorarium. You may also accept the expenses related to the honorarium. There is no reporting requirement under these circumstances.

**HCO 95-04—January 10, 1995**

*To: The Honorable Kendrick Meek, Representative, 104th District, North Miami*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion on the following question:

> Whether you, as an employee of and on behalf of Wackenhut Corporation, may submit a bid proposal for security services to the Broward County School Board?

Your question is answered in the affirmative.

Article II, section 8(e), Florida Constitution, provides that "no member of the legislature shall personally represent another person or entity for compensation during his term of office before any state agency other than judicial tribunals." House Rule 5.15 similarly provides that, "no Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal." Section 112.313(9)(a)3., Florida Statutes, provides similarly.

Section 112.313(9)(a)2.c., Florida Statutes, defines state agency as "an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budget and statutory control." This definition of state agency does not include the Broward County School Board and consequently you are not prohibited by Article II, section 8(e), Florida Constitution, House Rule 5.15, or Section 112.313(9)(a)3., Florida Statutes, from representing Wachenhut before the Broward County School Board for compensation.

**HCO 95-05—February 10, 1995**

*To: The Honorable J. Alex Villalobos, Representative, 112th District, Miami*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion regarding the applicability of section 112.3148, Florida Statutes, to the following situation:

> The Deutscher Akademischer Austauschdienst, [(DAAD) German Academic Exchange Service] is a private, self-governing organization of universities promoting international relations between institutions of higher education through academic and scientific exchange. DAAD's programs are almost entirely funded from governmental sources. DAAD, in cooperation with the University of Bonn, has invited you to apply for a two-week program designed for a group of 20 distinguished Americans from academic and political spheres, which focuses on political, economic, social, and cultural issues relevant to transatlantic dialogue. If selected, you would receive an international travel subsidy, program related domestic travel within Germany, hotel accommodations, meals, tuition, and expenses for cultural events and excursions. You have asked whether you can apply for and accept such subsidy.
>
> Your question is answered in the affirmative.

The travel, lodging, and other expenses, other than food or beverage consumed at a single sitting or event, to be paid by DAAD would constitute a gift as defined by section 112.312 (12), F.S. Section 112.3148, F.S., permits you to accept such a gift assuming DAAD does not employ a lobbyist before the Florida House of Representatives. (A search of lobbyist registration under section 11.045, F.S., through section 11.062, F.S., reflects that DAAD does not employ such a lobbyist). However, since the gift has an apparent value in excess of $100, section 112.3148 (8)(a), F.S., requires you to report such a gift by the end of the next calendar quarter following receipt of the gift. See also Opinions of this office HCO 91-03, HCO 91-04, and HCO 93-10, which provide similar rulings.

Finally, it is noted that although the application process may be construed as a solicitation by you, section 112.3148 (3), F.S., only prohibits solicitations from a political committee or committee of continuous existence or from a lobbyist or the partner, firm, employer, or principal of such lobbyist. Since DAAD is apparently not any of the above, you would not be prohibited from making such an application, even if it is construed to be a solicitation.

**HCO 95-06—March 10, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion on the following question:

> Whether you may apply for and accept the position of Secretary/Treasurer of the Florida Chapter of the AFL/CIO.

Subject to the clarifications noted below, your question is answered in the AFFIRMATIVE.

Several Rules of the House of Representatives should be considered given these facts. House Rule 5.9 provides:

> A Member of the House shall not allow personal employment to impair the Member's independence of judgement in the exercise of official duties.

House Rule 5.10 provides:

> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

In addition to the House Rules, the statutory Code of Ethics found Ch. 112 F.S., should be considered. Specifically, s.112.313 (7) F.S., provides in relevant part:

> (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP—
> (a) ... 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 private interest and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

There is nothing apparent from the job description which you provided which indicates that such employment would impair your ability to exercise your independent judgement in performing your duties as a state representative. Nor is there anything in the job description which would indicate that your job duties would result in a "substantial" conflict with your duties as a Member of the House or that your employment would create a "continuing or frequently recurring" conflict between your private interests and your public duties.

The Rules only prohibit an employment situation which results in a "substantial" conflict. "Substantial" is generally defined as, among other things, solid, strong or fundamental and should be construed as such in the present context. Such a construction of the House Rules appears appropriate in light of s.112.313 (7)(a) F.S., which prohibits "continuing or frequently recurring" conflict and provisions such as s. 112.311 (2) F. S., which provides that:

> the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interest except when conflicts with the responsibility of such officials to the public cannot be avoided.

Section 112.316, F.S., similarly provides that [i]t is not the intent of this part [Code of Ethics], nor shall it be construed, to prevent any ... legislator ... from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such legislator ... of his duties ....

A Commission on Ethics opinion, CEO 89-60, which construed s.112.313 (7)(a) F.S., advised that a Member of the Legislature may be employed as an administrator of a state university or community college. That same opinion also emphasized that the Code of Ethics would not prohibit a state legislator from being employed as executive director of a nonprofit organization receiving state funds. The Commission assumed that the duties of such a position would not require the legislator to lobby the legislature on behalf of the community college and consequently, such employment did not necessarily present a prohibited conflict of interest with the public responsibilities of a legislator.

The rational of that opinion appears applicable here. Moreover, in light of the above cited Rules and statutes, the job would not appear to be a substantial conflict unless the job prevented you from attending sessions or committee meetings on a regular basis.

The duties and the job description require the Secretary/Treasurer to devote "full-time" to the interests and business of the Florida AFL/CIO. It appears that the AFL/CIO must determine whether you will be able to fulfill the "full-time" responsibilities as Secretary/Treasurer.

Items (m) and (n) in the job description are catch-all provisions which require you to represent the federation when your normal duties will permit and perform such other duties as the interests of the AFL/CIO require. House Rule 5.1 provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

You should make it clear, in light of Rule 5.15, that you personally could not represent the AFL/CIO before a state agency.

In addition, should you accept the position, like all other Members, you would want to examine any legislation which might inure to the special private gain of your employer. Under House Rule 5.11, if you are called upon to vote on a measure which inures to the special private gain of your employer, you are required to disclose this prior to voting.

Accordingly, it does not appear that your proposed employment would create a prohibited conflict of interest.

**HCO 95-07—April 10, 1995**

*To: The Honorable Debra A. Prewitt, Representative, 46th District, New Port Richey*

*Prepared by: B. Elaine New, House General Counsel*

You asked whether it presents a voting conflict for you to offer or to vote upon amendment number 149 to House Bill 2575, the General Appropriations Act. This memorandum will memorialize our conversation on this issue on April 6, 1995.

Your question is answered in the negative.

Amendment number 149 provides for funding for the Florida Council for Persons Who are Deaf or Hard of Hearing. This Council is created in section 413.275, Florida Statutes, to review the services provided to hearing-impaired persons, explore ways to improve services to hearing-impaired persons, report to the Governor, Speaker of the House, and President of the Senate, and other similar activities. The Council does not provide funding for services, but rather acts as an information source for services for the hearing-impaired.

You are employed as the executive director of an agency which provides services to the hearing-impaired (although you are on an unpaid leave of absence during the legislative session). Your agency does not receive funding from the Council. Your agency may receive referrals from the Council if someone in need of services contacted the Council, however, no funds are provided for those services through the Council.

The general rule is that you are protected from conflict of interest charges for voting on legislation unless you, your family member, your principal or employer, or your family

member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private, or professional interest which inures to special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed.

The question presented here is whether the passage of the amendment would result in special private gain to you or your employer. The test for whether there is special private gain depends upon the size of the class benefited and the speculative nature of the gain. Here the adoption of the amendment will provide funding for the Council for Persons who are Deaf or Hard of Hearing but will not provide funding to any provider of services for the hearing-impaired. Those benefited by the amendment are the two people employed by the Council and those citizens of the state who may benefit by the work of the Council. Your employer would not benefit differently than all other entities providing services to the hearing-impaired or differently than all other persons interested in services for the hearing-impaired. It is clear that neither you nor your employer will receive a special private gain from the adoption of this amendment. Thus, disclosure under House Rule 5.11 is not required.[1]

**HCO 95-08—April 10, 1995**

*To: The Honorable John Thrasher, Representative, 19th District, Orange Park*

*Prepared by: B. Elaine New, House General Counsel*
*David Evans, Assistant General Counsel*

You have requested an advisory opinion as to the applicability of sections 112.3148 and 112.3149, Florida Statutes, to the following situation:

> On April 12, 1995, the Spaceport Florida Authority and Lockheed-Martin Corporation will conduct a ground-breaking ceremony at the site of the soon-to-be-constructed Titan IV Rocket Motor Warehouse on Camp Blanding, the Florida National Guard Training Facility in Western Clay County. You have been invited to attend the ground-breaking and to make brief remarks. Because the ground-breaking occurs during a legislative day, the Florida National Guard has offered to provide transportation to and from the ceremony on National Guard Aircraft at their own expense. You want to know whether or not you can accept free transportation on a National Guard Aircraft.

Your question is answered in the affirmative.

Since you have been asked to make brief remarks, section 112.3149, Florida Statutes, concerning honoraria must be considered. Section 112.3149(1)(a), Florida Statutes, provides:

[1]It should also be noted that s. 112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s. 112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

> (a) "Honorarium" means a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his behalf, as consideration for
>
> > 1. A speech, address, oration, or other oral presentation by the reporting individual or procurement employee, regardless of whether presented in person, recorded, or broadcast over the media.

You indicate that you have been asked to provide only brief remarks in the nature of welcoming and congratulatory remarks and not a substantive speech. It is my opinion that the salutary remarks you will present in this ceremonial situation do not rise to the level of a speech, address, oration, or oral presentation as provided for in section 112.3149, Florida Statutes. Accordingly, section 112.3149, Florida Statutes, does not govern your actions in this situation.

Rather, the gift provisions in section 112.3148, Florida Statutes, govern your actions in this situation. A similar issue has been addressed in House General Counsel Opinion 91-33. It provides that a Member may accept the gift of transportation on National Guard aircraft and the gift is to be valued at the cost of a flight to the nearest commercial airport. It appears that both transporting State Representatives to ceremonies such as the one at issue, and the receipt of such transportation would serve a valid public purpose.

Accordingly, you may accept transportation to the Spaceport Florida Authority's activities at Camp Blanding on a National Guard aircraft at no expense to yourself, so long as you disclose the transportation as a gift, valued at the cost of a flight to the nearest commercial airport. This is to be filed on Form 9 by September 30, 1995.

**HCO 95-09—April 11, 1995**

*To: The Honorable Steven A. Geller, Representative, 101st District, Hallandale*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked whether it presents a voting conflict for you to offer and to vote on House Bill 49 relating to public adjusters.

Your question is answered in the negative.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private, or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member of the Member's family is retained or employed. Further, House Rule 5.1 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest.

CS/HB 49 includes two primary issues. It amends s. 626.854, F.S., to allow a public adjuster to adjust third-party claims and clarifies that the negotiation of third-party claims requires licensure as a public adjuster. CS/HB 49 also restricts the subject matter of claims that may be settled or negotiated by a public adjuster. It amends s. 626.854, F.S., to prohibit public adjusters from acting on behalf of or aiding a person in negotiating or settling a claim relating to bodily injury or death.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your family member's principal or employer. The test for whether there is special private gain depends upon the size of the class benefited and the speculative nature of the gain. This bill treats all public adjusters the same. No one type of public adjuster is given special treatment. As the bill analysis notes, under this bill, a public adjuster could no longer compete with attorneys on adjusting claims relating to bodily injury or death. All attorneys may benefit from the passage of this legislation if work previously being performed by public adjusters must be performed by an attorney; however, you will not have a "special private gain" nor could your principal or employer have a "special private gain" under this bill. When proposed regulation results in one large class possibly benefiting over another large class, there cannot be "special private gain." Further, to the extent that an individual's legal rights are not adequately protected when a public adjuster represents an individual in negotiating a claim, the bill may benefit all citizens of Florida by assuring proper legal representation.

It is clear that the passage of this legislation will not result in "special private gain" to you, your family, or the special gain of any principal by whom you or your family is retained or employed. Thus, you have nothing to disclose under House Rule 5.11.[1]

The question presented under House Rule 5.1 is whether this legislation immediately concerns your private rights. The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. (See Opinion 28, May 16, 1975). It is clear that this bill is to protect the public interest and does not immediately concern your private rights, and thus you are required to vote on this legislation.

**HCO 95-10—April 13, 1995**

*To: The Honorable David I. "Dave" Bitner, Representative, 71st District, Port Charlotte*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked whether it presents a voting conflict for you to appear before the House Committee on Community Affairs and to speak against House Bill 1945 relating to the Sarasota County Public Hospital Board, or to subsequently vote on this bill.

Your question is answered in the negative.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private, or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed.

You and your wife operate a private advertising business which distributes advertising tools such as pens, cups, and stationery containing the advertiser's corporate logo. Columbia Hospital purchases such items from you in large quantities, however, they are one of many customers who purchase similar advertising materials. HB 1945 would allow the

[1]It should also be noted that s. 112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s.112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

Sarasota County Public Hospital Board to take certain actions which could adversely affect neighboring Columbia Hospital.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your family member's principal or employer. Columbia Hospital cannot be said to be your principal, rather it is your customer. Columbia is not your principal merely because you sell goods to the hospital. A principal is defined as one who directs and controls another (an agent) to act on the principal's behalf. The agent is subject to the control of the principal while also having authority to bind the principal. You are not directed or controlled by Columbia, nor do you have the authority to bind Columbia, therefore, Columbia is not your principal. Columbia Hospital similarly is not your employer since it does not pay your wages or salaries.

It is clear that the passage of the above-referenced legislation will not result in special private gain to you, your family, or any principal by whom you or your family is retained or employed. You have no conflict of interest and nothing to disclose under House Rule 5.11.[1] Accordingly, you are not barred from appearing before the House Committee on Community Affairs and speaking against House Bill 1945 nor from voting on this bill.

**HCO 95-11—April 13, 1995**

*To: The Honorable John F. Cosgrove, Representative, 119th District, Miami*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

You have requested an advisory opinion as to the applicability of sections 112.3148 and 112.3149, Florida Statutes, to the following situation:

> You have been invited to accompany the reinsurance brokerage firm E. W. Blanch Co. on a trip to London. The purpose of the trip is to restore a competitive property insurance market in Florida. Your goal is to provide current and accurate information, through multiple formal presentations to leaders of the world reinsurance market, about new legislation in Florida and the Florida market. By providing such information, which the reinsurance industry needs to accurately evaluate the current status of the Florida market, you thereby convey Florida's commitment to creating a sound business climate for insurers in the state. If successful, Floridians, as well as the Residential Property and Casualty Joint Underwriting Association (RPCJUA), created by section 627.351, Florida Statutes, will once again have insurance available at favorable terms. E. W. Blanch Co. has offered to pay for the airfare, lodging, and the food and beverage expenses associated with the trip.
>
> The E. W. Blanch Co. is not a political committee, a committee of continuous existence, a lobbyist, or the partner, firm, employer, or principal of a lobbyist, and it does not lobby the Florida Legislature. However, E. W. Blanch Co. is currently an agent of the RPCJUA which does retain a lobbyist before the Florida Legislature.

[1]It should also be noted that s.112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s.112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

You want to know whether you can ethically accept the payment of such expenses by E. W. Blanch Co.

Your question is answered in the affirmative.

Pursuant to section 112.312(12)(b)3., Florida Statutes, neither an honorarium nor expenses related to an honorarium event are considered to be gifts for the purposes of section 112.3148, Florida Statutes. An honorarium is defined in section 112.3149(1), Florida Statutes, as "consideration for . . . a speech, address, oration, or other oral presentation by the reporting individual . . . regardless of whether presented in person, recorded, or broadcast over the media." Section 112.3149, Florida Statutes, prohibits organizations which employ lobbyists from paying an honorarium, in cash or in kind, of any amount. However, specifically excluded from the definition of honorarium is "the payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event for a reporting individual or . . . spouse." Pursuant to this provision, an organization such as the RPCJUA, which employs lobbyists, may pay expenses related to an honorarium event.

I understand that you are expected to make formal oral presentations to various members of the world reinsurance market. Your presentations would constitute an honorarium event. Since you will be making oral presentations you may accept the invitation extended by E. W. Blanch Co. to pay your actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event, as permitted by section 112.3149(5), Florida Statutes. (See HCO 92-07.) Note however, that only the payment of reasonable expenses relating to the honorarium event can be accepted. Although what is reasonable is subject to interpretation, the payment of the expenses for transportation, lodging, and food and beverage from the time beginning the day before the first oral presentation until the day after the last oral presentation is reasonable and permissible. (See HCO 91-10.)

Honorarium expenses paid for by an entity that does not employ a lobbyist do not have to be reported. However, since E. W. Blanch Co. is the agent of the RPCJUA, the RPCJUA would be required to provide you with an itemized list of those expenses within 60 days after the event, pursuant to section 112.3149(5), Florida Statutes. You would then be required to publicly disclose receipt of those expenses no later than July 1, 1996, pursuant to section 112.3149(6), Florida Statutes.

**HCO 95-12—April 18, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked whether you may use excess campaign funds to pay for expenses incurred during a proposed trip of local business leaders to Luxembourg and Brussels, Belgium, sponsored by Florida Atlantic University.

Your question is answered in the affirmative.

The general rule is that candidates elected to the House of Representatives may transfer up to $5,000 from their campaign account to an office account separate from any personal or other account. You may only use transferred funds for legitimate expenses in connection

with public office, including travel expenses incurred by the Representative or a member of the Representative's staff. Section 106.141(5), Florida Statutes (1993). [1]

You have been invited to participate in a trip to Luxembourg and Brussels, Belgium, at the invitation of the President of the European Union. The purpose of the trip is to encourage business and professional relationships between Broward County businesses and European officials as well as to help Florida Atlantic University establish Centers for European Studies and Information Transfer. You have provided this office with an itinerary of the proposed trip which is composed primarily of business sessions and official functions, but does contain some recreational tours and activities.

The question presented under s.106.141(5), Florida Statutes (1993), is whether the trip is a legitimate expense connected with public office. Clearly, the duties of your public office include promoting the economic welfare of your district and the state of Florida. Most of the activities listed on the itinerary appear to fall within your official duties and are legitimate expenses connected with public office. Those purely personal activities, such as the recreational tours, are not legitimate expenses connected with public office and may not be paid for with excess campaign funds.

You have informed me that you intend to use the office account funds only for the airfare and not for additional travel while in Europe. It is clear that the trip to Luxembourg and Brussels, Belgium, to attend business sessions and official functions is a legitimate expense connected with public office. Accordingly, you may use the excess campaign funds in your office account to pay for your airfare.

**HCO 95-13—April 19, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*David Evans, Assistant General Counsel*

Under House Rule 5.17, you have asked whether it presents a voting conflict for you to vote on HB 2211 or HB 2693, concerning underground petroleum storage tanks, since you own property containing an underground petroleum storage tank.

Your question is answered in the negative.

House Rule 5.1 states that no Member shall be permitted to vote on any question immediately concerning the private rights of a Member, as distinct from the public interest. Additionally, House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private, or professional interest which inures to the special private gain of the Member or the Member's family. It also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed.

The question presented under both House Rule 5.1 and House Rule 5.11 is whether the passage of this bill would immediately concern your private rights or result in special private gain to you since you own property containing an underground petroleum storage tank. Generally, the terms "private rights" and "special private gain" are used in the narrowest sense, to exclude benefit or gain to a specific class of which the legislator is a member.

[1]It appears that the failure to comply with these statutory requirements could also be considered a failure to comply with House Rule 5.6.

(Opinion 28, May 16, 1975) It is acceptable for a legislator to vote on matters which affect this class so long as any gain or benefit does not inure solely to the legislator. *Id*. In the instant case, you belong to a class of persons who own property containing underground storage tanks. House Bills 2211 and 2693 affect all members in that class in the same manner as they affect you, and do not provide any special gain or loss to you individually.

It is clear that the passage of the above-referenced legislation will not result in special private gain to you, nor will it immediately concern your private rights as distinct from the public interest. Accordingly, you have no conflict of interest and may vote without disclosure under House Rule 5.1 and House Rule 5.11. [1]

**HCO 95-14—April 24, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked whether it presents a voting conflict for a Member to vote on issues which enhance the budget of local or state entities with whom the Member may be employed.

Your question is answered in the negative in most circumstances.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill.

House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private or professional interest which inures to special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed. Further, House Rule 5.11 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest. If the state or local entity in question is the employer of you or a member of your family, then you must determine whether the legislation in question will result in special gain to the state or local entity or to you or a member of your family.

The test for whether legislation results in special private gain depends upon the size of the class benefited and the speculative nature of the gain. When proposed legislation results in one large class benefiting, there cannot be "special private gain." Each specific fact situation needs to be examined to determine whether or not there is special private gain. It is difficult to say with certainty whether a Member, the Member's family or their principal would have special private gain without examining a specific set of facts.

[1]It should also be noted that s. 112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s.112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

As a general rule, where the general appropriations act provides for increased funding for a state or local agency, there would not be special private gain. *See* CEO 90-08. There could be special private gain if the general appropriations act provided unique funding. For instance, if the budget provides for a 3 percent salary increase for all state employees and a member of our family is a state employee, there is no special private gain. However, if the budget provided for a 3 percent salary increase for all state employees but contained a specific provision for a 10 percent salary increase for a member of your family (and only your family member), there would be special private gain.

If a given set of facts reveals that legislation will not result in "special private gain" to you, your family, or the special gain of any principal by whom you or your family is retained or employed, you have nothing to disclose under House Rule 5.11.[1] If a given set of facts discloses "special private gain", a memorandum disclosing this fact needs to be filed with the Clerk prior to voting on the measure.

The next question which must be answered is whether in a given situation, the legislation would immediately concern your private rights. The intent of this Rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. *See* Opinion 28 (May 16, 1975). In order to meet this test, the legislation would have to clearly affect your rights. For instance, an attorney legislator could not vote on a claim bill which would result in the attorney receiving legal fees.

**HCO 95-15—June 1, 1995**

*To: The Honorable Randy Ball, Representative, 29th District, Mims*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked for an opinion whether you may be employed as a law enforcement officer while you are a Member of the House of Representatives. You have also asked whether there are restrictions on your ability to seek re-election if you are employed by a governmental entity. Finally, you ask whether there are other issues you should consider in determining whether to accept employment with a governmental entity. Each question will be answered in turn.

I. You have asked whether you may be employed as a law enforcement officer while you are a Member of the House of Representatives.

Your question is answered in the negative.

Article II, Section 5(a), Florida Constitution, provides:

> (a) . . . No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, . . .

Article II, section 5(a), Florida Constitution, prohibits a Member of the House of Representatives from also being employed as a law enforcement officer because it is considered dual officeholding.

As a Member of the House of Representatives, you are a state officer. You cannot accept another position which is considered an "office." The importance of avoiding a

[1]It should also be noted that s.112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989).

situation involving dual officeholding cannot be overemphasized. If an officer accepts another office, it results in a vacancy being created in the first office. In re Advisory Opinions to the Governor, 79 So. 874 (1918).

There are several cases and opinions from the Attorney General which provide guidance on what constitutes "officeholding." The term "office" implies a delegation of a portion of the sovereign power, while employment does not comprehend such a delegation. State ex rel Holloway v. Sheats, 83 So. 508, 509 (1919).

Law enforcement related positions have repeatedly been found to be "offices." A police chief (AGO 86-11), a law enforcement officer (AGOs 76-92 and 86-84), a deputy sheriff (AGO 77-89), and a part-time police officer (AGO 77-63) have all been found to be "officers." The only opinion located where a law enforcement related position was found not to be an "office" was an old opinion of the Attorney General where a special investigator employed by the county grand jury was found not to be an "officer." (AGO 57-224).

A recent opinion from the Attorney General which found that an insurance fraud investigator was an "officer" (while not a law enforcement officer) focuses on the rationale for these opinions:

> While insurance fraud investigators are not law enforcement officers for state employment classification purposes, they have been delegated the sovereign power of arrest and have been given the authority to bear arms in carrying out their official duties. Thus, it would appear that the position held by an insurance fraud investigator is an "office" for purposes of the dual officeholding prohibition in s. 5(a), Art. II, State Const.AGO 91-80.

Thus, you may not be employed as a law enforcement officer or hold any other position which constitutes an "office" while serving as a Member of the House of Representatives. If you are considering a law enforcement related position, each position should be examined on a case by case basis to determine whether it is an "office" (i.e. delegated the sovereign power of arrest and authority to bear arms) or an employee position.

II. You have asked whether there are restrictions on your ability to seek re-election if you are employed by a governmental entity.

Your question is answered in the affirmative. The nature of the restrictions depends upon the type of job and the type of governmental entity.

Several statutory provisions should be considered. Florida's resign-to-run law, section 99.012, Florida Statutes, applies to officers and to subordinate personnel. That section provides:

> (3)(a) No officer may qualify as a candidate for another public office, whether state, district, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he presently holds.
>
> . . .
>
> (5) A person who is a subordinate officer, deputy sheriff, or police officer need not resign pursuant to this section unless he is seeking to qualify for a public office which is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for re-election to that office. However, upon qualifying, the subordinate officer, deputy sheriff, or police officer must take a leave of absence without pay during the period in which he is a candidate for office.

The resign-to-run provisions of subsection (3) do not apply to "employees", only to officers. Neither do the subordinate officer provisions in subsection (5) apply to employees. The term "subordinate officer" refers to an appointed "officer" who is under control and supervision of another who is his superior. AGO 79-81. You cannot be a State Representative and hold another position which is an "office;" therefore, the resign-to-run provisions would not apply to another position where you are simply an employee and not an "officer." The resign-to-run provisions would of course apply to your position as a state representative.

If you accept a position as an employee (rather than as an officer), the governmental entity which employs you may place restrictions upon your ability to run for office while employed by the governmental entity. For instance, persons who are employed in a career service position with the state are subject to section 110.233(4), Florida Statutes. This section prohibits career service employees from being a candidate for public office while in the employment of the state. Thus, any career service employee must resign their position with the state to run for a state office or to otherwise hold such office (i.e. accept an appointment).

It is my understanding that many local governments have similar restrictions. You should explore any restrictions which a local government may have prior to accepting any employment with a local governmental entity.

III. You asked whether there are other issues you should consider in determining whether to accept employment with a governmental entity.

Several Rules of the House of Representatives should be considered. Rule 5.7 requires a Member to "perform at all times in a manner that promotes public confidence in the integrity and independence of the House." Rule 5.9 provides that "a Member of the House shall not allow personal employment to impair the Member's independence of judgment in the exercise of official duties." Similarly, Rule 5.10 prohibits a Member from receiving any compensation for services when it is in substantial conflict with the duties of a Member of the House.[1]

While these rules are clear, it is also clear that Florida has a citizen legislature. An interpretation by the Chair of the Committee on Ethics in 1978 (Interpretation 27) addresses the question of outside employment. It notes that Florida's Legislature is a "part-time Legislature" and Members are free to have outside activities. Further, it should be noted that section 112.316, Florida Statutes, provides that the Code of Ethics should not be construed to prevent any legislator from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the Member's duties.

One additional rule to consider is Rule 5.11 which imposes a requirement to disclose certain voting conflicts. The general rule is that you are protected from conflict of interest charges for voting on legislation unless you, or your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. Like any other Member, you would need to consider whether legislation would provide a unique advantage to you, your family member, your principal or employer or your family member's principal or employer. For example, if you are employed by a local governmental entity, a local bill which uniquely affects your governmental entity would provide a unique advantage (or disadvantage) to your employer which you would be required to disclose. You would not be prohibited from voting on such legislation, unless under Rule 5.1, the bill immediately affected your private rights.

[1]A similar statutory provision in section 112.313(7), Florida Statutes, prohibits employment or contractual relationships which create a continuing or frequently recurring conflict. However, members of legislative bodies whose authority over the business entity is the enactment of laws are not deemed to have a conflict.

**HCO 95-16—June 1, 1995**

*To: The Honorable Lois Frankel, Representative, 85th District, West Palm Beach*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked whether it presents a conflict for you to use your title as State Representative to solicit funds for the American Cancer Society on its letterhead, stationery, and materials related to its annual "jail and bail" fundraiser.

Your question is answered in the negative.

House Rule 5.12 provides:

> A Member shall not engage in any activity for personal gain which would be an abuse of the Member's official position as a Member . . .

Soliciting funds for the American Cancer Society is not for your personal gain. It does not constitute an abuse of your official position to use your title as State Representative to solicit funds for charitable purposes. House Interpretation 33 (September 19, 1978) reached a similar result.

Further, there is nothing in the Code of Ethics provisions relating to soliciting and receiving gifts which would prohibit you from soliciting funds for charitable purposes. *See* House General Counsel Opinions 90-03 and 91-11.

Finally, it should be noted that you should not use the Seal of the House of Representatives for soliciting funds for the American Cancer Society. House Rule 16.2 limits the use of the House Seal to "official business of the House or official legislative business and matters properly within the scope of responsibilities of the Member . . .." Soliciting funds for the American Cancer Society is not "official business of the House" and is not within the scope of your responsibilities as a Member.

**HCO 95-17—June 6, 1995**

*To: The Honorable Earl Ziebarth, Representative, 26th District, DeLand*

*Prepared by: B. Elaine New, House General Counsel*

Under Rule 5.17, you have asked whether you are required to provide facsimile service for constituents.

Your question is answered in the negative.

Neither the Florida Constitution, the Florida Statutes, nor the House Rules require you to provide facsimile services to any constituent.

The only House Rule which may be relevant is House Rule 5.6, which requires you to "watchfully guard the responsibility of office and the responsibilities and duties placed on the Member by the House." Constituent services have in recent years been provided by most Members of the House, however, the Florida Constitution, Florida Statutes or the House Rules do not impose a responsibility or duty to provide such services. For purposes of the speech and debate clause, the United States Supreme Court has found that constituent services are not even "legislative acts." United States v. Brewster, 408 U.S. 507, 518 (1972).

While you are not required to provide facsimile services to a constituent, in certain circumstances you may do so and in certain circumstances you are prohibited from doing so. House of Representatives Policy 3.4 addresses the use of facsimile machines. It limits the use of facsimile machines to legislative personnel while conducting the business of the House. While this policy currently does not directly apply to the district offices, the legal basis for the policy does. State equipment (including facsimile machines and SUNCOM long distance lines) is provided with tax dollars. Use of the long distance service unrelated to state business is theft of state property. Therefore, you may use the House facsimile machine in your district office only to the extent that it is necessary to conduct the business of the House, including obtaining state services for constituents. Use of the facsimile machine for issues unrelated to the business of the House is prohibited.

**HCO 95-18—June 27, 1995**

*To: The Honorable Kelley R. Smith, Representative, 21st District, Palatka*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Under House Rule 5.17, you have requested an advisory opinion as to the following situation:

> Whether there is any law or rule that would prohibit you from accepting the French Government's invitation to go to France to ride on and study their high-speed rail system.

The French Government, through its Consul General in Miami, has invited you and several dozen other state and local government officials, employees, and representatives from the business community and transportation sector interested in railroad projects in Florida, on an all-expense paid, 5-day, round-trip from Miami to France, to ride on the Trains A Grande Vitesse (TGV) and to attend educational seminars on the economic and environmental factors that influence and result from operation of a high-speed rail system. The 25 people invited apparently have one thing in common: they are all involved with, or are advisors to, or themselves have some impact on either the programming, planning, administering, operating, financing, or oversight of some aspect of Florida's transportation system and its related sectors. You currently serve as Chair of the Florida House Committee on Transportation, with state legislative oversight responsibility and jurisdiction of the developing high-speed rail program in Florida.

The invitation to this "study tour" is an official invitation from the Government of France, through its Agency for Cooperation in Technical and Economic Fields (ACTIM), acting in collaboration with the French Railroads (SNCF). The three days in France will include a visit to the Paris-Aeroport Charles de Gaulle Trains a Grande Vitesse-Reseau Express Regional, the TGV station located below CDG Terminal 2; a visit to the Paris TGV maintenance facility; a round-trip ride on the TGV-Nord line from Paris to Lille; a visit to the Eurallile complex; transfer to ACTIM for its presentation on the economics of high-speed rail; a round-trip ride southwest on the TGV Atlantique line to Le Mans; and visits to various SNCF operations; all interspersed with meetings with national and local officials and rail experts. You will have opportunities to discuss all matters related to the operations, technology, economics, and environmental impact of a high-speed rail system and its intermodalities.

During the past several years, Sweden and Germany have organized and sponsored demonstrations of their X2000 and ICE trains in the U.S. France has been unable to do so because here we have no demonstration track capable of handling the TGV at 186.5 mph, its normal operating speed in France. So, as an alternative, the Government of France has,

over the past 3 years, at its expense, brought about 600 federal and state officials from the U.S. to France to learn about and ride the TGV system. The proposed group of 25 Floridians is the latest in that program. Except for a free morning to adjust for jet lag upon arrival, and a free evening before departure on the return flight, there is little free time scheduled or opportunity for diversions. Any attendees who wish to stay longer may do so, but at their own expense.

The Florida Department of Transportation expects a consortium of four companies, GEC Alsthom; Bombardier, Inc.; Odebrecht, a Brazilian construction firm; and Flur Daniel, a French construction firm, to be one of the bidders on the Florida project.

The RFP specifies October 31, 1995 as the final day to submit an application, and also specifically prohibits the applicants, their agents, associates, and employees from contacting, communicating with, or soliciting department personnel, including members of the Citizens Planning and Environmental Advisory Committee (CPEAC). To date no funds have been appropriated by the Florida Legislature for this system other than those necessary for the franchise application review process. The RFP states that availability of public funds for the project is subject to legislative appropriations. Currently the Department of Transportation's work program has identified the state's proposed contribution to the project's funding of $70 million per year, beginning in 1997.

GEC Alsthom, a corporation chartered in Amsterdam for tax reasons but headquartered in Paris, is owned 50 percent by GEC of England and 50 percent by France's Alcatel Alsthom. Both parent corporations are privately owned and publicly traded on various stock exchanges. GEC Alsthom is the supplier of the fleet of TGV trainsets to the French Government and is a party with SNCF, to an R & D agreement to develop the next generation of TGV technology. The Government of France has no managerial control over GEC Alsthom's affairs, although the government, like those of virtually all industrialized countries, does have policies and does offer export credits that help all French industries involved abroad. GEC Alsthom will not pay for or bear any of the costs of the proposed trip; however, because its personnel in many cases are the best sources to answer technical questions that might be asked by the participants, they will provide company personnel who will participate in the seminars to give information on the technology. *All GEC Alsthom participants will be specifically forbidden by the company to address or to answer questions regarding the Florida RFP and the proposal that is being put together.* Neither GEC Alsthom, nor anyone on its behalf, has or uses a registered lobbyist in Florida.

Bombardier, Inc., a publicly-traded Canadian company with $5 billion in annual sales from production of high-speed trains, engines, subway cars, snowmobiles, personal watercraft, tractors, trucks, aircraft, and aircraft and aerospace components, currently has two registered lobbyists at the Florida Legislature and one registered to lobby in the executive branch. By contractual agreement unrelated to the consortium, Bombardier, Inc. is the North American Agent for, and has business relations with, GEC Alsthom, to further the sale of TGV technology in North America. Like GEC Alsthom, Bombardier, Inc., is not involved in any way in the financing of expenses incurred by the Government of France associated with the invitation it has extended to you.

> The SNCF (Societe Nationale des Chemins de Fer Francais) established in 1937, is a French public entity of an industrial and commercial character with management autonomy under French law. The company is wholly owned by the Republic of France. In 1992, SNCF joined with the operator of the Paris Metro to form a joint engineering subsidiary, Financiere SYSTRA, that provides specialized transportation engineering services. Because SYSTRA has access to the SNCF experience in building and operating the TGV, they were retained by the Consortium to act as an engineering subcontractor in the event that the Consortium is selected and certified to build Florida's High Speed Rail system.

Legislative History

In 1984, the Legislature enacted the High-Speed Rail Act, created the Florida High-Speed Transportation Commission, and established the initial procedure by which a franchise would be issued to a single entity for the private development of a high-speed rail system. Recent amendments authorized the issuance of a new request for proposals. There is now a two-step process by which the Department of Transportation will first award a franchise based on a Request For Proposals. The franchise holder must then apply for certification to construct the system. Upon receipt of the initial applications, the CPEAC and affected local governments will review and make recommendations concerning them. The Florida Secretary of Transportation will make the final determination and award the franchise. The Governor and Cabinet will then determine whether to award the certification to the franchise holder.

## Legal Issues

### A. Gift Prohibitions

Section 112.312(12)(a), F.S., defines the term "gift" to include transportation and lodging that is accepted by a donee for which equal or greater consideration is not given in return. Section 112.3148, F.S., regulates the receipt and reporting of gifts by legislators. This section generally prohibits the acceptance by reporting individuals, directly or indirectly, from a lobbyist, his partner, or the principal of a lobbyist, of gifts having a value in excess of $100. There is no limit on the value of the gift if it is from a donor who is not associated or connected with a lobbyist or lobbying principal.

Based upon the above facts, I am of the opinion that your acceptance of transportation, lodging, and food expenses paid for by the Government of France would not constitute a prohibited "gift".

There are two basic factors that convert an otherwise legal and reportable gift into a prohibited one: the combination of source and amount. If the source is a lobbyist or principal, and the value of the gift is over $100, then the gift is prohibited. Here, the value of the transportation, accommodations, and food and beverages is clearly over $100. There is a lobbying connection between the Legislature and Bombardier Inc., but that firm will not pay for or bear any of the costs of your trip, neither will GEC Alsthom. The donor is the Government of France. It intentionally has no lobbying presence at the Florida Legislature. The fact that a wholly-owned subsidiary of the French Government (SNCF) is a consortium participant with Bombardier, Inc., a private Canadian corporation, does not, in my opinion, make Bombardier, Inc., the donor, either directly or indirectly.

Section 112.3148(8)(a), F.S., requires generally that you report, on Ethics Commission Form 9, the receipt of all authorized gifts having a value in excess of $100, on the last day of the calendar quarter for the previous calendar quarter (in this case, December 31,1995, if you go on the August trip). This report must describe the gift, state the monetary value of the gift, name the person or entity providing the gift, and the date on which the gift was received.

### B. Unauthorized Compensation

Section 112.313(4), F.S., provides:

> No public officer, employee of any agency, or local government attorney or his 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 official capacity.

If the French Government intends, by this trip, to influence your vote or action in which you are expected to participate in your official capacity, then you cannot accept this invitation. The best way to find out a donor's subjective intent is not to guess at it, but simply to ask. In their official response to a formal and specific inquiry, the French Government stated that its intent is to inform, not to influence decisions that are not theirs to make. It is for that reason that neither the French Government, nor ACTIM, nor the SNCF have a professional lobbyist in Florida. In my view, you may reasonably rely on their response.

Finally, the Florida Ethics Commission ruled in CEO 89-11 that:

> A prohibited conflict of interest would not be created were members and staff of the Florida High Speed Rail Transportation Commission to accept transportation to and hotel accommodations in West Germany from an applicant for a magnetic levitation train demonstration project, provided that the location in West Germany is the only place the educational process can occur, the length of time is no longer than is reasonably necessary to complete the educational process, the donor only pays actual expenses, and appropriate records and gift disclosure are made. Under these circumstances, if the primary purpose of the trip is to educate Commission members as to the qualifications of a potential applicant for certification, acceptance of the transportation and airfare would not violate Section 112.313(4), Florida Statutes.

Applying the above five-part test, it is my view that:

1. The location in France is the only place the proposed educational process can reasonably occur. In 1991, Amtrak proposed that the SCNF bring a TGV train to the United States and operate it along the northeast corridor. However, the French Government determined that our track beds were unable to support train speeds of 300 km/h and the operation, in addition to being extremely costly, would not fully demonstrate the features of the system.

2. The length of the trip is 3 days in France plus one day going and one day returning. Three days is not longer than reasonably necessary to complete the educational process.

3. The French Government will pay only actual expenses.

4. It will be up to you to make all the required gift disclosures.

5. The clearly stated intent of the invitation is to inform, not to influence, Florida decision makers. The stated purpose of the trip is purely educational.

c. House Rules

House Rule 5.8 provides in part:

> (1) A Member of the House shall accept nothing which reasonably may be construed to improperly influence the Member's official act, decision or vote.

The test under Rule 5.8 is similar to the test under s. 112.313(4), F.S. It would constitute a violation of Rule 5.8 for you to accept any gift which is given with the purpose of improperly influencing your act, decision, or vote. As discussed above, the Government of France has stated its intent. The facts support that it is not given to influence your act, decision, or vote. Therefore, it would not violate House Rule 5.8 for you to accept the gift.

Conclusion

The invitation constitutes an offer of a gift from an entity that has no lobbyist registered at the Florida Legislature, so the gift is not prohibited. Your transportation, accommodations, and food and beverages may be paid for by the Government of France or its instrumentalitites, but not by Bombardier, Inc., directly or indirectly. Reporting requirements are explained above.

The French Government has officially and clearly articulated its intention behind its invitation to you to ride and study the TGV. Their reasons are, in my opinion, credible and justified. Thus, the "unauthorized compensation" provision of s.112.313(4), F.S., does not prohibit you from going on this trip, nor does House Rule 5.8.

Although you, as a Member of the Florida Legislature, may have input into the future collegial decision of whether to appropriate public money to fund a high-speed rail system, you will have no input into which bidder wins the franchise—that will be a decision of executive branch officers and agencies. Furthermore, you clearly meet the Ethics Commission's five-part test set forth in CEO 89-11.

**HCO 95-19—June 29, 1995**

*To: The Honorable Robert Casey, M.D., Representative, 22nd District, Gainesville*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Under House Rule 5.17, you have asked for an opinion on the following two questions.

> You are a delegate from the Alachua County Medical Society who will be attending the Florida Medical Association meeting. The Alachua County Medical Society pays for their delegates to attend the FMA meeting. The Alachua County Medical Society does not have a lobbyist. You want to know whether or not you can accept the travel expenses to the meeting and whether or not you are required to report those expenses.
>
> You are on the staff of Alachua General Hospital and contract with AvMed Santa Fe who has acquired the Hospital. AvMed Santa Fe wants you to attend a meeting of the GHAA Group Health Institute in San Diego with other physicians or staff of AvMed. AvMed Santa Fe will pay for your travel expenses to the meeting in order to further your education related to the services you perform for AvMed Santa Fe. AvMed Santa Fe does not currently have a registered lobbyist, although they did have one earlier this year. AvMed, Inc., has several registered lobbyists. You want to know whether or not you can accept the travel expenses to the meeting and whether or not you are required to report those expenses.

Section 112.312(12), Florida Statutes, defines the term gift. It excludes from the definition:

> Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment or business.

Both of these expenses are associated primarily with your business of being a physician. The Medical Society is paying your expenses and the expenses of other delegates to attend the FMA meeting. The expenses are primarily associated with your business of being a

physician in Alachua County. AvMed Santa Fe is paying your expenses and the expenses of others to attend the Group Health Institute meeting. Again, these expenses are primarily associated with your business of being a staff physician at Alachua General Hospital. Thus, these expenses do not meet the definition of a gift. You may accept payment of the travel expenses and the payment is not to be reported since it is not a gift.

**HCO 95-20—July 14, 1995**

*To: The Honorable Burt L. Saunders, 76th District, Naples*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked for an opinion on the following situation.

> You will be participating in two events with your constituents. The first is a symposium on criminal justice issues which will be held at the Naples Registry Resort. The cost of renting the hall for the event is $100 which you want to pay for from the intradistrict account. The second event will be at the Telford Educational Center. You have been invited to participate in a program of the Collier County Medical Society regarding health care issues. The hall is provided to the Collier County Medical Society at no charge. The Collier County Medical Society does not have a lobbyist.
>
> For each of the these events, you wish to produce several 30-second commercials to promote the events. The cost of this production is approximately $3,500. You want to know whether or not you may solicit funds to pay for this expense.

Your question is answered in the affirmative to the extent that you may solicit funds from certain persons and are prohibited from soliciting funds from lobbyists and certain others.

House Rule 5.14 requires Members of the House to scrupulously comply with the requirements of all laws related to the ethics of public officers. Renting a hall for a meeting with your constituents is an authorized expenditure from your intradistrict account. Participating in this meeting of the Collier County Medical Society also does not raise any ethical questions.

Solicitation of funds to pay for the promotion of these events is governed by part III of chapter 112, Florida Statutes. Under section 112.312(12), Florida Statutes, a gift includes anything that you accept for which equal or greater consideration is not given. Money which you receive to pay for the cost of the promotion is a gift. Pursuant to section 112.3148, Florida Statutes, a Member of the House is prohibited from soliciting funds from certain persons and entities referred to as the “prohibited class.” The “prohibited class” includes a political committee; a committee of continuous existence; a lobbyist; or a partner, firm, employer, or principal of a lobbyist. You may, however, solicit funds for this purpose from persons who are not in the “prohibited class.”

Also, you may accept money which a member of the prohibited class provides without solicitation as long as the amount of money from one person or entity does not exceed $100. In addition, you may accept any amount of money from persons who are not in the prohibited class. The acceptance of money is limited by House Rule 5.8 and section 112.313(4), Florida Statutes, which prohibit the acceptance of anything of value when it is given with the intent to influence a vote or other official action. There is nothing in these facts which suggests that any of the persons would provide the money with the intent to influence your vote or other official action.

Any gift, the value of which exceeds $100, must be reported on the quarterly gift disclosure (Form 9). For gifts received during the quarter July 1995 to September 1995, the report is to be filed with the Secretary of State no later than December 31, 1995.

**HCO 95-21—July 26, 1995**

*To: The Honorable Annie Betancourt, 116th District, Miami*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Under House Rule 5.17, you have requested an advisory opinion as to the following:

> Whether you may serve, without compensation, on the Board of Directors of "The Deering Estate Foundation" (Deering Foundation)? The Deering Foundation is a private not-for-profit organization chartered to provide resources and assistance to the Dade County public park known as the Deering Estate. Over the years, Dade County has maintained a cooperative relationship with the Deering Foundation for the restoration of the Deering Estate. Dade County has entered into a subgrant agreement with the Deering foundation to provide quality control and to expedite the planning and restoration of the historic buildings and landscapes of the Deering Estate.
>
> It is your understanding that some of these grant dollars were previously obtained by Dade County from the State of Florida. It is your further understanding that Dade County will not be seeking any additional grants from the State. It should be noted that Dade County has registered lobbyists.

Your question is answered in the affirmative.

The answer to your question is determined by general "conflict of interest" principles and particularly by s. 112.312(8), s. 112.311(5), and s. 112.313(7)(a), Florida Statutes, and by House Rule 5.10.

Section 112.312(8), Florida Statutes, provides the following definition of a conflict of interest:

> . . . means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

This definition alone does not create any duty upon you as a Member.

Section 112.311(5), Florida Statutes, declares that it is the public policy of this State that no member of the Legislature shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity "which is in substantial conflict with the proper discharge of his [her] duties in the public interest." Similarly, this section is intent language and also does not create a duty upon you as a Member.

Section 112.313(7)(a), Florida Statutes, prohibits any public officer from holding any employment or contractual relationship "that will create a continuing or frequently recurring conflict between his [her] private interests and the performance of his [her] public duties or that would impede the full and faithful discharge of his [her] public duties." However, this section further provides the exception that a legislator is not prohibited from a contractual relationship when the only regulatory power which the Legislature exercises over the entity is

strictly the enactment of laws. The only regulatory power which the Legislature exercises over the Deering Foundation is through the enactment of laws, thus, the exception in section 112.313(7)(a) is met.

Further, the Commission on Ethics has repeatedly found that noncompensated service as an officer or director of a nonprofit corporation does not constitute an employment or contractual relationship and thus is not prohibited. *See* CEO 86-39 and previous opinions cited there.

A Member of the House must also consider House Rules. House Rule 5.10 addresses the issue of conflict of interest and provides:

> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

You are not receiving compensation for your services, and thus House Rule 5.10 would not prevent you from serving on the Deering Foundation.

It does not appear that your serving on the Board of Directors of the Deering Foundation, under the facts that you have presented, will create either a "substantial conflict" or "continuing or frequently recurring conflict" that would tend to lead to disregard of your public duties. Accordingly, it is our opinion that you may serve on the Board of Directors of the Deering Foundation.

**HCO 95-22—August 1, 1995**

*To: The Honorable Scott W. Clemons, 6th District, Panama City*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Under House Rule 5.17, you have requested an advisory opinion as to the following:

> Whether you may accept travel and hotel accommodations for the annual meeting of the Associated Marine Institutes (AMI). You have been asked to address the AMI Governmental Affairs Committee and participate in a panel discussion. AMI, the Panama City Marine Institute, or its chairman personally would pay for you and your wife's travel and hotel accommodations. A review of the lobbyist registration reflects that none of the three are, or employ, a lobbyist for the purpose of lobbying the Florida Legislature.

Your question is answered in the affirmative.

Section 112.3149(1)(a), defines "honorarium" as "a payment of money or anything of value, directly or indirectly, to a reporting individual . . . as consideration for: 1) a speech, address, oration, or other oral presentation by the reporting individual." Since you have been requested to address the meeting and to participate in a panel discussion, your speaking engagement expenses would qualify as honorarium expenses. Pursuant to s.112.312(12)(b)3, Florida Statutes, neither an honorarium nor expenses related to an honorarium event are considered to be gifts for the purpose of s. 112.3148, Florida Statutes, but they are subject to the provisions of s. 112.3149.

Section 112.3149 prohibits the solicitation of an honorarium which is related to your public duties. It further prohibits accepting an honorarium from a lobbyist although a lobbyist may pay the actual and reasonable honorarium-related expenses. Under the facts of your case, the honorarium expenses for you and your wife may be paid by any one of the three. Furthermore, since no lobbyist before the Florida Legislature is employed by the party paying for the honorarium-related expenses, the reporting provisions of s. 112.3149(6), Florida Statutes, do not apply. Thus there is no requirement that you disclose the payment of your honorarium-related expenses.

**HCO 95-23—July 31, 1995**

*To: (Identification withheld at Member's request)*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion regarding the following:

> Whether you may be employed by a law firm in which your father is a partner where your father or another lawyer in the firm represents a health maintenance organization before the Agency for Health Care Administration or the Department of Insurance. Such legal services include representation on contract and licensure issues before these agencies which may lead to hearings before the Division of Administrative Hearings.

Your question is answered in the affirmative, subject to the disclosure requirements noted below.

Article II, section 8(e), Florida Constitution, provides in part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 contains a similar prohibition and provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

The Commission on Ethics has repeatedly interpreted this section of the Florida Constitution to be a personal prohibition. That is, the constitutional prohibition applies to you as a Member of the House, but does not apply to other attorneys in your law firm. *See* CEO 91-54 and opinions cited therein. House Rule 5.15, similarly, is a prohibition against you personally providing representation but does not prevent other attorneys in your law firm from providing such representation. Thus, you may not personally represent the health maintenance organization before the Agency for Health Care Administration or the Department of Insurance or before the Division of Administrative Hearings; however, any other attorney in your law firm may do so. The fact that one of the other attorneys in your law firm is your father does not alter this conclusion. Further, you may personally represent the health maintenance organization before a judicial tribunal.

Pursuant to section 112. 3145(4), Florida Statutes, representations before a state agency by partners or associates of your law firm must be disclosed quarterly. Form 2 must be filed

with the Secretary of State 15 days after the end of a quarter in which such representation occurred.

In addition, several other House Rules should be considered. House Rule 5.9 prohibits conflicting employment and provides:

> A Member of the House shall not allow personal employment to impair the Member's independence of judgment in the exercise of official duties.

House Rule 5.10 prohibits a conflict of interest and provides:

> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

Simply being employed in a law firm which provides representation before state agencies does not impair your judgment in the exercise of your official duties and is not in conflict with your duties as a Member of the House. Florida continues to have a citizen Legislature. Like the Code of Ethics, House Rules should not be construed to prevent a legislator from accepting employment which does not interfere with the faithful discharge of the duties of a Member of the House. *See* section 112.316, Florida Statutes.

**HCO 95-24—August 17, 1995**

*To: The Honorable Debbie Wasserman Schultz, 97th District, Davie*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion as to the following situation:

> Whether accepting employment with Nova Southeastern University (NSU) as a Public Policy Curriculum Specialist would create a prohibited conflict of interest in light of your position as Chair of the House Higher Education Committee. As a Public Policy Curriculum Specialist, your duties would include: identifying resources for enhancing technology at NSU; assisting program directors with selecting curriculum related to public policy and politics; conducting workshops on leadership for student leaders; analyzing Florida demographics and suggesting new program opportunities for NSU; consulting with programs in higher education on processes for including issues on state higher education in the curriculum.
>
> You also ask that this office advise you regarding your responsibilities in terms of potential voting conflicts as well.

Your employment question is answered in the negative, subject to certain conditions expressed below.

Article II, section 8(e), Florida Constitution, provides in part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 contains a similar prohibition and provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

The Commission on Ethics has interpreted "represent" to mean to take the place of in some respect or to act or stand in the place of someone. Furthermore, Section 112.312(22), Florida Statutes, provides that "represent" means:

> "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

The job description that you have provided does not appear to require that you personally represent NSU before any state agency. Consequently, so long as you do not represent NSU before any state agencies other than judicial tribunals, Art. II, section 8(e), Florida Constitution, and House Rule 5.15 do not prohibit you from accepting employment as a Public Policy Curriculum Specialist at NSU.

This prohibition against representing a client before a state agency is a personal prohibition and does not prohibit NSU from being represented before a state agency by someone else (CEO 77-168).

Second, your employment would not create a prohibited conflict of interest but you may be required to file a memorandum of voting conflict on a case-by-case basis if matters arise for a vote of the Legislature which would provide "special private gain" to NSU.

Section 112.313(7)(a), Florida Statutes, provides in relevant part:

> No public officer . . . 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 is an officer . . . nor shall an officer . . . have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This section prohibits employment in three situations: employment in regulated entities, employment which would create a frequently recurring conflict, and employment which would impede the full and faithful discharge of public duties. Each one of these parts will be discussed.

As to employment in a regulated entity, NSU is subject to regulation by the state as a private university pursuant to Chapter 246, Florida Statutes. Under these circumstances NSU is subject to the regulatory power of the Legislature. However, Section 112.313(7)(a)2., Florida Statutes, contains the following exemption from this provision for members of legislative bodies:

> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

The circumstances you describe would come within this exemption since the only regulatory authority of the Legislature over NSU is through the enactment of laws. Furthermore, there is no distinction in this exemption based on the office you hold within the Legislature and, therefore, the application of this exemption does not change by virtue of the fact that you are the Chair of the Higher Education Committee (CEO 90-08).

The second part contains a prohibition on employment which would create a frequently recurring conflict. The Commission on Ethics has interpreted this subsection to also preclude legislators from having employment that would create a continuing or frequently occurring conflict of interest. Although we do not necessarily agree that this subsection applies to legislators, House Rules discussed below contain similar language. Nevertheless, we will consider whether the appearance of representatives of NSU before the Legislature or the necessity of the Legislature to act on issues of interest to NSU would create either type of conflict.

The Commission on Ethics has held that:

> . . . private employment was permissible so long as it did not encompass activities related to lobbying his agency, and we specified the types of activities which we considered to be related to lobbying . . . which include not only actual contact with legislators through physical attendance at legislative meetings, submission of written materials, and personal contact with legislators in an effort to encourage the passage, defeat, or modification of any measure before the Legislature, as part of your employment responsibilities, but also directing the activities of those who will contact the Legislature, participating in setting the strategies of whom to contact, and what to say, and assisting in preparing amendments to documents in support of the corporation's position. In other words, it is our view position that your employment with the corporation should be completely separated from the lobbying activities of your employer (CEO 90-08).

As noted in CEO 90-08, these restrictions would not preclude your participation in NSU activities leading to a decision to approach the Legislature concerning an issue. However, once such a decision is made, your employment should not include any activities related to accomplishing the goals of NSU before the Legislature. It would be helpful if the contract would specify the limitations on your involvement in the lobbying activities of NSU using language similar to the above.

The third part of section 112.313(7)(a) prohibits employment which would impede the full and faithful discharge of public duties. There is nothing in your job description which indicates you would be unable to discharge your public duties. *See also* CEO 90-08.

You are also subject to the provisions of House Rules 5.9 and 5.10 regarding employment and conflict of interest. These rules provide:

> 5.9--Conflicting Employment
>
> A Member of the House shall not allow personal employment to impair the Member's independence of judgment in the exercise of official duties.
>
> 5.10--Conflict of Interest
>
> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

Again, there is nothing in this job description which indicates this employment would impair your independence of judgment in performing your duties. Nor is this activity in substantial conflict with your duties as a Member of the House. By following the limitations noted above regarding lobbying activities, there should be no conflict with your duties as a Member of the House.

Finally, you must consider the issue of voting conflicts. The general rule is that you are protected from conflict of interest charges for voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. Like any other Member who is employed, you must disclose those situations where your employer would receive "special private gain" from legislation. The presence of a special benefit must be evaluated in the context of the specific vote rather than in terms of general prescriptions, and consequently you may wish to request an additional opinion when a specific vote becomes an issue.

Accordingly, subject to the conditions noted above, we find no prohibited conflict of interest were you to accept the position of Public Policy Curriculum Specialist with NSU while you also serve as Chairman of the Committee on Higher Education of the House of Representatives.

**HCO 95-25—August 18, 1995**

*To: The Honorable Kendrick Meek, 104th District, Miami*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Pursuant to House Rule 5.17, you have asked whether you may accept the following business opportunity:

> You have been asked to promote a private Miami-based U.S. telecommunications firm's products in Haiti. As a liaison for the company, you would travel to Haiti to meet with members of the Haitian government and other prospective clients in Haiti in an effort to secure a telecommunications contract.

Your question is answered in the affirmative. The issue of employment conflicts has been recently addressed in detail in Opinion 95-24.

Your contractual relationship will not involve appearances before any state agency. Nor will accepting this contractual relationship impair your independence of judgment or result in a substantial conflict with your duties as a Member of the House. Like any other Member with a business relationship, you will need to be alert to a possible voting conflict.

**HCO 95-26—September 8, 1995**

*To: The Honorable Scott W. Clemons, 6th District, Panama City*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Pursuant to House Rule 5.17, you have asked whether your personal representation of an insurance company before the Florida Birth-Related Neurological Injury Compensation Association ("NICA") would create a prohibited conflict of interest.

Your question is answered in the negative.

The answer to this question is governed by an advisory opinion, 93-24, issued by the Commission on Ethics involving analogous facts. In that opinion, the commission held that a prohibited conflict of interest would not be created if a State Senator's firm provided insurance consulting services to a company seeking to do business with the Residential Property and Casualty Joint Underwriting Association, including the Senator's personal representation of the company before the Association. The Commission reasoned that Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, would not be violated by the Senator's personal representation of the company before the Association because the Association is not a "state agency." Likewise, NICA would not be considered a "state agency." Therefore, your personal representation of an insurance company before NICA would not constitute a prohibited conflict of interest.

**HCO 95-27—September 29, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion on the following:

> You previously represented a client in a criminal matter. Your partner will present your former client before the clemency board. You asked whether you may attend the meeting of the board and whether you may consult with your partner but not participate in the proceeding.

Your question is answered in the negative.

Article II, section 8(e), Florida Constitution, provides:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 also provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Similarly, section 112.313(9)(a)3, Florida Statutes, provides in part:

> No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

These provisions contain several elements. First, the prohibition against representation is a personal one. It applies only to you and not to your partner, associates, or employees. *See* CEO 91-54. Thus, actions undertaken by your partner in this matter are permissible.

The next element is that "representation" is prohibited. Section 112.312, Florida Statutes, defines "represent" or "representation" as:

> . . . actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

The Commission on Ethics recently addressed the issue of whether the term "represent" includes attending legislative committee meetings and concluded that a former Member of the House was precluded from attending and monitoring legislative meetings on behalf of another for compensation during the two-year period after leaving office. The Commission's rationale was that the statutory definition includes actual physical attendance in an agency proceeding.

While your question relates to "representation" before a state agency during your term of office, and this opinion addresses restrictions after leaving office, the rationale is the same. The definition of "represent" includes actual physical attendance on behalf of a client in an agency proceeding. Therefore, it is my opinion that your attendance at a meeting of the clemency board constitutes "representation."

In order to be prohibited, the representation must be before a state agency. Clemency procedures are through the Parole Commission and the Governor and Cabinet. Clearly, they are state agencies for the purpose of this prohibition.

The final element is an exception for representation before judicial tribunals. I did not locate anything which would indicate that the Governor and Cabinet should be considered a judicial tribunal for clemency purposes.

Therefore, it is my opinion that your attendance at a meeting of the clemency board is prohibited by Article II, section 8(e), House Rule 5.15, and section 112.313(9)(a)3, Florida Statutes.

**HCO 95-28—October 5, 1995**

*To: The Honorable Jack Ascherl, 28th District, New Smyrna Beach*

*Prepared by: B. Elaine New, House General Counsel*
*Gerald B. Curington, Deputy General Counsel*

Pursuant to House Rule 5.17, you have asked for an opinion on the following situation:

> Bert Fish Medical Center is issuing an invitation to bid for an insurance agent of record. You ask whether it would create a prohibited conflict of interest for you to respond to the invitation.

Your question is answered in the negative.

Neither the Code of Ethics for Public Officers and Employees (Section 112.313, Florida Statutes) nor Article II, Section 8(e), of the Florida Constitution, nor House Rules prohibit such an action.

Section 112.313(3), Florida Statutes, provides in part:

> (3) DOING BUSINESS WITH ONE'S AGENCY.-No . . . public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services, for his own agency from any business entity of which he or his

> spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his spouse or child, or any combination of them, has a material interest.

This subsection prohibits a public officer from selling services in his private capacity to his own agency. This provision would not apply in this instance since your "agency," as the term is defined in section 112.312(2), Florida Statutes, is the Florida Legislature. *See* CEO 78-39.

Section 112.313(7), Florida Statutes, also provides in part:

> (7)(a) Conflicting Employment or Contractual Relationship.-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 is an officer or an employee. . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This subsection prohibits a public officer from having a contractual relationship with any business entity which is subject to the regulation of his agency. However, this subsection also exempts members of legislative bodies where the regulatory power is exercised strictly through the enactment of laws. *See* CEO 82-35. Since the Legislature's regulatory power over Fish Medical Center is limited to the enactment of laws, any contractual relationship you might have with them is permissible. *See* CEO 90-59.

Furthermore, subsection 112.313(12)(b) allows you to bid on business awarded to the lowest bidder under a system of sealed, competitive bidding. Under this provision, the official cannot participate in either the determination of the bid specifications or the determination of the lowest or best bidder. This exemption would permit you to submit bids with the Fish Medical Center as long as the conditions set forth in the section are met. *See* CEO 87-47.

Thus, the Code of Ethics for Pubic Officers allows you to bid on these insurance services.

Article II, Section 8(e), provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

This section of the Constitution does not prohibit a State Representative from representing another for compensation before private entities or political subdivisions of the State which are not state agencies. As noted in CEO 86-6, hospitals, such as Fish Medical Center, which are located in hospital districts created by special acts are not state agencies. *See* Chapter 65-2362, Laws of Florida. Since Fish Medical Center would not be considered a state agency, Article II, Section 8(e) would allow you to participate in developing the responses to the requests for bids from the hospital. *See* CEO 90-10.

Further, House Rule 5.10 prohibits a Member from receiving compensation for any services which are in substantial conflict with the duties of a Member of the House. Responding to an invitation to bid and providing insurance services to a local hospital does not result in a conflict with your duties as a Member of the House.

Accordingly, we find that no prohibited conflict of interest would be created, under the Code of Ethics for Public Officers and Employees nor Article II, Section 8(e), of the Florida Constitution nor House Rules, were you to personally contract with or bid on projects for Bert Fish Medical Center.

**HCO 95-29—October 10, 1995**

*To: The Honorable Kendrick Meek, 104th District, Miami*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have asked for an opinion on the following situation:

> You ask whether you may meet with the North Broward Hospital District's administrators and staff on behalf of your employer, the Wackenhut Corporation, in hopes of acquiring the physical security services contract for their hospitals.

Your question is answered in the affirmative.

Article II, Section 8(e), Florida Constitution, provides in relevant part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 also provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Similarly, section 112.313(9)(a)3, Florida Statutes, provides in part:

> No member of the legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

In order to be prohibited, the representation must be before a state agency. These provisions do not prohibit a State Representative from representing another for compensation before private entities or political subdivisions of the State which are not state agencies. As noted in CEO 89-6, hospital districts, such as North Broward Hospital District, which are created by special acts are not state agencies.

Accordingly, we find that no prohibited conflict of interest would be created, under Article II, Section 8(e), of the Florida Constitution, House Rules, nor the Code of Ethics for Public Officers and Employees were you to personally meet with the North Broward Hospital District's administrators and staff to procure business for your employer.

**HCO 95-30—October 11, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Under House Rule 5.17, you have asked for an opinion on the following question:

> You want to solicit money for the purpose of paying for newsletters to your constituents regarding legislative issues such as surveying your constituents,

> providing information about issues in the forthcoming session, and providing reports to constituents after the legislative session. The money allotted under the Member expense account and the intradistrict account is insufficient to provide regular newsletters to your constituents. You ask whether you can solicit money for the purpose of informing your constituents and if so, how to account for the same.

Your question is answered in the affirmative to the extent that you may solicit funds from certain persons and are prohibited from soliciting funds from lobbyists and certain others. Also while you are not clearly required to obtain approval for newsletters produced with such funds, you are advised that the better course of action would be to obtain approval from the Office of House Administrative Services to ensure that the newsletter is for the purpose of informing your constituents and is not an expenditure made for the purpose of reelection. Such funds which you do solicit should be maintained in a separate account and not commingled with the state funds.

Solicitation of funds to pay for the production and mailing of newsletters is governed by part III of chapter 112, Florida Statutes. Under section 112.312(12), Florida Statutes, a gift includes anything that you accept for which equal or greater consideration is not given. Money which you receive to pay for the cost of the newsletters is a gift. Pursuant to section 112.3148, Florida Statutes, a Member of the House is prohibited from soliciting funds from certain persons and entities referred to as the "prohibited class." The "prohibited class" includes a political committee; a committee of continuous existence; a lobbyist; or a partner, firm, employer, or principal of a lobbyist. You may, however, solicit funds for this purpose from persons who are not in the "prohibited class."

Also, you may accept money which a member of the prohibited class provides without solicitation as long as the amount of money from one person or entity does not exceed $100. In addition, you may accept any amount of money from persons who are not in the prohibited class. The acceptance of money is limited by House Rule 5.8 and section 112.313(4), Florida Statutes, which prohibit the acceptance of anything of value when it is given with the intent to influence a vote or other official action. You should not accept money from persons who intend to influence your vote or other official action by providing the funds.

Any gift, the value of which exceeds $100, must be reported on the quarterly gift disclosure (Form 9). The quarterly gift disclosure is due at the end of a calendar quarter for gifts received during the previous calendar quarter. In addition, the money which you accept for the newsletters may be considered income to you by the I.R.S.

Chapter 106, Florida Statutes, provides for regulation of the solicitation and acceptance of funds for the purpose of influencing the results of an election. If your newsletter is for the purpose of furthering your reelection or influencing the result of any election, the solicitation or acceptance of money for this purpose is governed by Chapter 106 and you would be required to report all contributions accordingly.

The House has recently combined several sources of funds for the Member into the Member expense account. Funds in this account may be used for production of House newsletters and bulk-rate mailing of newsletters. Similarly, postage and printing of a non-political newsletter is an authorized expenditure from your intradistrict account. Newsletters to constituents prepared with the state funds are reviewed to confirm that the contents of the newsletter comply with House guidelines which ensure that the newsletter is not of a political nature. *See* Interpretation 13. (If the design and content of the newsletter is for constituents' informational purposes, it is an acceptable practice under House rules and the Code of Ethics for Public Officers and Employees.) While newsletters prepared with money which you have solicited from private sources are not clearly required to be approved by the Office of House Administrative Services, I recommend that you do so in order to avoid any appearance that the newsletter is for the purpose of influencing the results of an election. House Rule 5.14 requires Members of the House to scrupulously comply with the

requirements of all laws related to the ethics for public officers. In order to be scrupulous, it is my recommendation that you have the newsletter approved by OHAS.

Finally, any funds which you solicit should be maintained separately from state funds. This will facilitate proper documentation for your intradistrict account.

**HCO 95-31—October 19, 1995**

*To: The Honorable Peter R. Wallace, Speaker of the House of Representatives*

*Prepared by: B. Elaine New, House General Counsel*

Under Rule 5.17, you have asked for an opinion whether your law firm may accept fees related to a claim bill under the following facts:

> The law firm by which you are employed as an associate represented a client in a wrongful death action. Your law firm ceased to represent the client and the case was accepted by another firm. The second firm was successful in obtaining a judgment against a governmental entity for the wrongful death of the client's deceased relatives. A lobbyist unconnected to either law firm lobbied the claim bill on behalf of the claimant. Neither you nor your law firm was involved in seeking passage of the claim bill. You recently discovered that your firm had a fee agreement with the client concerning recovery after your firm ceased to represent the client. You ask whether your law firm may share in fees paid to the second law firm from the subsequent claim bill arising out of the wrongful death.

Your question is answered in the affirmative, provided the fee agreement is consistent with the Rules Regulating The Florida Bar.

House Rule 5.10 provides:

> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

It would not present a substantial conflict with your duties as a Member for your law firm to share in a fee for its work in the wrongful death action. There are two House Ethics Committee opinions which must be considered. Opinion 9 (May 2, 1969) found that it would constitute a "conflict of interest" for a House Member to file a claim bill if a fee is to be received by the Member, his law partner, or his law firm. Thus, you could not file such a claim bill.

Also, Opinion 16 (February 4, 1971) found that there would be a conflict on the part of the Member if there was "introduced, or caused to be introduced, a claims bill by [a Member's] law partner." This was based upon the rationale that the law firm would necessarily be required to lobby on behalf of the claim bill, and it would violate Cannon 6 of the Bar Rules for the law firm to lobby when a Member of the House is in the law firm. In this case, neither you nor your firm was involved in the claim bill process. In addition, the process for claim bills is substantially different than it was in 1971. Today, in a typical excess judgment claim bill, the trial lawyer will present the case to the special master, but a lobbyist is also hired to facilitate passage of the claim bill. When this arrangement is followed, there is not a "substantial conflict" under House Rule 5.10. Further, in the facts here, it was another step removed, i.e., your firm had no involvement in the claim bill process and you did not know at the time of your firm's fee agreement. Thus, there is not a substantial conflict

under House Rule 5.10 for your firm to accept the legal fees related to its work in the wrongful death action.

In addition, you must consider whether you should file a voting disclosure under House Rule 5.11, which provides:

> A Member of the House prior to taking any action or voting upon any bill in which the Member knows or believes the Member or the Member's family has a personal, private or professional interest which inures to the Member's special private gain, or to that of the Member's family, or the special gain of any principal by whom the Member or the Member's family is retained or employed, shall disclose the nature of such interest as a public record in a memorandum filed with the Clerk. . . .

At the time you voted on the bill, you indicate that you were not aware of your firm's fee arrangement relating to the claim bill. However, since you have now become aware of this fee arrangement, you may wish to consider whether to file such a disclosure. While Rule 5.11 does not require it since you did not know at the time you voted that your employer would receive "special private gain," I recommend that you now file a memorandum with the Clerk which will disclose your employer's interest in the claim bill.

**HCO 95-32—November 3, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have asked for an advisory opinion on the following four factual situations:

> 1) You previously had a contractual relationship with a not-for-profit corporation. Your contract with that corporation has expired, and you have not promised the corporation any future services. You ask whether you may represent the corporation before a state agency as long as you do not receive compensation for the representation.
>
> 2) An educational institution has asked you to provide consulting services. One of the terms of the contract would require you to advocate their interests before the Legislature. You ask whether you may do so.
>
> 3) A law firm has a contract with a state agency. The law firm has asked you to associate with the firm and provide some of the services under contract with the state agency. You ask whether you may do so.
>
> 4) You have been asked to serve as a consultant to an investment banking firm that is pursuing business contracts with state agencies. You ask whether a prohibited conflict of interest would be created if you were to contract with the investment banking firm.

Your questions are answered as follows:

Article II, section 8(e), Florida Constitution, provides:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 also provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Similarly, section 112.313(9)(a)3, Florida Statutes, provides in part:

> No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

With regard to your first question, in order to be prohibited under these provisions, the representation before the state agency must be for compensation. *See* CEO 84-114 & CEO 80-41. You indicated to our office that you were formerly under contract with a nonprofit corporation. Your contract with that organization, which did not include an implied agreement for future services, has expired and you now desire to represent the organization before a state agency. Upon expiration of your contract with that organization, your compensation from the organization terminated. Since you no longer receive compensation from the corporation and your contract with that organization did not contain any implied agreement to perform future services for the corporation, you may personally represent the organization before a State agency, other than the Legislature, as discussed below.

In reference to your second question, you cannot act as an advocate for an educational institution before your own agency, the Legislature, for compensation. In CEO 90-08, the Commission on Ethics considered whether a Member of the House of Representatives could be employed by an organization that was expected to appear before his agency, the Legislature, on a regular basis to advocate its position on a variety of issues. The Commission decided that the Member's employment was permissible only so long as it did not encompass activities related to lobbying the Legislature. We find the rational of that opinion applicable to your question. Accordingly, you cannot engage in any lobbying activities on behalf of another before the Legislature for compensation.

With respect to your remaining questions, ss. 112.313(7)(a), F.S., provides in relevant part:

> Conflicting Employment or Contractual Relationship. - 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 is an officer or an employee . . . ; 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This subsection prohibits a public officer from having a contractual relationship with any business entity which is subject to the regulation of his agency. However, this subsection also exempts members of legislative bodies where the regulatory power is exercised strictly through the enactment of laws. *See* CEO 82-35. Since the Legislature's regulatory power over the law firm and the investment banking firm is limited to the enactment of laws, any contractual relationship you might have with them is permissible (*See* CEO 90-59), provided the firms do not do any business with the Legislature. *See* CEO 86-27. Please note, however, you still would be prohibited from personally contacting state agencies in an effort to market the services of these firms. *See* CEO 84-9. In other words, we find that no continuing or frequently recurring conflict of interest would be created were you to associate with the law firm or to serve as a consultant for an investment banking firm that does business with state agencies other than the Legislature.

**HCO 95-33—November 28, 1995**

*To: The Honorable F. Allen Boyd, Jr., 10th district, Monticello*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have requested an advisory opinion as to the application of section 112.3149, F.S., to the following situation:

> You attended the Florida Restaurant Association (FRA) Convention held in Orlando. At the FRA Convention, you participated in the ribbon cutting ceremony, the seafood and beef challenge, and in a panel discussion for a seminar dealing with outlooks for the upcoming session. The FRA has offered to reimburse you for lodging, transportation, and meal expenses. You ask whether you may accept these reimbursements as honorarium expenses. A review of the lobbyist registration reflects that the FRA employs a lobbyist for the purpose of lobbying the Florida Legislature.

Section 112.3149, F.S., prohibits organizations which employ lobbyists from paying an honorarium, in cash or in kind, of any amount. An honorarium is defined in s.112.3149(1)(a), F.S., "as consideration for . . . a speech, address, oration or other oral presentation by the reporting individual." Nonetheless, the definition of honorarium excludes "the payment or provision of actual and reasonable transportation, lodging and food and beverage expenses related to the honorarium event for the reporting individual . . . and spouse."

Since the FRA retains a lobbyist before the Legislature, they are prohibited from giving an honorarium to your or any other legislator. Nevertheless, the FRA may offer and you may accept the payment or provision of your "reasonable and actual transportation, lodging and food and beverage expenses related to the honorarium event."

In this instance, as your participation in the ribbon cutting ceremony, the seafood and beef challenge were void of any oral presentations, and thus not an honorarium event, you may not receive any reimbursement related to your participation in these events. On the other hand, your services as a panelist for a discussion on outlooks for the 1996 Session would qualify as an honorarium event. *See* HCO 91-35. Thus, the FRA can offer and you may accept reasonable expenses for transportation, lodging, and meals related to your services as a panelist.

Based upon the rules adopted by the Commission on Ethics, the determination of what is reasonable with regard to an honorarium event must be determined on a case-by-case basis. Factors which are considered in determining the reasonableness of honorarium event-related expenses include the distance the reporting individual is required to travel to the event, the mode of transportation used to travel to the event, the length of the presentation, the length of the event where the reporting individual will speak, and the time of day the presentation takes place. *See* HCO 93-12. As a general rule, you may accept round-trip travel to the event by air or other means, lodging the night prior to the presentation and on the night of the day the presentation is made, and meals and beverages on the day prior to, the day of, and the day after, the presentation. *See* HCO 91-40. Accordingly, FRA may reimburse for the following expenses that are reasonably related to the oral presentation you gave on Saturday, September 30, 1995: your round-trip travel expenses, lodging for Friday, September 29, and Saturday, September 30, and meals and beverage expenses for Friday, September 29, and Saturday, September 30, and Sunday, October 1.

Please note that, pursuant to s.112.3149(5), F.S., the FRA would be required to provide you with a statement within 60 days of the honorarium event which lists 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. Moreover, s.112.3149(6), F.S., requires that you disclose the receipt of the payment of allowable expenses related to an honorarium event. The statement of the honorarium expenses must be filed by July 1 following the year in which the expenses were paid.

**HCO 95-34—December 4, 1995**

*To: The Honorable Burt L. Saunders, 76th district, Naples*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have requested an advisory opinion as to the applicability of s.112.3148, F.S. (1991), to the following factual situation:

> A law school friend has offered to share, free of charge, his house in Tallahassee with you during the months of the upcoming legislative session. Your friend works as a associate for a law firm and is not registered as a legislative lobbyist. The firm itself is not registered to lobby the Legislature; however, two of its associates are registered as lobbyists. You ask whether you may accept this offer of accommodations.

Pursuant to the definition of "gift" included in s.112.312(12)(a)2, F.S., use of real property would constitute a gift under the provisions of s.112.3148, F.S. Thus, it is clear that your use of your friend's house, without charge, during session would constitute a gift. *See* HCO 92-05.

After determining that rent-free use of your friend's house would be a gift, the next question we must answer is whether this gift would be prohibited under the Code of Ethics for Public Officers and Employees. Pursuant to the Code of Ethics, section 112.3148, F.S., a Member of the House is prohibited from receiving a gift having a value in excess of $100 from certain persons and entities referred to as the "prohibited class." The "prohibited class" includes a political committee; a committee of continuous existence; a lobbyist; or a partner, firm, employer, or principal of a lobbyist. *See* 112.3148(4), F.S. Accordingly, if your friend is considered to be a member of the "prohibited class," assuming the value of your rent-free use of the house during session is in excess of $100, you could either pay the fair market value of rent for the house minus $100, in which case, your friend would have to report the gift, or pay the entire fair market value, in which case, no one would be required to report anything because then there would be no gift involved. *See* HCO 91-15.

In determining whether your friend would qualify as a member of the "prohibited class," it is clear that your friend is not a political committee or a committee of continuous existence, as defined in s.106.011, F.S., or a partner or employer of the two associates of the law firm who are registered lobbyists. The issue which must be addressed in more detail is whether your friend would qualify as a lobbyist. Section 112.3148(2)(b) provides in relevant part that "the term 'lobbyist' includes only a person who is required to be registered or otherwise designated as a lobbyist." In particular, the term person, as used in the definition of lobbyist, is defined in subsection 112.3148(2)(c) to include "individuals, firms, associations, joint associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." With respect to the definition of lobbyist, it would appear that your friend is not a member of the prohibited class.

Finally, section 11.045, F.S., defines a "principal" of a lobbyist as the person, firm, corporation, or other entity which has employed or retained a lobbyist." In the case at hand, the law firm, not your friend, has employed or retained the two lobbyists. Accordingly, it

would appear that your friend's offer to share his house with you free of charge during he upcoming session would not constitute a gift from a member of the "prohibited class." As such, you could accept the gift, but you would be required to report it.

Alternatively, as mentioned above, you can pay fair market value for your use of the house and not have to report anything, because there would be no gift involved, since you would be giving your friend consideration for the use of his house.

**HCO 95-35—December 11, 1995**

*To: Identification withheld at Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion on the following:

> You are a lawyer and have been asked to represent a client who is being investigated by the Department of Banking and Finance. You want to represent the client before the Department in the investigation and in any resulting administrative proceedings. You ask whether you may do so.

Your question is answered in the negative.

Article II, section 8(e), Florida Constitution, provides:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 also provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Similarly, section 112.313(9)(a)3, Florida Statutes, provides in part:

> No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

These provisions contain several elements. First, the prohibition against representation is a personal one. It applies only to you and not to your partner, associates, or employees. *See* CEO 91-54. Thus, you are personally prohibited from representing this client before the Department; however, a partner or business associate could represent the client.

The next element is that "representation" is prohibited. Section 112.312, Florida Statutes, defines "represent" or "representation" as:

> . . . actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

You would be prohibited from any contact with the agency on behalf of a client. You could, however, do legal research or other activities which are not "representation" as that term is defined above.

In order to be prohibited, the representation must be before a state agency. The Department of Banking and Finance is clearly a state agency for purposes of this prohibition.

The final element is an exception for representation before judicial tribunals. Even if this matter proceeded to a hearing before the Division of Administrative Hearings, such an appearance is not within the exception for representation before judicial tribunals. *See* CEO 78-2.

Therefore, it is my opinion that your representation of a client before the Department of Banking and Finance is prohibited by Article II, section 8(e), House Rule 5.15, and section 112.313(9)(a)3, Florida Statutes.

**HCO 96-01—January 4, 1996**

*To: The Honorable O. R. "Rick" Minton, Jr., 78th District, Fort Pierce*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have asked for an opinion on the following situation:

> A proposed local bill amends Section 1 of Chapter 69-1544, Laws of Florida, 1969, to allow the Board of Supervisors of North St. Lucie River Water Control District to assess and levy a minimum maintenance tax in an amount not to exceed $25.00 per year upon each tract or parcel of land within the district. You do not personally own any land within the district, however, several of your family members are landowners within the district. You ask whether it presents a voting conflict for you to vote on this local bill.

Your question is answered in the negative.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed. Further, House Rule 5.1 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your family member's principal or employer. As you indicated to our office, although some of your family members are landowners within the borders of the water control district, you do not personally own any land within the District. Since you do not own any land within the District this bill would not result in special private gain to you. Your family members who own land would be effected by the passage of this bill. However, they would not be effected differently than any other individual who owns land within the district. Accordingly, the passage of this

legislation will not result in "special private gain" to you, your family, or the special gain of any principal by whom you or your family is retained or employed, and as a result you have nothing to disclose under House Rule 5.11.[1]

The question presented under House Rule 5.1 is whether this legislation immediately concerns your private rights. The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. (See Opinion 28, May 16, 1975). It is clear that this bill does not immediately concern your private rights and thus you are required to vote on this legislation.

**HCO 96-02—January 8, 1996**

*To: The Honorable Evelyn Lynn, 27th District, Ormond Beach*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have asked for an advisory opinion with regard to the following factual situation:

> You would like to hire someone to work on your campaign. This same employee would also like to work as a volunteer in your district office. You ask whether a conflict of interest would be created if a campaign employee were to volunteer in your district office.

Your question is answered in the negative, subject to the conditions noted below.

While there are opinions regarding the use of House staff in campaign activities, the reverse question has not been presented.

House Rule 5.6 provides in part:

> Legislative office is a trust to be performed with integrity in the public interest. A Member of the House is jealous of the confidence placed in the Member by the other Members and by the people. By personal example and by admonition to colleagues whose behavior may threaten the honor of the lawmaking body, the Member shall watchfully guard the responsibilities and duties placed on the Member by the House.

There are several issues which must be considered in evaluating this situation.

House volunteers are governed by House Policy 1.12. This policy requires that volunteers abide by House personnel policies and procedures; imposes certain restrictions regarding the use of Suncom and other state equipment; and requires approval from the

[1]It should also be noted that s.112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflicts is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s. 112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

Office of House Administrative Services for the use of a volunteer in the district office. The outside activities of a House volunteer are not restricted. Thus, the use of a volunteer in your district office who is employed by your campaign would conform with the House policies as long as you obtained approval from House Administration.

Next, you must consider whether there would be any conflict by the use of the campaign employee in your district office. Previous communications have addressed the issue of House staff involvement in campaigns and have concluded that House staff may volunteer for a Member's campaign after working hours. It has been emphasized in that context that the employee should clearly maintain a distinction between work for the House and volunteer work for the campaign. Similarly in this context, you should maintain a clear distinction between this campaign employee's work for the campaign and the volunteer work for your district office. Clear records regarding the volunteer's time for the House would help maintain this distinction.

Finally, you must consider Chapter 106, Florida Statutes which requires that all campaign expenditures be "for the purpose of influencing the results of an election." The campaign could not pay an individual to work in the district office because this expenditure would not be "for the purpose of influencing the result of an election". Thus, there cannot be any express or implied requirement from the campaign that this individual would volunteer for the House.

**HCO 96-03A—March 7, 1996**

*To: The Honorable Steven B. Feren, 98th District, Sunrise*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have asked for an advisory opinion with regard to the following factual situation:

> House Bill 557 amends s. 194.171, F.S., to provide that a property appraiser's assessment or determination is presumed correct in an administrative or judicial action in which a taxpayer challenges an assessment or denial of an exemption. The bill also defines a taxpayer's burden of proof in these proceedings. You serve as a special master for the Broward County Value Adjustment Board, which is an administrative agency that hears taxpayers' challenges to a property appraiser's assessments. You ask whether it presents a voting conflict for you to vote on this bill relating to ad valorem tax administration.

Your question is answered in the negative.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed. Further, House Rule 5.1 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your

family member's principal or employer. The test for whether there is special private gain depends upon the size of the class benefited and the speculative nature of the gain. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he or she stands to gain more than the other members of the class. The bill, at hand, lowers the burden of proof for taxpayers, thus making it easier for taxpayers to prove their cases, which in turn could increase the caseload of your principal, the Broward County Value Adjustment Board. While this is not a "gain" in the traditional sense, we have interpreted "gain" to mean "gain" or "loss." Further, ss. 112.3143, F.S., specifically includes gain or loss.

However, your principal is not treated any differently under this bill than all the other value adjustment boards in the state, which together constitutes a large class of persons. Since your principal is treated the same as all other value adjustment boards and the nature of the gain is speculative, your principal will not have a "special private gain" under this bill. Furthermore, it is clear that the passage of this legislation will not result in "special private gain" to you individually, your family, or a principal by whom your family is retained or employed. Thus, you have nothing to disclose under House Rule 5.11.[1]

The question presented under House Rule 5.1 is whether this legislation immediately concerns your private rights. The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. (See Opinion 28, May 16, 1975). It is clear that this bill does not immediately concern your private rights and thus you should vote on this legislation.

**HCO 96-04—January 10, 1996**

*To: The Honorable Muriel "Mandy" Dawson-White, 93rd District, Fort Lauderdale*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have asked for an advisory opinion with regard to the following factual situation:

> A proposed bill entitled the Florida Emergency Medical Services for Children Act establishes an emergency medical services program for children under the State Health Office of the Department of Health and Rehabilitative Services. This program is designed to promote coordination of programs and policies related to the delivery of emergency medical services to children. You serve as a consultant to both trauma and emergency medical doctors. You ask whether it presents a voting conflict for you to offer or vote on this bill relating to emergency medical services.

Your question is answered in the negative.

[1]It should also be noted that s. 112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s. 112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed. Further, House Rule 5.1 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your family member's principal or employer. The test for whether there is special private gain depends upon the size of the class benefited and the speculative nature of the gain. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he or she stands to gain more than the other members of the class. The enactment of this bill might benefit trauma and emergency room doctors who specialize in pediatric care. However, the trauma and emergency room doctors with whom you are associated are not treated any differently under this bill than any Florida trauma and emergency room doctors, which constitute a large class of person. Since your principals are treated the same as all other emergency room and trauma doctors and the nature of the gain to all the doctors is somewhat remote and speculative, your principal or employer will not have a "special private gain" under this proposed legislation. Furthermore, it is clear that the passage of this legislation will not result in "special private gain" to you individually, you family, or a principal by whom you family is retained or employed. Thus, you have nothing to disclose under House Rule 5.11.[1]

The question presented under House Rule 5.1 is whether this legislation immediately concerns your private rights. The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. (See Opinion 28, May 16, 1975). It is clear that this bill is meant to benefit children in Florida who need emergency medical services. Accordingly, the bill protects the public interest and does not immediately concern your private rights and thus, you would be required to vote on this legislation.

**HCO 96-05—January 23, 1996**

*To: The Honorable Stan Bainter, 25th District, Eustis*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion on several issues related to the operation of the Lake County Delegation, of which you are the chair.

In order to answer these questions, some background regarding the concept of the local legislative delegation is useful. Then, each one of your questions will be answered in turn.

[1]It should also be noted that s. 112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 10, 1989). Even if s. 112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

A local legislative delegation is generally considered to consist of the Members of the House and the Members of the Senate from a given geographical area. Most areas of the state have a group referred to as the local legislative delegation but some do not. The procedures of the local delegations vary. Some have staff provided by the county while others operate much more informally. Most have adopted some procedures or rules for how the group will function.

There is no constitutional rule or statutory basis for local legislative delegations. In other words, delegations do not have a basis in law, rather they are simply informal groups of legislators.

It is my understanding that the concept of local delegations has evolved over time. One factor encouraging the formation of local delegations has been the policy of the House Committee on Community Affairs regarding the scheduling of local bills. It has been the Committee's policy not to hear a local bill unless the local delegation approves the bill. The Committee defers to the delegation's rules for the determination of whether or not the local delegation approves the bill. Delegations have differing requirements to approve a local bill. Some have a majority requirement, some have extraordinary vote requirements, and so forth. If the local delegation does not approve the bill, it has been the Committee's policy not to hear the bill. This does not, however, totally prevent a Member from having a local bill heard. Like any other committee, if the chair does not agenda a Member's bill, the Member has several other options to obtain a hearing on his bill. Admittedly, it would take an extraordinary measure to accomplish this.

Some would say that this policy of the Committee is inappropriate, and previous concerns have been raised with the policy. For instance, it is clearly not appropriate for a Senator to control whether or not the House hears a bill.

Others would say that the chair of the Committee on Community Affairs is doing the Members a favor by putting the other members on notice of what it takes to have a bill heard in his committee. In addition, unless a local delegation is unified behind a measure, the consideration of the measure by the House may unnecessarily distract the body form important statewide issues.

Now turning to your specific questions.

> Is a member of the Delegation required to vote on a bill [in a delegation meeting], as is required under House Rule 5.1?

Your question is answered in the negative, as explained further below.

House Rule 5.1 provides:

> Every Member shall be within the House Chamber during its sittings unless excused or necessarily prevented, and shall vote on each question put, *except*….

This rule does not apply to a Member when acting as a Member of the local delegation. House Rule 5.1 applies to Members when voting on measures before the House. A "vote" on a bill before it is filed in the House is not included within the requirements of House Rule 5.1.

You note that the delegation has adopted the House Rules as the rules of the delegation. Therefore, it would appear that under the delegation rules, the member of the delegation would be required to vote. However, because there is no constitutional rule or statutory basis for a delegation, there is nothing other than the informal agreement of the Members through the adoption of the delegation rules which requires a member of the delegation is required to vote, but it appears there are no consequences for failure to do so.

Your second question is as follows:

> Should Delegation Rule 8 regarding voting requirements of a "majority of House and Senate members of the Delegation present" be interpreted to mean that a simple majority is all that is required of the members present in order for a bill to pass?

Delegation Rule 8 provides in part:

> . . . Voting requirements on local bills shall be by a majority of the House and Senate members of the Delegation that are present; however, a tie vote shall be considered a vote of disapproval. . . .

This rule is subject to either interpretation suggested, i.e., that a simple majority of all the members present at the delegation meeting must agree or that a majority of the members of the House and a majority of the members of the Senate must agree. As the chair of the delegation, it would generally be considered your job to decide questions of order. See House Rule 6.12 which is a delegation rule adopted by reference and Mason's Legislative Manual Section 611. As such, you could determine the application of the delegation rule subject to appeal to the entire delegation.

Your final question is:

> If a majority of the delegation votes for a bill, is the one Senator in the delegation required to file the bill.

No. The delegation rules do not require this, nor can the delegation rules impose an enforceable duty upon a Member to file a bill.

Your questions raise many issues which relate to the operation of the delegations. You may wish to share your concerns with the Committee on Community Affairs as they are undertaking an interim project on the local bill process.

**HCO 96-06—January 30, 1996**

*To: The Honorable F. Allen Boyd, Jr., 10th District, Monticello*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion as to the following situation:

> The village of Cedar Key, a community located within your district, sponsors an annual arts and fine crafts festival. You wish to invite all the Members of the House of Representatives to attend the festival. You ask whether you may extend this invitation to fellow Members on letterhead imprinted with the House Seal.

Your question is answered in the affirmative.

House Rule 16.2 provides:

> Unless a written exception is otherwise granted by the Speaker:

> (a) Material carrying the official seal shall be used only by a Member, officer, or employee of the House of Representatives or other persons employed or retained by the House.
>
> (b) The use, printing, publication, or manufacture of the seal, or items or materials bearing the seal or a facsimile of the seal, shall be limited to official business of the House or legislative business and matters properly within the scope of the responsibilities of the Member, officer, or employee of the House.

Pursuant to Rule 16.2, correspondence containing the House seal must satisfy a two prong test in order to constitute a proper use of the seal. First, the correspondence carrying the seal must be used by the Member or an employee of the House of Representatives. In other words, material containing the House seal cannot be disseminated by the general public. The invitation to the arts festival containing the House seal would only be used by you or your staff, thus, the first prong of the test for proper use of the seal would be satisfied.

The second prong of the test for proper use of the House seal requires that the subject matter of the correspondence be either official business of the House or legislative business, and matters properly within the scope of the responsibilities of the Member. The purpose of your sending the Cedar Key Arts Festival invitation to your fellow Members is to promote the economic development of a community within your district. The promotion of a community located within your district would certainly fit within the scope of your responsibilities as a Member. Moreover, internal correspondence from Members to Members falls within the scope of your responsibilities as a Member. Since your invitation is intended to promote economic development and is an internal correspondence between Members it would satisfy the second prong of the test for proper use of the seal.

Accordingly, you may use the House seal on invitations to other Members to attend the Cedar Key Art Festival.

**HCO 96-07—February 6, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion as to the following situation:

> You are planning a campaign fundraiser after session. You ask whether you may mail invitations for the fundraiser during the session.

Your question is answered in the negative.

House Rule 5.8(2) provides:

> A Member of the House shall neither solicit nor accept any campaign contribution during the sixty-day regular legislative session on the Member's own behalf or on the behalf of a political party or on behalf of a candidate for the House of Representatives; however, a Member may contribute to the Member's own campaign.

This rule prohibits the solicitation of any campaign contributions during the regular legislative session by a Member or anyone under his or her direction or control. Webster's dictionary defines "solicit" as to approach with a request or plea. The mailing of invitations to a campaign fundraiser would fall within the definition of solicit. Accordingly, neither you nor anyone under your direction or control may mail invitations to a campaign fundraiser anytime during the 60 days of legislative session.

Nevertheless, you may plan for the fundraiser during session by doing such things as reserving a room, ordering food, and having invitations printed. However, you may not ask others for contributions or assistance in preparation for the fundraiser.

**HCO 96-08—February 6, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion regarding the following situation:

> An organization is forming a political committee. You have been asked to serve as the chair of the political committee. You ask whether you may do so.

Your question is answered in the affirmative.

Nothing in the House Rules directly prohibits a Member from serving as a chairperson of a political committee. Members, like all citizens, are permitted to express their opinions on all political subjects and candidates. See AGO 84-17. Furthermore, nothing in chapter 106, which defines political committees, prohibits Members from forming or serving on political committees.

Nevertheless, you must maintain the distinction between your activities for the House of Representatives and your activities for the political committee. For example, you may not use House letterhead or state equipment such as telephones, facsimile machines, and computers for activities of the political committee. (See Memorandum dated 9/1/95 to all Members regarding campaign activities for further guidance on how to keep political activities separate from your duties as a House Member.)

Accordingly, you may serve as the chair of a political committee provided you maintain clear distinctions between your duties as a Member of the House and those as chair of the political committee.

**HCO 96-09—February 8, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17 several of you have asked about the following situation:

In May of 1995 you were all given one or two tickets to a sporting event from a county commissioner in a county which employs a lobbyist. The ticket had a face value of $0 and it was represented to you that they are obtained at no cost to the county.

In July of 1995, you were advised by the county that the tickets had an indeterminate value and that you should consult your counsel regarding the tickets. At that time, this office advised you not to take any further action because the county had requested an opinion from the Commission on Ethics.

The Commission on Ethics recently determined that the value of the gift from the county was $105. In addition, the Commission found that it was not a prohibited gift because under these facts it could not have been a "knowing" acceptance of a prohibited gift. While not asked this question, the Commission also suggested that the gift should be disclosed on form 9.

Member One

You received two tickets and have not paid back the cost of the tickets. You ask what you should do.

You may:

Reimburse the county for $110 in which case you would not have anything to report but the county would need to report a $100 gift.

Reimburse the county $210 and do not file any report.

Member Two

You received two tickets for a similar sporting event valued at $100 each. You have since reimbursed the county $200 for the two tickets. You ask whether you need to take any further action.

Your question is answered in the negative.

Member Three

You arranged for a friend to receive the two tickets. You have since reimbursed the county $210 for the two tickets. You ask whether you need to take any further action.

Your question is answered in the negative.

Member Four

> You received two tickets. You have since reimbursed the county $210 for the tickets. You ask whether you need to take any further action.
>
> Your question is answered in the negative.

Although the Commission on Ethics opinion only addressed the facts of one member, the facts regarding receipt of the tickets are similar for each of you. It cannot be said that you "knowingly" accepted a prohibited gift.

The Commission on Ethics opinion *in dicta* suggested that since the gift was received in a different quarter than when the reimbursement occurred that the gift should still be disclosed. I believe the Commission, in suggesting that a disclosure form should be filed, was concerned that a member could accept a gift, not report it and only pay it back upon later discovery.

The facts here are very different. You relied upon advice from this office not to take any further action at that time. Further, a county official represented to you that the gift had an indeterminate value and that you could accept it. It was not until the Commission's recent opinion that the value of the tickets were determined. Therefore, it is my opinion that if you have reimbursed the county or reimburse the county within this month, you are not required to file a disclosure form.

**HCO 96-10—February 20, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have asked for an opinion on the following situation:

> House Bill 605 is a bill relating to the aquaculture industry. It arose as a result of an interim project from the House Committee on Agriculture. It is designed to encourage the growth of the aquaculture industry in Florida. The bill reduces the regulation of this industry, partly in an effort to help fishermen displaced by the net ban. You own an aquaculture business. You ask whether it presents a voting conflict for you to vote on this bill.
>
> Your question is answered in the negative.

The general rule is that you are protected from conflict of interest charges for offering or voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private, or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed. Further, House Rule 5.1 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your family member's principal or employer. The term "special private gain" is measured in part by the size of the class benefited. Here, this bill affects the aquaculture business generally, a

business with over 900 aquaculture producers. The entire class of persons involved in the aquaculture business is benefited. You are not affected differently than any other similarly situated individual. Accordingly, the passage of this legislation will not result in "special private gain" to you, your family, or the special gain of any principal by whom you or your family is retained or employed, and as a result you have nothing to disclose under House Rule 5.11.[1]

The question presented under House Rule 5.1 is whether this legislation immediately concerns your private rights. The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. (See Opinion 28, May 16, 1975). It is clear that this bill does not immediately concern your private rights and thus you would be required to vote on this legislation.

**HCO 96-11—March 7, 1996**

*To: The Honorable Tracy Stafford, 92nd District, Wilton Manors*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion with regard to the following factual situation:

> House Bill 557 amends s. 194.171, F.S., to provide that a property appraiser's assessment or determination is presumed correct in an administrative or judicial action in which a taxpayer challenges an assessment or denial of an exemption. The bill also defines a taxpayer's burden of proof in these proceedings. You serve as an administrative assistant to the Broward County Property Appraiser, which requires you to represent the Property Appraiser before the Broward County Value Adjustment Board, an administrative agency that hears taxpayers' challenges to a property appraiser's assessments. You ask whether it presents a voting conflict for you to vote on this bill relating to ad valorem tax administration.

Your question is answered in the negative.

The general rule is that you are protected from conflict of interest charges for voting on legislation unless you, your family member, your principal or employer, or your family member's principal or employer stands to gain a special or unique advantage from passage of a bill. House Rule 5.11 requires a Member to disclose when the Member knows or believes the Member or the Member's family has a personal, private, or professional interest which inures to the special private gain of the Member or the Member's family. This Rule also requires disclosure when legislation will result in special gain to any principal by whom the Member or the Member's family is retained or employed. Further, House Rule 5.1 requires all Members to vote unless the question immediately concerns the private rights of the Member as distinct from the public interest.

[1]It should also be noted that s.112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s. 112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

The question presented under House Rule 5.11 is whether the passage of this bill would result in special private gain to you, your family member, your principal or employer, or your family member's principal or employer. The test for whether there is special private gain depends upon the size of the class benefited and the speculative nature of the gain. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he or she stands to gain more than the other members of the class. The bill at hand lowers the burden of proof for taxpayers, thus, making it easier for taxpayers to prove their cases and more difficult for property appraisers to defend their assessments. While this is not a "gain" in the traditional sense, we have interpreted "gain" to mean "gain" or "loss." Further, s.112.3143, F.S., specifically includes gain or loss.

However, your principal is not treated any differently under this bill than all the other property appraisers in Florida, which together constitute a large class of persons. Since your principal is treated the same as all other property appraisers your principal will not have a "special private gain" under this bill. Furthermore, it is clear that the passage of this legislation will not result in "special private gain" to you individually, your family, or a principal by whom your family is retained or employed. Thus, you have nothing to disclose under House Rule 5.11.[1]

The question presented under House Rule 5.1 is whether this legislation immediately concerns your private rights. The intent of this rule is to prohibit a vote on a matter where a private right or interest can be clearly distinguished from the larger public interest. (See Opinion 28, May 16, 1975). It is clear that this bill does not immediately concern your private rights and thus you should vote on this legislation.

**HCO 96-12—March 11, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Under House Rule 5.17, you have asked for an advisory opinion on the following factual situation:

> You share ownership of property with some family members. You and your family members want to obtain various permits for uses of the property and submerged land leases for land adjacent to the property. As part of the permitting process you would be required to represent your interests before the Governor and Cabinet and the Department of Environmental Protection. You ask whether you may do so.

Your question is answered in the affirmative.

Article II, section 8(e), Florida Constitution provides:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

[1]It should also be noted that s. 112.3143, F.S., addresses the issue of voting conflicts. The House of Representatives has taken the position that a Member's conduct regarding voting conflict is governed solely by the House Rules. See Interpretation 46 (May 30, 1989). Even if s. 112.3143, F.S., applies, the facts in your question lead to the same result under the statutory standard.

House Rule 5.15 also provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Similarly, section 112.313(9)(a)3, Florida Statutes, provides in part:

> No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

In order to be prohibited under these provisions, the representation before the state agency must be for compensation. *See* CEO 84-114 & CEO 80-41. You indicated to our office that you will not be receiving any compensation for seeking the permits or submerged land leases. Accordingly, you may personally represent your interests before the Governor and Cabinet and the Department of Environmental Protection.

**HCO 96-13—March 15, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion regarding the following factual situation:

> You were given a personalized flag by a registered lobbyist. The flag contains a small replica of the State of Florida flag in the upper corner. The majority of the flag consists of your name and district number sewn onto the material. You have asked whether you may accept this item, since it was given to you by a lobbyist and has a value in excess of $100.

Your question is answered in the affirmative.

The critical inquiry is determining whether the personalized flag constitutes a gift, as that term is defined in section 112.312(12), Florida Statutes.

Paragraph (b) of the definition provides exclusions from the definition of gift.

> Gift does not include: . . . 4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.

The determination of whether the receipt of tangible personal property meets the statutory definition of a gift is conducted on a case-by-case basis. The simple fact that tangible personal property is engraved does not mean the property meets this exclusion from the definition of gift. For example, a lobbyist could not circumvent the gift laws by giving a Member a set of golf clubs engraved with the Member's name and district number. The nature and character of the tangible property must be such that it could be identified as either an award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service in order to meet this exclusion.

The flag in question meets this test. It is a similar personalized item. Instead of engraving your name and district number on a wooden plaque, it is sewn on a cloth flag. The flag primarily consists of your name and district number and would not have any attributable value to anyone else. Therefore, the personalized flag which was given to you meets the exclusion from the definition of a gift in s.112.312(12)(b)4, F.S. and you may accept it.

**HCO 96-14—April 2, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion regarding the following situation:

> You and several other Members are interested in organizing for the purpose of increasing awareness and educating the public regarding public policy issues of concern to you. One way which you propose to educate the public is to buy advertising in newspapers and on television about issues before the Legislature. You would like this organization to hire staff who would work for the Members as a supplement to the staff provided by the House. You ask whether you and the other Members can solicit contributions for this organization without violating s.112.3148, F.S., and House Rule 5.8.

Your question is answered in the affirmative <u>if</u> you form a charitable organization which meets the requirements for an s. 501(c)(3) corporation.

Pursuant to s.112.3148(3), F.S., a Member is prohibited from <u>soliciting</u> any gift, food, or beverage from a political committee, a committee of continuous existence, a lobbyist who lobbies the Legislature or the partner, firm, employer, or principal of such lobbyist, [referred to as the prohibited class] where the gift, food, or beverage is for the personal benefit of the Member or certain other persons. A Member is not prohibited from soliciting a gift if it is for the benefit of a charitable organization, even if such solicitation is from the prohibited class. *See* s.112.3148(3), F.S., and HCO 90-03. A charitable organization means an s. 501(c)(3) organization under the Internal Revenue Code. s. 34-13.320 F.A.C.

Section 112.3148(4), F.S. also prohibits a Member, or another person on the Member's behalf, from knowingly <u>accepting</u> either directly or indirectly, a gift from the prohibited class if the gift is valued over $100. Members may accept such a gift, however, if it is made on behalf of a charitable organization. *See* s.112.3148(4), F.S. If a gift is accepted on behalf of a charitable organization, it must be transferred to that organization as soon as reasonably possible. <u>Id</u>

Therefore, assuming your organization can meet the requirements for a charitable organization as defined by s. 501(c)(3) of the Internal Revenue Code, you can solicit or accept contributions from the prohibited class pursuant to s.112.3148, F.S.[1] It should be noted that at least one other group of Members has successfully formed such an organization and it has previously been determined that Members may solicit or accept money on behalf of that organization. *See* HCO 90-03.

[1]It is beyond the scope of this opinion to formally advise you of the requirements to form an s. 501(c)(3) corporation.

Section 112.3148(4), F.S. prohibits "any other person" from accepting gifts on behalf of a Member. The term "persons" includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. *See* s.112.3148(2)(c), F.S. If you formed a partnership or other type of association, the partnership or association could not accept gifts on your behalf.

You may solicit and accept money from persons other than those in the prohibited class. *See* HCO 95-30. However, please note that gifts received by a Member, except gifts from relatives, those for an s. 501(c)(3) corporation, and certain others, which are valued over $100 must be reported on Form 9 to the Secretary of State. This statement is required to include: a description of the gift, the value of the gift, the name and address of the person giving the gift, and the date of the gift. The report is due at the end of a calendar quarter for the previous calendar quarter.

It should also be noted that you may not accept anything of value when it is given with the intent to influence a vote or other official action. *See* s.112.313(4), F.S., and House Rule 5.8(1). You should not accept money from persons who intend to influence your vote or other official action by providing the funds.

The next question to be addressed is whether you can solicit contributions for your organization without violating House Rule 5.8.

Rule 5.8 provides:

> (2) A Member of the House shall neither solicit nor accept any campaign contribution during the sixty-day regular legislative session on the Member's own behalf or on behalf of a political party or on behalf of a candidate for the House of Representatives; however, a Member may contribute to the Member's own campaign.

This rule addresses campaign contributions. It does not prohibit you from soliciting contributions for charitable organizations during session.

I would also point out the following incidental provisions of law. If one of the purposes of the organization is to support or oppose any candidate, issue, or political party, and the organization accepts contributions or makes expenditures in excess of $500, you would be required to register as a political committee pursuant to s.106.011, F.S. An issue is defined in s.106.011(7), F.S., to include "any proposition which is required . . . to be submitted to the electors for their approval or rejection at an election. . . ." Thus, if your organization is providing public information on a proposed constitutional amendment, your organization would be required pursuant to this section to register as a political committee.

Note that if you plan on soliciting contributions through testimonials, as defined in s.111.012, F.S., you must give notice of the testimonial, establish a testimonial account, and appoint a treasurer to oversee the account, prior to accepting contributions from such an event.

Pursuant to s.106.1437, F.S., if the organization runs advertisements for the purpose of influencing public policy or the vote of a public official, it must disclose as part of the advertisement that the organization paid for the advertisement.

Finally, if the organization employs a lobbyist as that term is defined in s.11.045, F.S., the lobbyist must register pursuant to that section.

**HCO 96-15—June 7, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have asked for an opinion on the following question:

> You are considering becoming a partner, an associate, or possibly "of counsel" in a law firm in your area. You ask what ethical factors you should consider if you become a partner, associate, or "of counsel" in a law firm and what disclosures may be required.

In addition to the general provisions in House Rule 5 and the Code of Ethics, there are several issues which are important for you to consider. For purposes of this memo, the use of the term "partner" includes a shareholder or any other arrangement which includes an ownership interest in the firm; the term "associate" means an employee of the firm; and any "of counsel" arrangement complies with the requirements of the American Bar Association and means generally a "close, regular, personal relationship." *See* CEO 96-1.

Relation to lobbyists

First, if you are going to be a partner or associate in a law firm, none of the other attorneys in the law firm may lobby the Legislature. *See* Opinion 27, January 30, 1974. This opinion arguably does not address an "of counsel" arrangement; however, the rationale of that opinion applies to an "of counsel" arrangement. The committee found:

> It was the unanimous decision of this Committee that such an arrangement is in conflict with the best interests of the Legislature and the constituents you serve.

Further, the Florida Bar in Opinion 67-5 found that it constituted a prohibited conflict of interest under the Bar rules for a Member of the Legislature to be an associate or partner in a firm where attorneys in the firm lobby the Legislture. Again, this opinion did not address an "of counsel" arrangement.

There are no such restrictions on the ability of others in your firm lobbying the executive branch.

Prohibited Representation/Disclosure of certain other Representation

Second, the type of legal services which you can provide are limited and certain services provided by other attorneys in the firm must be disclosed.

Article II, s. 8(e), Florida Constitution, provides:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

House Rule 5.15 also provides:

> No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Similarly, s. 112.313(9)(a)3, F.S., provides in part:

> No Member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

Thus, you may not personally represent another for compensation before a state agency. (This is true even if you are not a partner, associate,mor "of counsel" in a law firm.)

The first key phrase to consider is that "no Member of the legislature shall personally represent. . . ." This prohibition is a personal prohibition. It applies only to the Member of the House and not to the Member's partners, associates, or employees. *See* CEO 91-54. Thus, while a Member is prohibited from representing another before a state agency for compensation, the Member's partner or associate is not prohibited from doing so.

The next element is that "representation" is prohibited. Section 112.312, F.S., defines "represent" or "representation" as:

> actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

The purpose of prohibiting representation by a Member of the House is to avoid undue influence or the appearance of undue influence.

An exception to the prohibited representation is a "ministerial" exception carved out by the Commission on Ethics. The Commission has determined that filings under the UCC are a routine ministerial function and the appearance of improper influence is not present, thus, the Commission found they did not constitute prohibited representation. *See* CEO 82-83.

The next key phrase is for compensation. This constitutional prohibition does not prevent you from assisting constituents or other persons before state agencies if you do it without charge.

The next key phrase is before any state agency. Each entity in question would need to be examined to determine if it meets the definition of a state agency. For instance, water management districts are local agencies and thus a Member can represent a client before a water management district. *See* CEO 91-54. Appearance before the county commission is not representation before a state agency and thus a Member can represent a client in a rezoning matter before a county commission. *See* CEO 77-22. Appearance before the JUA does not constitute prohibited representation because the JUA is not a state agency. *See* CEO 93-24. However, the Orange County Expressway Authority was found to be a state agency. *See* 16 FALR 1499(1994).

The final key phrase is other than judicial tribunals. This exception allows an attorney legislator to represent a client and to sue a state agency before a judicial tribunal. *See* CEO 84-6. This does not, however, allow the attorney to represent a client before a state agency in any actions leading up to the filing of a lawsuit. For example, an environmental act required notice to the state agency prior to instituting an action in circuit court. When an attorney legislator files this notice, it is prohibited representation because under that environmental act the agency had discretion on how to proceed once the notification was provided. *See* CEO 77-168. After filing a lawsuit, a Member may provide representation in settlement negotiations. *See* s. 112.319(9)(a)3, F.S.

Judicial tribunals clearly include state and federal courts. Judges of Compensation Claims also have been determined to be judicial tribunals, thus allowing the Member to represent a client before them. *Scholastic Systems, Inc. v. LeLoup*, 307 So. 2d 166 (Fla. 1978).

On the other hand, representation before the Division of Administrative Hearings is not representation before a judicial tribunal and thus is prohibited. *See* CEO 78-2. Similarly, representation before the Public Service Commission is prohibited. *See Myers v. Hawkins*, 362 So. 2d 926 (Fla. 1978).

If attorneys at the law firm at which you are an associate or partner provide representation of a client before a state agency, you are required to file a disclosure form. Section 112.3145(4), F.S., provides:

> Representation before any agency shall be deemed to include representation by such officer or specified state employee or by any partner or associate or the professional firm of which he or she is a member and of which he or she has actual knowledge.

While the statute uses the word "member," and might imply that this provision only applies if you are a partner in the firm, the Commission on Ethics has determined that it includes both partners and associates of the firm. CEO 74-55. Form 2 must be filed with the Department of State within 15 days after the end of the calendar quarter in which the representation occurred. If you are "of counsel" to the firm, disclosure is not required. *See* CEO 74-55.

Voting issues

The third issue to consider is disclosure of voting conflicts. Under House Rule 5.11 a Member is required, among other things, to file a disclosure prior to taking action on legislation which will result in a "special private gain" to a principal by whom the Member is retained or employed. If the Member is a partner in a law firm, the Member's principals are all the clients of the law firm. *See* CEO 94-05. If the Member is "of counsel" to a firm, the principal should be considered the law firm. *See* CEO 96-1. If the Member is an associate in the firm, the Member's principal and employer is the law firm. While several Commission on Ethics opinions cite to the proposition that "an attorney has a contractual relationship with each client of his or her law firm, whether or not he or she personally was involved in the client's representation," see for instance CEO 94-5, these opinions involve situations where the attorney is a partner in the firm or otherwise has an ownership interest in the firm. Further, the cases from the Third District Court of Appeal which the Commission uses as the basis for those opinions, *Frates v. Nichols*, 167 So. 2d 77, 81 (Fla. 3d DCA 1964); *Kreutzer v. Wallace*, 342 So. 2d 981, 982 (Fla. 3d DCA 1980); and *Welsh v. Carroll*, 378 So. 2d 1255, 1257 (Fla. 3d DCA 1980); all involved situations where the attorney is a partner or otherwise has an ownership interest in the firm. Also, for purposes of voting disclosure, the House has taken the position that a Member's conduct regarding a voting conflict is governed solely by the House Rules. *See* Interpretation 46 (May 30, 1989).

Thus, if you are a partner in a firm, as opposed to an associate or "of counsel" to a firm, the range of possible disclosures is greater. If you are a partner in a firm, you should be familiar with the clients of the firm in order to properly comply with this disclosure requirement.

State agencies

If your firm wants to do business with the Legislature or a state agency, the following should be considered.

Generally, the firm may not do business with the Legislature. Section 112.313(3), F.S., prohibits the Member or the Member's firm from doing business with the Legislature unless one of the exemptions in s. 112.313(12) applies. These exemptions would allow the firm to do business with the Legislature for instance under a rotation system, in response to a sealed bid, in emergencies, or under a sole source contract. Several of these exemptions require disclosure forms to be filed. These exemptions, although permitting your firm to do

business, nevertheless still do not allow you to represent your firm before the Legislature because Article II, s. 8(e), Florida Constitution prohibits you from personally representing another before any state agency.

Generally, your firm may do business with other state agencies because s. 112.313(3), F.S., only prohibits doing business with one's own agency. Your agency is the Legislature, not any other state agency. However, pursuant to Article II, s. 8(e), Florida Constitution, you may not personally represent your firm before any state agency. Thus, you cannot contact a state agency seeking business on behalf of your firm. Others in your firm may contact a state agency and seek business. If your firm does business with a state agency, no disclosure is required. Further, your firm's doing business with other state agencies does not impede the full and faithful discharge of your public duties required under s. 112.313(7), F.S. *See* CEO 86-27.

Claim bills

If you are a partner in a law firm, it is a conflict of interest for you, your partner, or your firm to receive a fee from a claim bill. Opinion 9 (May 2, 1969). Similarly, if you are a partner, it is a conflict for your partner to arrange for a claim bill to be introduced because it necessarily involves lobbying. Opinion 16 (February 4, 1971). On the other hand, if you are an employee, it is not a conflict for the firm to receive a fee from a claim bill as long as the firm does not engage in lobbying the claim bill. HCO 95-31.

Although I have attempted to be comprehensive in my generic response, other ethical considerations may arise under any given specific set of facts.

**HCO 96-16—June 12, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion with regard to the following factual situation:

> Glen Mills School has offered to pay for travel and lodging expenses for you to attend the school's graduation ceremony in Pennsylvania. The school has a registered lobbyist and the value of the trip is in excess of $100. You have asked whether you may accept these expenses.

Your question is answered in the negative.

Generally, travel and lodging expenses are considered a "gift" subject to the provisions of s. 112.3148, F.S., except where such expenses are paid in conjunction with an honorarium event. Assuming that you were not invited to give a speech at the graduation ceremony, the expenses would constitute a gift. Since Glen Mills employs a legislative lobbyist, they are prohibited, absent a specific exemption, from providing any gift with a value in excess of $100 to you and you are prohibited from accepting such a gift.

Accordingly, you may not accept the travel and lodging expenses with a value in excess of $100 from Glen Mills.

**HCO 96-17—June 25, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have asked for an opinion on the following question:

> A Florida association publishes a monthly magazine for 12 months of the year. The magazine is free to the members of the association. It costs $200 per year to be a member of the association. A person who is not a member of the association may obtain the magazine but must pay $200 per year to receive all the magazines. The association employs a lobbyist. Because you are a Member of the House, the association sends you their monthly magazine at no cost to you. You ask whether this is a gift; if it is a gift, whether you may accept it; and if you may accept it, whether anyone must report the gift.

Your question is answered as follows: the magazine is a gift, you may accept it, and it is not required to be reported as a gift.

A gift is defined in section 112.312, Florida Statutes, as:

> (12)(a)"Gift" for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given, including:
>
> . . . . .
>
> 3. Tangible or intangible personal property.
>
> . . . . .

A magazine is tangible personal property and thus meets this definition of a gift. None of the exemptions from the definition of a gift in section 112.312(12)(b), Florida Statutes, apply. Thus, the magazine is a gift to you.

If the value of a gift from an association with a lobbyist, (a principal) exceeds $100, you are prohibited from accepting it. Section 112.3148(4), Florida Statutes. The value of the gift should be determined on a per occurrence basis. See section 112.3148(7)(i), Florida Statutes. Per occurrence means each separate occasion in which a donor gives a gift to a donee. See 34-13.500(6), Florida Administrative Code. In this case, each time you receive a magazine you receive a gift. Thus, the value of the gift is the value of each magazine which is $16.67 ($200÷12). Because the value of the gift from a principal is less than $100, you may accept the gift.

If the gift had a value between $25 and $100, the association, as the principal of a lobbyist, would be required to report the gift. Section 112.3148(5)(b), Florida Statutes. Under the Code of Ethics, part III Chapter 112, Florida Statutes, a gift with a value of less than $25 is not required to be reported by you or by the association.[1]

[1]No opinion is offered whether the association would be required to report the value of the publication as lobbyist expenditure pursuant to s. 11.045, Florida Statutes.

**HCO 96-18—August 8, 1996**

*To: Identification withheld at the Member's request*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion regarding the following situation:

> You are a lawyer and have previously represented a client on several private legal matters. Since your election, the client has come to your legislative office. You have provided constituent services to him and his company and you have discussed legislative matters with him. There was no quid pro quo for these constituent services. Now the client has returned to your law office seeking additional private legal services. The legal services are unrelated to any constituent services matter and do not involve representation before a state agency. Your law office and your legislative office are located adjacent to each other but have separate entrances and signs. You ask whether you are permitted to provide additional legal services to him.

Your question is answered in the affirmative.

House Rules 5.10 and 5.12 should be considered. Rule 5.10 provides:

> 5.10 Conflict of Interest
> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

Providing legal services to a client who is also a constituent is not in substantial conflict with your duties as a Member of the House.

Rule 5.12 provides:

> 5.12 Use of Official Position
> A Member shall not engage in any activity for personal gain which would be an abuse of the Member's official position as a Member or a violation of the trust or authority placed in the Member either by the public or by other Members.

Providing legal services to a client who is also a constituent is not an abuse of your official position as a Member of the House. The location of your legislative office and your law office ext door to each other does not lead to an abuse of your position as a Member of the House. As long as the offices have separate entrances and separate signs identifying the legislative office and the law office, and you provide legal services from your law office and legislative services from your legislative office, you would not abuse your position as a Member of the House if you provide both legal services and constituent services to one individual.

It should also be noted that your ability to provide legal services is limited by Article II, section 8(e), Florida Constitution, which restricts your ability to provide representation before a state agency. Here the legal services do not involve representation before a state agency, thus you would not violate this provision.

The Code of Ethics, Part III, Chapter 112, Florida Statutes, should also be considered. In CEO 92-4, the Commission on Ethics addressed a similar question. In that case constituents would visit a Senator who was also a lawyer. The constituents often had legal

problems rather than legislative issues. The Commission determined that the Code of Ethics did not prohibit the Senator from providing legal services to clients who initially contacted him in his capacity as a Senator.

The Commission opinion addresses two sections of the Code of Ethics. Section 112.313(7), Florida Statutes, prohibits employment or contractual relationships that will create a continuing or frequently recurring conflict between private interests and the performance of public duties. The Commission found that under these circumstances, employment as a attorney does not pose a continuing or frequently recurring conflict with the responsibilities of a Senator.

Another section of the Code of Ethics considered by the Commission in this opinion was section 112.313(6), Florida Statutes. This section prohibits a public officer from corruptly using or attempting to use his official position to secure a special privilege, benefit, or exemption for himself or others. The Commission found that it was conceivable that the Senator could run afoul of this provision if he used his position as a Senator to solicit and obtain clients for his law practice and if somehow he acted with a wrongful intent and in a manner which was inconsistent with the proper performance of his public duties. However, the Commission found that under these circumstances, there was no evidence of wrongful intent or anything inconsistent with the proper performance of his public duties.

Similarly here, your employment as an attorney does not pose a continuing or frequently recurring conflict with your responsibilities as a Member of the House, nor is there any evidence that you are acting with a wrongful intent or in a manner inconsistent with the proper performance of your public duties.

This Commission on Ethics opinion also suggests consulting with the Florida Bar to determine whether any rules regulating the Florida Bar apply. I did so and was advised that Rule 4-1.11(a) should be considered. It provides that a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee. Since the constituent services and the legal services are on a unrelated matter, this rule does not restrict your actions here.

**HCO 96-19—September 4, 1996**

*To: The Honorable Luis C. Morse, 113th District, Miami*

*Prepared by: B. Elaine New, House General Counsel*

Pursuant to House Rule 5.17, you have asked for an advisory opinion on the following question:

> You have been invited by the government of Costa Rica to visit that country. You will visit with the First Lady of Costa Rica and will attend a performance of the New World Symphony. The government of Costa Rica will pay for your travel and lodging expenses. The government of Costa Rica does not employ a lobbyist before the Florida Legislature. You ask whether you may accept the invitation.

Your question is answered in the affirmative.

A gift is defined in section 112.312(12), Florida Statutes. It includes “that which is accepted by a donee . . . for which equal or greater consideration is not given.” Section 112.312(12)(a)7, Florida Statutes, specifically includes transportation, lodging, and parking within the definition of a gift. Receipt of the transportation and lodging expenses will

constitute a "gift" to you. See also HCO 91-04 and HCO 93-11 which reached the same conclusion.

You may accept this gift from the government of Costa Rica since they do not have a lobbyist before the Florida Legislature. See section 112.3148, Florida Statutes. However, you must report the value of the expenses paid for by that government. See section 112.3148(8), Florida Statutes. The report (form 9) is to be filed with the Secretary of State by the last day of the calendar quarter for gifts received during the previous calendar quarter.

**HCO 96-20—October 2, 1996**

*To: The Honorable James B. Fuller, 16th District, Jacksonville*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion regarding the following situation:

> You serve as a member of the Board of Directors for Prevent Blindness Florida, a charitable organization. You ask whether it presents a conflict for you or Prevent Blindness Florida to use your title as State Representative to solicit contributions for Prevent Blindness Florida on its letterhead, stationery, or other materials related to its functioning.

Your question is answered in the negative.

House Rule 5.12 provides:

> A Member shall not engage in any activity for personal gain which would be an abuse of the Member's official position as a Member. . . .

Soliciting contributions for Prevent Blindness Florida is not for your personal gain. It does not constitute an abuse of your official position to use your title as State Representative to solicit contributions for charitable purposes. *See* House General Counsel Opinion 95-16 and House Interpretation 33 (September 19, 1978).

Moreover, there is nothing in the Code of Ethics provisions relating to soliciting and receiving gifts which would prohibit you from soliciting contributions for charitable purposes. *See* House General Counsel Opinions 90-03 and 91-11.

Please note that you should not use the House Seal for soliciting contributions. The use of the House Seal is limited to "official business of the House or official legislative business and matters properly within the scope of responsibilities of the Member. . . ." *See* House Rule 16.2. Soliciting contributions for charitable purposes is not "official business of the House" and is not within your responsibilities as a Member.

Accordingly, you or Prevent Blindness Florida may use your title as State Representative to solicit contributions for Prevent Blindness Florida on its letterhead, stationery, or other materials related to the functioning of the organization.

**HCO 96-21—October 4, 1996**

*To: The Honorable Vernon Peeples, 72nd District, Punta Gorda*

*Prepared by: B. Elaine New, House General Counsel*
*Luis A. Cabassa, Assistant General Counsel*

Pursuant to House Rule 5.17, you have requested an advisory opinion regarding the following situation:

> You are currently employed as a consultant by the University of South Florida Foundation. In that capacity, you are responsible for coordinating fundraising activities and locating historical materials for the library's special collection. You are compensated on a fixed basis, which is not conditioned upon nor contingent upon how much money you raise for the Foundation. You do not personally represent the Foundation before any State agency nor do you lobby the Legislature on behalf of the Foundation. You ask whether your employment with the Foundation creates a prohibited conflict of interest.

Your question is answered in the negative.

Section 112.313(7)(a), Florida Statutes, provides in relevant part:

> No public officer . . . 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 is an officer . . . nor shall an officer . . . have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This section prohibits employment in three situations: employment in regulated entities, employment which would create a frequently recurring conflict, and employment which would impede the full and faithful discharge of public duties.

As to employment in a regulated entity, s.112.313(7)(a)2., F.S., contains the following exemption from this provision for members of legislative bodies:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

The circumstances you describe would come within this exemption since the only regulatory authority of the Legislature over the Foundation is through the enactment of laws.

With respect to the prohibition on employment which would create a frequently recurring conflict and the prohibition against employment which would impede the full and faithful discharge of public duties, contained in s.112.313(7)(a), F.S., the Commission on Ethics has interpreted both of these prohibitions as applied to State legislators. In an analogous case,

the Commission ruled that a State Representative could be employed by a community college to coordinate fundraising activities of the college's foundation without creating a prohibited conflict of interest. *See* CEO 95-25.

In addition, the Commission has found that the Speaker of the House could serve as a chief administrative officer of a community college (CEO 89-60), that a legislator could be employed as an administrator of a State university or community college (CEO 79-59), that a State Representative could be employed by a State university (CEO 81-14), and that a State legislator could be employed as an executive director of a nonprofit corporation receiving state funds without creating a prohibited conflict of interest (CEO 85-86).

In accordance with the rationale of the above cited Commission on Ethics' opinions, your employment with the Foundation would not create a frequently recurring conflict or impede the full and faithful discharge of your public duties.

The provisions of House Rules 5.9 and 5.10 regarding employment and conflict of interest are also applicable. These Rules provide:

> 5.9—Conflicting Employment
>
> A Member of the House shall not allow personal employment to impair the Member's independence of judgment in the exercise of official duties.
>
> 5.10—Conflict of Interest
>
> A Member of the House shall not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the Member or another when such activity is in substantial conflict with the duties of a Member of the House.

In HCO 95-24, this office found that a House Member would not have a conflict of interest were she to accept a position with a private university as a Public Policy Curriculum Specialist, because the position would not impair the Member's independence of judgment in performing her duties or be in substantial conflict with her duties as a Member of the House. Likewise, there is no indication that your job responsibilities with the Foundation would impair your independence of judgment in performing your duties. Nor is this activity in substantial conflict with your duties as a Member of the House.

Accordingly, under both the Code of Ethics and House Rules there is no prohibited conflict of interest with your current employment as a consultant to the University of South Florida Foundation.

**HCO 97-01—January 27, 1997**

*To: The Honorable Sharon J. Merchant, 83rd District, Palm Beach Gardens*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives.

The issue presented is of whether your acceptance of the chairmanship of the Committee on Transportation & Economic Development would create a continuing conflict of interest in violation of Rule 31 of the Rules of the Florida House of Representatives. In summary, I have concluded that no such conflict would exist.

As I understand the facts which give rise to your concerns, your father is the owner of Merchant Transport, a company whose primary interest is the transporting of large equipment. The company does not have any governmental contracts and does not employ a lobbyist. To the extent that the company has any interest in the operation of government, it would be from the regulatory side. Additionally, your family owns Equipment Rental Services Inc., which is primarily engaged in the rental of small construction equipment. You serve as the Vice President of Equipment Rental Services Inc. and do participate in the operation of the company. Like Merchant Transport, Equipment Rental Services Inc. does not have any governmental contracts and does not employ a lobbyist.

Because the two companies do not have any governmental contracts, the most likely occasion for any conflict of interest to arise would be in the development of regulatory policy affecting the trucking or equipment rental industries. As Chair of the Transportation & Economic Development Committee, you are charged with presiding over the development of the budget of various state agencies and with the consideration of the fiscal aspects of legislation affecting those agencies. Your committee is not charged with the primary responsibility for developing regulatory policy over the trucking industry or any industry. It is clear, therefore, that your position would not create a continuing conflict of interest, and you should not refrain from accepting the responsibility which accompanies the chairmanship of the Committee on Transportation & Economic Development.

Although the possibility of any conflict is remote, you would be best advised to seek further advice should legislation affecting the regulatory powers over the trucking industry or the rental equipment industry come before the committee or the House. In considering such legislation, you would be required to disclose the possibility of a conflict should the legislation affect your family's businesses differently than the industry generally. The vast majority of such legislation would not have such an impact, and no disclosure would be required in those instances. Counsel will be able to advise you on a case-by-case basis.

This opinion addresses the potential for a violation of the House Code of Conduct. While I am confident that your acceptance of the chairmanship would also be appropriate under the provisions of Chapter 112, the Commission on Ethics is charged with the official responsibility for issuing opinions relating to statutory conflicts of interest. If you wish, we would be happy to assist you in seeking confirmation of our opinion from the Commission on Ethics.

**HCO 97-02—February 10, 1997**

*To: The Honorable Margo Fischer, 52nd District, St. Petersburg*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives.

The issue presented is whether you may add personal funds to the surplus campaign office account you established pursuant to Section 106.151(5)(c), Florida Statutes.

In short the answer is yes. However, the account, including the personal funds contributed, must still be used only for legitimate expenses in connection with your public office.

**HCO 97-03—March 19, 1997**

*To: The Honorable Douglass F. Wiles, 20th District, St. Augustine*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives as to the application of Rule 24.

The issue presented is whether a conflict of interest would arise were you to seek an appropriation on behalf of St. John's County. This appropriation would be used to purchase a hospital building and land owned by Flagler Hospital, a not-for-profit hospital.

You serve as the Chairman on the Board of Trustees for the hospital, which is located in your district. You are not compensated for your service as a member or as chairman of the board.

The question is answered in the negative. No conflict would exist.

Rule 24 of the Rules of the Florida House of Representatives prohibits a Member from voting on an issue which inures to the Member's special private gain and requires the filing of a disclosure statement when voting on an issue which inures to the special private gain of a principal by whom the Member is retained or employed. While the Rule specifies voting, it has generally been interpreted to discourage a Member from taking any official legislative action which would inure to the special private gain of the Member.

While the appropriation would inure to the special private gain of the hospital, even though it is technically directed to the county, it is clear that you would not personally benefit financially from the appropriation. Likewise, it is clear that as an uncompensated board member, you are neither employed nor retained by the hospital.

Webster's Third New International Dictionary defines the word "employ" to mean "to provide with a job that pays wages or a salary or with a means of earning a living." Likewise, it defines "retain" as meaning "to keep in pay or in one's service; to employ by paying a preliminary fee that secures a prior claim upon services in case of need." Thus, both terms require compensation.

Accordingly, the hospital would not constitute a principal that employs or retains you, and the provisions of Rule 24 do not apply.

**HCO 97-04—March 20, 1997**

*To: Identification not requested*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives.

The issue presented is whether you may accept a check from a private hospital on behalf of a nonprofit civic association, without violating s.112.3148, F.S., relating to gifts; or House Rule 30, relating to solicitation and acceptance of campaign contributions during session.

Your question is answered in the affirmative.

Pursuant to s.112.3148, F.S., a Member is prohibited from soliciting a gift for the Member's personal benefit, the benefit of another reporting individual, or a member of the Member's immediate family. However, a Member is not prohibited from soliciting a gift if it is accepted on behalf of a charitable organization pursuant to s.112.3148(4), F.S. Since you are accepting the check on behalf of a nonprofit civic association, there is no violation of the applicable provisions of s.112.3148, F.S.

House Rule 30 provides:

> (b) A Member of the House shall neither solicit nor accept any campaign contribution [emphasis added] during the 60-day regular legislative session on the Member's own behalf or on behalf of a political party or on behalf of a candidate for the House of Representatives; however, a Member may contribute to the Member's own campaign.

This Rule addresses campaign contributions. It does not prohibit you from soliciting or accepting contributions for a nonprofit civic organization during session.

**HCO 97-05—April 2, 1997**

*To: Identification not requested*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested our opinion, pursuant to Rule 36 of the Rules of the Florida House of Representatives, as to whether you may accept an offer to retain your services as a professional consultant on an environmental matter. The potential principal is a Florida corporation which neither lobbies the Florida Legislature nor employs a lobbyist to lobby the Florida Legislature. The company, however, does engage in projects regulated by federal, state, and local environmental agencies.

The answer to your question is that you may accept such an offer, but only subject to the stipulation that you cannot and will not represent the company before, or make any inquiries on behalf of the company from, any state agency or official. This would, of course, include

the Governor or any member of the Cabinet, any officers or employees within the Department of Environmental Protection, the Department of Community Affairs, or other state departments. You may represent the company before a federal agency, including the Environmental Protection Agency, the Department of Interior, or the Army Corps of Engineers. Likewise, you could represent the company before a local governmental entity, such as a city, county, or water management district.

Rule 35 of the Rules of the Florida House of Representatives provides that "No Member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal." This language mirrors the language of Article II, Section 8(e), of the Constitution of the State of Florida and Section 112.313(9)(a)3., Florida Statutes[1]. In interpreting the prohibition found within the State Constitution and state law, the Commission on Ethics has opined that a Member may not represent an entity before any state agency, including representation in administrative proceedings under chapter 120, but that such prohibition does not apply to legislators representing clients before local governments, including water management districts. See CEO 91-54.

This opinion that water management districts are local governmental entities, rather than agencies of the state government, is further supported by the provision that water management districts are supported by ad valorem taxation, under Article VII, Section 9, of the Constitution of the State of Florida, entitled "Local taxes." State agencies, on the other hand, are specifically prohibited from levying ad valorem taxation on real estate or tangible personal property by Article VII, Section 1, of the Constitution.

Accordingly, it is our opinion that you may accept an offer of employment which would require you to represent a company before cities, counties, water management districts, or federal agencies, but you may not agree to accept any employment which would require you to participate in the representation of the company before a state agency.

**HCO 97-06—April 28, 1997**

*To: Identification not requested*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked for an opinion on whether you may solicit contributions for a community picnic to be held in your district for your constituents, which you would sponsor. The event would be open to the public. You have further asked whether the answer to the question would be different if the event were a campaign-related event.

In summary, the answer to your question is that you may solicit contributions from persons other than political committees or committees of continuous existence, lobbyists and their partners, firms, employers and principals, and the partners, firms, and principals of the principals, regardless of whether the event is campaign-related, or not. If the event is

[1]Formerly Section 112.3141(1)(c), Florida Statutes, moved to Section 112.313 by Chapter 91-85, Laws of Florida.

campaign-related, you may solicit contributions from anyone, subject to the contribution limits found in Section 106.08, Florida Statutes.

Pursuant to Section 112.3148, Florida Statutes, a legislator may not solicit any contribution for the Member's personal benefit from political committees or committees of continuous existence, lobbyists and their partners, firms, employers and principals, and the partners, firms, and principals of the principals. Although the purpose of the contribution is primarily for the benefit of your constituents, the goodwill which would be engendered on your behalf as the sponsor of the event would make you also a beneficiary of the contribution. Accordingly, such solicitation would generally be prohibited.

On the other hand, the prohibitions of section 112.3148, Florida Statutes, relating to solicitation of contributions, do not extend to the solicitation of campaign funds reportable under chapter 106, Florida Statutes. If the event is a campaign-related event, it could be paid from your campaign account if you have opened such an account. You could also accept in-kind contributions, which would also be reportable under chapter 106. You should note, however, that section 106.08, Florida Statutes, limits contributions to your campaign to $500 per donor.

Should you decide to sponsor the event as a campaign event, you should remember that Rule 30(b) of the Rules of the Florida House of Representatives prohibits a Member from soliciting or accepting contributions (including in-kind contributions) during the 60-day regular session of the Legislature. Accordingly, you could not solicit contributions for the event this year until Saturday, May 3, 1997, or following *sine die*, whichever is earlier.

**HCO 97-07—May 16, 1997**

*To: Identification not requested*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked for an opinion under Section 112.3148, Florida Statutes, as to whether you may accept lodging in the home of a registered lobbyist. In summary, you may accept lodging with a value of $100 or less, but the lobbyist must report any gift with a value over $25, unless you reimburse the lobbyist for the lodging.

Under section 112.3148, Florida Statutes, a Member of the Florida Legislature may not accept a gift from a lobbyist with a value in excess of $100. You may accept a gift with a value of $100, or less, but the lobbyist must report any gift with a value in excess of $25. The term "gift" does specifically include lodging. (*See* Section 112.312(12)(a)7., Florida Statutes.) Because it is difficult to attribute a value to lodging in a private home, Florida law provides that it will be valued at $29 per day, which is the per diem amount of $50 less the daily meal allowance amount of $21. Lodging on consecutive days is considered a single gift. (*See* Section 112.3148(7)(e), Florida Statutes.) Consideration provided for the gift is subtracted from the value.

Accordingly, were you to pay the lobbyist $29 per day for the lodging, there would be no report required by the lobbyist. However, if payment is not made, a single night's lodging would have a value in excess of $25, making it reportable by the lobbyist, and four or more nights of continual lodging would have a value in excess of $100 and would be prohibited.

**HCO 97-08—May 28, 1997**

*To: Identification not requested*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked for an opinion, pursuant to Sections 112.3148 and 112.3149, Florida Statutes, as to whether you may participate in the state policy conference of the Institute for State Policy Studies, to be held in June of 1997. Your expenses, including travel and lodging, will be paid for by the institute, which is a nonprofit educational organization, which is not engaged in lobbying the Florida Legislature. In summary, you may attend and you may accept payment of your expenses. Whether a report will be required, however, is dependent upon the role you assume as a participant in the conference.

Section 112.3148, Florida Statutes, provides that an elected official may accept a gift with any value from a person who is neither a lobbyist nor the principal of a lobbyist, nor the partner or associate of such a lobbyist or principal, nor a political committee or a committee of continuous existence. The Institute for State Policy Issues is none of these entities. Accordingly, you could accept a gift from the Institute, although a gift with a value in excess of $100 must be reported.

Generally, both travel expenses and lodging expenses would constitute a gift under the Florida Code of Ethics. (*See* Section 112.312(12)(a)7., Florida Statutes.) However, such expenses related to an honorarium event are excluded from the definition of the term "gift" under Section 112.312(12)(b)3., Florida Statutes. The issue which must be determined, therefore, is whether your participation in the conference would constitute an honorarium event.

Under Section 112.3149, Florida Statutes, an honorarium event is an event at which the elected official gives a speech, address, oration, or other oral presentation. While the invitation is not clear, it does not appear that you would be making such a formal presentation at the conference. Rather, it appears that you will be expected to listen and to react to presentations by others. If that is the case, the expenses would constitute a reportable gift under Section 112.3148(8), Florida Statutes. If, on the other hand, you are expected to make a more formal presentation, and you make such a presentation, the expenses would not constitute a gift, and no report would be required.

**HCO 97-09—May 29, 1997**

*To: The Honorable Joseph R. "Randy" Mackey, Jr., 11th District, Lake City*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives, regarding an offer of employment by AeroCorp. In our opinion, you may accept the employment as offered.

Aero Corporation has offered you a position as Director of Human Resources, with varying duties. None of these duties appear to include the representation of the corporation

before a state agency. Generally, you would be involved in employee recruitment, training, and administration, and would help to manage the operations of the corporation. You would receive an annual salary, with the possibility of a bonus. The corporation has assured you that your duties would be structured in such a way as to permit you to continue to meet all the needs of your legislative constituents.

In our opinion, the acceptance of this position would not create any conflict under House Rules or Florida law. Accordingly, you may accept the offer without violating the Rules of the Florida House of Representatives.

**HCO 97-10—September 9, 1997**

*To: Identification not requested*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion as to whether you may accept the invitation of the Women In Government/Legislative Business Roundtable to attend "The Impact of Medicaid Reform on Uninsured Children & The Working Poor." Your question is answered in the affirmative.

By letter dated July 28, 1997, you have been invited by Women In Government/Legislative Business Roundtable (WIG/LBR) to attend a roundtable discussion in St. Petersburg, Florida, from September 24, 1997, through September 27, 1997. The roundtable is "designed to address the impact of new Medicaid reforms on the quality of health for uninsured children and the working poor in the United States." WIG/LBR, a 501(c)(3) nonprofit association directed primarily by state legislators, has invited legislators from California, Florida, Georgia, Massachusetts, Mississippi, New Jersey, New York, Ohio, Pennsylvania, and Texas. Your transportation, hotel, and meal costs will be paid by WIG/LBR. Program costs are provided in part by a grant from Wyeth-Ayerst Laboratories (Wyeth). Participants are selected by WIG/LBR. Nonetheless, you will be required to pay a registration fee. You are not a member of WIG/LBR. WIG/LBR is not the principal of a lobbyist, but Wyeth-Ayerst Laboratories is.

Section 112.312(12), Florida Statutes, includes within the definition of "gift" the use of real property (lodging), transportation, and food and beverage. Likewise, the program presented would constitute a service for which a fee is normally charged, and is therefore included within the definition of the term "gift." Although items provided by an organization primarily composed of governmental officers or employees to its members are exempt from the gift definition, you are not a member of WIG/LBR. Accordingly, the provision of your travel, hotel, and meals and the program would constitute a gift to you subject to the provisions of Section 112.3148, Florida Statutes.

Because WIG/LBR neither lobbies, nor employs a lobbyist, before the Florida Legislature, there is no limitation on the amount of a gift you may receive from the organization. On the other hand, Wyeth does employ a lobbyist before the Florida Legislature, and therefore may not provide a gift to you with a value in excess of $100.

The issue which must be determined is whether you are receiving a gift from Wyeth. It is my opinion that you are not. Although the program is "made possible in part by a grant from Wyeth-Ayerst Laboratories," the actual donor of whatever gift you are receiving is WIG/LBR.

The remainder of the cost of the program is presumably covered by the registration fee which you are required to pay. WIG/LBR, not Wyeth, has made the invitation to you and has determined who will receive a scholarship for the roundtable discussion. Wyeth's only involvement is providing a grant to WIG/LBR. If a gift is being provided by Wyeth, it is to WIG/LBR, not to the participants.

In summary, because WIG/LBR does not lobby the Florida Legislature, you may accept the payment by them of your expenses related to attendance at the roundtable discussion. You will be required to disclose the payment of those expenses by WIG/LBR as a gift. Because the gift is provided in September of 1997, disclosure must be made no later than December 31, 1997.

**HCO 97-11—September 16, 1997**

*To: The Honorable Mary Brennan, 51st District, Pinellas Park*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion as to whether you may accept the payment of your expenses by the National Conference of State Legislatures (NCSL) for attendance at a meeting of the NCSL Human Issues Committee, which you chair. You have further asked whether such expenses, if accepted, are reportable pursuant to the provisions of Section 112.3148, Florida Statutes. You may accept the payment of the expenses by NCSL and no report is required.

Section 112.312(12)(a), Florida Statutes, defines the term "gift" to generally include items such as transportation, lodging, and food or beverages. However, Section 112.312(12)(b) specifically excludes these items from the definition of what constitutes a gift when these items are provided by an organization which is primarily composed of elected or appointed public officials or staff where the recipient is a member or the staff of a member of the organization. (*See* Section 112.312(12)(b)8., Florida Statutes.) NCSL is such an organization, and you, as a state legislator, are a member of NCSL.

Accordingly, these items provided to you by NCSL are not a "gift" and therefore, are not subject to the provisions of Section 112.3148, Florida Statutes. In addition, items provided to a public official in connection with his or her service as an officer or director of an organization are also exempt from the gift definition. (*See* Section 112.312(12)(b)1., Florida Statutes.)

**HCO 97-12—September 16, 1997**

*To: The Honorable Mary Brennan, 51st District, Pinellas Park*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Sections 112.3148 and 112.3149, Florida Statutes, as to whether you may accept payment of your expenses by the Southern Legislative Conference which were provided in connection with a speech you delivered at the

annual meeting of the conference. You have further asked whether any report of the receipt of those expenses is required. You may accept payment of your expenses from the Southern Legislative Conference and no report is required.

The payment of reasonable transportation, lodging, and food and beverage costs connected with an honorarium event are exempt from the definition of "gift" contained in Section 112.312(12), Florida Statutes. (*See* Section 112.312(12)(b)3., Florida Statutes.) However, the payment of such expenses, if received from a lobbyist or the principal of a lobbyist, are reportable pursuant to the provisions of Section 112.3149, Florida Statutes. However, as the Southern Legislative Conference does not employ a lobbyist before the Florida Legislature, no report of those expenses is required.

In addition to the exemption for honorarium-related expenses, Section 112.312(12)(b)8., Florida Statutes, also excludes from the definition of "gift" items such as these when they are paid for by an organization primarily composed of government officials on behalf of a member of the organization. The Southern Legislative Conference is such an organization, and as a legislator from one of the member states, you are a member of the Southern Legislative Conference. Accordingly, the payment of your expenses by the Southern Legislative Conference does not constitute a gift, and is therefore not subject to the provisions of Section 112.3148, Florida Statutes.

**HCO 97-13—September 29, 1997**

*To: The Honorable Carlos L. Valdes, 111th District, Miami*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an advisory opinion pursuant to s. 112.3148, Florida Statutes, on the following question:

> Whether you, as a member of the board of directors of Enterprise Florida, may accept payment of your expenses to participate in an export marketing mission to the Orient as part of the Enterprise Florida International Trade Program.

Your question is answered in the affirmative.

As amended by Chapter 96-328, Laws of Florida, Section 112.312, Florida Statutes, excludes from the definition of "gift" expenses associated primarily with the donee's service as an officer or director of a corporation or organization. (*See* Section 112.312(12)(b)1., Florida Statutes.) Enterprise Florida is a corporation or organization and you have stated that you are on the board of directors of Enterprise Florida. Consequently, payment of these expenses by Enterprise Florida is not a gift and you may accept payment of these expenses. Further, since there is no gift in this situation, no report under Section 112.3148, Florida Statutes, is required.

**HCO 97-14—October 23, 1997**

*To: The Honorable Doug Wiles, 20th District, St. Augustine*
*The Honorable Earl Ziebarth, 26th District, DeLand*

*Prepared by: Eric Thorn, General Counsel*
*Tom Tedcastle, General Counsel*

Pursuant to s. 112.3148, F.S., you have requested an advisory opinion on the following question:

> You have been selected from a national pool of applicants to be a member of the Flemming Fellows Class of 1997. As a Flemming fellow, you are to attend a series of three weekend retreats that focus on different aspects of governing over the course of the next year. The Flemming Fellows Leadership Institute has offered to pay for the expenses associated with your participation in the program. You ask whether you may accept payment of your expenses including the cost of your travel, lodging, and meals associated with your participation in the program.

Your question is answered in the affirmative.

Section 112.312(12), Florida Statutes, defines "gift" to include transportation, lodging, and food. Therefore, receipt of transportation, lodging, and meals are a "gift" to you.

You may accept this gift from the Flemming Fellows Leadership Institute since they do not have a lobbyist before the Florida Legislature. *(See* Section 112.3148, Florida Statutes.) However, you must report the value of the gift from the Flemming Fellows Leadership Institute. (*See* Section 112.3148(8), Florida Statutes.) The report (form 9) is to be filed with the Secretary of State by the last day of the calendar quarter following the calendar quarter in which the gift is received.

**HCO 97-15—December 3, 1997**

*To: The Honorable Jorge Rodriguez-Chomat, 114th District, Miami*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked for our opinion as to whether Florida law prohibits you, as a Member of the Florida Legislature, from accepting employment with the City of Miami as the Director of Internal Auditing and Professional Compliance. In short, you may accept such employment, if offered.

As a Florida legislator, you may generally accept any employment unless it would present 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." (*See* Section 112.313(7), Florida Statutes.) Serving as the Director of Internal Auditing and Professional Compliance with a city government would not create such a conflict. In the rare instance that you may be called upon to address an issue legislatively that might result in a potential conflict, you would be advised to seek counsel as to whether you must refrain from voting or whether you may vote with disclosure.

**HCO 97-16—December 19, 1997**

*To: The Honorable Jorge Rodriguez-Chomat, 114th District, Miami*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked us to review our opinion of December 3, 1997, in which we advised you that it would be permissible for you to accept employment with the City of Miami. Specifically, you have asked whether you may accept either the position as Director of Finance or as Director of Internal Audits.

After reviewing the job descriptions for each position, we are of the opinion that neither would create a continuing or frequently recurring conflict between your position as a legislator and the responsibilities you would have if you accept the employment opportunities. However, upon reviewing the job descriptions, we are concerned that, on an infrequent basis, a possible conflict could result where the City of Miami is subject to an audit or review by either the Auditor General or OPPAGA. In those instances, we would advise you that you should refrain from voting on whether such audits or reviews should be done and that someone other than you be the contact for the city with the state auditors or analysts.

We would also advise you, that as an employee of the City of Miami, you would be required to disclose such employment whenever voting on legislation which would inure to the special gain of the city. It has been our observation that such instances are rare.

**HCO 97-17—December 22, 1997**

*To: Identification not requested*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested our opinion as to whether you may appear as a party or as counsel to a party in actions before the Division of Administrative Hearings or other state agencies. In short, you may appear as a party, but you may only represent another if you receive no compensation for the representation.

Article II, Section 8(e), of the Florida Constitution prohibits any member of the Florida Legislature from personally representing another person for compensation before a state agency other than judicial tribunals during his or her term of office. This is also prohibited by Rule 35 of the Rules of the Florida House of Representatives and Section 112.313(9)(a)3., Florida Statutes. As the Division of Administrative Hearings is part of the executive branch of government rather than the judicial branch, it does not qualify as a judicial tribunal. (*See* CEO 78-2.) Accordingly, a Member of the Legislature cannot represent another for compensation before the Division of Administrative Hearings. On the other hand, however, a Member may represent himself or herself or may represent another where no compensation is involved.

Even where there is an agreement to represent another without compensation, we have recommended that Members not represent a continuing client of their firm, where it could be argued that compensation paid for permissible compensated representation is supporting the representation before the state agency. While such representation may be technically legal,

the appearance that a conflict exists could constitute a violation of Rules 28 and 29 of the Rules of the Florida House of Representatives.

**HCO 98-01—January 26, 1998**

*To: The Honorable Doug Wiles, 20th District, St. Augustine*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested our opinion as to whether the sponsoring of, or voting for, a local bill codifying the charter of the Flagler Estates Water and Road District would constitute a violation of Rule 24 of the Rules of the Florida House of Representatives. In short, the answer is that no conflict exists which would prohibit you from sponsoring or voting on the legislation, and no disclosure is required.

A constituent in your district who represents the Flagler Estates Water and Road District has requested that you sponsor a local bill codifying the charter of the district. You note that the district purchases insurance through Herbie Wiles Insurance, a corporation in which you own a 64% interest and which you generally manage.

Rule 24 of the Rules of the Florida House of Representatives, requires that a Member file a disclosure whenever voting on any legislation which inures to the special private gain of a principal by whom the Member is employed. While the Rule is limited to voting, we have generally recommended that Members, in order to avoid any appearance of impropriety, apply the same standards when determining whether to sponsor legislation.

In addressing the issue, we must determine whether the legislation would inure to the "special private gain" of the district, and if so, whether the district is a principal which employs you. Because the specific legislation would only constitute a codification of present law applicable to the district, the proposed legislation would not inure to the benefit of the district. Rather, codification is intended to benefit the public in general, by making it easier for those affected by the district to determine whether the district is acting in a lawful manner. Since the legislation would not inure to the special private gain of the district, we do not reach the issue of whether the district would qualify as a principal.

Accordingly, you may sponsor the legislation if you so desire, and you may vote on it without the requirement of filing any disclosure statement.

**HCO 98-02—February 18, 1998**

*To: The Honorable Jamey Westbrook, 7th District, Bascom*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked for our opinion as to whether your service on the Committee on Transportation would result in a violation of Rule 31 of the Rules of the Florida House of Representatives. We have previously informed you orally that no violation would result from accepting the appointment; you have subsequently asked that we provide an opinion in

writing. Our opinion has not changed. Your acceptance of the appointment would not violate Rule 31.

You have also asked for our opinion as to whether you may continue to bid on Department of Transportation jobs. The answer to that question is in the affirmative, although you should avoid any reference to your service as a Member of the State Legislature in the submission of bids.

Rule 31 of the Rules of the Florida House of Representatives provides that a Member "shall not directly or indirectly receive or agree to receive any compensation for services rendered or to be rendered either by the Member of another when such activity is in substantial conflict with the duties of a Member of the House." It further provides that a Member may not permit his or her personal employment to impair his or her independent judgment as a Member of the Legislature.

You have informed us that as a water well driller, you have contracted for nearly two decades with various road building firms throughout Florida. Your company is a sole proprietorship. In this capacity, you have benefited indirectly from state contracts let to those road building firms.

As a member of the Committee on Transportation, you would be expected to vote on matters involving state policy affecting the area of transportation. You would not generally be voting on any issue which is specific to a particular contractor. Accordingly, how you vote on these policy issues should not result in gain or loss in your financial position as a well driller. Should there exist an issue where a particular vote could result in your receiving a special private financial gain, you would simply be required to abstain from that particular vote, and file a disclosure notice pursuant to the provisions of Rule 24 of the Rules of the Florida House of Representatives.

While the knowledge and experience you have gained in your profession will likely assist you in understanding the policy issues brought before you as a member of the committee, the purpose behind a citizen legislator is to bring together persons with different professional backgrounds who can apply differing perspectives to issues brought before the Legislature. You are encouraged to make use of the knowledge you have gained in your private profession, whatever it may be. In directing Members to retain "independence of judgment," the Rules do not contemplate that Members will not come to the Legislature with certain views and opinions. In fact, it is those differing views and opinions that provide the electorate with a reasoned way to choose between opposing candidates for legislative office.

In response to your question as to whether you may continue to bid on projects involving the Department of Transportation, the answer is that you may. While it is not clear whether the submission of a bid constitutes "representation before a state agency," because your company is a sole proprietorship, you would not be representing "another" for compensation before the agency, as prohibited by Section 112.313(9), Florida Statutes, Rule 35 of the Rules of the Florida House of Representatives, or Article II, Section 8 of the Florida Constitution. Of course, whether or not you are a member of the Committee on Transportation, you may not cast any vote, threaten to cast any vote, or imply that any vote is, based upon the receipt of any contract. (*See* Rule 30(a), Rules of the Florida House of Representatives.) Likewise, you should avoid any appearance that you are using your official position as a legislator to influence the decision of the agency in awarding a contract.

(*See* Rule 32, Rules of the Florida House of Representatives; Section 112.313(6), Florida Statutes.) To assist in avoiding any appearance that you might be using your official position to influence the Department of Transportation, it would be our recommendation that in any contact you have with the agency regarding a bid submitted by you that you not identify yourself as a Member of the Florida Legislature and that you refrain from any mention of your service on the Committee on Transportation.

In summary, you may accept the appointment to the Committee on Transportation and continue your ownership and operation of the well drilling business, including contracting with road building firms and submitting bids to the Department of Transportation on behalf of your sole proprietorship. On a rare occasion, you may be required to abstain from voting on an issue and disclosing a potential conflict, and you should avoid any appearance that you are using your official position to obtain contracts with the department.

**HCO 98-03—February 18, 1998**

*To: The Honorable Carlos Valdes, 111th District, Miami*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an advisory opinion pursuant to Section 112.3148, Florida Statutes, on the following question:

> Whether you, as a member of the board of directors of Enterprise Florida, may accept payment of your expenses by Enterprise Florida to participate in a business forum in Costa Rica as a part of an official U.S. delegation with the U.S. Commerce Department.

Your question is answered in the affirmative.

Section 112.312, Florida Statutes, excludes from the definition of "gift" expenses associated primarily with the donee's service as an officer or director of a corporation or organization. (*See* Section 112.312(12)(b)1. Florida Statutes.) Enterprise Florida is a corporation or organization, and you have stated that you are on the board of directors of Enterprise Florida.

Consequently, payment of these expenses by Enterprise Florida is not a gift and you may accept payment of these expenses. Furthermore, since payment of these expenses is not a gift, no report under Section 112.3148, Florida Statutes, is required.

**HCO 98-04—May 19, 1998**

*To: The Honorable Carlos L. Valdes, 111th District, Miami*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

Under House Rule 5.17, you have requested an advisory opinion as to the following situation:

Whether there is any law or rule that would prohibit you from accepting the French Government's invitation to go to France to ride on and study their high-speed rail system.

The French Government, through SNCF, the French National Railway System, has invited you and several other government officials, on an all-expense paid, three day, roundtrip from Miami to France, to ride on the Trains a Grande Vitesse (TGV), and to attend educational seminars on the economic and environmental factors that influence and result from operation of a high-speed rail system. The people invited apparently have one thing in common: they are all involved with, or are advisors to, or themselves have some impact on either the programming, planning, administering, operating, financing, or oversight of some aspect of Florida's transportation system and its related sectors.

You currently serve as Chairman of the Florida House Committee on Business Development and International Trade, as well as the Transportation and Economic Development Appropriations Committee, both of which have state legislative oversight responsibility and jurisdiction of the developing high-speed rail program in Florida.

The invitation to this "study tour" is an official invitation from the Government of France, through its Agency for Cooperation in Technical and Economic Fields (ACTIM), acting in collaboration with the French Railroads (SNCF). The three days in France will include a visit to the Paris-Aeroport Charles de Gaulle Trains a Grande Vitesse-Reseau Express Regional, the TGV station located below CDG Terminal 2; a visit to the Paris TGV maintenance facility; a roundtrip ride on the TGV-Nord line from Paris to Lille; a visit to the Eurallile complex; transfer to ACTIM for its presentation on the economics of high-speed rail; and visits to various SNCF operations--all interspersed with meetings with national and local officials and rail experts. You will have opportunities to discuss all matters related to the operations, technology, economics, and environmental impact of a high-speed rail system and its intermodalities.

During the past several years, Sweden and Germany have organized and sponsored demonstrations of their X2000 and ICE trains in the U.S. France has been unable to do so because here we have no demonstration track capable of handling the TGV at 186.5 mph, its normal operating speed in France. So, as an alternative, the Government of France has, over the past three years, at its expense, brought about 600 federal and state officials from the U.S. to France to learn about and ride the TGV system. The group of which you are a member is the latest in that program. Except for a free morning to adjust for jet lag upon arrival, and a free evening before departure on the return flight, there is little free time scheduled or opportunity for diversions. Any attendees who wish to stay longer may do so, but at their own expense.

The Florida Department of Transportation expects a consortium of four companies, GEC Alsthom; Bombardier, Inc.; Odebrecht, a Brazilian construction firm; and Flur Daniel, a French construction firm, to be one of the bidders on the Florida project.

GEC Alsthom, a corporation chartered in Amsterdam for tax reasons but headquartered in Paris, is owned 50 percent by GEC of England and 50 percent by France's Alcatel Alsthom. Both parent corporations are privately owned and publicly traded on various stock exchanges. GEC Alsthom is the supplier of the fleet of TGV trainsets to the French Government and is a party, with SNCF, to an R & D agreement to develop the next generation of TGV technology. The Government of France has no managerial control over GEC Alsthom's affairs, although the government, like those of virtually all industrialized countries, does have policies and does offer export credits that help all French industries involved abroad. GEC Alsthom will not pay for or bear any of the costs of the proposed trip; however, because its personnel in many cases are the best sources to answer technical

questions that might be asked by the participants, they will provide company personnel who will participate in the seminars to give information on the technology. *All GEC Alsthom participants will be specifically forbidden by the company to address or to answer questions regarding the Florida RFP and the proposal that is being put together.* Neither GEC Alsthom, nor anyone on its behalf, has or uses a registered lobbyist in Florida.

Bombardier, Inc., a publicly traded Canadian company with $5 billion in annual sales from production of high-speed trains, engines, subway cars, snowmobiles, personal watercraft, tractors, trucks, aircraft, and aircraft and aerospace components, currently has two registered lobbyists at the Florida Legislature and one registered to lobby in the executive branch. By contractual agreement unrelated to the consortium, Bombardier, Inc., is the North American Agent for, and has business relations with, GEC Alsthom, to further the sale of TGV technology in North America. Like GEC Alsthom, Bombardier, Inc., is not involved in any way in the financing of expenses incurred by the Government of France associated with the invitation it has extended to you.

The SNCF (Societe Nationale des Chemins de Fer Francais) established in 1937, is a French public entity of an industrial and commercial character with management autonomy under French law. The company is wholly owned by the Republic of France. In 1992, SNCF joined with the operator of the Paris Metro to form a joint engineering subsidiary, Financiere SYSTRA, that provides specialized transportation engineering services. Because SYSTRA has access to the SNCF experience in building and operating the TGV, they were retained by the Consortium to act as an engineering subcontractor in the event that the Consortium is selected and certified to build Florida's High-Speed Rail system.

## Legislative History

In 1984, the Legislature enacted the High-Speed Rail Act, created the Florida High-Speed Transportation Commission, and established the initial procedure by which a franchise would be issued to a single entity for the private development of a high-speed rail system. Recent amendments authorized the issuance of a new request for proposals. There is now a two-step process by which the Department of Transportation will first award a franchise based on a Request For Proposals. The franchise holder must then apply for certification to construct the system. In February, 1996 this franchise was awarded to Florida Overland eXpress (FOX), who will be taking part in the program you propose to attend.

## Legal Issues

A. Gift Prohibitions

Section 112.312(12)(a), F.S., defines the term "gift" to include transportation and lodging that is accepted by a donee for which equal or greater consideration is not given in return. Section 112.3148, F.S., regulates the receipt and reporting of gifts by legislators. This section generally prohibits the acceptance by reporting individuals, directly or indirectly, from a lobbyist, his partner, or the principal of a lobbyist, of gifts having a value in excess of $100. There is no limit on the value of the gift if it is from a donor who is not associated or connected with a lobbyist or lobbying principal.

Based upon the above facts, I am of the opinion that your acceptance of transportation, lodging, and food expenses paid for by the Government of France would not constitute a prohibited "gift."

There are two basic factors that convert an otherwise legal and reportable gift into a prohibited one: the combination of source and amount. If the source is a lobbyist or principal, and the value of the gift is over $100, then the gift is prohibited. Here, the value of the transportation, accommodations, and food and beverages is clearly over $100. The donor, however, is the Government of France. It intentionally has no lobbying presence at the Florida Legislature. The fact that a wholly-owned subsidiary of the French Government (SNCF) is a consortium participant with Bombardier, Inc., a private Canadian corporation, does not, in my opinion, make Bombardier, Inc., the donor, either directly or indirectly.

Section 112.3148(8)(a), F.S., requires generally that you report, on Ethics Commission Form 9, the receipt of all authorized gifts having a value in excess of $100, on the last day of the calendar quarter for the previous calendar quarter (in this case, September 30, 1998, if you go on the June trip). This report must describe the gift, state the monetary value of the gift, name the person or entity providing the gift, and the date on which the gift was received.

B. Unauthorized Compensation

Section 112.313(4), F.S., provides:

> No public officer, employee of any agency, or local government attorney or his 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 official capacity.

If the French Government intends, by this trip, to influence your vote or action in which you are expected to participate in your official capacity, then you cannot accept this invitation. The best way to find out a donor's subjective intent is not to guess at it, but simply to ask. In their official response to a formal and specific inquiry, the French Government stated that its intent is to inform, not to influence decisions that are not theirs to make. It is for that reason that neither the French Government, nor ACTIM, nor the SNCF have a professional lobbyist in Florida. In my view, you may reasonably rely on their response.

Finally, the Florida Ethics Commission ruled in CEO 89-11 that:

> A prohibited conflict of interest would not be created were members and staff of the Florida High-Speed Rail Transportation Commission to accept transportation to and hotel accommodations in West Germany from an applicant for a magnetic levitation train demonstration project, provided that the location in West Germany is the only place the educational process can occur, the length of time is no longer than is reasonably necessary to complete the educational process, the donor only pays actual expenses, and appropriate records and gift disclosures are made. Under these circumstances, if the primary purpose of the trip is to educate Commission members as to the qualifications of a potential applicant for certification, acceptance of the transportation and airfare would not violate Section 112.313(4), Florida Statutes.

Applying the above five-part test, it is my view that:

1. The location in France is the only place the proposed educational process can reasonably occur. In 1991, Amtrak proposed that the SNCF bring a TGV train to the United States and operate it along the northeast corridor. However, the French Government determined that our

track beds were unable to support train speeds of 300 Km/h and the operation, in addition to being extremely costly, would not fully demonstrate the features of the system.

2. The length of the trip is three days in France plus one day going and one day returning. Three days is not longer than reasonably necessary to complete the educational process.
3. The French Government will pay only actual expenses.
4. It will be up to you to make all the required gift disclosures.
5. The clearly stated intent of the invitation is to inform, not to influence Florida decision makers. The stated purpose of the trip is purely educational.

C. House Rules

House Rule 30 provides in part:

(1) A Member of the House shall accept nothing which reasonably may be construed to improperly influence the Member's official act, decision, or vote.

The test under Rule 30 is similar to the test under Section 112.313(4), F.S. It would constitute a violation of Rule 30 for you to accept any gift which is given with the purpose of improperly influencing your act, decision, or vote. As discussed above, the Government of France has stated its intent. The facts support that it is not given to influence your act, decision, or vote. Therefore, it would not violate House Rule 30 for you to accept the gift.

Conclusion

The invitation constitutes an offer of a gift from an entity that has no lobbyist registered at the Florida Legislature, so the gift is not prohibited. Your transportation, accommodations, and food and beverages may be paid for by the Government of France or its instrumentalities. Reporting requirements are explained above.

The French Government has officially and clearly articulated its intention behind its invitation to you to ride and study the TGV. Their reasons are, in my opinion, credible and justified. Thus, the "unauthorized compensation" provision of Section 112.313(4), F.S., does not prohibit you from going on this trip; nor does House Rule 5.8.

This opinion is consistent with Opinion 95-18, issued by B. Elaine New as General Counsel to the Florida House of Representatives on June 27, 1995.

**HCO 98-05—June 10, 1998**

*To: Identification not requested*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested an opinion as to whether you may represent a client for compensation before a regional planning council. In short, the answer is that you may represent a client for compensation before a regional planning council.

The limitation on legislators representing clients for compensation is limited to representation of them before state agencies. For the purpose of that limitation, state agency is defined in Section 112.313(9)(a)2.c., F.S. and Rule 35 of the Rules of the Florida

House of Representatives. Each of those provisions defines a state agency to be "an entity...of state government over which the Legislature exercises plenary budgetary and statutory control." The Legislature does not exercise plenary budgetary control over regional planning councils. Accordingly, a regional planning council is not a state agency for the purpose of the prohibition against representation of clients for compensation.

**HCO 98-06—August 5, 1998**

*To: Identification not requested*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested our opinion, pursuant to Rule 36 of the Rules of the Florida House of Representatives, as to potential conflicts of interest due to your employment with a health care provider and its foundation.

Your question is answered in the negative, subject to certain conditions set out below.

First, Article II, section 8(e), Florida Constitution, provides in part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.

Similarly House Rule 35 contains a prohibition and provides in part:

> No member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal.

Therefore, if you do not represent the health care provider or its foundation before a state agency, Article II, section 8(e) and House Rule 35 do not prohibit you from employment.

Second, any potential conflicts that may arise from your employment must be examined. In brief, there do not appear to be any prohibited conflicts of interest but you may be required to file a memorandum of voting on a case-by-case basis if a vote is required that would provide a "special private gain" to either you, your family, or the health care provider or its foundation.

Section 112.313(7)(a), Florida Statutes, provides in part:

> No public officer . . . 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, the agency of which he or she is an officer . . . nor shall an officer . . . have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This section prohibits employment in the following three situations: (a) employment in regulated entities; (b) employment that would create a frequently recurring conflict; and (c) employment that would impede the full and faithful discharge of public duties. Each situation will be discussed.

Concerning employment by a regulated entity, as you state in your letter, the health care provider and its foundation are regulated by the Agency for Health Care Administration (AHCA). While one could argue that these entities are regulated by the Legislature, section 112.313(7)(a)2, Florida Statutes, contains the following exemption:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Here, the only regulatory authority of the Legislature would be through the enactment of laws; therefore, you are exempted from any conflict based upon this provision. Additionally, this exemption is not distinguished by the office you hold within the Legislature.

Turning next to employment that would create a frequently recurring conflict, it does not appear that any conflict would arise on a frequent basis. Should an apparent conflict arise you should seek counsel as to whether you should refrain from voting or whether you may vote after filing the necessary disclosure.

The final situation prohibits employment that would impede the full and faithful discharge of public duties. You have made no indication that you would be unable to discharge your public duties.

Therefore, there is nothing to indicate that section 112.313(7)(a), Florida Statutes, prohibits your employment.

It should also be noted that you are subject to the provisions of House Rule 31 regarding employment and use of official position. The rule provides in part:

> 31. Ethics; Conflicting Employment—A member of the House shall:
>
> (a) Scrupulously comply with the requirements of all laws related to the ethics of public officers.
>
> (b) Not allow personal employment to impair the Member's independence of judgment in the exercise of official duties.

Since Florida has citizen legislators, House Rules should not be construed to prevent a legislator from retaining employment if that employment does not impair the legislator's independence of judgment. Again, nothing you have provided indicates that your employment with the health care provider or its foundation would impair your independence of judgment in the exercise of your official duties as a Member of the House.

Finally, any potential voting conflict that may arise due to your employment must be examined. House Rule 24 prohibits you from voting on legislation if you, your family member, your principal or employer, or your family member's principal or employer stands to receive a special private gain from the passage of a bill. Should you receive a special private gain from a vote, you must disclose this by filing a disclosure statement. Although the rule requires Members to vote, it is generally accepted that a Member should not vote in instances of special private gain. Since whether you receive a special private gain is

examined on a bill-by-bill basis, you may wish to request another opinion when a specific vote becomes an issue.

Accordingly, subject to the conditions laid out above, there is no conflict of interest in your continued employment.

**HCO 98-07—September 2, 1998**

*To: The Honorable Doug Wiles, 20th District, St. Augustine*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have asked for our legal opinion as to whether you would have a conflict of interest if you were to sponsor local legislation eliminating the Flagler Estates Road and Water Control District. Because the statute and rules governing conflicts of interest speak only to "voting" on legislation, there would be no technical violation. However, in order to avoid the appearance of any conflict, we have advised against members filing legislation on which they would be prohibited from voting.

You have advised us that residents in the Flagler Estates Road and Water Control District have contacted you and requested that you sponsor legislation which would either eliminate the district or portions of it. The responsibilities of the district would be assumed by the county in which the property is located. The district includes property in Flagler and St. Johns Counties. Herbie Wiles Insurance, which is your employer and in which you own an interest, provides insurance to the Flagler Estates Road and Water Control District.

Rule 24, Rules of the Florida House of Representatives, prohibits a member from voting on any matter which would inure to the special private gain or loss of the Member. It further provides that where such loss or gain would inure to the employer of a Member, the Member must disclose the potential conflict. In this case, the elimination of the district would result in the loss of a client of this insurance firm. This loss would be a "special private" loss to Herbie Wiles Insurance, and presumably would result in a loss of income to you personally, as well. Accordingly, we would advise that you should refrain from voting on legislation which eliminates the district.

We recognize that the question posed involves the filing of legislation, rather than voting on legislation. The rules do not specifically prohibit your filing the legislation, only voting on it. Nevertheless, we have consistently advised Members to avoid the appearance of a conflict, which the filing of legislation, although not specifically prohibited, could be argued to do. While it may also be argued that filing legislation which would harm you, rather than benefit you, does not create a conflict, our rules make no distinction on whether a Member's actions assist or harm the Member. If he or she has any interest in the legislation, he or she is directed to refrain from voting, regardless of which way the Member would vote. We would suggest that the prudent course would be to assume that the House would apply the same rationale to filing legislation that it applies to voting on it.

We understand that the issue raised in this request adds the additional concern that the legislation would need to be filed as a local bill and that you are the sole House Member representing the counties involved. Traditionally, local legislation should be filed only by the Member representing the affected counties. The rules, however, do not prohibit another Member from filing the legislation, nor do they require that the legislation be initiated in the House of Representatives, rather than the Senate. You may wish, therefore, to suggest to

your constituents that they pursue this issue with the appropriate Member of the Florida Senate, understanding that the Senator could ask a different Representative to handle the issue in the House of Representatives.

We certainly regret the inconvenience which this opinion will cause your constituents. We understand that you would like to be of assistance to them.

**HCO 98-08—October 14, 1998**

*To: The Honorable James Bush III, 109th District, Miami*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

You have requested our opinion, pursuant to Rule 36 of the Rules of the Florida House of Representatives, whether you may serve as Chair Emeritus of the Martin Luther King, Jr. Institute for Nonviolence (Institute). Additionally, you ask what ramifications may arise due to your position as Chair Emeritus, specifically, as it relates to disclosure, voting, restitution, and appearing before state and local governments.

Your question is answered as follows: you may serve as Chair Emeritus subject to certain conditions.

First, assuming that sections 240.631 - 240.634, Florida Statutes, provides for the position of Chair Emeritus, there is no prohibition from you serving in such a capacity.[1]

Turning to your appearance as Chair Emeritus before state and local governments, Article II, section 8(e), Florida Constitution, provides in part:

> No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. (emphasis added)
>
> Similarly House Rule 35 contains a prohibition and provides in part:
>
> No member shall personally represent another person or entity for compensation before any state agency other than a judicial tribunal. (emphasis added)

Therefore, if you do not represent the Institute before a state agency for compensation, Article II, section 8(e) and House Rule 35 do not prohibit you from employment.

However, there is no such prohibition against appearing before local governments. See HCO 97-05 and CEO 91-54. Therefore, you may appear on behalf of the Institute before a local government.

Second, any potential conflicts that may arise from your capacity as Chair Emeritus must be examined. In brief, there do not appear to be any prohibited conflicts of interest but you may be required to file a memorandum of voting on a case-by-case basis if a vote is required that would provide a "special private gain" to either you, your family, or the Institute.

[1] It is beyond the scope of this opinion to advise you whether the Institute may have a Chair Emeritus and how the Institute validates the contributions of the outgoing Chair Emeritus.

Also, section 112.313(7)(a), Florida Statutes, provides in part:

> No public officer . . . 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, the agency of which he or she is an officer . . . nor shall an officer . . . have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This section prohibits employment or a contract relationship in the following three situations: (a) in a regulated entity; (b) one that would create a frequently recurring conflict; and (c) one that would impede the full and faithful discharge of public duties. Each situation will be discussed.

Concerning employment or a contractual relation with a regulated entity, the Institute is established at the Miami-Dade Community College by the State Community College System in conjunction with the State University System. While one could argue that these entities are regulated by the Legislature, section 112.313(7)(a)2, Florida Statutes, contains the following exemption:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

Here, the only regulatory authority of the Legislature would be through the enactment of laws; therefore, you are exempt from any conflict based upon this provision.

Turning next to employment or contractual relationship that would create a frequently recurring conflict, it does not appear that any conflict would arise on a frequent basis. Should an apparent conflict arise, you should seek counsel as to whether you should refrain from voting or whether you may vote after filing the necessary disclosure.

The final situation prohibits employment or contractual relationship that would impede the full and faithful discharge of public duties. You have made no indication that you would be unable to discharge your public duties.

Therefore, there is nothing to indicate that section 112.313(7)(a), Florida Statutes, prohibits your employment or contractual relationship with the Institute.

It should also be noted that you are subject to the provisions of House Rule 31 regarding employment and use of official position. The rule provides in part:

> 31. Ethics; Conflicting Employment—A member of the House shall:
> (a) Scrupulously comply with the requirements of all laws related to the ethics of public officers.
> (b) Not allow personal employment to impair the Member's independence of judgment in the exercise of official duties.

Since Florida has citizen legislators, House Rules should not be construed to prevent a legislator from retaining employment if that employment does not impair the legislator's independence of judgment. Again, nothing you have provided indicates that your position with the Institute would impair your independence of judgment in the exercise of your official duties as a Member of the House.

Additionally, any potential voting conflict that may arise due to your employment must be examined. House Rule 24 prohibits you from voting on legislation if you, your family member, your principal or employer, or your family member's principal or employer stands to receive a special private gain from the passage of a bill. Should you receive a special private gain from a vote, you must disclose this by filing a disclosure statement. Although the rule requires Members to vote, it is generally accepted that a Member should not vote in instances of special private gain. Since whether you receive a special private gain is examined on a bill-by-bill basis, you may wish to request another opinion when a specific vote becomes an issue.

Finally, you also ask about restitution by the Institute. As you have stated, restitution means reimbursement for expenses associated with your service with the Institute. Neither Florida law nor House Rules prohibit the Institute from reimbursing you for these expenses. Also, section 112.312(12)(b), Florida Statutes, excludes from the definition of "gift" any expenses associated with your service with any organization in which you are an officer or director.

Accordingly, subject to the conditions laid out above, there is no conflict of interest in +your capacity as Chair Emeritus of the Florida Martin Luther King, Jr. Institute for Nonviolence.

**HCO 98-09—November 12, 1998**

*To: The Honorable Larry Crow, 49th District*

*Prepared by: Fred McDowell, General Counsel*
*Tom Tedcastle, General Counsel*

Pursuant to Rule 36 of the Rules of the Florida House of Representatives, you have requested an opinion as to whether you may represent a client against the State of Florida in the courts of this state. Your question is answered in the affirmative.

The limitation on legislators representing clients is found in Article II, Section 8(e) of the Florida Constitution which provides that "No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals." This provision has also been included within the code of ethics as Section 112.313(9)(a)3., Florida Statutes and in Rule 35 of the Rules of the Florida House of Representatives.

While the prohibition specifically permits legislators to represent clients before judicial tribunals, the representation of clients against the state presents the additional concern that proper representation will require discussions between the legislator, as counsel, and representatives of the agency which is the opposing party in the litigation.

In addressing this issue, the Commission on Ethics has determined that a state legislator may conduct settlement negotiations with the state agency after suit is filed, without violating the prohibition on representation of another before a state agency. *CEO 84-6.* While the opinion could be broadly construed to permit your involvement in settlement negotiations

prior to filing suit, I would note that the Commission on Ethics had previously determined that negotiations conducted prior to the filing of litigation would be prohibited. *CEO 77-168.* The commission has never specifically retreated from its earlier opinion and it is factually distinguishable from the 1984 opinion. Accordingly, I would advise that you avoid any discussions with the agency prior to your filing suit on behalf of the client without first seeking a formal opinion from the Commission on Ethics.

Although you may represent a client for compensation in court against a state agency, you should avoid any appearance of seeking favorable treatment of your client as the result of your serving as a state legislator. Accordingly, I would advise that you make no reference to your service as a legislator and that should contacts with the agency be required, you not combine such contact with legislative business.

**HCO 98-10—November 18, 1998**

*To: The Honorable James B. Fuller, 16th District*

*Prepared by: Tom Tedcastle, General Counsel*

You have asked for an Opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives as to whether there would exist a conflict of interest if you were to sponsor and vote on legislation providing a tax exemption for diesel fuels burned by motor coaches while idling. You advise us that you own one such motor coach and that you could potentially receive a minor benefit from the passage of such legislation. You have further advised that if such a conflict exists, you would withdraw as the sponsor of the legislation.

The answer to your question is that you are not prohibited from sponsoring the legislation or from voting on it and that no conflict disclosure is required. You may, however, voluntarily disclose your ownership of the motor coach, if you so desire.

Rule 20 of the Rules of the Florida House of Representatives prohibits a Member from voting on legislation which could inure to "the special private gain" of the Member. This prohibition is similar to the prohibition found in Section 112.3143, Florida Statutes, relating to voting conflicts.

The term "special private gain" requires that the Member be affected more favorably than others similarly situated. This is particularly true in cases where the legislation affects a large number of people, as is the case with the legislation in question. As you own only one motor coach which is used on an occasional basis, the legislation would, in fact, appear to provide you with a lesser benefit than many of those who could potentially be benefited. Accordingly, you would not be receiving a special private benefit, and thus no prohibited conflict exists.

**HCO 98-11—November 30, 1998**

*To: The Honorable Carlos L. Valdes, 111th District*

*Prepared by: Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives and Section 112.3148, Florida Statutes, relating to the following factual situation:

> You have been invited by Project Interchange, an institute of the American Jewish Committee (AJC) to attend a seminar in Israel from December 9-18, 1998. The seminar will include discussions on U.S. - Israel relations, the Middle East peace process, trade and economic development, education, immigration, and other similar governmental topics. You are required to pay a fee of $350 plus the cost of your U.S. domestic air fare. The remaining expenses will be paid by Project Interchange.

The trip to Israel, and its related expenses, would constitute a gift to you and would be subject to the provisions of Section 112.3148, Florida Statutes. However, as neither Project International or AJC employs a lobbyist before the Florida Legislature, you would not be prohibited from accepting the gift, although you would be required to report the trip on Form 9 by March 31, 1999. Likewise, the acceptance of a gift from a person having no interest before the Florida Legislature would not violate any rules of the Florida House of Representatives.

**HCO 99-01—January 5, 1999 Superseded by Corrected Opinion**

*To: Identification not requested*

*Prepared by: Tom Tedcastle, General Counsel*

You have requested an opinion as to whether the two-year prohibition contained in state law on a former officer lobbying his or her agency applies to former city commissioners. The answer is that the prohibition does not apply to former municipal officers.

Article II, Section 8(e) of the Florida Constitution provides:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

The provisions of this constitutional prohibition are also found in Section 112.313(9), Florida Statutes. In accord with the first sentence of Article II, Section 8(e), the statutory language affects state legislators and statewide elected officers. In accord with the final sentence of the constitutional prohibition, Section 112.313(9), has expanded the prohibition to include appointed state officers and certain state employees. Although Article II, Section

8(e) authorizes the Legislature to apply the prohibitions by law to all public officers and employees, the Legislature has chosen to apply the provisions only to certain officers and employees of state government, and not to the officers and employees of municipal governments. Accordingly, former officers and employees of municipal governments are not governed by the two-year ban on lobbying contained in state law.

While there is no limitation under state law which would prohibit a former municipal officer from lobbying the municipality which he or she served absent a conflict of interest, the municipality may have enacted a lobbying prohibition of its own. Any former municipal officer should consult with the local authority to determine whether such a prohibition has been enacted on the local level.

**HCO 99-01—January 25, 1999** **Corrected Opinion**

*To: Identification not requested*

*Prepared by: Tom Tedcastle, General Counsel*

You have requested an opinion as to whether you may represent yourself, or if you should eventually enter into a business partnership, the partnership before a city commission on which you served prior to your election to the Florida House of Representatives. You were reelected to the city commission after October 1, 1992. Finally, you have asked whether any prohibition on representation would apply to partners.

I had previously advised you in error that under no circumstances would representation be prohibited. That response failed to address the provisions of Section 112.313(14), Florida Statutes.

Article II, Section 8(e) of the Florida Constitution provides:

> No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

In accordance with the permissive language found in the last sentence of Article II, Section 8, of the State Constitution, the Legislature has enacted Section 112.313(14), Florida Statutes, which prohibits persons elected or reelected as municipal officers after October 1, 1992, from representing another for compensation before the governing body of the municipality for two years after leaving office.

In order to violate the provisions of this act, a person covered would have to do all three of the following:

1. Represent another;
2. Receive compensation; and

3. Perform an act which constitutes representation.

In regard to the question posed where a partnership has not been formed, and you are merely representing yourself, it is clear that you would not be representing another. While in this capacity, you may clearly interact with the commission, attend its meetings, contact its members, and suggest that the commission take or fail to take any action.

A different conclusion may be reached, however, should you enter into a business partnership with respect to matters before the commission in which the partnership has an interest. This potential different conclusion would only apply with respect to interactions occurring after you have entered into the business partnership. Although you would personally benefit as a partner on any matter in which the partnership benefits, you would be considered as representing not only yourself, but each of the partners. Accordingly, you would be representing another if you were to appear before the city commission on behalf of the partnership. The question therefore, is whether you are compensated for the appearance and whether the appearance constitutes representation.

The issue of compensation is a factual determination which will vary from case to case. I would alert you, however, that compensation does not necessarily require the payment of a fee. For example, if part of the consideration you would be providing for your share of the partnership would be the representation, it is my opinion, the share of the partnership you are receiving would constitute consideration for the representation. On the other hand, reimbursement of expenses, such as travel, meals, and lodging, does not constitute consideration for the purposes of the representation prohibition (CEO Opinions 80-41, 83-16, 84-114).

Whether one is performing an act which constitutes representation, is likewise a factual determination. Clearly, appearing as an advocate would be representation. On the other side, the Ethics Commission has ruled that merely providing information to a public official at the request of the public official does not violate the prohibition on representation by former office holders (CEO Opinion 90-04).

The prohibition in Section 112.313(14), Florida Statutes, by its own language, applies only where the former officer "personally" represents another for compensation. The prohibition does not apply to a person's business associates, law partners, or family members, unless such associate, partner or relative has also been a former member of the city commission within the preceding two years.

In conclusion, in that any representation you would make at present is solely for your own benefit, you are not prohibited by the Code of Ethics from appearing before the city commission of which you were once a member. Should you enter into a business partnership in the future, you must refrain from any compensated representation of that partnership before the city commission or its members for a period of two years, commencing on the date you left office as a city commissioner. This prohibition would apply only to you - it would not apply to any of your business associates who are not themselves former members of the city commission.

**HCO 99-02—January 25, 1999**

*To: The Honorable Janegale Boyd, 10th District*

*Prepared by: Tom Tedcastle, General Counsel*

You have requested an opinion pursuant to Rule 36 of the Rules of the Florida House of Representatives and Sections 112.3148 and 112.3149, Florida Statutes, relating to the payment of certain expenses. You may accept the payment of the expenses offered, but must report some of them no later than July 1, 1999.

The factual situations which you have presented are as follows:

During the month of September, you addressed the Annual Conference of the Florida Aquaculture Association in Cedar Key, Florida. In connection with the presentation, the Association provided you a check for $58.85, as reimbursement for the cost of one night's lodging, which you had paid.

On October 10, 1998, you addressed an alumni group of nurses from the University of Pennsylvania in Orlando, Florida. In order to attend the conference, you incurred an expense of $41.79, for the cost of a car rental and tolls, and other miscellaneous expenses. Following the conference, Stanley J. Wojciak and Pauline Wojciak, two persons who attended the conference, provided you a check for $50 which you intend, if permitted, to use for the payment of the expenses incurred for the travel to Orlando. You have further indicated that if you may accept the check, it is your intent to reimburse the state with the money for expenses paid by the state in connection with this event.

The Florida Aquaculture Association is the principal of a registered lobbyist before the Florida Legislature. As such, the association would be prohibited from providing a gift to you with a value in excess of $100. However, as the expense paid by the association was in connection with an honorarium event, it would appear to be exempt from the definition of "gift" found in Section 112.312(12)(b)3., Florida Statutes. Specifically exempted are "expenses related to an honorarium event."

Although the expense paid by the Florida Aquaculture Association is not considered a gift for the purposes of the Code of Ethics, it is governed by the provisions of Section 112.3149, Florida Statutes, relating to honorariums. Under Section 112.3149, Florida Statutes, the association may not provide, and you may not accept, an honorarium. You may however accept payment by the association of actual and reasonable expenses for lodging, transportation, meals, and registration fees. What is reasonable depends on the circumstances of the event.

Because the annual convention was held within 100 miles of your home, and you were only speaking on one day, it would appear that the general rule that lodging for two nights is reasonable would not apply in this case. However, as you were reimbursed for only one night's lodging, and the cost of the lodging was minimal, it would appear that the expense paid was both actual and reasonable. You may, therefore, accept the reimbursement. However, as honorarium expenses, the association is required to provide you with a report no later than 60 days following the event which shows the payment of the expense. You are required to report the receipt of the expense, no matter how small, no later than July 1, 1999 on Form 10, and to attach a copy of the report received from the association to the Form 10 filing.

In connection with the payment of $50 by Stanley and Pauline Wojciak, to cover the expenses incurred by you in connection with your appearance in Orlando, it is less clear whether the $50 is a gift. Although the money has been used to cover expenses related to the event, the Wojciaks did not require that it be used for that purpose, nor did they know how much had been expended in connection with the visit to Orlando. Accordingly, I would recommend that you take the conservative approach and consider the $50 check a gift for

the purposes of Chapter 112. However, since neither Mr. or Ms. Wojciak is a registered lobbyist or the principal of a lobbyist and the value of the gift is not more than $100, you may accept the gift and no report is required by either you or the Wojciaks. You are not legally required to use the funds to reimburse the state, but your decision to do so is in keeping with the high ethical standards that the House of Representatives encourages its Members to follow.

**HCO 99-03—January 27, 1999**

*To: The Honorable Johnnie Byrd, 62nd District*

*Prepared by: Tom Tedcastle, General Counsel*

You have asked for an opinion pursuant to the provisions of Section 112.3148, Florida Statutes, regarding your service as an officer of the Committee for Responsible Government. More particularly, you have asked whether the Committee may reimburse you for travel expenses related to your service as an officer of the committee.

The Committee for Responsible Government is a committee of continuous existence formed pursuant to the provisions of Section 106.04, Florida Statutes. You serve as the Vice-President of the committee. As Vice-President, you will likely be required to meet with candidates around the State who are potential recipients of contributions from the committee.

Section 112.3148, Florida Statutes, prohibits a Member of the Legislature from accepting a gift from a committee of continuous existence which is in excess of $100. The question, therefore, is whether the payment of your expenses would constitute a "gift" for the purposes of Section 112.3148, Florida Statutes.

The term "gift" is defined in Section 112.312(12), Florida Statutes. Specifically excluded from the definition are "expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization." Section 112.312(12)(b)1., Florida Statutes. As a committee of continuous existence is an organization, reimbursement of your expenses associated with your service as the Vice-President of the Committee for Responsible Government would not constitute a gift, and therefore you may receive the payment without violating the provisions of Section 112.3148, Florida Statutes.

**HCO 99-04—August 16, 1999**

*To: The Honorable J. Alex Villalobos, 112th District*

*Prepared by: Tom Tedcastle, General Counsel*
*Richard Hixson, General Counsel*

You have requested our opinion as to whether you may share office space with Senator Diaz-Balart. As we understand your question, it is your intent to occupy, for the purpose of opening a satellite district office, a portion of the space presently occupied by Senator Diaz-Balart as his district office. You would assume responsibility for paying a prorated portion of the rent and utilities, based on the amount of square footage utilized.

You are permitted to open a satellite office and to share space with another Member of the Florida Legislature. It is particularly appropriate where the two Members serve many of

the same constituents. Because you would be paying your prorated share to the landlord, there would be no gift implications. You may use either your intra-district expense account or the surplus office account to pay for this constituent service.

**HCO 99-05—October 6, 1999**

*To: The Honorable Elaine Bloom, 106th District*

*Prepared by: Tom Tedcastle, General Counsel*
*Richard Hixson, General Counsel*

You have requested our opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives as to whether the provisions of Rule 26(b) apply to the acceptance and solicitation of campaign contributions for federal office. It is our opinion that they do not.

Rule 26(b) prohibits a Member of the Florida House of Representatives from soliciting or accepting a campaign contribution during the 60-day regular session of the Florida House of Representatives. While on its face, the rule, which has been in existence since 1994, would appear to apply to candidates for any office, case law leads us to the conclusion that it must be interpreted only to apply to candidates for state and local offices.

The specific question which you raise has been decided in 1996 by the United States Court of Appeals, 11th Circuit, which is the federal appellate court having jurisdiction over the State of Florida. In the case of *Teper v. Miller*, 82 F.3d 989, the court considered a Georgia statute which, like Rule 26(b), prohibited Members of the Georgia General Assembly from accepting campaign contributions during a session of the Legislature. In that case, the court held that to the extent the Georgia law was intended to apply to candidates for federal office, it was preempted by federal law and could not be enforced.

Accordingly, it is our opinion that, notwithstanding the existence of Rule 26(b) of the Rules of the Florida House of Representatives, a Member of the Florida House of Representatives who is a candidate for federal office may, if he or she so chooses, solicit and accept campaign contributions during the 60-day Regular Session of the Florida Legislature. Candidates for office other than federal offices, however, are still subject to the prohibitions of Rule 26(b).

**HCO 99-06—October 12, 1999**

*To: The Honorable Dwight Stansel, 11th District*

*Prepared by: Tom Tedcastle, General Counsel*
*Richard Hixson, General Counsel*

You have requested our opinion pursuant to Rule 32(a) of the Rules of the Florida House of Representatives as to whether you may participate in the debate and vote on the outcome of legislation which would provide for financial relief for tobacco farmers. It is our opinion that you may both debate the bill and vote on it; however, in an abundance of caution, we would recommend that you disclose your interest as a tobacco grower.

You have related to us that legislation is being proposed in the Committee on Agriculture which would provide financial relief for those tobacco growers who have been adversely affected by the settlement reached between the State of Florida and tobacco manufacturers. You are one of approximately 250 growers who would receive a cash payment over a period of years if the legislation should become law. The majority of others who would be similarly benefited reside in your legislative district. The legislation would provide for a proportional distribution of the proceeds based upon the tobacco production quota each grower received. Accordingly, your portion of the proceeds would approximate 0.67% of the amount appropriated.

Rule 20(a) of the Rules of the Florida House of Representatives provides:

> Every Member . . . shall vote on each question put; however, no Member may vote on any measure that the Member knows or believes would inure to the Member's special private gain.

In determining whether the rule prohibits a Member from voting, it must be determined whether the Member would be benefited by the legislation, and, if so, whether the benefit constitutes a "special private gain."

It is clear from the question you have posed that the legislation, if adopted, would provide a benefit to you. Like other tobacco growers, you would stand to receive financial compensation which you would not otherwise receive; however, in that the legislation treats all of the growers in the same manner, it is our opinion that the gain you would receive is not a special private gain, as that term has been defined by opinions of the Florida Commission on Ethics.

In CEO 87-27, the Commission was faced with the issue of whether members of a city commission would receive a special private gain where they were determining to rezone all the property in the city from residential to commercial to permit it to be sold to a single commercial entity. The vote would have resulted in each parcel being purchased, including those of the Members of the town council. In determining that the vote would not result in the Members receiving a "special private gain" the commission looked at the size of the class (210) and at the fact that the proceeds of the sale would be distributed on an equitable formula. In your case, the proceeds would go to a slightly larger class (250) and would also be distributed based on an equitable formula. Likewise, in a more recent case, the commission determined that a class of 83 similarly affected persons was sufficiently large (although just barely) to avoid impacts on the class being considered to be "special."

In our opinion, the fact that the class of persons to be affected resides primarily in your district also supports the finding that your participation both in debating the legislation and voting on it would not constitute the type of conflict of interest that the rule was intended to prohibit. Rather, in this case it would appear that your own interest and those of your constituents are identical. We would note, that were you precluded from participating, the remaining members of the class who reside in your district would have no voice in the House of Representatives on an issue which is of paramount importance to them.

Although we have opined that Rule 20(a) does not prohibit you from either debating or voting on the proposed legislation, and accordingly you must vote on the legislation whether you wish to or not, we would recommend, in an abundance of caution and in keeping with the spirit of ethical rules, that you nonetheless disclose your interest at each stage of the process where you will be voting. We would note that Section 112.3143, Florida Statutes, which also

governs potential conflicts of interest, provides that a state official may vote on a matter even if it inures to the officers "special private gain" if the officer has disclosed the interest in writing. While we do not believe that the legislation would result in such a gain, we note the determination is one which includes a level of subjectivity. Although the facts presented in this case would appear sufficiently similar to cases in which the commission has likewise determined no special private gain existed, the facts are clearly different. Disclosure, if made, would leave no question as to whether you have complied with the requirements of state law.

**HCO 99-07—October 29, 1999**

*To: Identification not requested*

*Prepared by: Richard Hixson, General Counsel*
*Tom Tedcastle, General Counsel*

Pursuant to House Rule 32, you have asked for an advisory opinion with regard to the following question:

An airport authority has offered to pay for your travel expenses to attend an economic development meeting in Israel, the purpose of which is to promote the location of a major aviation repair and overhaul facility in your district. The airport authority employs a registered lobbyist, and the value of the trip is in excess of $100. You have asked whether you may accept the cost of these travel expenses from the airport authority.

Your question is answered in the affirmative.

As previously expressed in prior House Counsel Opinions 91-14, 91-44 and 96-16, travel expenses are considered a gift subject to the provisions of s. 112.3148, Florida Statutes. Because the airport authority employs a registered lobbyist under the provisions of s. 112.3148(4), Florida Statutes, you would generally be prohibited from accepting any gift with a value in excess of $100 from the principal employer of a registered lobbyist; however, s. 112.3148(6)(b), Florida Statutes, provides a specific exception to this general rule if the gift is from certain governmental agencies, including an airport authority, and there is a public purpose for the gift. Specifically, Section 112.3148(6)(b), Florida Statutes provides:

> Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of $100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to s. 373.069, Tri-County Commuter Rail Authority, a county, a municipality, an airport authority, or a school board if a public purpose can be shown for the gift; and a reporting individual or procurement employee who is an officer or employee of a governmental entity supported by a direct-support organization specifically authorized by law to support such governmental entity may accept such a gift from such direct-support organization.

In conjunction with s. 112.3148(6)(b), Florida Statutes, the Florida Commission on Ethics, promulgated Rule 34-13.320, Florida Administrative Code, which provides in pertinent part:

> 34-13.320 Exceptions to Prohibitions Against Accepting and Giving Gifts. Notwithstanding the prohibitions expressed in Rule 34-13.310, the following gifts are permitted.

(2) An entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, a water management district created pursuant to s. 373.069, Florida Statutes, the Tri-County Commuter Rail Authority, or a school board may give, either directly or indirectly, to a reporting individual or procurement employee a gift having a value in excess of $100 if a public purpose can be shown for the gift. The reporting individual or procurement employee may accept such a gift if a public purpose can be shown for the gift.

(a) In order to show a public purpose for the gift, not only must there be a public purpose for the governmental entity's having given the gift, but also there must be a public purpose in the reporting individual's or procurement employee's accepting the gift.

(b) "Public purpose" means that which promotes the public health, safety, and welfare of the citizens of the State or a political subdivision therein, rather than the welfare of a specific individual or class of persons. Where the gift involves attendance at a spectator event and is given by a governmental entity, and where the donee has no direct supervisory or regulatory authority over the event, persons participating in the event, or the governmental entity which gave the tickets to the donee, there is no public purpose shown for the giving of, or the receipt of, the gift. (e.s.)

It appears from your circumstances that the purpose of this trip is to promote the economic welfare of your district, not to benefit a specific individual or class. Under similar circumstances the Commission on Ethics has determined that a trip provided by a governmental agency had a public purpose and was within the exception provided by s. 112.3148(6)(b), Florida Statutes. See CEO 91-57.

Accordingly, so long as the cost of the trip is paid by the airport authority, and there is a public purpose to the trip, you may accept travel expenses associated therewith. You should further be advised to report the travel expenses received in connection with this trip as a gift in excess of $100 as required by s. 112.3148(6)(d), Florida Statutes.

**C**



**D**

## V

**ADVISORY OPINIONS**

**of the**

**OFFICE OF LEGISLATIVE SERVICES GENERAL COUNSEL**

**Relating to**

**LOBBYIST REGISTRATION**

**for the State of Florida**

**November 23, 1993, through June 25, 1999**

**LRO 93-01—November 23, 1993**

*To: Thomas M. Dawson, Esq., and John P. Mulhern, Esq. - LeBoeuf, Lamb, Leiby, & MacRae*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry addressed to Ms. Patty Ryan regarding lobbyist registration. She forwarded your letter to me for an informal opinion under the provisions of Rule 1.5(1), Joint Rule of the Florida Senate and House of Representatives (1993).

Your letter states that your law firm is counsel for Underwriters at Lloyd's, London. You appeared before the House Committee on Insurance on 1 November 1993 to express the support of your client for House Bill 33-C. You later sent correspondence regarding the bill and its proposed amendments to members of the committee and also to members of the Senate Committee on Commerce.

Under the foregoing circumstances, it appears that you were influencing or attempting to influence legislative action on the pending bill. Such activity is within the definition of "lobbying." If you or your firm were employed and received compensation or contracted for economic consideration for your lobbying, you are required by Section 11.045, Florida Statutes, and Rule 1.1(1), Joint Rules of the Florida Senate and House of Representatives (1993), to be registered as lobbyists.

**LRO 93-02—December 8, 1993**

*To: Wade L. Hopping, Esq. - Hopping, Boyd, Green, & Sams*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry made under the provisions of Rule 1.5(1), Joint Rule of the Florida Senate and House of Representatives (1993). Your four questions are repeated below with their responses.

**Question 1**

> Our law firm produces a summary of legislative action which is routinely mailed to clients each year following the end of the Regular Session. As a courtesy, we have also mailed copies to all members of the Senate and House of Representatives. The summary does not expressly encourage communication with members or employees of the Legislature. Neither is it designed, in and of itself, to communicate with legislators or legislative employees. Production services, however, are handled by an independent contractor. Will we be permitted to exclude the cost of production based on use of the summary for a non-lobbying business purpose, or must we report as a lobbying expenditure the prorated cost for the number of copies sent to members of the Legislature?

**Response**

If, at the time the summary is produced, your firm anticipates distributing copies of the summary to legislators or legislative staff, the cost of the summary production should be apportioned between the legislative recipients and your firm's clients. If, for example, 10 percent of the copies will be sent to legislators or legislative staff, then 10 percent of the production cost should be considered a reportable expenditure.

**Question 2**

> If our law firm has been retained for the sole purpose of drafting specific legislation and related amendments, but not for purposes of lobbying for passage of the same, is the client required to report our fee as an expenditure for research? What, if anything, is the firm's responsibility under the new law in this circumstance?

**Response**

If the members of your firm are not lobbyists on behalf of the client for whom the firm produces draft legislation, and the client is not represented by anyone else as its lobbyist before the Florida Legislature, then your firm's fee for the drafting would not be reportable since the client is not a principal required to make expenditure reports. If, however, the client is represented by a lobbyist, then the acquisition of draft legislation would be a reportable expenditure if the client obtained the drafts for the purpose of influencing legislative action. There would be a strong inference that the drafts were obtained for that very purpose. Under these circumstances, your firm should provide your client with an accurate report of the cost associated with producing the draft legislation.

**Question 3**

Our law firm subscribes to a commercial bill-tracking service. Information on various bills is routinely transmitted to a large number of clients, only some of whom have retained lawyers within the firm to work for them in a lobbying capacity. Even among those clients who have retained the firm to lobby, only a portion of the information will ever be utilized in order to influence legislative action. Should we categorize the expense for the bill-tracking service as a non-lobbying business purpose, or should some portion of the cost be reported as an expenditure for research? If any portion of the cost is to be reported, how is that cost to be apportioned among the various clients, and what records should be preserved in order to substantiate the expense as a lobbying expenditure?

**Response**

The general use of a commercial bill-tracking service by your firm may be considered an office expense which is excluded by Rule 1.4(4)(b), Joint Rule of the Florida Senate and House of Representatives (1993), from being a reportable expenditure. However, when the bill-tracking service is used to research a specific issue for a particular principal and your firm thereby incurs additional charges, such as for connect-time fees, those additional charges are reportable as research expenses to that principal. Your firm should maintain such records as are necessary to establish which fees for the bill-tracking service constitute general office expenses and which charges or fees are attributable to research on a specific issue for a particular principal or principals.

**Question 4**

Suppose a client for whom our firm has been retained to lobby the Legislature hosts a public event at which literally hundreds of people are participants. Among them are several members of the client's local legislative delegation. Must the client report some portion of the cost as a lobbying expenditure if it is assumed that the client has engendered the goodwill of the legislators in attendance? If so, how should such an expenditure be valued in the absence of an accurate count of those participating?

The foregoing facts were supplemented by your letter of 30 November 1993 sent in response to my request for more specificity. The following facts were added:

The event is a non-ticketed event, the principal purpose of which is to gain public support for a new commercial endeavor. It has been planned as a marketing effort and is not, by design, intended to result in legislative action. Examples of similar events might include groundbreaking ceremonies or the opening of new businesses. Invitations will be sent to a large number of persons throughout the community, including business and financial people, local and state officials, other community leaders, and the press. The general public may or may not be independently invited. Food and beverages will be available for all participants. The presence of members of the local legislative delegation is not the focus of any of the planned activities. Having been planned with no clear lobbying purpose in mind, what obligation, if any, arises under the rule because of the presence of one or more members of the local legislative delegation?

**Response**

Because the main or even a subsidiary purpose of the event is not lobbying and the event is open to all members of the public (whether they received an invitation or not), none of the cost of the event would be reportable if any goodwill engendered in the attending legislators or legislative staff came solely as the result of their participation in the event as members of the public. If, however, participation is restricted to invitees so that the goodwill engendered in legislators or legislative staff would not be freely available to the general public, then the cost attributed to engendering goodwill could be apportioned on the ratio of legislators to non-legislators on the invitation list. This apportionment method assumes that an accurate head count of actual participants is not feasible.

**LRO 94-01—January 19, 1994**

*To: H. Frank Meiners, Operations Manager - Public Affairs, Southern Bell*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on whether Southern Bell Telephone's membership dues for Associated Industries of Florida should be reported in whole or in part as a lobbying expense.

Your inquiry states that, "The reason we belong to AIF is to have our position represented before the Legislature on many generic business issues. In addition, AIF is used as a general source of information regarding legislative activities, in the majority of which we have no interest. Some of the issues which AIF covers are cabinet decisions or other executive agencies."

Southern Bell Telephone is a principal which has lobbyists registered to represent it before the Florida Legislature. The company is therefore required to report expenditures made for the purpose of lobbying, that is, for the purpose of influencing legislative action. Section 11.045, Florida Statutes, and Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). If the primary reason or a significant reason for paying the AIF membership dues is to have AIF represent the interests of the company before the Legislature, the cost of the dues should be reported by the company as a lobbying expenditure. The dues do not appear to fall within any of the categories which are considered not to be "expenditures" under Rule One: lobbyists' or principals' salaries, office expenses, campaign contributions, or non-lobbying business expenses which later may have a lobbying purpose. Section 1.4(4), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

If the dues paid by the company are prorated by the AIF as to which portion is for representation before the Legislature and which portion is for other services or membership activities, the company would report only the dues amount allocated to lobbying as a lobbying expenditure.

**LRO 94-02—January 20, 1994**

*To: Wayne Blanton and John Gaines - Florida School Boards Association Inc.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry regarding the possible registration of appointed school superintendents as lobbyists.

Your letter poses the following question: "Are appointed school superintendents required to register as lobbyists and/or required to submit quarterly reports?"

Your letter states that:

> Appointed school superintendents are constitutional officers and it is the belief of our associations that they should be treated no differently than elected school board members or elected superintendents. The primary function of appointed superintendents is not legislative affairs, although on occasion they are involved in this area. Their primary responsibilities are for management and administration of their local school districts.

Your question is answered as follows. Section 11.045, Florida Statutes, requires the Legislature to adopt a rule to provide for the registration of legislative lobbyists. This has been accomplished by the adoption of Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The rule requires that all lobbyists must register with the Joint Legislative Management Committee before lobbying. Rule 1.5, Joint Rules of the Florida Senate and House of Representatives (1993). Certain classes of persons are, however, exempt from being considered lobbyists. Those classes include, "A person who is a state officer holding elective office or an officer of a political subdivision of the state holding elective office and who is acting in that officer's official capacity." Rule 1.1(4)(d), Joint Rules of the Florida Senate and House of Representatives (1993). The rule does distinguish between elective officers and those who are appointed.

While appointed school district superintendents are not exempt from registration solely because of their position, they do not appear to meet the definition of a lobbyist. They are employed to manage school districts and are not employed to lobby or to be principally employed for the governmental affairs of their school districts. According to their significant or primary responsibilities as set out in your letter, appointed superintendents do not appear to be lobbyists as defined in Rule 1.1(2)(d) Joint Rules of the Florida Senate and House of Representatives (1993).

This opinion is limited to the facts presented in your inquiry and to the provisions of Chapter 230, Florida Statutes, relating to the duties of school superintendents. It does not apply to superintendents acting on behalf of any entity other than their employing school districts.

**LRO 94-03—January 21, 1994**

*To: S. James Brainerd, Esq. - Florida Chamber of Commerce*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on the reporting of lobbying expenditures as they may related to the Business Breakfast described below. Your letter states:

> I administer a program called Business Breakfast. It consists of approximately 40 lobbyists who hold a "breakfast" each morning during the legislative session. We invite state legislators to join us in an informal and relaxed setting. The rules of our organization specifically prohibit "lobbying" the legislators, however, we are always willing to respond to their questions, so technically it is probably lobbying or at the very least, generating goodwill. Membership in the Breakfast is by invitation only. "Dues" are $850 for one and $1150 for one plus a full-time alternate. We meet at Andrew's Adams Street Cafe and Andy charges us $10 per person per day for those actually in attendance. We keep careful count of how many lobbyists and legislators attend each day. The "dues" form a pot of money that can be replenished through assessment if we run short during session. I act as manager and pay the bills to the restaurant but I only act as the agent of the organization.
>
> It is my understanding that, under the provisions of Section 1.5 of HCR 57-C, you can give me informal opinion about the application of the rule to this situation. Given the above description, can you please tell me:
>
> (1) Since "Business Breakfast" itself is not an "entity" trying to lobby or obtain goodwill, does Business Breakfast itself need to report?
>
> (2) If Business Breakfast does have to report, what does it report?
>
> (3) If Business Breakfast does not have to report, does the individual lobbyist have to report? If so, what do they report?
>
> (4) No matter who reports, how much are they required to report: their *pro-rata* share of only what is spent on legislators? (i.e., the number of legislative meals divided by the total spent each week?)

The following is my opinion on application of the rule to the above situation. While the rules of the Business Breakfast program prohibit "lobbying" as that activity may be defined by the program, the holding of the breakfast where legislators are invited to meet with lobbyists on an informal basis is a lobbying event. It appears to be an activity which attempts to obtain or engender the goodwill of the legislators.

Lobbying "means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a Member or employee of the Legislature." Section 1.1(1)©, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Section 1.4(2) of the Joint Rule provides further that:

> An expenditure shall be considered to have been intended to be for the purpose of engendering goodwill if it is a gift, an entertainment, *any food or beverage*, or any

> other item or service of similar personal benefit to a member or an employee or the Legislature. . . . (Emphasis supplied.)

The cost of the Business Breakfast therefore appears to be a lobbying expenditure which must be reported. Since the program is neither a principal nor a lobbyist, each participating lobbyist should report as a lobbying expenditure the cost of the program to him or her. This amount would be the dues paid to participate in the program. From the total dues paid, each reporting lobbyist can deduct the $10.00 charge for each meal the lobbyist actually ate in the program. This deduction is contained in Section 1.4(4)(b) of the Joint Rule which provides that the cost of a lobbyist's own meals are not a reportable expenditure.

This proration method may not be the only permissible method which comports with the Joint Rule, but since each lobbyist knows how many meals he or she ate in the program, this method may avoid some administrative burden. It does not require the manager to send reports to the Business Breakfast members on who ate how often an how many of the attendees were legislators or lobbyists.

**LRO 94-04—January 21, 1994**

*To: Dennis Roberts, Esq. - President, Florida Public Defender Association Inc.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on whether assistant public defenders who lobby on behalf of the Florida Public Defender Association need to register to lobby. Your letter states:

> Current Status: during interim committee meetings and the legislative session, various assistant public defenders appear before House and Senate committees and articulate the Florida Public Defender Association's legislative positions. Currently, the Association has a paid lobbyist who is the designated principal lobbyist and a number of elected public defenders who have also registered to represent the Association. Some assistant public defenders may appear only once while others make multiple appearances articulating the Association's position on legislation. Do these assistant public defender(s) need to register? And secondly, if they do, what is their cost to register. And thirdly, can this cost be paid by their public defender office?

The answers to your questions follow. The Joint Rule relating to legislative lobbyists provides that:

> Any person employed by any executive, judicial, or quasi-judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

Section 1.1(1)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).[1] There is an exception to this definition for such employees who might lobby on their own time.

> (4) For purposes of registration and reporting, the term "lobbyist" does not include any of the following:
>
> * * * * *
>
> A person employed by any executive, judicial, or quasi-judicial department of the state or community college of the state who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, *while that person is on approved leave or outside normal working hours, and who does not otherwise meet the definition of lobbyist.* (Emphasis supplied.)

Section 1.1(4)(f), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Simply stated, when an assistant public defender is making an appearance or attendance before the House or Senate, or any member or committee thereof, and is doing so on the time of his or her public employer, that assistant should be registered as a lobbyist.

The fee for an assistant public defender to register is an annual charge of $50 per each house of the Legislature for the first principal represented. Section 1.3, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) and Section 2, HCR 67-C, House Concurrent Resolutions (1993).

I am unable to offer an opinion on how the registration fee should be paid as the question involves provisions of law outside the scope of Joint Rule One. I am restricted in providing opinions to only the application of Rule One to a specific situation.

**LRO 94-05—January 21, 1994**

*To: Jeffrey N. Steinsnyder, Esq. - Senior Assistant County Attorney, Office of the County Attorney, Manatee County*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on whether you are required to register as a legislative lobbyist. Your letter states:

> Pursuant to Joint Rule 1, as amended, I am seeking an advisory opinion as to whether I am required, under the recently modified law, to register as a lobbyist on behalf of my employer. I hold the position of a senior assistant county attorney with Manatee County, a political subdivision of the State of Florida. In addition, I am assigned to represent the Environmental Action Commission of Manatee County, a local environmental regulatory agency created pursuant to Special Act

[1]See also Section 11.061, Florida Statutes.

of the Legislature, Chapter 91-412, Laws of Florida. In the past I have registered on behalf of both the Board of County Commissioners and the Environmental Action Commission. It is my opinion that the revised Joint Rule removes the requirement for me to register as a lobbyist.

* * * * *

As a senior assistant county attorney, my principal employment is to provide legal advice and representation to both the Board of County Commissioners and the Environmental Action Commission. I am assigned to do local land use, water use permitting and environmental regulatory work. My efforts in approaching [the] Legislature are limited to local legislation which the Board or Environmental Action Commission sponsors through the local legislative delegation for passage and occasional appearances before committees regarding general legislation which would have an impact on those two entities' ability to perform their governmental functions.

In answer to your question, I am of the opinion, based upon the facts provided above, that you are not required to register as a legislative lobbyist on behalf of Manatee County or the Environmental Action Commission of Manatee County. The lobbying activities which you perform or may perform for either entity appear to be only incidental to your primary responsibilities. *See* Section 1.1(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

**LRO 94-06—February 4, 1994**

*To: A. E. (Ned) Pooser IV - State Legal Advocate for Long-Term Care Residents, Long-Term Care Ombudsman Council*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on the following question as stated in your letter:

We are requesting your opinion on the following question:

Are the State Long-Term Care Ombudsman and Legal Advocate within the Office of State Long-term Care Ombudsman exempt from the annual registration fee stated in Joint Rule 1.3?

The Office of State Long-Term Care Ombudsman is a federally mandated advocacy agency for fragile elderly persons residing in nursing homes and other long-term care facilities. Both federal and state law anticipate that lobbying for changes in state laws relating to the health, safety, and welfare of this population be a vital part of that advocacy effort, and places this responsibility upon the State Long-Term Care Ombudsman and Legal Advocate. See, e.g., ss. 712(a)(1)(G) and 712(g), Older Americans Act; and, 400.0063(3) and 400.0065(1)(g), F.S. (1993).

The two employees of this program were previously exempted from the lobbyist registration fee under former Joint Rule 1.3(1)©. New Joint Rule 1.3(2)(a) now

> exempts "Two employees of each department of the executive branch created under chapter 20, Florida Statutes."
>
> The Office of State Long-Term Care Ombudsman is an autonomous agency housed for administrative purposes within the Department of Elderly Affairs. ss. 20.41(3) and 400.0063(1), F.S. (1993).

The answer to your question follows. Section 1.3(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) provides:

> The following persons are exempt from paying the fee, provided they are designated in writing by the agency head or person designated in this subsection:
>
> (a) Two employees of each department of the executive branch created under chapter 20, Florida Statutes.
>
> (b) Two employees of the Game and Fresh Water Fish Commission.
>
> (c) Two employees of the Executive Office of the Governor.
>
> (d) Two employees of the Commission on Ethics.
>
> (e) Two employees of the Florida Public Service Commission.
>
> (f) Two employees of the judicial branch designated in writing by the Chief Justice of the Florida Supreme Court.

Since the Office of State Long-Term Care Ombudsman does not meet any of the above criteria for exemption from the registration fee, there is no authority for a registration of the State Long-Term Care Ombudsman or the Legal Advocate without the payment of the fee. The provisions of the earlier version of the Joint Rule which allowed two fee exemptions for each state agency have been repealed.

**LRO 94-07—February 10, 1994**

*To: Sandra J. Robinson - Associated Industries of Florida*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on the following questions as stated in your letter:

1. Is there a "percentage threshold" for being "principally" involved in government affairs and therefore, considered a lobbyist for the purposes of the reporting requirement?

2. Would serving on an agency or department technical committee constitute lobbying?

3. Can an extension be obtained for the Executive Branch Lobbyist Report similar to the automatic extension available for the Joint Legislative Management Committee Report?

The answers to your questions follow. There is no percentage threshold which must be achieved before a person becomes principally employed for governmental affairs. Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), provides that:

> "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

There is no single bright-line criterion which will define in all cases when an employee's responsibility for either representing the employer in its contacts with government or for overseeing the employer's various relationships with government becomes a principal or a most significant responsibility of that employee.

In an attempt to provide some guidance in making such a determination, I suggest a reference to the concepts found in the Americans with Disabilities Act under which each covered employer must identify the "essential functions of a job" for its employment positions. If either of the two responsibilities referenced in the Joint Rule would constitute an essential function of an employee for purposes of the ADA, then the employee may be considered to be principally employed for governmental affairs.

There are many relevant factors which separately or together constitute being principally employed for governmental affairs. As one example, if the successful performance of representing the employer in its contacts with the government is a primary element in evaluating the employee's job performance for retention or promotion, then the employee would be considered to be principally employed for governmental affairs. Alternatively, if an employee spends a major portion of his or her working hours on governmental relations or lobbying, then the employee would be considered principally employed for governmental affairs. In contrast, if an employee incidentally lobbies for a few days and her primary job function is mechanical engineering, she would not meet the definition of being a lobbyist under the Joint Rule.

Your second question inquires about serving on an agency or department technical committee. The mere fact of serving on a technical committee would not by itself constitute legislative lobbying. If, however, that service entailed influencing or attempting to influence legislative action or attempting to obtain the goodwill of a Member or staff of the Legislature, then lobbying may be involved. If your question concerns with whether such service would constitute lobbying of the executive branch, you should make an inquiry to the Commission on Ethics which administers the executive branch lobbying provisions contained in Chapter 112, Florida Statutes.

I am unable to issue an opinion on extensions of time for filing executive branch lobbying expenditure reports. Section 1.5(1), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) limits informal opinions to legislative lobbying. As I mentioned in our telephone conversation, the Commission on Ethics is responsible for receiving executive branch expenditure reports. It has made provisions for extensions of time under certain circumstances.

**LRO 94-08—February 10, 1994**

*To: Dorothy D. Rasmussen*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on the following circumstances as stated in your letter:

> My husband and I are both registered lobbyists. We wish to rent a room in our home to a legislative employee for the legislative session. The rent that we have negotiated is $350 per month, which is consistent with the fair market value.
>
> I am writing to confirm that this is not a gift, for the purpose of lobbying or for the purpose of engendering goodwill. This being the case, I would also want to confirm that such a transaction is not a reportable expenditure.

The answer to your question as to whether renting a room in your home to a legislative employee for the fair market value of the rent is a lobbying expenditure as found in Section 1.4, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). An expenditure is defined as a "payment, distribution, loan, advance, reimbursement, deposit, or anything of value made or controlled, directly or indirectly, by a lobbyist or principal for the purpose of lobbying." An arm's length rental at fair market value to a legislative employee would not constitute an expenditure and need not be reported.

If the rental fee were set at an amount of less than the fair market value, there would be a goodwill gift[1] to the employee of an amount representing the difference between the actual rate and the fair market rate. The forbearance from charging the fair market rate would be a thing of value which must be reported under the provisions of Section 1.4 of the Joint Rule. That does not appear to be the case in your circumstances.

If you have any question about the application of Chapter 112, Florida Statutes, which includes the limitations on giving gifts to employees of the Legislature, please inquire with the Commission on Ethics. I am not authorized to give guidance on such inquiries.

**LRO 94-09—February 10, 1994**

*To: Thomas C. Woods - Special Consultant, Blank, Rigsby, & Meenan, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on the firm's expenditure reporting responsibilities under the circumstances stated in your letter:

> Two Blank, Rigsby, & Meenan, P.A., firm members are registered lobbyists for a given vendor. As co-counsel, Blank, Rigsby, & Meenan, P.A., was paid a fee by another law firm to lobby on behalf of the vendor.

[1]Section 1.4(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

> With this in mind, do the two Blank, Rigsby, & Meenan, P.A., member lobbyists need to report all services performed on behalf of the vendor, even though the firm was paid by a third party law firm? Blank, Rigsby, & Meenan, P.A. has kept an accurate account of its lobbying expenditures, including the expenditures referred to in this letter.

Even though the vendor retained Blank, Rigsby, & Meenan, P.A. through the use of a third party, in this case another law firm, the attorneys in your firm who are lobbying on behalf of the vendor should be registered as lobbyists for that vendor, as you indicated they have. Section 1.2, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Their lobbying expenditures made on behalf of the vendor are reportable, as are any expenditures the vendor itself may make. Section 1.4, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

The fees paid from the other law firm to your firm solely for the time of the two firm members are not considered expenditures subject to reporting. Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

**LRO 94-10—February 14, 1994**

*To: Phyllis Slater, Esq. - General Counsel, Department of State*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on whether the office expenses of the Department of State are exempt from being reported as lobbying expenditures. Your inquiry states:

> Pursuant to Rule 1.5(l), Joint Rules of the Florida Senate and House of Representatives (1993) (hereinafter cited as Rule), please provide the Department of State with an informal opinion regarding Rule 1.4(4)(b). While "principal" according to Rule 1.1(2)(f) means "the person, firm, corporation, **or other entity** which has employed or retained a lobbyist," Rule 1.4(4)(b) states that "[i]f the principal is a firm, corporation, association, **or person, other than a natural person,** the office expenses of the **entity** . . . are not lobbying expenses." (Emphasis added.)
>
> We question whether the Department of State falls within this exception since it is not a firm, corporation, or association, and pursuant to the definition of person contained in Section 1.01(3), Florida Statutes, we are not sure whether a state agency is considered a person for purposes of Rule 1.4(4)(b). Section 1.01(3), Florida Statutes, defines person as including "individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."

The answer to your question follows. The Department of State is an entity which employs a lobbyist registered to lobby the Florida Legislature. Because the Department is a principal under the Joint Rule, it may take advantage of the exemption in Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), from reporting routine office expenses. I find no indication that a state agency, which is a principal, is intended to be precluded from the office expense reporting exemption. Please

note, however, that Section 11.062, Florida Statutes, provides limitations on the use of state funds for lobbying purposes. The application of the lobbying expense reporting exemption under the Joint Rule is not intended to interfere with the prohibitions of Section 11.062, Florida Statutes.

**LRO 94-11—February 17, 1994**

*To: David C. G. Kerr, Chairman - Florida Transportation Commission*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on whether the Florida Transportation Commission may register two lobbyists without paying the registration fee. Your letter states:

> This is to request an opinion as to whether or not the Florida Transportation Commission is a state agency within the intent of Joint Rule One. Currently Jane Mathis, Executive Director, and Bill Ham, Assistant Executive Director, serve as registered lobbyists. It is my desire that they continue to serve as lobbyists for the Commission.
>
> For your information, I am enclosing copies of previous correspondence interpreting the Florida Transportation Commission to be a state agency and therefore exempt from paying registration fees for two employees. I am also enclosing a copy of Chapter 20.23, F.S.(2)(a) creating the Commission.

Section 1.3(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), provides:

> The following persons are exempt from paying the fee, provided they are designated in writing by the agency head or person designated in this subsection:
>
> (a) Two employees of each department of the executive branch created under chapter 20, Florida Statutes.
>
> (b) Two employees of the Game and Fresh Water Fish Commission.
>
> (c) Two employees of the Executive Office of the Governor.
>
> (d) Two employees of the Commission on Ethics.
>
> (e) Two employees of the Florida Public Service Commission.
>
> (f) Two employees of the judicial branch designated in writing by the Chief Justice of the Florida Supreme Court.

Since the Florida Transportation Commission does not meet any of the above criteria, there is no authority for the registration of its lobbyists without the payment of the fee. While the Commission is created in Chapter 20, Florida Statutes, it is not one of the departments of

the executive branch. A “department” is the principal administrative unit of the executive branch. Section 20.04(1), Florida Statutes.

The provisions of the earlier version of the Joint Rule which allowed two fee exemptions for each state agency have been repealed.

**LRO 94-12—February 22, 1994**

*To: Karen B. Wilde, Ph.D. - Executive Director, Education Practices Commission*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on whether the Chairman of the Education Practices Commission must register as a legislative lobbyist. Your letter states:

> As Executive Director of the Education Practices Commission, I am registered as a legislative lobbyist to represent the interests of the commission before the Florida Legislature as a part of my job responsibilities. I am requesting your assistance in determining whether or not the current chairman of the Education Practices Commission should register as a second legislative lobbyist for the commission.
>
> Pursuant to Section 231.261, Florida Statutes, individuals are appointed by the State Board of Education to serve as members of the Education Practices Commission. Members are not paid for their quasi-judicial services as the regulatory agency for the education profession in the State of Florida. They are reimbursed for travel expenses incurred while on commission business.
>
> Mr. Aaron Wallace is currently serving as Chairman of the Education Practices Commission. He is employed as a teacher by the Bay County School Board. He also serves as Vice President of the Florida Teaching Profession - National Education Association. While in Tallahassee for association business, he may have occasion to speak to legislators as the Chairman of the Education Practices Commission regarding proposed legislation that is of interest to the commission. He may also, at the request of members of the Education Practices Commission, address the concerns of the Commission to legislators in the form of letters. Does Mr. Wallace need to register as a lobbyist representing the Education Practices Commission in order to engage in such activities?

On the basis of the facts stated in your letter, I do not believe Mr. Wallace meets the definition of a lobbyist contained in Section 1.1(2)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). He has not contracted with the Commission to represent it, he does not receive compensation from the Commission for the purpose of lobbying, and he is not an employee of the Commission. The reimbursement he receives for travel expenses is not considered compensation for purposes of the registration requirement. Section 1.1(2)(e), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

For the foregoing reasons, Mr. Wallace is not required to register as a legislative lobbyist on behalf of the Commission.

**LRO 94-13—March 3, 1994**

*To: S. James Brainerd, Esq. - General Counsel, Florida Chamber of Commerce*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on the several questions posed below. Your letter states:

(1) Most of our lobbyists are salaried employees and their salaries are not reportable.

QUESTION: If we hire a contract lobbyist on a specific issue, is his total contract amount reportable? If so, under what category?

(2) Upon occasion, we put on special events. These are primarily for our members, but we occasionally invite legislators from the local area.

QUESTION: Is it reportable; if so, how much and under what category?

(3) All of our lobbyists pay the state registration fee.

QUESTION: Is the fee a reportable expense; if so, how much and under what category?

(4) We have two "electronic" methods of doing legislative calls to action for our members: one is an "internal" FAX board; the other is a fax service offered by AT&T.

QUESTION: The internal FAX is generated by our own computer and the only "outside" cost is our monthly phone bill. Is any of that reportable; if so, how much and under which category?

QUESTION: Upon occasion, we use an external FAX system where we send a FAX to AT&T and they FAX it to selected lists of members. They charge us a fee based on the number of people on the lists. Is their charge includable and if so, under what category?

(5) Finally, I have three questions about mailings. Upon occasion, we mail calls to action to our members. We do it in one of three ways. First, we print it externally at the Copy Shop and mail it ourselves by either using our postage machine or, if it is pre-sorted, by taking a check to the Post Office.

QUESTION: Is any of this reportable; if so, how much and under what category?

Second, upon occasion the mailing is big enough that we print it externally, have the Mail House (an outside vendor) put it in envelopes we supply and mail it for us. We usually do a separate check for postage and they give it to the Post Office to cover postage. We pay Mail House a fee for their services.

QUESTION: Is it reportable; if so, what parts are reportable and what category do they fall under?

Third, our monthly magazine, *Pulse*, does not contain any calls to action but is supplied to each legislator. It is created in-house, typeset and printed out of house, and mailed by the Mail House, usually with a separate check for postage. I believe that the legislators *pro-rata* share is "goodwill" and thus reportable.

QUESTION; Is it reportable as "goodwill" and, if so, how do you compute the *pro-rata* share; does it include printing, Mail House charges, and postage?

The answers to your questions follow and are numbered to correspond to the number of each question.

1. Fees and salaries paid to lobbyists are not expenditures. Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). That portion of a lobbyist's total charge that represents a lobbying fee or salary is therefore exempt from reporting.

2. If the purpose of the event is not lobbying, but legislative members are incidentally invited to the event, a prorated share of the cost of the event should be reported as a goodwill expenditure. Section 1.4(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). In this particular case, the prorated share would be reported in the "food and beverages" category. Section 1.4(3)©, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The proration may be made either on the basis of the number of legislative members invited as a part of the total guest list, or alternatively, on the number of legislative members who attended the event as a part of the total of the guests who attended the event.

3. The payment of the registration fee is a condition precedent for a person to begin lobbying. Section 1.2(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The fee therefore is not considered to be an expenditure to influence legislative action, but instead is an expense which pays for the registration system. This conclusion was reached in Comptroller's Memorandum No. 24 (1990-91) in which the State Comptroller wrote, "We have concluded that the registration, and therefore the cost thereof, is for the purpose of public notification. In light of this conclusion, payment of such registration fees from State funds will not constitute prohibited expenditures for lobbying purposes by Section 11.062, Florida Statutes." On the basis of this reasoning, the registration fee is not an expenditure which must be reported.

4. Calls to action sent to your membership are reportable expenditures to the extent the cost is not part of your office's routine payment for utilities, postage, telephone service, employees' salaries, and the other items listed in Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Ordinarily a call to action which is not part of a newsletter, journal, or other regular publication would be reported in the "communications" expenditure category. Section 1.4(3)(a)1., Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). If the distribution of the call to action is made by an entity outside your office, the cost of that distribution is a reportable expenditure. Section 1.4(4)(b) of the Joint Rule provides in part:

> Communications, publications, and research are office expenses if performed or produced by the lobbyist or principal or their employees. If those functions are performed by independent contractors, other than the lobbyist or principal or an affiliate controlled by the principal, they are expenditures reportable under the appropriate expenditure category.

In your case, the cost of the FAXes sent by your own office is not an expenditure, but the cost of those distributed by AT&T at a set cost per recipient should be reported as a communications expenditure.

5. The reportable cost of a call to action printed outside your office but distributed by your staff would be the printing charge paid to the Copy Shop. The expenditure category would be communications unless the call were part of a newsletter, journal, or other regular publication of the Chamber, in which case the cost would be reported in the publications category. Section 1.4(3)(g), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

When the call to action is handled by an outside vendor, the cost to be reported includes the printing, handling, and mailing charges. In the case of your monthly magazine, *Pulse*, the cost of typesetting, printing, and mailing should be reported as a publication expenditure but on a *pro-rata* share to cover the "goodwill" based on the number of copies sent to legislative members or staff as compared to the entire circulation. If for example, 10 percent of the circulation were sent to members and staff of the Legislature, then 10 percent of the total cost should be reported as a publication expenditure.

Please be aware that the boundaries between certain expenditure categories are not iron-clad. A good faith allocation to a given expenditure category is sufficient as long as the cost of the expenditure is reported. As stated in Section 1.4(1), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), "Each reporting individual shall make a good faith effort to report an expenditure and to report it in the appropriate category. If an expenditure fits in two or more categories, it shall be reported in the category to which the expense primarily relates."

**LRO 94-14—March 14, 1994**

*To: Ronald G. Meyer, Esq. - Meyer and Brooks, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your request for an informal opinion on your advice about the registration of FTP-NEA staff and UniServ Directors. Your letter states:

> This office represents the Florida Teaching Profession-National Education Association (FTP-NEA). I am requesting an opinion concerning the methodology FTP-NEA and its subordinate groups plan to utilize in compliance with the lobbyist registration and reporting requirements of the Joint Rules of the Florida Senate and House of Representatives and Florida law.
>
> By way of background, the FTP-NEA is a voluntary, unincorporated association of public education employees spread throughout the state. For service purposes, it has established 19 regions known as "UniServ Districts" which provide

representation to members. The UniServ Districts generally have a staff employee (UniServ Director) and some of the larger units have multiple employees.

The members of the FTP-NEA statewide establish legislative goals for the organization. The FTP-NEA employs lobbyists for the purpose of advancing such goals. Individual UniServ Districts also participate in the advancement of legislative goals, both those which are uniquely local in nature as well as the goals established by the FTP-NEA statewide. The UniServ Directors lobby for a UniServ District.

Some of the UniServ Directors employed throughout the state are employees of their UniServ District or the local associations comprising it; others are employed by the FTP-NEA but assigned to the UniServ District.

In complying with the legislative lobbyist registration and reporting requirements, it is my recommendation that the staff employees in the Governmental Relations Division of the FTP-NEA, which implements the FTP-NEA legislative goals and responsibilities at the state level, register as lobbyists naming the FTP-NEA as their principal.

It is my further recommendation that individual UniServ Directors who participate in carrying out the legislative goals and responsibilities of the UniServ District, which include the Statewide adopted objectives of FTP-NEA, register as lobbyists naming the UniServ District which they represent as their principal.

Because of the unique interrelationships between the FTP-NEA and its UniServ Districts, which is somewhat different than the classic corporate subsidiary relationship, I wanted to be sure that our planned registration and reporting technique, as outlined above, meets with the Joint Legislative Management Committee's requirements.

In a telephone conversation with me, you explained the relationship of the various UniServ Districts to the state FTP-NEA office in Tallahassee. The state office exercises only limited direction over the primarily autonomous districts which all operate under local control. The directors take their instructions from the district and not vice versa. Based on the facts presented above, the directors appear to be employed by the districts to represent primarily local interests before the Legislature. If the districts are separate legal entities, whether incorporated or not, they are the appropriate principals for the registration of the respective district directors. Section 1.1(2)(f), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

To give complete notice of the relationships among the parties, I suggest that the directors name their principals as "UniServ District _ of the FTP-NEA."

The lobbyists in the Governmental Relations Division should register for the FTP-NEA as their principal. Your registration advice appears to be appropriate under the terms of the Joint Rule.

**LRO 94-15—March 21, 1994**

*To: Dr. Michael K. Bookman - Assistant Superintendent for Business and Research, Hillsborough County Public Schools*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting guidance on whether you or Dr. Sickles are lobbyists under Section 11.045, Florida Statutes, and Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Your letter states:

> In accordance with state law, the Hillsborough County Schools have filed a statement regarding lobbyists and designating a principal lobbyist; however, we have received information that possibly Dr. Walter L. Sickles and Dr. Michael K. Bookman may not be covered under the law.
>
> Dr. Walter L. Sickles is the appointed Superintendent of Schools, and as such, his primary duty is the administration of the Hillsborough County Schools. A portion of his job does involve informing legislators of the impact of proposed legislation, but that is a small portion of his responsibilities.
>
> Dr. Michael K. Bookman is the Assistant Superintendent for Business and Research, and as such, his primary duty is the administration of the business functions of the Hillsborough County School System. A portion of his job does involve informing legislators of the impact of proposed legislation, but that is a portion of his responsibilities.
>
> Please evaluate the above in relation to the law and advise as to whether or not Dr. Sickles and Dr. Bookman are covered as defined lobbyists. Should they not be covered within the definition of the law, please advise and take the appropriate action. Ms. Connie Milito is the School System Legislative Liaison, and I do believe that she would still fall within the definition of the law.

The answer to your inquiry follows. Under Section 11.045(1)(e), Florida Statutes, a lobbyist is:

> . . . a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

This definition is further amplified by Section 1.1(2)(d), Rule One, *Joint Rules of the Florida Senate and House of Representatives* (1993), which provides in part that:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the principal is not a "lobbyist" unless the employee is principally employed for governmental affairs. "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the

> employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

As the appointed Superintendent of Schools for the School District of Hillsborough County, Dr. Sickles is probably not principally employed for governmental affairs and he would not otherwise be a lobbyist. *See* Informal Opinion 94-02 relating to appointed school superintendents in general.

Your letter did not state whether your lobbying responsibilities are a significant or an insignificant portion of your duties for the school district. For that reason, I refer you to Informal Opinion 94-07, which addresses how much of an employee's duties must be lobbying before the employee will be determined to be "principally employed for governmental affairs."

**LRO 94-16—March 21, 1994**

*To: James L. Reinman, Esq. - Reinman, Harrell, Graham, Mitchell, & Wattwood, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting agreement on whether the mayor, city manager, and a city attorney are lobbyists under Section 11.045, Florida Statutes, and Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Your letter states:

> I have just reviewed the newly promulgated Joint Rules regarding lobbyist registration and reporting. Based on the definitions provided in sections 1.1(2)(d) and 1.1(4), it is my interpretation that a mayor, a city manager, and a city attorney would not be considered lobbyists for purposes of Rule One.
>
> None of these individuals "is principally employed for governmental affairs by [the municipality] to lobby on behalf of [the municipality]." Neither do these individuals have as a "principal or most significant responsibility" the overseeing of the municipality's relationships with government or the representation of the municipality in its contacts with government.
>
> It is contemplated merely that, occasionally, from time to time, these individuals would approach members of the local legislative delegation regarding the municipality's legislative program. Therefore, it appears that a mayor, a city manager, and a city attorney would be exempt from the lobbyist registration and reporting requirements.
>
> Kindly advise me if you disagree with my interpretation.

If the responsibilities of the referenced people only incidentally include occasional lobbying in support of the city's legislative position, I agree that they do not meet the definition of a legislative lobbyist contained in Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

**LRO 94-17—March 21, 1994**

*To: Major General Ronald O. Harrison, The Adjutant General, Department of Military Affairs*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting the registration of two employees of the Department of Military Affairs without the payment of the registration fee required under Section 1.3, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Your request states in part that:

> The Florida Legislature recently passed House Concurrent Resolution (HCR) 67-C concerning lobbyist registration. Each person registered as a lobbyist is required to pay a fee of $100.00. The resolution however exempts two employees from the fee from each State department created under Chapter 20, Florida Statutes (Fl. Stat.), (*see* Section 1.3(2)(a) of HCR 67-C).
>
> The Department of Military Affairs (DMA) was not created pursuant to Chapter 20, Fl. Stat., but was created pursuant to Chapter 250, Fl. Stat. The DMA, however, is a full-fledged department of the State of Florida and, as such, should be treated as all other departments of the State.
>
> Accordingly, we are requesting herewith, that your department consider exempting two of our employees from the $100.00 registration requirement pursuant to executive administrative action. We have been advised that your department may have this discretionary authority and thereby not require an amendment by the Legislature.

There are no provisions in either Section 11.045, Florida Statutes, or Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), for a discretionary waiver of the registration fee for legislative lobbyists. The only provision for the Joint Legislative Management Committee to exercise any discretion with respect to the registration fee is to annually set the amount of the fee paid by all registrants to cover the cost of operating the registration and expenditure reporting system. Section 1.3(3), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

Being without the authority to grant the Department's request, the Committee must respectfully deny it.

**LRO 94-18—March 21, 1994**

*To: Ms. Barbara C. Bruening, Finance and Operations Administrator, The John and Mable Ringling Museum of Art*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting advice on whether the Trustees or employees of the Ringling Museum of Art are lobbyists under the terms of Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Your request states:

> The Ringling Museum of Art is requesting an informal opinion as to whether employees and/or Trustees of the Museum are considered lobbyists under the definition as put forth under the Rule by the Joint Legislative Management Committee.

To be a lobbyist a person must first engage in the act of lobbying. Under Section 11.045(1)(d), Florida Statutes, and Section 1.1(2)©, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), lobbying is ". . . influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature."

The second criterion for being a lobbyist is found in Section 11.045(1)(d), Florida Statutes, which states:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

This definition is further amplified by Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), which provides:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the principal is not a "lobbyist" unless the employee is principally employed for governmental affairs. "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. Any person employed by any executive, judicial, or quasi-judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

Under the foregoing definitions, it is probable that the trustees of the museum are not lobbyists. They do not appear to receive compensation for their service to the museum. Section 265.26, Florida Statutes, provides only reimbursement for their travel expenses. Such a reimbursement does not constitute a payment or salary for purposes of being a lobbyist. Section 1.1(2)(e), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

It is my understanding that some of the employees of the museum are state employees, but that other employees are paid directly from the museum's direct-support organization and are therefore not state employees.

Both the state and non-state employees of the museum may be lobbyists if they meet the criteria applicable to any person who influences or attempts to influence legislative action or who attempts to obtain the goodwill of legislative members or staff. They will be lobbyists if they are employed and receive payment, or contract for economic consideration, for the purpose of lobbying, or are a person who is principally employed for governmental affairs. Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), quoted above.

In addition, any one of the museum's state employees who " . . . seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist." Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

The above criteria are subject to the exemptions found in Section 1.1(3) and (4) of Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), such as appearing before a committee, subcommittee, or delegation on a written request, or supplying information to the Legislature in response to a request.

**LRO 94-19—March 21, 1994**

*To: Pamela Chewning Mackey - Larry J. Overton and Associates*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your telephone conversation and letter requesting an opinion under the terms of Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) on your employment as a registered legislative lobbyist while being the spouse of a Member of the House of Representatives. Your letter states:

> Pursuant to a telephone conversation with your office earlier today, this letter will serve as my request for your written opinion as to my employment as a registered lobbyist with the firm of Larry J. Overton and Associates.
>
> According to our advice from Sarah Bradshaw, Staff Director of the House Ethics & Elections Committee, my prior employment as a Legislative Assistant does not conflict with F.S. 112.313(9). Further, Ross McSwain, General Counsel for the House, has advised that the fact that my husband is a Member of the House does not pose a conflict, given the fact that I disclosed such on my registration form.

I am not aware of anything within Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) which either prohibits or limits your registration as a legislative lobbyist because you are the spouse of a Member of the Florida House of Representatives.

**LRO 94-20—April 25, 1994**

*To: Patsy Palmer - Children's Policy Coordinator, Office of the Governor*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an informal opinion providing advice on the legislative lobbyist registration and expenditure reporting rule as it affects your roles as the Governor's Children's Policy Coordinator and as the spouse of the President of Florida State University. Your letter states in part:

> I am writing for guidance about handling my separate roles as Children's Policy Coordinator for Governor Chiles and wife of Florida State University President Talbot "Sandy" D'Alemberte.
>
> As a member of the Governor's staff, and one of his registered lobbyists, I am bound by—and support—Florida laws on lobbying and financial disclosure, and by our own internal code of ethics. As the wife of the FSU President, I am sometimes hostess to legislators, at our house or at university athletic or cultural events.
>
> I attempt to keep these two worlds as separate as possible. My job definition does not include university policy or budget matters. I use annual leave, evenings, and weekend hours for FSU activities and do not lobby the Governor's agenda at university events. FSU functions for which I serve as hostess are paid for by the university, or its direct-support organizations; my husband's office issues invitations to such events, and the university reports any lobbying expenses.
>
> In a January letter to the Commission on Ethics, I asked for an advisory opinion stating whether it is necessary for me—as a Governor's lobbyist—to file expenditure reporting forms when helping to entertain legislators on behalf of FSU. Julia Cobb Costas now has responded that I should consult with you.
>
> I would appreciate your counsel on this matter, as well as any other advice you care to offer, in order for me to avoid conflicts or unintentional missteps in fulfilling these two roles.

The above information was supplemented in our telephone conversation in which it became clear that no funds which you control directly or indirectly are expended at, or for, any of the University-related functions. Under Rule One, Section 1.4(1), Joint Rules of the Florida Senate and House of Representatives (1993), an expenditure is:

> . . . a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made or controlled, directly or indirectly, by a lobbyist or principal for the purpose of lobbying.

Because the funds which pay for the FSU functions where you may serve as the hostess come directly or indirectly from the Florida State University, and not from you or your principal, you are not required to report those events as legislative lobbying expenditures.

**LRO 94-21—April 25, 1994**

*To: Leslie Sampson-Waters - Political Action Manager, Allstate Insurance Company*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an opinion on the registration requirements for Allstate employees who will be lobbying members of the Legislature who represent legislative districts other than that of the employee. Your letter states:

> As the Political Action Manager in Florida for Allstate Insurance Company, I am in the process of setting up an employee-legislator contact list called "Adopt-a-Legislator."
>
> In most cases the employee/constituent has selected "their" Senator or Representative.
>
> However, in some cases an employee has selected a legislator in another part of the state, mainly because of an already present friendship/acquaintance.
>
> Is this latter instance in conflict with "lobbyist registration and reporting" law?
>
> In other words, is it all right if an employee (i.e., a claims representative) who is not a registered lobbyist to contact, for purposes of discussing insurance-related issues, a legislator who they cannot vote for?

If the Allstate employees participating in the "Adopt-a-Legislator" program are not otherwise "lobbyists" as defined in Section 1.1(1)(d), Rule One, *Joint Rules of the Florida Senate and House of Representatives* (1993), they will not become lobbyists solely by contacting legislators who represent districts other than the employees' home districts.

**LRO 94-22—June 23, 1994**

*To: H. Lee Moffitt, Esq. - H. Lee Moffitt, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your memorandum requesting opinions on a series of questions submitted by your client, the American Automobile Association (AAA). The questions are indented below. They are followed by an answer on each inquiry:

> 1) As you know, AAA clubs have bimonthly publication. Many times the two publications include articles and issues about legislators and legislative issues. All phases of production except the actual printing and mailing are handled "in-house."
>
> *Do the clubs report expenses when they are announcing the "AAA Legislators of the Year?"

Because the reason for choosing a Legislator of the Year appears to be to "reward" a member of the Legislature for supporting AAA's legislative positions, the award has a lobbying purpose as it is designed to influence or to attempt to influence legislative action. Section 1.1(2)©, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The expenditures related to the Legislator of the Year award should be reported under the Joint Rule.

*Do the clubs report expenses when conducting a FAX survey of the members through the magazine as AAA solicits members' input on legislative issues?

A polling of AAA members by use of the magazine with a FAX response would be research and the expenses should be reported if the information is gathered for a lobbying purpose. AAA would not, however, need to report its own routine FAX costs or staff salaries involved in the polling as those expenses are not reportable. Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

*How about when legislators are given an opportunity to write a "guest editorial" for the magazine?

The sole fact of allowing a legislator to author a "guest editorial" for the magazine does not automatically make the publication of the magazine a lobbying expenditure, if the opportunity to write similar editorials is offered to persons other than legislators. If, however, such an opportunity were not available to other persons, this privilege for legislators would be special treatment designed to either engender goodwill or to otherwise influence the participating legislators in their legislative actions. Under those circumstances the publication costs can become lobbying expenditures.

*How about when AAA reports on legislative action and in that report AAA recognizes specific legislators?

The mere reporting on legislative action which incidentally mentions which legislative members supported or voted for or against particular bills would not by itself make the publication a reportable expenditure.

2) AAA's Legislator of the Year Award.

*What if the cost of each award is more than 100 dollars?

The cost of the award should be reported. Any questions about the propriety of the amount of the award should be submitted to the Commission on Ethics, which has jurisdiction over the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes.

*Is the reception held for the Legislator of the Year and attended by AAA employees considered a reportable expense?

The cost of the reception should be reported.

3) AAA's National Headquarters is used by various groups, including the local legislative delegation and the local Chamber of Commerce, at no cost. On occasion, AAA picks up the tab for food and drinks. The Chamber of Commerce holds its Christmas party there and many

legislators attend. Are these reportable expenses? Is there a rule of thumb for a reportable "event?" Does the event become reportable when a legislator attends?

If the facilities of the National Headquarters are available to community groups, units of government, or civic organizations on a space-available basis without any favoritism being given to the local delegation, the use of the space would not be a reportable expenditure. In addition, the normal rent a principal pays for its facilities are part of its routine office expenses and are thereby excluded from reportable expenditures. Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

The expenses of the food and drinks should be reported when the facilities are used for the local delegation, unless such hospitality is universally extended to all other guest organizations, units of government, or civic groups.

If the Christmas party given by the Chamber of Commerce is not for the primary purpose of lobbying members or staff of the Legislature, only that portion of the party expenses which are attributed to inviting legislative members will be reportable expenses. Those expenses may be prorated among the host organizations and may be further prorated based either on the ratio of legislative members invited as compared to the total guest list or based on the number of legislative members who actually attend the party as compared to the total number of guests who actually attend.

All the expenses of an event do not become reportable solely because one legislative member attends the function. If, however, the primary function of an event is lobbying, then the entire events cost should be reported.

4) Each year, AAA prepares a special "TripTik for Florida Legislators." The package includes general information about AAA and membership legislative issues survey results. Tallahassee, Florida, and USA maps are included in each package. Is the "TripTik" a reportable expense? If so, should AAA report the actual cost of the "TripTik" and the cost of the maps, or the retail value, which is printed on the front cover of the maps?

The "TripTik" is a reportable expenditure. The amount to be reported is the actual cost of the "TripTik" and the actual cost of the maps. Section 1.4(5)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

(5) Each year, AAA contributes to various conferences and events that attract state officials and legislators. If legislators attend, would the contribution become reportable?

If the primary purpose of the conference or event is lobbying, AAA should report its contribution. If the primary purpose of the event is other than lobbying, but AAA supplies an admission ticket to a legislative member or employee, then the cost of the ticket should be reported. As noted above, the incidental attendance of a legislator at an event does not by itself create reportable expenditures.

**LRO 94-23—June 25, 1994**

*To: William B. Wiley, Esq. - McFarlain, Wiley, Cassedy, & Jones, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting advice on expenditure reporting for a former client. Your letter states:

> I have a very practical problem with respect to a former lobbying client. Their name is Pet Vaccine Services Inc. The enclosed forms reflect the reporting, as best as I can do at this point in time.
>
> We performed legislative services for this corporation during the 1993 Session. We expended substantial time and billed the corporation our fees for services. We only received a small portion of the fees that were due. We were strung along during the year of 1993 with promises of payment and some small payments. We learned in January of their filing a Chapter 11 bankruptcy proceeding.
>
> Although we have requested a letter designating me as the primary lobbyist for the corporation for purposes of filing the reports, there has been no response. We have not had any effective communications in quite some time, and I don't know whether I will ever get a letter of designation consistent with what Lobby Registration needs.
>
> What is enclosed is reflective of what we did for this corporate entity. There were zero reportable lobbying expenditures from June 30, 1993, to date.
>
> Please advise me what I need to do in the context of this factual scenario.

Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), makes no provision for the failure of a lobbying client to cooperate with its registered lobbyist in filing expenditure reports. Certainly the lobbyist should make every reasonable effort to secure from his or her principal the necessary information and principal's signature to file each expenditure report. What is reasonable will depend upon the circumstances of the principal and the resources the lobbyist has to ensure cooperation.

In the event a principal fails to cooperate in filing required reports, the lobbyist should report as much of the expenditure information as he has for the relevant period and document the failure of the principal to cooperate and file that documentation with the report. It appears from your correspondence that you have followed these steps, and, therefore, have done all that needs to be done.

**LRO 94-24—August 2, 1994**

*To: O'Bannon M. Cook, Esq. - Florida Securities Dealers Association*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting advice on reporting legislative lobbyist expenditures. Your letter states:

> (1) The FSDA [Florida Securities Dealers Association] puts out a newsletter to its members. The newsletter reports on the work of the FSDA and on items of interest to its members, including Florida legislative and executive branch activities. The newsletter may, from time to time, encourage FSDA members to communicate with their legislators on topics of current interest, but this is not the primary purpose of the newsletter. There is no charge to the members for the newsletter (although the members do pay annual dues).
>
> The cost of producing the newsletter is currently borne by a member of the FSDA, so there is no cost or payment by the FSDA for producing the newsletter.
>
> Question: Is the newsletter a "publication" within the meaning of the applicable statutes and Joint Rule 1.4(3)(g)?
>
> Question: Bearing in mind that there is no cost to the FSDA to obtain the newsletter, does the newsletter constitute an "expenditure" within the purview of the applicable statutes and Joint Rule 1.4(1)?
>
> (2) FSDA members assembled in Tallahassee at private locations to have a dinner and a luncheon prior to members visiting with legislators. No legislators or executive branch personnel or their staff were present. Legislative issues were considered. The cost of the dinner and luncheon was paid for by the FSDA.
>
> Question: Is the expense to the FSDA of the dinner or the luncheon a reportable expenditure under the applicable statutes and Joint Rule 1.4(1)? *See* also Joint Rule 1.4(3)© (defining "Food and Beverages") and 1.4(4)(b) (stating that a principal's personal expenses for meals is not reportable).
>
> (3) The undersigned paid fees (ultimately paid for by FSDA) to register as a lobbyist for the executive and legislative branches of government on behalf of the FSDA.
>
> Question: Are these reportable as lobbying expenditures? *See* Joint Rules 1.1(2)© and 1.4(l).
>
> Despite my review of the statutory authorities and Joint Rule 1, I am having difficulty resolving the foregoing questions with finality, and would appreciate any help you could provide in resolving them.

The following opinion is directed to the above-numbered questions. The newsletter in

(1) is a publication within the definition of Section 1.4(3)(g), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), whenever the newsletter encourages FSDA members to communicate with legislators or their staff or whenever the newsletter is sent to legislators or their staff.

The payment for the cost of the newsletter will not be an expenditure only when the payment does not pass through the direct or indirect control of the FSDA. An expenditure is defined in the Joint Rule as:

. . . a payment, distribution, loan, advance, reimbursement, deposit, or anything of value *made or controlled, directly or indirectly*, by a lobbyist or principal for the purpose of lobbying. (Emphasis added.)

Section 1.4(1), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). For there to be no indirect control, the FSDA should ensure there is no *quid pro quo* for the payment by your member. For example, the member should not receive a reduced dues rate or any special services not normally afforded to regular FSDA members in trade for the payment.

As you suggested in (2), the expenses of the FSDA for its members to meet to discuss legislative issues among themselves are not reportable expenditures. Your citation to the exemption from reporting for a lobbyist's or principal's food, lodging, and travel found in Section 1.4(4)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), is correct.

The fees you paid to register as a legislative lobbyist as mentioned in (3) are not expenditures. That issue was addressed in Informal Opinion 94-13. The Commission on Ethics, which administers the executive branch registration program can provide you information on the status of their fees as expenditures.

**LRO 94-25—June 25, 1994**

*To: Roger S. Tucker, Esq. - General Counsel, Tampa Bay Regional Planning Council*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an informal opinion on the need for the Executive Director or employees of the Tampa Bay Regional Planning Council to register as legislative lobbyists. Your letter states:

> The Tampa Bay Regional Planning Council hereby requests an informal advisory opinion as to Joint Rule One requirements for lobbyist registration.
>
> The TBRPC Executive Director and other staff members, from time to time, DO attempt to influence legislative action or non-action through oral and written communications (lobby). None of the employees of the Council are employed or receive payment for the purpose of lobbying nor are they principally employed for governmental affairs.
>
> Under the circumstances described, are any of the above-mentioned Council employees required to register as lobbyists?

The answer to your question follows. Section 11.045(1)(e), Florida Statutes, defines a lobbyist as:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

This definition is amplified by Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) which provides:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the principal is not a "lobbyist" unless the employee is principally employed for governmental affairs. "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. Any person employed by any executive, judicial, or quasi-judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

As I stated in an earlier opinion with respect to when an employee may become a lobbyist for registration purposes:

> There is no single bright-line criterion which will define in all cases when an employee's responsibility for either representing the employer in its contacts with government or for overseeing the employer's various relationships with government becomes a principal or a most significant responsibility of that employee.
>
> In an attempt to provide some guidance in making such a determination, I suggest a reference to the concepts found in the Americans with Disabilities Act, where each covered employer must identify the "essential functions of a job" for its employment positions. If either of the two responsibilities referenced in the Joint Rule would constitute an essential function of an employee for purposes of the ADA, then the employee may be considered to be principally employed for governmental affairs.
>
> There are many relevant factors which constitute being principally employed for governmental affairs. As one example, if the successful performance of representing the employer in its contacts with the government is a significant element in evaluating the employee's job performance for retention or promotions, then the employee would be considered to be principally employed for governmental affairs. *See* Lobbyist Registration Informal Opinion 94-07 [10 February 1994].

Based on the foregoing considerations, it does not appear that any of the facts stated in your letter require any of the mentioned employees of the TBRPC to register as legislative lobbyists.

**LRO 94-26—August 2, 1994**

*To: Jon H. Gutmacher, Esq. - Vice Chairman, Florida Firearms Political Alliance Inc.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting advice on whether the Florida Firearms Political Alliance Inc. is within the scope of the legislative lobbyist registration law. Your letter states:

> I represent the Florida Firearms Political Alliance Inc., which is a recently formed Florida corporation whose purpose is as a patriotic organization attempting to secure the protections of the Second Amendment to the citizens of Florida. We employ no lobbyist, and the Articles of Incorporation specifically forbid this. Instead, we hold rallies throughout the state on a Second Amendment platform, and encourage our members to contact their Representatives regarding Second Amendment issues. According to my reading of the lobbying law, and Joint Rule One of the Florida House and Senate, it appears that the organization is exempt from registration since we have no lobbyist, although we do take positions on bills and issues.

You are correct that on the facts presented, the Alliance does not appear to be within the scope of the legislative lobbyist registration law. Unless the Alliance employs or retains a lobbyist, as that term is defined in Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), the Alliance is not a principal with any reporting duties. Section 1.1(2)(f), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

**LRO 94-27—August 5, 1994**

*To: Debra A. Zappi, Esq. - Legislative Counsel, The Academy of Florida Trial Lawyers*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting advice on reporting legislative lobbyist expenditures. Your letter states:

> Question 1: The Academy of Florida Trial Lawyers (AFTL) publishes a monthly journal, which is sent to all AFTL members. The journal is approximately 50 pages per month and is primarily devoted to case summaries, analysis, and comment on recent developments in the law with regard to medical malpractice, products liability, insurance law, family law, criminal law, workers compensation, and other matters of general interest to AFTL members. The publication also contains a “President’s Message,” which is usually one or two pages, and an insert which is called the “Academy Action Report.” Both the “President’s Message” and the “Academy Action Report” occasionally contain calls to action, requesting AFTL members to contact members of the Legislature regarding certain legislation.Is the entire cost of the publication, including printing, handling, and postage a reportable

lobbying expenditure under publications, or is it permissible to prorate the reportable portions of the publication based on the number of pages which contain calls to action on legislative matters?

Question 2: How should we calculate the amount which should be reported as an expenditure for the copies of the journal which may be sent to legislators who are not AFTL members?

Question 3: Are the amounts referred to in Question 2 reportable where journals are sent to legislators who are members of the Academy and receive the journal as part of their membership fee?

An expenditure is a payment made for the purpose of lobbying. Section 1.4(1), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). Payments made for purposes other than lobbying are obviously not reported. When a single payment, such as for the cost of printing, has both a lobbying and a non-lobbying purpose, proration may be allowed where there is a clear line of demarcation on which to make an allocation between the lobbying and non-lobbying portion of the payment. In the case of a publication, I believe that a page count does provide such a clear line.

Sending copies of the journal to legislators or to legislative staff who are not Academy members is engendering goodwill in the recipient. Section 1.4(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The Academy may calculate the expenditure based on the number of copies sent to legislators and legislative staff in comparison to the total number of copies sent to all other recipients. For instance, if 10 percent of the copies for a particular issue were sent to legislators and staff, then the reportable expenditure would be 10 percent of the total journal cost.

Copies of the journal which have been paid for by legislator members of the Academy as part of their dues are not being provided to them for a lobbying purpose, but are sent in fulfillment of the Academy's responsibilities to its members. The cost of those copies is therefore not an expenditure if the dues from legislator members completely cover the cost of their journal subscription. *See* also Section 1.4(5)(b), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), which provides:

> The amount to be reported for an expenditure shall be determined using the actual cost to the lobbyist or principal or other person making the payment on behalf of the lobbyist or principal, *less any compensation received by such lobbyist or principal in payment for the object of the expenditure.* (Emphasis added)

**LRO 94-28—October 4, 1994**

*To: Arthur E. Murphy, Vice President, Governmental Affairs, American Society of Safety Engineers*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an opinion on the legislative lobbying registration responsibilities of the American Society of Safety Engineers. Your letter states:

> The American Society of Safety Engineers is a professional volunteer society and a not-for-profit organization incorporated in Illinois. Within the state of Florida, the Society has approximately 1000 members and eight chapters.
>
> In the state of Florida, we wish to communicate positions on various issues to the Florida Legislature and executive branch of government which affects our profession. This may occur through written correspondence to the House and Senate or to the executive branch. This includes, but is not limited to, House and Senate members, committees and subcommittees of the House and Senate and to the Governor, Cabinet members, bureaus, divisions, boards, commissions, or authorities of the executive branch. However, on occasion our position on issues may also be communicated by telephone, meetings with the aforementioned, or by testimony.
>
> Members of the Society do not receive compensation from the organization and we do not have a paid lobbyist. However, if it becomes necessary for a member to travel to discuss an issue, the related expenses may be reimbursed from Region VIII funds. Region VIII includes Florida, Georgia, and Puerto Rico.
>
> We would appreciate an informal opinion as to what is required for this type of legislative involvement by our organization in Florida.

The test for registration under Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), is whether a person receives compensation for lobbying. A lobbyist is:

> . . . a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the principal is not a "lobbyist" unless the employee is principally employed for governmental affairs. "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

Section 1.1(2)(d).

> If none of the members or the employees of the American Society of Safety Engineers fit this definition, no registration is required and the Society has no expenditure reporting responsibilities.

This is true even though members of the Society may receive reimbursement for traveling to lobby. A reasonable reimbursement for travel expenses does not constitute compensation for lobbying. Section 1.1(2)(e), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), provides:

> "Payment" or "salary" means wages or any other consideration provided in exchange for services, but does not include reimbursement for expenses.

**LRO 94-29—January 6, 1995**

*To: Joan Galvin, Esq. - Legislative Representative, Ringling Bros. and Barnum & Bailey Combined Shows Inc.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an opinion on the legislative lobbying registration requirements as they apply to the activities of Ringling Bros. and Barnum & Bailey Combined Shows Inc. Your letter states:

> Pursuant to Sec. 1.5 of the Joint Rules of the Senate and House of Representatives on lobbyist registration and reporting, Ringling Bros. and Barnum & Bailey Combined Shows Inc. respectfully requests an informal ruling as to whether the Rule's lobbyist registration requirement applies to the following activities:
>
> (1) Complimentary tickets to legislators and their families to attend the circus as guests of Ringling Bros. and Barnum & Bailey;
>
> (2) Periodic contact mailings to legislators concerning the business activities interests and corporate policies of Ringling Bros. and its affiliates.
>
> At this time, Ringling Bros. and Barnum & Bailey Circus has no legislative interests before the state Legislature. Ringling Bros. and Barnum & Bailey Circus is, however, a corporation doing business in the state of Florida and is, therefore, subject to state regulation of various aspects of our industry.

The foregoing activities would constitute lobbying as defined in Section 1.1(2)©, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). It provides:

> "Lobby" or "lobbying" means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

If the circus contracts for or employs a lobbyist, registration is required prior to lobbying. Section 1.2(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

It appears from your title, Legislative Representative, and that of Mr. Andy Ireland, Vice President, Government Relations, as shown on the letterhead, that both of you may meet the definition of a "lobbyist" as the term is defined in Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). On this basis, I suggest that the Legislature's lobbyist registration requirements apply to the above activities contemplated by the circus

**LRO 95-01—April 17, 1995**

*To: Lawrence P. Stevenson, Esq. - Holland & Knight*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an opinion on the legislative lobbying registration requirements as they apply to a group of firm clients.

Your letter states:

> Our law firm generally represents several clients in the medical field. These clients have mutual interests in legislation, and have in the past collectively retained our firm to lobby for those interests before the Florida Legislature. While these clients have no formal corporate status, they meet periodically to discuss issues of common interest and have appointed certain of their members to keep the group informed on the actions of the Legislature. They have also hired an administrator to coordinate their activities, schedule and make arrangements for their meetings, and perform other support functions for the group. Our payment for lobbying activities has been in the form of a single check from one of the members of the group, which represents the contributions of the individual members.
>
> In the past, we have registered as legislative lobbyists for each of the individual members of the group. Our question is whether we would be permitted to file a single registration on behalf of the group, rather than filing 10 or more individual registrations. What are the criteria, if any, that your office looks to in determining whether a group or association may register collectively? Please keep in mind that this is not an effort to shield the identities of the group members from public scrutiny. We would be happy to identify the membership of the group in any fashion acceptable to your office.

An opinion on your query follows. Sections 11.043 and 11.045, Florida Statutes, have as their fundamental purpose the full and complete disclosure of who is attempting to influence the actions of the Florida Legislature. Section 11.043 states in part:

> . . . [I]n order to preserve and maintain the integrity of the process and to better inform the citizens of the efforts to influence legislative branch action, the Legislature finds it necessary to require the public disclosure of the identity, expenditures, and activities of certain persons who attempt to influence actions of the legislative branch.

Your question addresses the method by which the identity of persons lobbying the Legislature is established. Section 11.045(2)(a), Florida Statutes, requires that a lobbyist register for each principal represented. A principal is "the person, firm, corporation, or other entity which has employed or retained a lobbyist." Section 11.045(2)(f), Florida Statutes.

This definition is further amplified by Section 1.1(f), Rule One, Joint Rules of the Florida Senate and House of Representatives (1994), which states:

> "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist. When an association has employed or retained a lobbyist, the association is the principal; the individual members of the association are not principals merely because of their membership in the association.

This section of the rule gives a slightly broader recognition to the concept of a principal to include an association which would be similar to a firm or corporation in the relationship of its members to its lobbyist.On the basis of the somewhat restrictive definition of what is a principal and on the disclosure purpose of the registration law,[1] I believe the group of clients you represent is not the kind of entity for which lobbyists can register as their principal.

In your inquiry you ask about the criteria used to determine when a group of principals may be considered a single principal. While this is perhaps not an exhaustive list, the following factors apply:

- Being a legal entity like a corporation, unincorporated association, partnership, or unit of government, or at least possessing related characteristics such as being an employer, holding or renting property, and having a separate telephone number or address.
- Size of membership.
- Ability to discharge the duties of a principal, including responding to the penalty provisions of the registration law, designating a reporting lobbyist for a multiple lobbyist principal, and completing the principal portion of expenditure reports.
- Reason for existence.

No single criterion is determinative, but a group created primarily for the purpose of lobbying bears a heavy burden before it may be considered a single principal. Otherwise, the disclosure purposes of registration will be circumvented by the creation of shell principals to hide the real parties in interest.[2] Some states attempt to prevent such a circumvention by requiring disclosures about the more significant members of a group principal. See Section 5-7-208(5)©, *Montana Code*; Section 2-17-25(F), *South Carolina Code*; Section 67-6617(6), *Idaho Code*; Section 42-17.150(1)(i), *Revised Code of Washington*; and Section 305.005(h), *Texas Code*.

Because Florida has no requirement that the significant members of a principal must be identified, I believe the integrity of the disclosure system requires a strict reading of who may be a principal when more than one person or entity is being represented.

**LRO 95-02—April 19, 1995**

*To: Ronald L. Book, Esq. - Ronald L. Book, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an opinion on the legislative lobbyist registration and expenditure reporting requirements for two of your clients.

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[1]Held to be a compelling state interest in *Florida League of Professional Lobbyists, Inc., v. Meggs*, (U.S. District Court, N.D. Fla., No. 93-40277-MMP, March 31, 1995).

[2] For this reason, law firms or lobbying firms are not appropriate principals when they are lobbying on behalf of clients.

Your letter states:

In the past, I have always registered on behalf of my pro bono clients since there was no charge for such registration. It has come to my attention that the rule has changed and that once you register, fees must be paid. My two pro bono clients for this legislative session are Best Buddies and the United States Olympic Soccer Committee. I receive no fees or compensation from either entity and absorb all expenses. Because you receive no fees from these clients, you are not required to register in order to lobby on their behalf.

A lobbyist is defined as: ". . . a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying. . . ." Section 1.1(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1994). Since you receive no payment or other economic consideration for your lobbying on behalf of Best Buddies or the Olympic Soccer Committee, you do not fit the definition of a lobbyist required to register.

Because you are not their *registered* lobbyist, you are not required to file any expenditure reports for your pro bono clients.

**LRO 96-01—June 6, 1996**

*To: Julie E. Douthit, Esq., Executive Director, Workers' Compensation Oversight Board*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an informal opinion on the legislative lobbyist registration requirements for a member of the Workers' Compensation Oversight Board (WCOB). Your letter states:

> I am writing to request an informal advisory opinion on behalf of one of my Board members. This individual wishes to know whether he should register as a lobbyist with respect to the Board, or to the corporation by which he is employed, or both.
>
> As you know, the Workers' Compensation Oversight Board was part of a legislative package of reforms to the workers' compensation law enacted in 1993. Its enabling statute is s.440.4416, F.S., a copy of which is enclosed with this letter. The purpose of the Board is to observe and advise upon the functioning of the workers' compensation system as a whole, as well as its component parts, and advise the Legislature, the Division of Workers' Compensation, and other entities as to needed policy changes. Board members are chosen by the Governor, the Speaker of the House and the President of the Senate to represent certain employer or employee constituencies. All Board members have full-time jobs outside their Board duties. They meet approximately once a month.
>
> Although the Board is housed within the Department of Labor and Employment Services (DLES), its relationship to DLES is different than that of most other offices within the Department, which act to support the policies and positions of the Secretary of DLES and the Governor. The Board, however, is an independent advisory organization. On workers' compensation matters, its function is to arrive at its own assessment and opinion.

> The Board has a budget, paid out of the Workers' Compensation Administration Trust Fund, and has been allocated 2 1/2 FTEs who are state employees.
>
> The individual in question (who I will call "A") has been a member of the Board since its inception. As a Board member, "A" is entitled to reimbursement by the state of all travel-related expenses and, in addition, up to $50.00 a day as "compensation" for time spent on Board business. "A" has never requested either reimbursement for his expenses or Board compensation. (Board members who receive over $600 in Board compensation in a calendar year receive a report of that income on a Form 1099 from the state comptroller.)
>
> One of "A"'s duties as a Board member is to discuss issues on which the Board has taken a position with the Legislature. In the past, these have been issues which a legislator, or legislative staff, has requested the Board to examine. It would not be unexpected, however, if "A" were to discuss an issue on which the Board has taken a position independent of any legislative request.
>
> At the same time, "A" works for a large corporate employer which has hired its own lobbyist. When "A" speaks to legislators, he makes it clear who his employer is. If the position which the Board has taken on an issue is in accord with the position which his employer has taken, he will tell legislators that he is speaking both as a representative of the Board and of his employer.
>
> "A"'s question is whether, under these circumstances, he needs to register as a lobbyist to represent either the Board or his employer, or possibly both entities.

Under the circumstances presented by your inquiry it is difficult to conclude that when Board member "A" is performing his duties as a member of the Board he is lobbying and is therefore required to register as a legislative lobbyist. This conclusion results from the status of the Board members as not being full-time state employees, and the express requirements of Section 440.4416, Florida Statutes, that Board members appear before the Legislature concerning legislation affecting workers' compensation.

The Workers' Compensation Oversight Board is part of the Executive branch. It was created within the Department of Labor and Employment Security (DLES). Section 440.4416(1), Florida Statutes. The Board's expenses are funded through the Workers' Compensation Administration Trust Fund which is administered by the Division of Workers' Compensation of the DLES. Sections 440.4416(3) and 440.50, Florida Statutes. The payment of the Board's expenses therefore comes from an executive branch trust fund administered by an executive branch department. This fact is relevant to application of Section 11.062, Florida Statutes, that prohibits the use of public funds for lobbying.

Section 11.062(2)(a), Florida Statutes, provides:

> A department of the executive branch, a state university, a community college, or a water management district may not use public funds to retain a lobbyist to represent it before the legislative or executive branch. However, full-time employees of a department of the executive branch, a state university, a community college, or a water management district may register as lobbyists and represent that employer before the legislative or executive branch. *Except as a full-time employee, a person may not accept any public funds from a department of the executive branch, a state university, a community college, or a water management district for lobbying.* (Emphasis added.)

Members of the WCOB are not full-time state employees, but they are required to, ". . . appear before the Legislature in connection with legislation that impacts the workers' compensation system. . . ." Section 440.4416(2)(b), Florida Statutes. Board members are paid for such appearances. They are compensated at a rate of $50.00 per day for each full day devoted to Board business. Section 440.4416(3)(b), Florida Statutes. If Board members' appearances were considered to be lobbying, they and the DLES would be violating the prohibition of Section 11.062, Florida Statutes.

For this reason I conclude that Board members who appear before members or staff of the Legislature on official Board business are not lobbying and are not lobbyists. This conclusion is reinforced by the definitions of "lobbying" and "lobbyist" found in the rules of the Senate and the House.

Section 1.1(3), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) provides in part:

> For purposes of this rule, the terms "lobby" and "lobbying" do not include any of the following:
>
> (a) Response to an inquiry for information by any member, committee, or staff of the Legislature.
>
> (b) An appearance in response to a legislative subpoena.
>
> * * *

Section 1.1(4), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993) provides in part:

> For purposes of registration and reporting, the term "lobbyist" does not include any of the following:
>
> * * *
>
> (e) A person who appears as a witness or for the purpose of providing information at the written request of the chair of a committee, subcommittee, or legislative delegation.

These two exceptions to the definitions of lobbying and lobbyist make it clear that when a person is requested or required to appear before a member or staff of the Legislature, that person is not lobbying or is not a lobbyist. The statutory mandate of Section 440.4416(2)(b), Florida Statutes, that members of the WCOB appear before the Legislature serves the same function as a request or a subpoena.

The fact mentioned in your letter that Board member "A" does not actually receive compensation for his work on the Board further removes him from the possibility of being considered a lobbyist. By definition, lobbyists receive some form of compensation or are entitled to receive compensation either by contract or as an employee. Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

In summary, when members of the WCOB appear before members of the Legislature or its staff or otherwise act to influence legislative action and are acting within the requirements

of Section 440.4416(2)(b), Florida Statutes, they are not required to be registered lobbyists on behalf of the Board.

You also inquired about the registration requirements as they might affect Board member "A's" actions on behalf of his full-time corporate employer. If his actions are "lobbying" as the term is defined in Section 1.1(2)©, Rule One, Joint Rules of the Florida Senate and House of Representatives (1993), and he is taking such actions on behalf of his employer, *even if incidentally by only mentioning his employer's name*, he should consider registering for that employer if he meets the definition of a lobbyist as set out in Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993).

Whether or not he meets the test for being a lobbyist under that definition will depend upon his position and responsibilities within his employer's organization.

**LRO 96-02—June 14, 1996**

*To: Paul F. Hill, Esq., General Counsel, The Florida Bar*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an informal opinion on recognition plaques and attendance at The Florida Bar Convention for several Members of the Florida Legislature. Your letter states:

> The Florida Bar would like to give plaques to several selected state legislators from both the Senate and the House of Representatives, in recognition of their service to this organization and the state legal profession. The Bar would further like to reimburse the reasonable expenses of any legislator that are related to their receipt of these plaques, which would be presented at The Florida Bar Convention in Orlando next month.
>
> The Bar is registered as a lobbying principal for purposes of F.S. 11.045(1)(d) and Joint Rule One. All of these awards and recognition will be done in the singular name of The Florida Bar. However, it is possible that any moneys spent by the Bar in connection with the presentation of these plaques may ultimately be offset by a separate contribution to the Bar from a law-related organization that does not lobby and is not registered with state authorities.
>
> Does any statute or legislative rule prohibit this proposed activity? If so, could you please provide pertinent guidance or commentary that might suggest a different outcome. If not, how should such activities be properly reported by the Bar, and to what state agencies or officials? Must any other participant in these activities report anything or register with anyone, and what might be the Bar's obligations with respect to those individuals or entities?

The Bar's expenditures for the plaques and the reimbursement to the legislators for their travel expenses are lobbying expenditures. Section 1.4(1), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The plaques and surrounding recognition appear to be for the purpose of engendering goodwill in the recipients toward the Bar and its members. Section 1.4(2), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). The cost of the plaques and the travel expenses should

therefore be reported on the Bar's next quarterly legislative lobbying expenditure report. Section 1.2(4), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). If the funds expended for the travel reimbursements and plaques are moneys within the exclusive control of The Florida Bar, it does not appear that other parties will have any lobbyist expenditure reporting obligations.

The rest of your query is outside the scope of my authority to give informal opinions. Section 1.5(1), Rule One, Joint Rules of the Florida Senate and House of Representatives (1993). As I suggested in our recent telephone conversation, the Florida Commission on Ethics or its staff can best address the remaining issues as they appear to arise under the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes.

**LRO 97-01—May 22, 1997**

*To: Mr. John Dowless, Executive Director, Christian Coalition of Florida*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your letter requesting an informal opinion on the application of the lobbyist registration requirement to your position as the Executive Director of the Christian Coalition of Florida. Your letter states in part:

> My situation sounds similar to the Tampa Bay Regional Planning Council example you faxed. I am Christian Coalition of Florida's executive director. Though I am up three days a week during session, lobbying is not my primary job. My salary does not depend on legislative activities, successes or failures. In fact, the main way we operate is by sending out legislative alerts to our members encouraging them to contact their legislators. I have discussed issues with individual legislators on numerous occasions, and testified before five committees. I have also indicated on the cards I filled out that I was not a registered lobbyist. Last year I didn't need to register, so I assumed I didn't need to again this year.

The focus for determining when an employee of a possible lobbying principal must register is on the duties of the employee. Section 1.1(2)(d), Rule One, Joint Rules of the Florida Senate and House of Representatives (1997), provides in part that:

> "Lobbyist" means a person who is . . . principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. *An employee of the principal is not a "lobbyist" unless the employee is principally employed for governmental affairs*. "Principally employed for governmental affairs" means that *one of the principal or most significant responsibilities* of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. [Emphasis added.]

As I previously stated in Lobbyist Registration Opinion 94-07, "There is no single bright line criterion which will define in all cases when an employee's responsibility for either representing the employer in its contacts with government or for overseeing the employer's

various relationships with government becomes a principal or a most significant responsibility of that employee." I did suggest a few factors to consider: the amount of time spent on lobbying activities, whether lobbying would be an "essential function" of the employee's position under an Americans with Disabilities Act type analysis, or if lobbying is an important factor in a performance evaluation of the employee.

In your recent telephone conversation with me you indicated that lobbying was only a small portion of your duties as Executive Director. You also stated your belief that the Coalition's Board of Directors does not consider your lobbying activities as a criterion for evaluating your overall performance. In addition, your letter states that your compensation is not dependent upon your success in influencing legislative action. These factors must be balanced against what appears to be a significant amount of time spent on lobbying activities, at least during the legislative session.

On these facts, I believe registration is not required, but should any of the mitigating factors change and your time commitment to lobbying activities remains the same, I would recommend that you register.

**LRO 97-02—May 23, 1997**

*To: Cari L. Roth, Esq., Lewis, Longman & Walker, P.A.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry that states:

> We have received signed original reports from our clients for authorization to sign expenditure reports for them for the Executive Branch Legislative Reporting. We are asking for an informal opinion that this signed original letter will also cover the expenditure report forms for the Legislative Branch reporting. Thank you for your consideration of this request.

The Executive Branch Lobbyist Registration program is administered by the Florida Commission on Ethics. Section 112.3215, Florida Statutes. The expenditure report form adopted by the Commission provides in its instructions that the principal may delegate to its lobbyist the authority to execute the report on behalf of the principal. The Commission's forms and their instructions were adopted by the Commission pursuant to the Florida Administrative Procedures Act. Section 34-7.001 and 7.002, Florida Administrative Code. As such, the instructions are rules of the Commission. Section 34-7.010(l), Florida Administrative Code.

The Legislative Lobbyist Registration program is administered by the Joint Legislative Management Committee. Section 11.045, Florida Statutes. This administration is governed by Joint Rule One, Joint Rules of the Florida Senate and House of Representatives (1997). Joint Rule One makes no provision for the lobbyist, even with a specific authorization from the principal, to execute an expenditure report for the principal. Section 11.045(3)(a), Florida Statutes (Supp. 1996), provides, in part, as to expenditure reports for a single lobbyist principal:

> The principal is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the principal. The lobbyist is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the lobbyist.

Section 11.045(3)(b) provides, in part, as to reports from principals with multiple lobbyists:

> The principal is responsible for the accuracy of figures reported by the designated lobbyist as lobbying expenditures made directly by the principal. The designated lobbyist is responsible for the accuracy of the figures reported as lobbying expenditures made by that lobbyist.

Pursuant to these requirements, the Lobbyist Registration Office provides expenditure report forms that require the signature of both the lobbyist and the principal. Until the Legislature adopts a rule to the contrary, I believe these statutory provisions preclude the authorization by a principal for its lobbyist to sign that portion of the expenditure report that calls for the principal's signature.

Such an authorization would be contrary to the penalty provisions of the registration law at Section 11.045(7) which states:

> Any person required to be registered *or to provide information pursuant to this section* or pursuant to rules established in conformity with this section who *knowingly fails to disclose any material fact* required by this section or by rules established in conformity with this section, *or who knowingly provides false information on any report* required by this section or by rules established in conformity with this section, commits a noncriminal infraction, punishable by a fine not to exceed $5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (6). [Emphasis added.]

Delegated reporting responsibility from the principal to the lobbyist is inconsistent with the principal's making *knowing* disclosures. In order for this penalty provision to be effective, the principal must sign for its own reported expenditures.

**LRO 98-01—February 9, 1998**

*To: Thomas J. Bonfield, City Manager, City of Temple Terrace*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry that states in part:

> I have served the City of Temple Terrace—a State of Florida incorporated municipality with a population of 20,400—as its City Manager since 1985 and have registered annually with the Joint Legislative Management Committee as a Lobbyist for the City (principal).

> My position as City Manager is my primary, full-time employment. Part of my responsibilities in working to promote and enhance the City entail my occasionally contacting a State elected official on behalf of the City and its residents.
>
> I respectfully ask that you please review the State Statute and the lobbyist registration requirements and advise me of their applicability to City Managers. Your informal opinion would be greatly appreciated and would clarify for managers of small cities throughout the State whether or not we are "lobbyists."

Upon receipt of your letter I called you for a further explanation of your duties for the city. You explained that your primary or most significant functions include formulating policies for the administration of the city and then implementing those policies. Additionally your responsibilities are predominately those of managing city government. In a given year you spend, or will likely spend, less than 5% of your time lobbying the Florida Legislature or other units of government.

Section 11.045(1)(e), *Florida Statutes,* defines a lobbyist as:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

This definition is amplified by Section 1.1(2)(d), Rule One, *Joint Rules of the Florida Legislature,* which provides:

> "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the principal is not a "lobbyist" unless the employee is principally employed for governmental affairs. "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government. Any person employed by any executive, judicial, or quasi-judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

As I stated in an earlier opinion with respect to when an employee may become a lobbyist for registration purposes:

> There is no single bright line criterion which will define in all cases when an employee's responsibility for either representing the employer in its contacts with government or for overseeing the employer's various relationships with government becomes a principal or a most significant responsibility of that employee.

> In an attempt to provide some guidance in making such a determination, I suggest a reference to the concepts found in the Americans with Disabilities Act where each covered employer must identify the "essential functions of a job" for its employment positions. If either of the two responsibilities referenced in the Joint Rule would constitute an essential function of an employee for purposes of the ADA, then the employee may be considered to be principally employed for governmental affairs.
>
> There are many relevant factors which constitute being principally employed for governmental affairs. As one example, if the successful performance of representing the employer in its contacts with the government is a significant element in evaluating the employee's job performance for retention or promotions, then the employee would be considered to be principally employed for governmental affairs.

Lobbyist Registration Informal Opinion 94-07 (February 10, 1994).

Based on the foregoing considerations, I believe your responsibilities on behalf of the City of Temple Terrace do not require you to register as a legislative lobbyist. Each city manager may have her or his own unique responsibilities that may bring them within the ambit of being a "lobbyist" as defined above. This opinion would therefore not be applicable to them.

**LRO 99-01—February 22, 1999**

*To: Louis Rotundo*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry that states in part:

> I am currently registered as a lobbyist in the State of Florida. For the last several years, one of my declared clients is listed as The Orlando Area Sports Commission, with Randy Johnson as its President and CEO. As you may already be aware, Mr. Johnson was elected to the House of Representatives in November of 1998.
>
> The Orlando Area Sports Commission is a not-for-profit public/private regional partnership, representing five counties and three cities within Central Florida. Its primary charge is to serve as an economic development agency, which attracts sports events and relocations to generate economic impact. It has a Board of Directors who sets policy and oversees Mr. Johnson as its sole employee. The funding for the organization is granted through allocation of resort tax and general revenue. Currently, I report to the organization's Vice President, Mr. John Saboor, who is in charge of governmental affairs for the twelve member staff of the corporation.
>
> My question deals with the declaration that lobbyists must make upon registering regarding their business relationships with legislators. Through the By-laws of the

> corporation, both Mr. Saboor and Mr. Johnson must sign all checks with double signatures for all outside vendor services. Does this constitute a business relationship? If so, what steps should I take to declare this matter with the office of lobbyist registration?

Section 11.045(2)(d), Florida Statutes, requires:

> Every registrant shall be required to state the extent of any direct business association or partnership with any current member of the Legislature.

This requirement is repeated in Section 1.2(1), Rule One, Joint Rules of the Florida Legislature.

Legislative lobbyists have been required to disclose direct business associations with members since at least 1966. Senate Rule 12.1, adopted on 15 November 1966, Journal of the Senate for the 1966 Organization Session at 15.

Your question poses the question of how "direct" does the business association have to be before disclosure is required. If, for example, a lobbyist has a checking account at a bank where a member of the legislature is employed or sits on the board of directors, the business association would not be sufficiently direct to require disclosure. On the other hand, if the member and the lobbyist jointly own a land development company, then disclosure is certainly required. In this case their interests coincide; if the company does well they both benefit. I believe that factor is also present in your situation.

If you are successful as a lobbyist for the Orlando Area Sports Commission, Representative Johnson as the Commission's President and chief executive officer will be presumed for appearance purposes to also benefit. Certainly here where Representative Johnson's signature is required before your lobbying fees can be paid, the business association is sufficiently direct to require disclosure.

Under the foregoing facts, I recommend that you amend your current legislative registration to disclose that Representative Johnson is the President and chief executive officer of your principal, the Orlando Area Sports Commission.

**LRO 99-02—March 15, 1999**

*To: Diane Buerger, Esq.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your inquiry that states in part:

> I currently am employed by the Public Defender's Office in the 10th Judicial Circuit in Bartow, Florida. I, also, am the president of the Florida Association of Criminal Defense Lawyers (FACDL) until June of this year. As president of FACDL, I will

> need to be in Tallahassee during part of the legislative session to talk to the State's elected officials and occasionally address legislative committees. Obviously, that requires my presence on weekdays during normal business (legislative) hours. I will not be paid by FACDL for this work. All FACDL members (including officers) are strictly volunteer. FACDL, however, will assist me by helping to cover hotel costs when I am in Tallahassee for the above stated purpose. I, personally, will cover remaining expenses.
>
> I have paid approved administrative leave from the Public Defender's Office for the time I spend in Tallahassee for the above stated purpose. Further, during the legislative session I will continue to be an active employee of the Public Defender's Office and perform "nonlegislative" duties for the office during any time I am not in Tallahassee (or local legislators' offices, etc.) actively engaged in talking to legislators and their staffs or appearing before legislative committees.
>
> ***
>
> I have reviewed the requirements for registering as a lobbyist. It appears, based on my review, that it is not necessary for me to register as a lobbyist. I base this on the exemption for "registering and reporting" for persons "employed by any executive, judicial, or quasi-judicial department of the state . . . who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, while that person is on approved leave . . . and who does not otherwise meet the definition of lobbyist."

Two statutes require the registration of state employees as legislative lobbyists. Section 11.045(1)(f), Florida Statutes, generally requires that employees who are "principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity" to register as a lobbyist. Section 11.061(1), Florida Statutes, specifically applies to only state employees. It requires that:

> Any person employed by any executive, judicial, or quasi-judicial department of the state or community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any committee thereof, shall, prior thereto, register as a lobbyist with the joint legislative office on a form to be provided by the joint legislative office in the same manner as any other lobbyist is required to register, whether by rule of either house or otherwise. This shall not preclude any person from contacting her or his legislator regarding any matter during hours other than the established business hours of the person's respective agency.

The foregoing section has been addressed by Section 1.1(4)(f), Joint Rule One, Joint Rules of the Florida Legislature. It exempts from registration:

> A person employed by any executive, judicial, or quasi-judicial department of the state or community college of the state who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or

committee thereof, *while that person is on approved leave or outside normal working hours, and who does not otherwise meet the definition of lobbyist*. (Emphasis added.)

The general provisions of Section 11.045, Florida Statutes, do not appear to require that you register as a legislative lobbyist for either your employer or the Florida Association of Criminal Defense Lawyers. You are not compensated by the Association and it does not appear from the information you supplied that you are "principally employed for governmental affairs" by your employer.

The more specific provisions of Section 11.061(1), Florida Statutes, do require that you register. As an attorney in the Office of the Public Defender for the Tenth Judicial Circuit you are an employee of the judicial branch ("department") of the state.[FL1][1] You also plan to appear before members of the Legislature and its committees during the working hours of your office. The purpose of this statute is to insure that state employees register whenever they are lobbying and are being compensated for their time by the state. For that reason the section does not apply to employees who are lobbying outside their normal office hours. This exemption is restated by Section 1.1(4)(f) of the Joint Rule One where it provides an exemption while a state employee ". . . is on approved leave or outside normal working hours . . . . "

I do not conclude that the term "on approved leave" can be extended to cover compensated administrative leave. Such an extension would be contrary to the purpose of Section 11.061(1) to track what state employees are doing while they are on the state payroll. The fiscal nature of the registration requirement is emphasized by the penalty for a violation. A guilty employee forfeits her pay for the number of hours of the violation. Section 11.061(3), Florida Statutes. For these reasons, I recommend that while you are lobbying and being compensated by your office you should be registered as a legislative lobbyist.

**LRO 99-03—March 15, 1999**

*To: Joe McCann*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your recent memorandum that states in part:

> I would like to request an informal opinion on a matter with a potential client that needs clarification. These individuals have a legislative matter they would like assistance with. The organization they have created is an informal one that is not an incorporated entity of any kind. It is impossible for us then to represent this "organization".
>
> There are approximately eighty (80) individuals that have a common interest and would like to retain our services. Rather than register for each person individually

[1] *State v. Mandell*, 599 So. 2d 1383, 1384-85 (Fla. 4th DCA 1992); *Dade County v. Baker*, 362 So. 2d 151, 154 (Fla. 3rd DCA 1978).

> I would prefer to register for one designated person, however, each of these individuals will share the cost of our fee.
>
> I would appreciate guidance in how to proceed so that we remain within the letter and spirit of the law.

Your inquiry raises the question of who is a principal within the scope of Section 11.045, Florida Statutes, and Joint Rule One, Joint Rules of the Florida Legislature. This issue was addressed in some detail in Lobbyist Registration Informal Opinion 95-01 (17 April 1995) where a group of health care providers sought to be represented as an association. A copy of that opinion is enclosed for your guidance.

As recommended in that opinion, I suggest that you register for each of your lobbying clients. Such a registration is potentially an onerous burden when the number of clients reaches 80, but Section 11.045 does not provide a means by which the members, or primary members, of a principal can be disclosed in a single registration. See the discussion in Opinion 95-01 about other states that do have such provisions.

In order to prevent ephemeral "coalitions" or shell associations from being created to shield the real parties in interest from disclosure, there must be some substance to an association before it can qualify as a single principal for registration purposes. The group specified in your inquiry will not meet the test set out in the referenced opinion.

**LRO 99-04—June 25, 1999**

*To: Rosemary L. Calhoun, Esq.*

*Prepared by: Michael Pearce Dodson, General Counsel*

This is a response to your recent letter that states in part:

> I am writing to request an informal opinion from your legal counsel on whether or not I am required to register as a lobbyist due to my employment as an Assistant State Attorney. I will be lobbying legislators as a volunteer on behalf of the Junior League of Daytona Beach, Inc., a nonprofit organization, in the coming year. While I would not be paid in any manner for my services as a lobbyist, the focus area of our League's service projects and lobbying efforts over the next several years will be domestic violence, which is also obviously an area of great interest and concern to the State Attorney's Office.

Two statutes require the registration of state employees as legislative lobbyists. Section 11.045(1)(f), Florida Statutes, generally requires that employees who are "principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity" to register as a lobbyist. Section 11.061(1), Florida Statutes, specifically applies to only state employees. It requires that:

> Any person employed by any executive, judicial, or quasi-judicial department of the state or community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any committee thereof, shall, prior thereto, register as a lobbyist with the joint legislative office on a form to be provided by the joint legislative office in the same manner as any other lobbyist is required to register, whether by rule of either house or otherwise. This shall not preclude any person from contacting her or his legislator regarding any matter during hours other than the established business hours of the person's respective agency.

The foregoing section has been addressed by Section 1.1(4)(f), Joint Rule One, Joint Rules of the Florida Legislature. The rule exempts from registration:

> A person employed by any executive, judicial, or quasi-judicial department of the state or community college of the state who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, *while that person is on approved leave or outside normal working hours, and who does not otherwise meet the definition of lobbyist*. (Emphasis added.)

The general provisions of Section 11.045, Florida Statutes, do not appear to require that you register as a legislative lobbyist for either your employer or the Junior League of Daytona Beach, Inc. You are not compensated by the Junior League and it does not appear from the information you supplied that you are "principally employed for governmental affairs" by your employer.

You also appear to be exempt from the registration requirements of Section 11.061(1), Florida Statutes, because you qualify for the exemption provided by Section 1.1(4)(f), of Joint Rule One. As you explained to me on the telephone, you will be lobbying only after normal working hours or while on annual leave. These facts distinguish your situation from the circumstances addressed in Informal Opinion 99-02 where the Assistant Public Defender would be on paid administrative leave to lobby.

## INDEX TO OPINIONS

### (Office of Legislative Services General Counsel)