Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM OPINION 00-01

To: The Honorable Lois Frankel
Representative, 85th District

From: Tom Tedcastle, General Counsel

Date: March 1, 2000

Re: Opinion Memorandum

You have asked for an opinion, pursuant to Rule 32 of the Rules of the Florida House of Representatives as to whether Rule 26(b)of those rules prohibits a Member of the Florida House of Representatives, during the 60-day regular session, from soliciting campaign funds for congressional candidates, for candidates for the Florida Senate who are not present Members of the House of Representatives, and for either a political action committee or committee of continuous existence.

Rule 26(b) of the Rules of the Florida House of Representatives provides that "A Member may neither solicit nor accept any campaign contribution during the 60-day regular legislative session on the Member's own behalf, on behalf of a political party, or on behalf of a candidate for the House of Representatives..." This rule does not prohibit solicitation of contributions for persons or entities other than existing House Members, candidates for the House of Representatives, and political parties. Additionally, the United States Court of Appeals, 11th Circuit, has ruled that federal law regulating the fund raising for federal offices has preempted any state limitations, including prohibitions on fund raising by state legislators during legislative sessions. Accordingly, your question is answered in the negative.

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM

OPINION 00-02

To: The Honorable Ken Gottleib
Representative, 101th District

From: Tom Tedcastle, General Counsel

Date: March 3, 2000

Re: Opinion Memorandum

You have asked whether you may use stationery which includes the House Seal and funds from your Surplus Office Account to correspond with your constituents concerning a vote on a change to the Pembroke Park charter. The correspondence would be in the form of a joint letter or statement between you and Senator Geller. The changes to the charter were approved through a local bill subject to ratification by referendum of the local voters.

In my opinion, a Member of the House of Representatives may ask voters to ratify a decision of the local delegation to amend a charter. Because this involves legislative matters, it would be acceptable to use stationery which includes the House Seal. Likewise, correspondence with your constituents is an appropriate expenditure in support of your duties as a public official. Accordingly, use of the Surplus Office Account is permissible.

As the General Counsel of the Florida House of Representatives, I am not authorized to give an opinion as to whether Senator Geller may use the Senate seal or as to whether expenditure of funds from one of his office accounts would be appropriate. If he is in question as to the propriety of the action, he should seek a separate opinion from the Senate on this matter.

TT/cb

cc: Committee on Rules & Calendar
Steven Kahn, Senate Counsel
Office of the Clerk
House Democratic Office
House Majority Office
Bonnie Williams, Commission on Ethics

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-03**

To: The Honorable Bill Sublette
Representative, District 40

From: Tom Tedcastle, General Counsel

Date: March 10, 2000

Re: Opinion Memorandum

You have requested my 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 my 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 me 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 my 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).

TT/cb

cc: Committee on Rules & Calendar
Steven Kahn, Senate Counsel
Office of the Clerk
House Democratic Office
House Majority Office
Bonnie Williams, Commission on Ethics

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-04**

To: The Honorable Willie F. Logan
Representative, District 103

From: Tom Tedcastle, General Counsel

Date: March 15, 2000

Re: Opinion Memorandum

You have requested my 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 my 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 me 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 my 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).

TT/cb

cc: Committee on Rules & Calendar
Steven Kahn, Senate Counsel
Office of the Clerk
House Democratic Office
House Majority Office
Bonnie Williams, Commission on Ethics

CEO 00-07-- March 17, 2000

SUNSHINE AMENDMENT

FORMER MEMBERS OF LEGISLATURE SERVING AS SECRETARY, DIVISION DIRECTOR, DEPUTY SECRETARY, AND ASSISTANT SECRETARY OF EXECUTIVE BRANCH DEPARTMENTS

TO: Mr. William G. Bankhead, Secretary, Department of Juvenile Justice; Mr. Robert G. Brooks, M.D., Secretary, Department of Health; Mr. Charles Williams, Director, Division of Workers' Compensation, Department of Labor and Employment Security; Mr. Luis Morse, Deputy Secretary, Department of Elder Affairs; Mr. Carl Littlefield, Assistant Secretary for Developmental Services, Department of Children and Families(Tallahassee)

SUMMARY:

Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, do not prohibit the Secretary of the Department of Juvenile Justice, the Secretary of the Department of Health, the Director of the Division of Workers' Compensation, the Deputy Secretary of the Department of Elder Affairs, or the Assistant Secretary for Developmental Services, Department of Children and Families, who have been members of the Legislature within the last two years, from appearing before the Legislature or legislators in the course of carrying out their official duties. CEO 81-57 and CEO 90-4 are receded from.

QUESTION:

Given the restrictions of Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, under what circumstances may the Secretary of the Department of Juvenile Justice, the Secretary of the Department of Health, the Director of the Division of Workers' Compensation, the Deputy Secretary of the Department of Elder Affairs, or the Assistant Secretary for Developmental Services, Department of Children and Families, who have been members of the Legislature within the last two years, appear before the Legislature or legislators in the course of carrying out their official duties?

Your question is answered below.

Through your letter of inquiry, we are advised that William G. Bankhead serves as the Secretary of the Department of Juvenile Justice, Robert G. Brooks, M.D., serves as the Secretary of the Department of Health, Charles Williams serves as the Director of the Division of Workers' Compensation, Department of Labor and Employment Security, Luis Morse serves as the Deputy Secretary of the Department of

Elder Affairs, and Carl Littlefield serves as the Assistant Secretary for Developmental Services, Department of Children and Families. All of you have been members of the Legislature within the last two years, which, given the restrictions of Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, leads you to inquire about the circumstances under which you may appear before the Legislature or legislators in the course of carrying out your official duties.

Article II, Section 8(e), 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. [E.S.]

Section 112.313(9)(a)3, Florida Statutes, reiterates this standard, providing as follows:

> **No member of the Legislature**, appointed state officer, 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 2 years following vacation of office.** 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. [E.S.]

Since the constitutional prohibition went into effect, in 1977, we have rendered two opinions interpreting it in the context of former members of the Legislature who assumed positions in the Executive Branch. In CEO 81-57, we concluded that this provision would prohibit a former State Senator from accepting employment as Director of the Division of Hotels and Restaurants in the Department of Business Regulation 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. However, we concluded that the provision would not prohibit him from accepting such employment if the duty of lobbying were transferred to another person. We also were of the opinion that Article II, Section 8(e) would not prohibit him 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.

In CEO 90-4, we examined the situation of a former member of the Florida House of Representatives who served as General Counsel to the Governor. Based on CEO 81-57, we concluded that Article II, Section 8(e), did not prohibit him from reviewing legislation, advising the Governor on legislative matters, and supervising members of the Governor's staff who were registered to lobby the

Legislature, so long as he did not personally represent the Governor before the Legislature. As in CEO 81-57, we concluded that he would not be prohibited 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. Answering a question that had not been presented in CEO 81-57, we concluded that he would not 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.

A significant issue in both opinions was the question of whether the prohibition of the Sunshine Amendment included governmental entities through its use of the terms "another person or entity" to describe who a former legislator could not represent before the Legislature within the two-year period. This issue was the primary focus of CEO 81-57, where we examined both the context of the language used in the Sunshine Amendment and extrinsic evidence of the intent behind the prohibition. We noted:

> 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).]

Finding the extrinsic evidence of intent on this issue to be inconclusive, we concluded that the purposes served by the constitutional prohibition would be apply regardless of whether a former legislator were being paid to lobby for a public entity or a private entity:

> Unfortunately, these remarks [from Governor Askew's 1977 address to the Legislature] 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.

We adhered to this conclusion in CEO 90-4, stating:

> 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 sustain 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.

We remain persuaded that this is the appropriate interpretation of the terms "person or entity." In addition to the reasons stated in the previous opinions, we note that the same phrase is used in the second sentence of Article II, Section 8(e)--the in-office ban against members of the Legislature representing "another person or entity" before State agencies other than the courts. We can think of no reason why the same phrase should not be interpreted identically when it is used in two adjacent sentences in the Constitution that were drafted by the same persons and were adopted at the same time. Further, we note that we have applied the in-office ban to representing governmental entities before Executive Branch agencies, advising in CEO 85-83 that Article II, Section 8(e), would prohibit a State Representative from personally contacting State agencies other than judicial tribunals in behalf of municipal and county governmental clients that were seeking grants, and advising in CEO 81-12 that a State Representative could not personally represent a municipal housing authority before State agencies other than judicial tribunals.

Nevertheless, in construing Article II, Section 8, we must keep in mind the following admonition of the Florida Supreme Court:

> In November 1976, the people of Florida adopted article II, section 8, Florida Constitution, commonly referred to as the 'Sunshine Amendment.' In construing this section, it is our duty to discern and effectuate the intent and objective of the people. In re Advisory Opinion to the Governor, 243 So.2d 573 (Fla. 1971); State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939). The spirit of the constitution is as obligatory as the written word. Amos v. Matthews, 99 Fla. 1, 126 So. 308 (1930). The objective to be accomplished and the evils to be remedied by the constitutional provision must be constantly kept in view, and the provision must be interpreted to accomplish rather than

> to defeat them. State ex rel. Dade County v. Dickinson, 230 So.2d 130 (Fla. 1970). A constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by the context. Gray v. Bryant, 125 So.2d 846 (Fla. 1960). [Plante v. Smathers, 372 So.2d 933, at p. 936 (Fla. 1979).]

We previously have stated that the prohibition of Article II, Section 8(e) establishes the principle 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, 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, and that, 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. In our view, these are "the objective to be accomplished and the evils to be remedied" by Article II, Section 8(e). In our view, also, these objectives can be met without precluding further public service by former members of the Legislature.

In CEO 81-57 we advised that 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 or her official responsibilities. There, we noted:

> 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.

Here, the subject former members of the Legislature have continued their public service by moving into the Executive Branch of State government, either as public officers or as full-time public employees with substantial administrative responsibilities, for whom appearing before the Legislature is an incidental responsibility of their current public position. The circumstances here do not involve the use of their public service careers and contacts developed in that capacity to enrich themselves at the expense of the public, do not present even the appearance of influence peddling and the use of public office to create opportunities for personal profit through lobbying after leaving the Legislature, and do not involve the possibility that their decisions as members of the Legislature were made out of regard for possible employment as lobbyists. In short, the situation simply does not come within the intent of the prohibition.

While we fully respect the concerns that led to the results of our past opinions, we believe that the Constitution can be construed, under the circumstances presented here, in such a way as to allow members of the Legislature to continue their public service within the Executive Branch, as public officers or full-time employees with substantial administrative responsibilities for whom appearing before the Legislature is an

incidental responsibility, while still meeting the objectives to be accomplished and prohibiting the evils that Article II, Section 8(e) sought to remedy. Accordingly, under the circumstances presented we recede from opinions CEO 81-57 and CEO 90-4 and find that Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, do not prohibit the Secretary of the Department of Juvenile Justice, the Secretary of the Department of Health, the Director of the Division of Workers' Compensation, the Deputy Secretary of the Department of Elder Affairs, or the Assistant Secretary for Developmental Services, Department of Children and Families, who have been members of the Legislature within the last two years, from appearing before the Legislature or legislators in the course of carrying out their official duties. This opinion relates only to the particular circumstances and responsibilities of the individuals who have made this request; if there is any question about the applicability of the law to other individuals in different circumstances, we suggest that another opinion be sought.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 16, 2000 and **RENDERED** this 17th day of March, 2000.

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM

OPINION 00-05

To: Identification Not Requested

From: Tom Tedcastle, General Counsel

Date: April 5, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives as to whether a Member of the Florida House of Representatives may, during the 60-day regular session, request another to serve as a host of a fund-raising event to be held after the session. The host would not pay the expenses for the event, but would assist after the session in soliciting contributions from others on behalf of the Representative or a political party. Further, you ask whether the opinion would be different if the person asked to be host is registered as a legislative lobbyist.

Rule 26(b) of the House Rules provides that "a Member may neither solicit nor accept any campaign contribution during the 60-day regular legislative session on the Members' own behalf, on behalf of a political party, or on behalf of a candidate for the House of Representatives . . . " By its clear language, the rule only covers solicitation of contributions; it does not prohibit solicitation of campaign workers. Because the host is not asked to pay the expenses of the event or to personally contribute to the campaign, the Member would be soliciting campaign workers and not campaign contributions.

While the answer to your question would be the same regardless of whether the host is or is not a registered lobbyist, a Member would be advised to take added caution when making any request of a registered lobbyist. I would draw your attention to Rule 26(a) which prohibits a member from accepting anything (including an offer of assistance) if it may reasonably be construed to improperly influence the Members official act, decision, or vote. Of course, this rule applies at all times, not just during a session. Nonetheless the timing of an offer could be considered in determining whether it was intended to influence a particular action.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-06**

To: The Honorable Shirley Brown
Representative, 69th District,

From: Tom Tedcastle, General Counsel

Date: April 7, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives as to the application of Rule 20 to you with respect to CS/HB 467. CS/HB 467 relates to consumer collection practices. You state that your spouse owns a collection agency and serves as President of the Florida Collector's Association. It is my opinion that no conflict exists which would prohibit you from voting on the bill or which would require public disclosure of your husband's business or office. Nonetheless, you may wish to voluntarily make a public disclosure when voting on the legislation.

Rule 20 of the Rules of the Florida House of Representatives prohibits a Member from voting on a matter only where it would inure to the special private gain of the Member. If legislation does not inure to the special private gain of the Member, he or she must vote on the legislation. The legislation which you mention could potentially affect the interests of your spouse, but not to you, personally. Accordingly you must vote on the legislation.

Notwithstanding the requirement that you must vote on the legislation, Rule 20 also requires a Member to disclose the nature of any interest of a family member with respect to legislation which would inure to the special private gain of the family member. In reviewing CS/HB 467, it would appear that the legislation would affect all collection agencies in the state in the same manner. Accordingly, it would not appear that the legislation would inure to the special private gain of your husband as the owner of a

collection agency. It is further my opinion that the legislation does not inure to the special private gain of the Florida Collector's Association. However, if the association is lobbying on behalf of, or in opposition to the legislation, one might argue that the success or failure of the legislation could affect the ability of the association to attract or retain members. While it is my opinion that such a benefit is sufficiently remote as to not require disclosure, you may wish, nonetheless, in an abundance of caution, to disclose his position with the association when voting on the legislation.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-07**

To: The Honorable Marco Rubio
Representative, 111th District,

From: Tom Tedcastle, General Counsel

Date: April 10, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives as to the application of Rule 20 to you with respect to legislation which would permit the voters of Miami-Dade County to approve a surcharge to pay for a new baseball stadium for the Miami Marlins. You inform me that you are employed by the law firm of Ruden, McClosky, Smith, Schuster and Russell, P.A., which firm represents the Marlins on a different legal matter. It is my opinion that Rule 20 requires you to vote on such legislation, but that you should disclose the fact that the Miami Marlins organization is a client of your law firm when voting on the legislation.

Rule 20 of the Rules of the Florida House of Representatives prohibits a Member from voting on a matter only where it would inure to the special private gain of the Member. If legislation does not inure to the special private gain of the Member, he or she must vote on the legislation. The legislation which you mention would appear to inure to the special private gain of a client of your employer, but not to you, personally. Accordingly you must vote on the legislation.

Notwithstanding the requirement that you must vote on the legislation, Rule 20 also requires a Member to disclose the nature of any interest of a principal by whom the Member is retained in legislation which would inure to the special private gain of the principal. While not exactly on point, I would note that the Commission on Ethics, in

interpreting the very similar provisions of Section 112.3143, Florida Statutes, has determined that a partner of a law firm must disclose when voting on a matter which inures to the special private gain of a client of the firm. (CEO 84-31) Although it may be argued that because you are an associate, and not a partner, it is the law firm that employs you, and not the Marlins, which is your principal for the purpose of determining whether a voting conflict exists, it is my opinion that it is more in the spirit of the rule for both partners and associates to disclose a potential conflict where legislation would inure to the special private gain of the law firm or of a client of the law firm. I would also note that the Rules of Professional Conduct of the Florida Bar make no distinction between the obligation of an associate or a partner in protecting the interests of a client of the firm. I would recommend, therefore, that you publicly disclose that the Miami Marlins organization is a client of your firm when you vote on legislation related to the construction of the stadium on the floor of the House of Representatives or in any committee.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-08**

To: The Honorable Frederick C. Brummer
Representative, 38th District,

From: Tom Tedcastle, General Counsel

Date: April 17, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives as to the application of Rule 20 to you with respect to legislation which would provide a tax exemption on rental of certain property used as a golf course. You state that a client of your C.P.A. firm could stand to benefit from the legislation, although it is not clear that your client is covered by the legislation. You have also inquired as to whether you would have a conflict should an amendment be offered relating to a tax exemption on items used for agricultural purposes. You note that several of the firms clients could be benefited by such an exemption. Your firm represents less than 50 of the several thousand businesses which would be affected by the amendment.

Rule 20 of the Rules of the Florida House of Representatives prohibits a Member from voting on a matter only where it would inure to the special private gain of the Member. If legislation does not inure to the special private gain of the Member, he or she must vote on the legislation. The legislation which you mention would appear to inure to the special private gain of a client of your firm, but not to you, personally. Accordingly you must vote on the legislation.

Notwithstanding the requirement that you must vote on the legislation, Rule 20 also requires a Member to disclose the nature of any interest of a principal by whom the Member is retained in legislation which would inure to the special private gain of the principal. The issue which must be determined is whether the benefit would be a “special

private gain." With respect to legislation which affects a substantial class of persons, absent facts which would result in your client receiving an inordinate amount of the gain from the legislation, the gain received would not be a "special private gain." It is my opinion, therefore, that the proposed amendment regarding agricultural items would not result in a special private gain to any of your firms clients and accordingly you are not required to disclose a conflict with regard to the potential agriculturally related amendments.

In contrast, the bill provides a sales tax exemption for property leased as a public golf course. While I am unable to ascertain the exact number of such courses, I note that the total fiscal impact of the bill is approximately $600,000 per year. I am informed that the number of golf courses involved is relatively small, perhaps as small as 15. Accordingly, if the golf course your firm represents is one of that small class to be benefited, it is my opinion that you must disclose your firms representation of the golf course when voting on HB 1001.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-09**

To: Identification Not Requested

From: Michael Dodson, General Counsel, OLS
For Tom Tedcastle, House General Counsel
Date: August 3, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Section 112.3149(8), Florida Statutes, as to the application of Section 112.3149, Florida Statutes to the following situation.

You have been invited to give an address to the American Leadership Conference at its July 28-29, 2000, conference to be held at the Miami Hilton Airport & Towers Resort in Miami, Florida. As consideration for your address, the American Leadership Conference has offered to pay you $500 and provide food and lodging for one day at the conference site. That site is sufficiently close to your residence and district office that the provision of food and lodging is not necessary for you to be able to address the conference

You have been informed that the American Leadership Conference does not employ a lobbyist registered to lobby the Florida House of Representatives. A check of the legislative lobbyist registration database confirms that fact. According to its Internet website, the American Leadership Conference is a project of the Washington Times Corporation and is an "IRS 501c3 non-profit public charity committed to teaching the proven principles of freedom, faith, and family." Also, the Conference is not registered with the Department of State, Division of Elections, as either a political committee or as a committee of continuous existence.

Section 112.3149, Florida Statutes, prohibits you, as a person who files financial disclosure reports, from receiving an honorarium from a certain class of persons and entities. The $500 and lodging and food offered by the Conference is an honorarium. Section 112.3149(1)(a), Florida Statutes, defines an honorarium as:

> . . . 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 . . . .

Because it does not appear that the provision of food, beverages, and lodging is necessary for you to address the conference, the payment for those expenses by the Conference constitutes part of the total honorarium. The Rules of the Commission on Ethics provide at Section 34-13.220, Florida Administrative Code, that:

> To the extent that the transportation, lodging, and food and beverages provided or paid for exceed "actual and reasonable expenses," this amount constitutes an honorarium. . . .

In the present situation you may, however, accept the honorarium because the American Leadership Conference is not one of the persons or entities within the prohibited class as defined at Section 112.3149(3), Florida Statutes. It states:

> A reporting individual or procurement employee is prohibited from knowingly accepting an honorarium from a political committee or committee of continuous existence, as defined in s. 106.011, from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or from the employer, principal, partner, or firm of such a lobbyist.

Because the $500 and food and lodging constitute an honorarium, neither you nor the Conference are required to report them in any disclosure reports.

This written memorandum confirms the oral opinion I gave you on July 28, 2000, prior to your attending the conference.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-10**

To: Identification Not Requested

From: Tom Tedcastle, House General Counsel

Date: September 21, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Rule 32 of the Rules of the Florida House of Representatives and Section 112.3148(10), Florida Statutes, regarding the following situation:

> As a Member of the Select Committee on Military Affairs, you accepted an invitation from the United States Government to tour the USS Washington. The government flew you to the ship, which was approximately 100 miles offshore, conducted the tour, provided lunch, and flew you home.

Your question is whether the receipt of the transportation to and from the ship, lunch, and the tour constitutes a gift, and if so, whether such gift should be reported. It is my opinion that it does constitute a gift and must be reported.

Generally, transportation and other services provided to a Member of the Legislature are considered gifts, as are meals. In this case, you were provided with transportation, a tour of the ship, and a meal. However, transportation provided to a legislator by an agency which is directly related to the legislator's duties is not

considered a gift. (Section 112.312(12)(a)7., Florida Statutes). While the transportation provided does appear to be directly related to your legislative duties, the United States government is not included within the definition of "agency" for the purposes of the Code of Ethics. Had the transportation been provided by a state or local entity, the transportation would not be a gift, and no report would be required for it, although a report might still be required for the lunch and the tour of the ship, depending on their value. In that the transportation was provided by the United States government, however, you have received a gift which consists of the transportation, lunch, and the tour, and whether a report is required depends on the value of the combined components.

In valuing the transportation, you must value it at the commercial rate. (Section 112.3148(7)(d), Florida Statutes) Of course, in this case, no commercial airline would be flying to a carrier, and thus an exact amount cannot be determined. Nonetheless, it is likely that the value of any round-trip flight, even for a distance of 100 miles, would exceed $100, and it would be my advice that you assume that the transportation has such a value. While I would assume that the value of the meal and the tour is less than $100, in that you should consider the event as a single gift, you should list all of the components as a single gift with a value in excess of $100. Because you cannot ascertain an exact value, you should state that the value is unknown. (Section 112.3148(8)(b), Florida Statutes) This gift should be reported by the end of the calendar quarter following the quarter in which it is received.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

John Thrasher, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 00-11**

To: The Honorable Carlos A. Lacasa
Representative, 117th District,

From: Tom Tedcastle, General Counsel

Date: September 28, 2000

Re: Opinion Memorandum

You have requested an opinion pursuant to Section 112.3148, Florida Statutes, and Rule 32 of the Rules of the Florida House of Representatives as to whether you may accept the payment of certain expenses by the Greater Miami Chamber of Commerce under the following circumstances. The Chamber has invited you to represent the State of Florida as the leader of a delegation for the International Services Mission to Spain from October 21 through October 28, or some portion thereof. The trade mission will go to both Madrid and Barcelona and will be held in conjunction with Enterprise Florida. The Chamber will pay both your airfare and hotel expenses with an estimated value of approximately $1,000.

Pursuant to Section 112.312(12)(a)7., Florida Statutes, both the airfare and the lodging are considered gifts. Although the invitation does not mention meals, if the Chamber provides meals during the mission, they would also be considered part of the total gift received. Because the Greater Miami Chamber of Commerce is not represented by a lobbyist before the Florida Legislature, under the provisions of Section 112.3148, Florida Statutes, you may accept the gift of both the transportation and lodging

expenses. However, in that the expenses exceed $100, you would be required to report the receipt of the gift with the Commission on Ethics no later than March 31, 2001.

TT/cb

cc: Committee on Rules and Calendar
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 01**

To: The Honorable Donald Brown
Representative, District 5

From: Tom Tedcastle, General Counsel

Date: January 11, 2001

Re: District Office Lease

You have asked for my opinion as to whether the proposed leasing arrangement with Okaloosa-Walton Community College is permissible. As I understand the situation, the college has vacant space in the Chautaugua Center on its Defuniak Springs Campus which it is willing to make available for a nominal fee for use as a district office. The college provides similar space on that campus for other entities, such as the Walton County Economic Development Council, which are serving a public purpose, for the same fee that it proposes to charge you. The space is not made available at any rate for uses other than for public purposes.

Providing office space at less than market value to an individual would generally constitute a gift under Florida law. Section 112.312(12), Florida Statutes includes within the definition of the term "gift" the use of real property, unless equal or greater consideration is given for it. According to the information provided to me by the Director of the OWCC Chautaugua Center, the rate charged depends on the amount of space required and the amount of alterations that would be required. The proposal which has been forwarded to me provides for a monthly charge of $300.

While the monthly rental fee mentioned would likely be less than the market rate for physically-similar property in the area, it is clear that in limiting the market for the

property to entities serving a public purpose, the rate which the college could expect to recover is smaller. I also note that the college is reserving the right to cancel the lease arrangement at any time with only 30 days' notice, presumably to permit the college to reclaim the space if needed for its academic purposes. This, likewise, decreases the market for the property. To the extent that you are required to pay the same or greater rate than the other tenants, therefore, it would appear that you are providing equal or greater consideration even though the amount is less than you would have to pay at a facility that did not limit the market in the way that the college does. Accordingly, it is my opinion that you are not receiving a gift from Okaloosa-Walton Community College.

Although I have determined that the leasing arrangement does not constitute a gift under the Code of Ethics, Section 112.3148, Florida Statutes, prohibits a legislator from receiving a gift with a value in excess of $100 only from an entity that hires a lobbyist to lobby on its behalf before the Florida Legislature. According to the Lobbyist Registration office of the Florida Legislature, Okaloosa-Walton Community College has not retained its own lobbyist before the Legislature. Accordingly, even if the college was providing a gift, it would not be prohibited, but would be reportable under Section 112.3148(8), Florida Statutes. Although it is my opinion that under the specific facts of this arrangement, there is no gift being provided, you may, nonetheless, to avoid any potential violation of the gift law, wish to disclose the leasing arrangement and attach a description of the arrangement to the quarterly gift reports you will be required to make as a Member of the Florida Legislature.

As requested, I have reviewed the draft Memorandum of Agreement, which I understand would constitute the lease in this matter. The agreement is in accordance with our policies on district offices, and you may agree to its terms.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 02**

To: Identification Not Requested

From: Tom Tedcastle, General Counsel

Date: January 22, 2001

Re: Women In Government Meeting

You have requested an opinion pursuant to Section 112.3148, Florida Statutes and the Rules of the Florida House of Representatives as to whether you may accept an invitation from Women In Government to attend the "Emergency Epidemics Roundtable" to be held in San Juan, Puerto Rico, from February 15-18, 2001. Women in Government would pay for your travel, lodging, and meals, subject to certain limitations. Your question is answered in the affirmative.

Women in Government is a not-for-profit Section 510(c)(3) charitable corporation which is primarily engaged in an educational effort to assist women choosing a career in government. It does not lobby the Florida Legislature or any other governmental body. It accepts funding from a variety of entities, but the expenditure of the funds received is nether controlled nor directed by the donors. Accordingly, for the purpose of the question posed, Women In Government is the sole donor of the travel, lodging, and meals.

The payment of your travel lodging and meal expenses for the Emerging Epidemics Roundtable would constitute a gift under the Florida Ethics Code. The Ethics Code makes no distinction between those items received of a personal nature and those which are given with a public purpose intended. The fact that you will be receiving information relevant to your service as a state legislator does not affect whether the receipt is a gift to you.

Under the provisions of Section 112.3148, Florida Statutes, a government official may receive a gift of any amount from an individual other than a lobbyist, the principal

of a lobbyist, a political committee, or a committee of continuous existence. If the value of the gift is in excess of $100, which the value of the gift in question would be, the gift must be reported on CEO Form 9. Since you would be receiving the gift in February of 2001, it must be reported by the end of June.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01-03**

To: Identity Not Requested

From: Tom Tedcastle, General Counsel

Date: January 24, 2001

Re: District Office Lease

You have requested my opinion as to whether you may rent space in your law office to yourself in your official capacity as a Member of the Florida House of Representatives for use as a district office. That question is answered in the affirmative. You have also asked whether there are any restrictions which would apply to such a lease arrangement. That question is also answered in the affirmative and the answer is explained more fully below.

Although Section 112.313(3), Florida Statutes, generally prohibits a public officer or employee from doing business with his or her own agency, the prohibition does not apply Ato district offices maintained by legislators when such offices are located in the legislator=s place of business...@ This exemption furthers the public policy of increasing the availability of a legislator to her or his constituents.

When a legislative district office is collocated with the Member=s place of business, the amount of rent charged cannot exceed the fair market rate. Where a portion of a leased space is being subleased for the purposes of the district office, we have recommended that the rent for the sublease should not exceed the pro rata share of the main lease, based on square footage allotted to the district office purposes. The cost of common areas used for both the private and public business can be shared.

You should also be alerted to the prohibition on using state employees in your private business. Accordingly, your district employees should not be greeting or assisting the clients of your law firm. Where a single entrance is used for the district office and the law office, and both the law firm=s clients and your constituents are to be

greeted by the same person, that employee must be employed by the law firm. Those persons who are in the office to see you in your capacity as a legislator may be immediately referred to your district employees.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

CEO 01-3 -- January 30, 2001

SUNSHINE AMENDMENT

STATE REPRESENTATIVE CONTACTING FLORIDA HOUSING FINANCE CORPORATION STAFF ABOUT ITS PROGRAMS' RULES AND AVAILABILITY OF PROJECT FUNDING

To: Name withheld at person's request (District 23,Gainesville)

SUMMARY:

As a result of the Legislature's adoption of Section 420.5061, Florida Statutes, which expressly provides that for purposes of the prohibitions of Section 112.313, Florida Statutes, the Florida Housing Finance Corporation is a continuation of the Florida Housing Finance Agency, the Corporation's predecessor, and since this Commission previously determined that the Florida Housing Finance Agency was a "state agency" for purposes of Article II, Section 8(e), Florida Constitution, both Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, prohibit you from personally contacting staff of the Florida Housing Finance Corporation on behalf of your development company for information about its programs' rules or for advice on completing funding applications.

QUESTION:

Do the Sunshine Amendment's and Code of Ethics' prohibitions against a legislator personally representing a person or entity for compensation before any state agency during his or her term of office prohibit you, a State Representative, from contacting staff of the Florida Housing Finance Corporation on behalf of your development company for information about its programs' rules or for advice on completing funding applications?

Your question is answered in the affirmative.

In your letter of inquiry, you advise that prior to your election to the Florida House of Representatives ("House"), you periodically contacted the Florida Housing Finance Corporation ("Corporation") on behalf of Jennings Development Group, Inc., which the Secretary of State's Division of Corporation's records indicate you are the sole officer and director of, regarding various affordable housing projects, the financing of which was provided through the Corporation. We are advised that your contacts with the Corporation generally consisted of your seeking clarification from Corporation staff about the various programs' rules and funding opportunities under each program administered by the Corporation. Having been elected to the House, you are now concerned about the extent to which the Sunshine Amendment (Article II, Section 8(e), Florida Constitution) and its statutory companion, Section 112.313(9)(a)3, Florida Statutes, prohibit you from contacting the Corporation's staff either for information

or for advice on completing funding (grant) applications.

You note that the Corporation was created pursuant to Section 420.504(1), Florida Statutes, as a "public corporation and a public body corporate and politic," within the Department of Community Affairs. However, Section 420.504, Florida Statutes, you write, further provides that the Corporation is "not a department of the executive branch of state government within the scope of, and meaning of, s. 6, Art. IV of the State Constitution[1], but is functionally related to the Department of Community Affairs." You note further that according to Section 420.504(2), Florida Statutes, the Corporation is an "agency" for purposes of Section 120.52, Florida Statutes (relating to the Florida Administrative Procedures Act), and, with certain exceptions, is subject to the requirements of Chapter 119, Florida Statutes (relating to the Public Records or Sunshine Law), and Chapter 286, Florida Statutes (relating to Open Meetings). However, with the exception of the requirement that members of the Corporation's Board of Directors file full and public disclosure of financial interests (CE Form 6) in the same manner as elected constitutional officers under Article II, Section 8, Florida Constitution, the statute, you write, is silent as to whether the Corporation is an "agency" for purposes of the application of the conflict of interest provisions of the Code of Ethics.

You also note that while the Legislature appropriates funds to the Corporation, it does not control the number of employees or the salary rate for such employees. For example, you indicate that some of the employees who were transferred to the Corporation remained State employees.[2] However, new hires are not. We also note that, while the Corporation is authorized to prepare and submit a budget request to the Secretary of the Department of Community Affairs, which includes requests for operational expenditures and separate requests for other authorized Corporation programs, the Corporation specifically is exempted from the statutory requirement of having to provide information on the number of its employees, their salaries, or any classification thereof. Section 420.507(30), Florida Statutes. Therefore, in light of the definition of "state agency" at Section 112.313(9)(a)2.c, Florida Statutes,[3] you suggest that the appropriation of funds by the Legislature to the Corporation without greater legislative controls over its expenditures does not constitute the exercise of "plenary budgetary control" over the Corporation for purposes of determining that the Corporation is a "State agency" as that term is used in Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, which provide respectively as follows:

---

[1]Article IV, Section 6, Florida Constitution, provides that "the functions of the executive branch of state government shall be allotted among not more than 25 departments, exclusive of those specifically provided for or authorized in [the] constitution."

[2]Section 420.506, Florida Statutes, authorizes the Corporation to enter into a lease agreement with the Department of Management Services or the Department of Community Affairs for the lease of state employees. Under this arrangement, the employee would retain his or her status as a state employee, as well as his or her right to participate in the Florida Retirement System. However, he or she would work under the direct supervision of the Corporation.

[3]"State agency" is defined at Section 112.313(9)(a)2.c, Florida Statutes, to mean

> an entity of the legislative, executive, or judicial branch of state government over which the legislature exercises plenary budgetary and statutory control.

> 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 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. [E.S.] [Article II, Section 8(e), Florida Constitution.]

> POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.--No member of the Legislature, appointed state officer, 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 2 years following vacation of office. 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. [E.S.] [Section 112.313(9)(a)3, Florida Statutes.]

These provisions prohibit a legislator from personally representing an entity for compensation before any State agency other than judicial tribunals during his or her term of office. The purpose behind the constitutional prohibition was expressed by the Florida Supreme Court in Myers v. Hawkins,[4] 362 So.2d 926, 930 (Fla. 1978), where the Court stated:

---

[4]Myers v. Hawkins, 362 So.2d 926, 930 (Fla. 1978), was an appeal brought by Senator Myers of a declaratory statement issued by the State Public Service Commission ("PSC")stating that, pursuant to the Sunshine Amendment, he was prohibited from practicing before the PSC. In quashing the PSC's order, the Supreme Court ruled as follows: (1) An affected agency is not the appropriate body to make a determination of its own status under Article II, Section 8(e), only the Ethics Commission should make those determinations; (2) the term "judicial tribunals" in Article II, Section 8(e) includes judges of industrial claims, the Industrial Relations Commission, and all courts of the state created under Article V of the Constitution. (The PSC is not a "judicial tribunal" -- the exercise by it of its judicial-like powers constitutes only a fraction of its duties.); and (3) Article II, Section 8(e) does not apply to affected legislators and statewide elected officers who held office on its effective date. (Senator Myers was not barred from practicing before the PSC during his senatorial term which began prior to the effective date of Article II, Section 8(e), Florida Constitution.)

> [W]e are always obliged to interpret a constitutional term in light of the primary purpose for which it has been adopted. Both Myers and the amici recognize that the Sunshine Amendment was evolved to establish an arsenal of protections against the actual and apparent conflicts of interest which can arise among public officials, and that 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 influence) when they appear before the agencies as compensated advocates for others. [Emphasis added.]

In In re George Stuart, COE Final Order 94-01, 16 FALR 1499, 1505-1506 (COE 1994), we similarly were faced with the question of whether the agency that Senator Stuart was lobbying, the Orlando-Orange County Expressway Authority, was a "state agency" for purposes of Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes. We found that it was a "state agency" and that Senator Stuart had violated Article II, Section 8(e). In contrast, here, because of the statutory language employed by the Legislature in creating the Corporation, our analysis of the issues involved appears to be simpler.

Initially, we note that in CEO 82-33, we determined that the Florida Housing Finance Agency ("FHFA"), the Corporation's predecessor, was a "state agency" for purposes of applying Article II, Section 8(e), and was not a judicial tribunal. However, when the Legislature abolished the FHFA and recreated it as the Florida Housing Finance Corporation, a public corporation [See Section 7, Chapter 97-167, Laws of Florida, and Section 420.504, Florida Statutes (1997)], it provided:

> PUBLIC CORPORATION; CREATION, MEMBERSHIP, TERMS, EXPENSES.--
>
> (1) There is created within the Department of Community Affairs a public corporation and a public body corporate and politic, to be known as the "Florida Housing Finance Corporation." It is declared to be the intent of and constitutional construction by the Legislature that the Florida Housing Finance Corporation constitutes an *entrepreneurial public corporation* organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in Florida and that the corporation is not a department of the executive branch of state government within the scope and meaning of s. 6, Article IV of the State Constitution, but is functionally related to the Department of Community Affairs in which it is placed. The executive function of state government to be performed by the secretary of the department in the conduct of the business of the Florida Housing Finance Corporation must be performed pursuant to a contract to monitor and set standards as provided in s. 420.0006. . . .
>
> (2) The corporation is constituted as a public instrumentality, and

> the exercise by the corporation of the power conferred by this act is considered to be the performance of an essential public function. The corporation is subject to chapter 119, subject to exceptions applicable to the corporation, and to the provisions of chapter 286. . . .
>
> (3) The corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department of Community Affairs in any manner, including but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The corporation shall consist of a board of directors composed of a Secretary of Community Affairs as an ex officio and voting member and eight members appointed by the Governor subject to confirmation by the Senate from the following: . . .
>
> . . . . .
>
> (7) Each member of the board of directors of the corporation shall file full and public disclosure of financial interests at the times and places and in the same manner required of elected constitutional officers under s. 8, Art. II of the State Constitution an any law implementing s. 8, Art. II of the State Constitution.
>
> (8) The corporation is a corporation primarily acting as an instrumentality of the state, within the meaning of s. 768.28. [E.S.]

In In re George Stuart, we accepted the Administrative Law Judge's observation that "an agency may assume a legal character based upon the particular statutory or regulatory background against which it is examined." 16 FALR at 1504. For example, in determining whether the Commission on Hispanic Affairs was a "state agency," the Attorney General, in AGO 80-29, opined that the Commission may not be considered a state agency for certain purposes, such as planning and budgeting (Chapter 216, Florida Statutes) or purchasing (Chapter 287, Florida Statutes), nor an executive department or agency for governmental reorganization purposes, but may be for other purposes. Thus, it ordinarily would be incumbent upon us to examine a governmental entity's statutory framework in order to determine whether it is a "state agency" for purposes of Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes.

Our examination of the Corporation's statutory framework leads us to conclude, as you did, that the Legislature clearly intended that the Corporation be constituted as an "agency" for purposes of Section 120.52 and, with certain limitations, for purposes of Chapters 119 and 286, Florida Statutes. However, unlike our determination in In re George Stuart that there was no reason to differentiate between the terms "state agency" and "agency of the state" for purposes of Article II, Section 8(e), Florida Constitution,[5] in its recreation of the FHFA as a public corporation in Chapter 420, Florida Statutes, the Legislature also describes the Corporation as acting as an "instrumentality of the state" for purposes of Section 768.28, Florida Statutes, that is, for purposes of the application of the State's limited waiver of immunity from

[5]See In re George Stuart, 16 FALR at 1504.

lawsuit, and as a "public instrumentality" which serves an "essential public function."[6]

However, regardless of how the Corporation is characterized in Chapter 420, we do not believe that it is necessary for us to determine here whether the Legislature intended to differentiate between the terms "state agency" and "public instrumentality" and "instrumentality of the State" for purposes of Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes. We also do not believe that we need to determine here whether the Corporation performs an essential governmental function and behaves like a State agency, whether compelling public policy reasons exist to consider the Corporation to be a "state agency" for purposes of Article II, Section 8(e), or whether the Legislature's appropriation of $173,671,276 from the State Housing Trust Fund[7] to the Corporation constitutes "plenary budgetary control" for purposes of Article II, Section 8(e) of the Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, among the issues previously looked at by the courts, the Attorney General, and this Commission in determining the status of statutorily created entities.[8]

Since we previously determined that the FHFA was a "state agency" for purposes of Article II, Section 8(e), and since there can be no question that the Legislature exercised "plenary budgetary and statutory control" over the FHFA for purposes of Section 112.313(9)(a)3, Florida Statutes, we find that, as a result of the Legislature's adoption of Section 420.5061, Florida Statutes,[9] which expressly provides that

---

[6]See Sections 420.504(2) and (7), Florida Statutes.

[7]See Section 5, Specific Appropriations 1458 - 1462, of Chapter 2000-166, Laws of Florida.

[8]See Kuvin, Klingensmith, and Lewis, P.A. v. Florida Insurance Guaranty Association, Inc., 371 So. 2d 214 (Fla. 3d DCA 1979) (Finding that the Florida Insurance Guaranty Association, Inc. was not a "governmental entity" entitled to the venue privilege of being served only at the site of its headquarters.); Prison Rehabilitative Industries & Diversified Enterprises, Inc. v. Betterson, 648 So.2d 778 2 (Fla. 1st DCA 1994), reh. denied, Feb. 9, 1995 (PRIDE is an "agency of the State" subject to the Section 768.28, Florida Statutes.); AGO 78-106 (HRS District Mental Health Boards may be deemed to be "state agencies or subdivisions" within the definitional purview of s. 768.28(5), Florida Statutes.); CEO 87-43 (Florida Joint Underwriting Association is not a "government entity."); and CEO 94-7 (Tri-County Commuter Rail Authority is not an executive branch agency for purposes of Section 112.3215, Florida Statutes.)

[9]Section 420.5061, Florida Statutes, which relates to the transfer of FHFA assets and liabilities to the Corporation, provides as follows:

> TRANSFER OF AGENCY ASSETS AND LIABILITIES.--Effective January 1, 1998, all references under Florida law to the agency are deemed to mean the corporation. The corporation shall transfer to the General Revenue Fund an amount which otherwise would have been deducted as a service charge pursuant to s. 215.20(1) if the Florida Housing Finance Corporation Fund established by s. 420.508(5), the State Apartment Incentive Loan Fund established by s. 420.5087(7), the Florida Homeownership Assistance Fund established by s. 420.5088(5), the HOME Investment Partnership Fund established by s. 420.5089(1), and the Housing Predevelopment Loan Fund established by s. 420.525(1)

for purposes of the prohibitions of Section 112.313, Florida Statutes, the Corporation is a continuation of the "agency," we find that the constitutional and statutory prohibitions against a legislator personally representing another person or entity for compensation before any state agency other than a judicial tribunal are clearly applicable.

Accordingly, we find that both Article II, Section 8(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, prohibit you from personally contacting staff of the Florida Housing Finance Corporation on behalf of your development company for information about its programs' rules or for advice on completing funding applications. However, we also are of the opinion that your company would be permitted to seek a grant or to pursue funding opportunities from the Corporation so long as you do not personally represent the company before the Corporation.[10] You should note that the term "represent" as defined in Section 112.312(22), Florida Statutes, 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."

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 25, 2001 and **RENDERED** this 30th day of January, 2001.

_____

Howard Marks
Chair

---

were each trust funds. For purposes of s. 112.313, the corporation is deemed to be a continuation of the agency, and the provisions thereof are deemed to apply as if the same entity remained in place. Any employees of the agency and agency board members covered by s. 112.313(9)(a)6. shall continue to be entitled to the exemption in that subparagraph, notwithstanding being hired by the corporation or appointed as board members of the corporation. Effective January 1, 1998, all state property in use by the agency shall be transferred to and become the property of the corporation. [E.S.]

[10]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.

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01-04**

To: The Honorable Mike Fasano
Representative, 45th District

From: Tom Tedcastle, House General Counsel

Date: February 16, 2001

Re: voting conflicts

You have requested an opinion as to whether you are required to abstain from voting under the following circumstances:

> You have been appointed as a member of the Public Employees Optional Retirement Program Advisory Committee (PEORPAC), established pursuant to Chapter 2000-169, Laws of Florida. Among other duties, the committee is required to make recommendations on the selection of the transition broker for the Optional Retirement Program. In addition to your service as a Member of the Florida House of Representatives, you are also employed by the firm of Morgan Stanley. That firm is one of the firms under consideration to serve as the transition broker. You work in the New Port Richey office of Morgan Stanley. You would not be involved in Morgan Stanley's operation as the administrator if the firm should be selected.

As you are voting as a PEORPAC member, and not as a Member of the Florida House of Representatives, you are not required to abstain from voting, but you may abstain if you so choose. If you decide to vote, I would advise that you disclose the interest of Morgan Stanley in the outcome of the decision.

Voting conflicts, for the purposes of ethics requirements in the Florida House of

Representatives, are governed by Rule 3.1 of the Rules of the Florida House of Representatives.

Rule 3.1 does not permit a Member of the House to refrain from voting on an issue where the
principal of the Member has a pecuniary interest, but public disclosure is required when a Member votes on an issue which would inure to the special private gain of such principal. Section 112.3143, Florida Statutes, likewise, permits state officers to vote on issues which inure to the special private gain of a principal of the officer, but requires public disclosure.

As a Member of PEORPAC you are not, however, serving in your capacity as a Member of the Florida House of Representatives. As PEORPAC is merely an advisory body, its members are also not officers of the state. Accordingly, neither the statute or the rule govern your conduct when voting as a Member of PEORPAC. As such, the choice as to whether to vote and whether to disclose is yours. Unlike your duties as a Member of the Florida House of Representatives, you are not serving as the voice of your constituents and thus there is no constitutional obligation to vote on the selection of the transition broker. On the other hand, if you choose to vote, there is also no legal obligation to disclose your principal's interest in the outcome of the vote. Nonetheless, to avoid any appearance of impropriety, I would advise that you disclose the interest of Morgan Stanley, if you choose to vote on the issue. You may also wish to disclose such interest as an explanation for your reason for not voting, if you choose to abstain.

TT/cv

cc: Committee on rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 05**

To: Identity Not Requested

From: Tom Tedcastle, General Counsel

Date: March 2, 2001

Re: Associate of a law firm

You have requested my opinion as to whether you may remain employed as an associate of a law firm if a person who represents clients before state agencies and the Legislature should join the firm as a partner or in an "of counsel" capacity. The answer is that you may remain both a Member of the House of Representatives and an associate of the firm.

In your request for an opinion, you state that you are employed as one of eleven associates in a law firm that has three partners. Under your employment relationship, you are paid a fixed salary and do not participate in a profit sharing plan of the firm. Accordingly, whether a member of the firm is successful before a state agency or the Legislature would not affect the amount of your income. I would also note that Florida law prohibits a person from accepting a contingency fee for lobbying the Florida Legislature. Accordingly, even for the partners of the firm, the amount of compensation the firm would receive for the lobbying effort would not be dependent on the outcome of any vote in the Legislature.

Whether or not a member of your law firm is representing a client of the firm before the Legislature, you may be required to disclose when you are voting on any matter that may inure to the special private gain or loss of a client of the firm. While it is not clear the Florida law requires a legislator who is an associate of a law firm to disclose when a client of the firm has an interest in a matter pending, I have previously advised that the more prudent course is to file such disclosure. (See HCO 00-07).

Although Florida law prohibits you from representing a client for compensation before a state agency, (Article II, Section 8, Florida Constitution) it does not prohibit a partner or associate from doing so. You are required, however, to quarterly report such activity by any partner or associate of the firm. (Section 112.3145(4), Florida Statutes).

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 06**

To: The Honorable, Paula Dockery
Representative, District 64

From: Tom Tedcastle, General Counsel

Date: March 8, 2001

Re: voting conflict

You have requested an opinion as to whether you are required to disclose a conflict of interest statement when voting on legislation relating to the proposed high speed rail system. It is my opinion that no disclosure is required, but you may voluntarily disclose, if you so choose.

> The facts which you have provided as a basis for my opinion are as follows: Your spouse was a leader in the campaign to promote the adoption of the constitutional amendment providing for the development of a high speed rail system in this state. He provided some of the funding for the promotion of the amendment and continues to support the project through seeking the adoption of implementing legislation in the legislature. Neither he nor you, nor any of your principals, has a financial interest in the development of the system.

Rule 3.1 of the Rules of the Florida House of Representatives, requires any Member to file a disclosure statement when voting or abstaining on legislation which would inure to the special private gain of the Member, a member of his or her family, or a principal of the Member or family member. Generally, the term “gain” has meant a financial gain. In that neither you, nor your spouse, stand to receive any financial gain from the development of the high speed rail system, no disclosure is required.

Although no disclosure is required, to avoid even the slightest appearance of impropriety, you may wish to disclose, nonetheless, because of your spouse's involvement in supporting the passage of the legislation.
TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 07**

To: The Honorable Dennis K. Baxley
Representative, 24th District

From: Tom Tedcastle, General Counsel

Date: March 23, 2001

Re: voting conflict

You have requested my opinion as to whether you are prohibited from voting on legislation regarding the regulation of the funeral services industry. You inform me that you are the Vice President of Hiers-Baxley Funeral Services. Except as to legislation which would impact you differently than the remainder of the industry, you are required to vote on the legislation. Although no disclosure is required, you may wish to file a disclosure notice when voting on such legislation.

Rule 9.1 of the Rules of the Florida House of Representatives, consistent with the constitutional duty to represent the constituents of your district, provides that each Member must vote on each question put. This rule, however, must be read together with Rule 3.1 of the Rules, which provides that a Member shall abstain from voting on any measure which will inure to the special private gain of the Member.

In determining whether a potential economic benefit provided in legislation would inure to a Member's special private gain, we have opined, consistent with the opinions of the Commission on Ethics, that if a gain realized is no different than that which would be received by others who are similarly situated, and the group of such persons is sufficiently large, no special private gain is realized. Accordingly, legislation regarding the funeral services industry that would affect your business in the same manner as the other numerous businesses in the industry would not inure to your special private gain. Therefore, not only are you not prohibited from voting, you would be required to vote.

Rule 3.1 of the Rules of the Florida House of Representatives, provides for the filing of a disclosure notice in cases in which a Member is prohibited from voting, or with regard to legislation which would inure to the special private gain of a family member or the principal of the legislator or a family member. Where the legislation would not result in such a gain, even though you may be affected along with the rest of the funeral services industry, no disclosure is required. However, as you have asked the question as to whether you would be prohibited from voting, I am assuming that you are concerned that others might believe you have a conflict of interest. If you desire, you may file a disclosure statement noting that I have advised you that you must vote, notwithstanding your interest in the funeral services industry.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 08**

To: The Honorable Gayle Harrell
Representative, 81st District

From: Tom Tedcastle, General Counsel

Date: April 10, 2001

Re: voting conflict

You have requested an opinion as to whether you are prohibited from voting on CS/HB 339 relating to certificates of need. As I orally informed you prior to the House's consideration of the bill, not only may you vote on the legislation, you must vote on the legislation.

CS/HB 339 would appear to authorize Martin Memorial Hospital to obtain a certificate of need for an adult open heat surgery program. You informed me that the hospital is negotiating with you to purchase a piece of property from you which is adjacent to the hospital. The purchase of the property is not contingent on the hospital being approved for the certificate of need.

Rule 9.1 of the Rules of the Florida House of Representatives requires each Member to "vote on each question put." The only exception to this requirement is found in rule 3.1(a) which prohibits a Member from voting on a measure which will inure to the special private gain of the Member. In this case, as the purchase of the property is not contingent on passage of the bill, you personally have no financial interest in its passage. Accordingly you will receive no special private benefit from its passage, and therefore must vote on passage.

Although I have opined that you must vote, I would note that Rule 3.1(b), requires a Member to disclose when voting on legislation which would inure to the special private

gain of a principal of the Member. Although it is not clear that the hospital would qualify as your

principle, I would suggest that in an effort to avoid any appearance of an ethical violation that you provide discloser of the hospital's interest in the legislation and your business dealings with the hospital. Such disclosure should note that I have advised you that you must vote on CS/HB 339.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01-09**

To: The Honorable Lindsay Harrington
Representative, District 72

From: Tom Tedcastle, General Counsel

Date: May 21, 2001

Re: Opinion Memorandum

You have requested an opinion as to whether you are prohibited from voting on HB 1225, based on the following factual situation:

> You are a real estate agent working for a brokerage which has been sold to Arvida Corporation. Arvida is an affiliated company of St. Joe Paper Company. The change in the definition of small county provided in HB 1225 could result in a special private gain for St. Joe.

Pursuant to Rule 9.1 of the Rules of the Florida House of Representatives, each Member of the House of Representatives is required to vote on each measure before the House. The only exception provided to this mandatory vote requirement is found in Rule 3.1 which provides that a Member shall not vote on any matter that inures to the special private gain of the Member. With respect to matters which may inure to the special private gain of a principal of the Member, rather than the Member himself or herself, Rule 3.1 provides that the Member must still vote but shall disclose the potential conflict in writing to the Clerk of the House within 15 days of casting such vote. Accordingly your question is answered in the negative. Not only are you not

prohibited from voting, you are required to vote. You must, however, file the disclosure statement mandated in Rule 3.1

TT/jb

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 10**

To: The Honorable Evelyn J. Lynn
Representative, District 27

From: Tom Tedcastle, General Counsel

Date: July 19, 2001

Re: Surplus Office Account

You have requested an opinion as to whether you may make an expenditure from your Surplus Office Account for a booth at a Home Show. The booth would provide information to those attending on the operation of your district office and of the services the office provides. Although you are an announced candidate for the Florida Senate, you would not provide any campaign materials or campaign information at the booth. The answer to your question is that you may make such an expenditure.

Section 106.141, Florida Statutes, provides that each Member of the Florida House of Representatives may transfer up to $5,000 of surplus campaign funds to an office account to be used to support the Member's office. The restriction on the use of these funds is that they must be expended during the two-year term of the Member and, in order to remain nontaxable to the Member, they must be used for legitimate business expenses, as determined by the Internal Revenue Service. Establishing a booth during your term as a Member of the Florida House of Representatives to provide information relative to the operation of your district office meets both of those criteria.

The fact that you are now an announced candidate for The Florida Senate does not diminish your obligation to represent your district as a Member of the Florida House of Representatives. You are still expected to maintain a district office, to provide services to your constituents, and to be reasonably accessible to them. Performance of these obligations is performance as a Member of the House of Representatives, not as a candidate for The Florida Senate. Accordingly, any

expenses related to the performance of these legislative responsibilities should be paid from your various office accounts and not from campaign funds.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

CEO 01-14 -- July 31, 2001

GIFT ACCEPTANCE AND DISCLOSURE

LEGISLATOR RENTING OFFICE SPACE FROM CITY

To: The Honorable Carey L. Baker, Member, Florida House of Representative, District 25 (Eustis)

SUMMARY:

The definition of "gift" in Section 112.312(12), Florida Statutes, excludes the "use of a public facility or public property, made available by a governmental agency, for a public purpose." Therefore, where a legislator leases, at a nominal fee, space for his district office from a municipality, he has not received a "gift" for purposes of Section 112.3148, Florida Statutes.

QUESTION:

Has a legislator received a "gift" for purposes of Section 112.3148, Florida Statutes, when he leases his district office space from a municipality for a nominal fee?

Your question is answered in the negative.

In your letter of inquiry, you relate that you lease your district office from the City of Eustis for a nominal fee. The offices are located in the City's Senior Center, and your verbal lease with the City is renewable on an annual basis. You question whether your lease of this discounted office space is a gift which should be reported pursuant to Section 112.3148, Florida Statutes.

The definition of "gift" in Section 112.312(12) provides:

> (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:
>
> . . .
>
> 2. The use of real property.
>
> . . .
>
> 14. Any other similar service or thing having an attributable value not already provided for in this section.
>
> (b) 'Gift' does not include:
>
> . . .
>
> 6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.

Section 112.3148(4), Florida Statutes, prohibits a reporting individual from accepting a gift with a value in excess of $100 from a lobbyist who lobbies his agency, or from the partner, firm, principal, or employer of a lobbyist.

The initial question which must be addressed is whether your discounted office space is a "gift" from the City of Eustis. In CEO 94-38, we opined that the telephone equipment and services provided to the Hillsborough County legislative delegation was a gift for purposes of the gift law, notwithstanding the statutory exemption in Section 112.312(12)(b)6 for the "use of a public facility or public property, made available by a governmental agency, for a public purpose." In that opinion, we construed the exemption to cover the short-term use of an agency's facilities, but not its equipment and services, like telephones. We were concerned that a broad construction would render meaningless Section 112.3148(6), Florida Statutes, which allows certain public agencies who retain or employ lobbyists to give gifts with a value in excess of $100 to reporting individuals and procurement employees but requires their disclosure. While we do not recede from that view, we do believe that the language of the exemption in Section 112.312(12)(b)6 should be construed to address the situation here, where a governmental entity leases office space to a legislator for his district office at a reduced rate, as there is clearly a public purpose in maintaining an office where constituents can meet with their elected representative in a convenient location.

Accordingly, we find that a legislator has not received a "gift" for purposes of Section 112.3148, Florida Statutes, when he rents space for his district office from a municipality at a discounted rate.

ORDERED by the State of Florida Commission on Ethics meeting in public session on July 26, 2001 and **RENDERED** this 31st day of July, 2001.

_____

Howard Marks
Chair

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 01- 11**

To: Identity Not Requested

From: Tom Tedcastle, General Counsel

Date: September 6, 2001

Re: lobbying by a law firm

You have requested my opinion as to whether you may accept a position as of counsel to a law firm if a person who represents clients before state agencies and the Legislature is a partner in the firm. The answer is that you may remain both a Member of the House of Representatives and become of counsel to the firm.

In your request for an opinion, you state that you have been offered employment in a large law firm that includes among its partners and associates various persons who lobby the legislature and state agencies on behalf of clients of the firm. Under your employment relationship, you are paid a fixed salary and do not participate in a profit sharing plan of the firm. Accordingly, whether a member of the firm is successful before a state agency or the Legislature would not affect the amount of your income. I would also note that Florida law prohibits a person from accepting a contingency fee for lobbying the Florida Legislature. Accordingly, even for the partners of the firm, the amount of compensation the firm would receive for the lobbying effort would not be dependent on the outcome of any vote in the Legislature.

Whether or not a member of your law firm is representing a client of the firm before the Legislature, you may be required to disclose when you are voting on any matter that may inure to the special private gain or loss of a client of the firm. While it is not clear the Florida law requires a legislator who is of counsel to a law firm to disclose when a client of the firm has an interest in a matter pending, I have previously advised that the more prudent course is to file such disclosure. (See HCO 00-07).

Although Florida law prohibits you from representing a client for compensation before a state agency (Article II, Section 8, Florida Constitution) it does not prohibit a partner or associate from doing so. You are required, however, to quarterly report such activity by any partner or associate of the firm. (Section 112.3145(4), Florida Statutes).

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-01**

To: The Honorable Connie Mack
Representative, District 91

From: Tom Tedcastle, General Counsel

Date: January 28, 2002

Re: Contributions During Session

You have requested an opinion pursuant to Rule 15.9, Rules of the Florida House of Representatives as to the application of Rule 15.3(b), to the solicitation and acceptance of contributions on behalf of The Freedom Caucus Political Committee. According to your request for opinion, the Freedom Caucus Political Committee will only advocate on issues and will not contribute to candidates. You serve as chair of the committee.

> Rule 15.3(b) of the Rules of the Florida House of Representatives provides as follows: A Member may neither solicit nor accept any campaign contribution during the 60-day regular session on the Member's own behalf, 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.

The clear language of Rule 15.3(b) limits its application to contributions to candidates and to political parties. It does not address contributions to a political committee other than a political party. Accordingly, Rule 15.3(b) authorizes you to both solicit and accept contributions on behalf of the committee during the 60-day regular session of the Legislature.

Having advised you that you are not prohibited by Rule 15.3(b) from soliciting or accepting contributions on behalf of the Freedom Caucus Political Committee, I would also direct your attention to Rule 15.3(a), which prohibits you, or any Member of the Florida House of

Representatives, from accepting anything that reasonably may be construed to improperly influence the Member's official act, decision, or vote. You would be advised to decline any contribution which you have reason to believe may be intended to influence any vote you are about to cast during the session, even though you know that the acceptance would not influence your official acts.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02- 02**

To: The Honorable Edward B. Bullard
Representative, 118th District

From: Tom Tedcastle, General Counsel

Date: February 27, 2002

Re: Campaign Fund Raising During Session

I have received your request for an opinion dated January 30, 2002, relating to campaign fund raising during session. In your letter, you have asked whether you, as a sitting Member of the Florida House of Representatives, may solicit funds during the 60-day regular session on behalf of a candidate for the Senate or on behalf of a committee of continuous existence. In general, the answer to both of your questions is that you may solicit contributions, although both answers are qualified below.

Rule 15.3(b) of the Rules of the Florida House of Representatives provides as follows:

> A Member may neither solicit nor accept any campaign contribution during the 60-day regular legislative session on the Member's own behalf, 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.

(emphasis added). The rule is intended to elaborate upon the general ethical standard established in Rule 15.1 of the Rules of The Florida House of Representatives, which states that "legislative office is a trust to be performed with integrity in the public interest" and in Rule 15.2 which directs Members to "perform at all times in a manner that promotes public confidence in the integrity and independence of the House and of the Legislature."

I have previously opined that a House member may solicit campaign contributions on behalf of a candidate for the Senate, assuming that the candidate for the Senate is not a sitting House Member (HCO 00-01). That opinion, however, was not based upon the factual situation where the spouse of a sitting House Member was a candidate for the Senate. Although not mentioned in your request, I am informed by your spouse that she is contemplating a run for the Florida Senate in the 2002 elections.

Rule 15.3(b) is a relatively new rule in the Florida House of Representatives, having been adopted initially during the 1994-1996 legislative term. It was adopted following the decision of the Florida Supreme Court declaring a law which prohibited campaign fund raising by all officials and candidates for state office during legislative sessions. The Court determined that while the Legislature may have a compelling interest sufficient to limit the fundraising ability of legislators - to avoid the appearance of impropriety - the absolute ban on all candidates for state office was not narrowly tailored to meet the state's compelling interest. Accordingly, the rule that was adopted was narrowly tailored to address those situations which would have the greatest probability of suggesting impropriety.

While Rule 15.3(b) does not expressly prohibit a House Member from soliciting campaign contributions on behalf of a spouse, one could argue that a contribution to the spouse benefits the Member. Whether or not such solicitation is expressly prohibited, in light of the compelling state interest that was to be addressed by the adoption of Rule 15.3(b), and when the rule is read in conjunction with Rules 15.1 and 15.2, it is my opinion that you would best be served by refraining from soliciting donations on behalf of your spouse during the 60-day legislative session. You may, however, solicit funds on behalf of other candidates for the Senate.

Likewise, I have opined that a sitting House Member may solicit contributions on behalf of a committee of continuous existence (HCO 00-01). This opinion, however, should also be qualified. If the purpose of the committee cf continuous existence is primarily to provide campaign contributions to candidates for the House of Representatives, it is my opinion that soliciting a contribution for the committee is tantamount to soliciting a contribution on behalf of a candidate for the House of Representatives. Assuming that the committee of continuous existence has a different primary purpose, it continues to be my opinion that a House Member may solicit contributions for such committee during the 60-day regular session.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-03**

To: The Honorable Rafael Arza
Representative, 102nd District

From: Tom Tedcastle, General Counsel

Date: February 28, 2002

Re: Use of School Facilities

You have requested an opinion as to whether you may conduct legislative business from the office provided you as a teacher in the Miami-Dade County school system. In short, the answer is that you may conduct such business from the office, where not specifically prohibited by the school board from doing so.

As I understand your question, you are provided office space in the public school at which you are employed for the purpose of planning and other teaching-related activities. In order to avoid unnecessary travel and the loss of valuable time with constituents, you would like to also conduct legislative business from that office when not otherwise occupied performing your teaching responsibilities.

In reviewing Florida law, the only limitation that I find on the use of public facilities is in section 112.313(6), Florida Statutes, which prohibits an officer or employee from using any property or resource to secure a special privilege, benefit, or exemption for himself, herself, or others. The question that must be answered, therefore is whether the use of the office is for the purpose of securing a special privilege or benefit for yourself.

It is my opinion that the use of the property is intended for the purpose of permitting you to perform your public duties as a Member of the Florida Legislature. If a benefit is being provided, it is to your constituents who will receive the benefit of your being able to attend to those duties on a more timely and regular basis. Accordingly, I am of the opinion that the use of the office provided by the school district in conducting your duties as a legislator is not a violation of state law. In support of this conclusion, I would also note that the Commission on Ethics has recently ruled that the provision of public property for a legislative office by a local government is for a public purpose because it provides a location at which constituents may meet with their elected representatives. (CEO 01-14)

Having opined that the use of the office is for a public purpose and is not prohibited by Florida law, I am not rendering an opinion as to whether the school board, as your employer, could prohibit you from using its property in conducting your legislative business. Your relationship as an employee is governed not only by Florida law, but also under the provisions of the employment contract. I am not authorized by law to advise you as to your conduct in your private capacity; I am only authorized to advise you as to your conduct as a Member of the Florida Legislature.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-04**

To: The Honorable Gary Siplin
Representative, District 39

From: Tom Tedcastle, General Counsel

Date: March 15, 2002

Re: Private Employment

You have requested my opinion as to whether you may accept a paid position as president of the Professional Opportunities Program for Students (POPS). You have informed me that the organization sought state funding in 2001, although it was ultimately unsuccessful in this endeavor. You have also informed me that it is likely that the organization would seek state funding in the future.

The answer to your question is that you generally may accept such a position as the head of a non-for-profit organization which may have interests before the Legislature. (See, CEO 90-8.) However, you would be prohibited from personally representing the organization before any state agency, including the Legislature. Additionally, it is my opinion your salary cannot be based on the success of the organization in obtaining an appropriation from the state Legislature. Also, when voting on any legislation which would inure to the special private gain of the organization, you would be required to file a disclosure statement acknowledging your employment by the organization and its interest in the legislation.

Section 112.311(2), Florida Statutes, provides:

> It is also essential that government attract those citizens best qualified to serve. Thus, 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 interests except when conflicts with the responsibility of such official to the public cannot be avoided.

The primary limitation on acceptance of employment is found in section 112.313(7), Florida Statutes, which provides, in pertinent part, that no "public officer...shall 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." Although POPS is likely on an annual basis to seek funding from the legislature, the number of votes you would likely cast regarding such funding would be minimal, and thus would not be "continuing or frequent." Nonetheless, I would note that under the Rules of the Florida House of Representatives, you would be prohibited from voting on the General Appropriations Act, if your compensation from the organization were tied to the success of the organization to obtain state funding. (Rule 3.1(a), Rules of the Florida House of Representatives). It is my opinion that any employment which would prohibit a Member from voting on the General Appropriations Act could be of a nature to impede the full and faithful discharge of such member's public duties, and should therefore be avoided.

Although I have opined that you may accept the position, if offered, subject to the condition that your compensation is not subject to the organization's obtaining an appropriation from the Legislature, Rule 3.1(b), of the Rules of the Florida House of Representatives, would require you to publicly disclose the employment relationship when voting on any matter that would inure to the special private gain of your principal. As an example, if an appropriations Act, or an amendment thereto, provided a specific appropriation to your organization, you would have to disclose such conflict when voting on such bill or amendment.

I would also note that under Rule 15.8 of the Rules of the Florida House of Representatives, Article II, Section 8 (e) of the Florida Constitution, and Section 112.313(9)(a)3., Florida Statutes, you, as a paid employee of the organization, would personally be prohibited from representing POPS before any state agency. This would not, however, prohibit another employee, a director, or a contractual lobbyist from representing the organization before those agencies.

TT/cv

cc: Committee on Rules, Ethics and Elections

Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-05**

To: The Honorable Gayle B. Harrell
Representative, District 81

From: Tom Tedcastle, General Counsel

Date: June 11, 2002

Re: Surplus Campaign Fund

You have requested an opinion as to whether you may spend funds from your surplus campaign fund office account established pursuant to section 106.141, Florida Statutes, for the printing and mailing of a postcard within your district seeking nominations for the "hero of the month" program which you have established in your district. You may use the funds for this purpose, as the only limitation is that the funds be used for a legitimate business expenditure in support of your service as a state legislator. Support of a program designed to promote civic involvement and responsibility is clearly within that limitation.

You have further asked for an opinion as to whether you may make such expenditures after qualifying for reelection has occurred if you are unopposed. There is no time restriction within section 106.141, Florida Statutes, other than that all funds be expended prior to the Member leaving public office. Your status as a candidate for reelection does not affect your legal ability to expend funds from the account for legitimate office expenditures such as the one you have proposed.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-06**

To: The Honorable Johnnie B. Byrd, Jr.
Representative, District 62

From: Tom Tedcastle, General Counsel

Date: July 15, 2002

Re: Assisting Charitable Organizations

You have asked whether you may assist a charitable organization with its fundraising efforts. The charitable organization is qualified as a charity under section 501(c)(3) of the Internal Revenue Code. Under the proposed fundraising scheme, the organization would sell prepaid phone cards. When the purchasers make phone calls with those cards, they would first here a message from you requesting that additional contributions to the charity be made. Should you be successful in your effort to be elected as Speaker, the message would identify you as the Speaker of the Florida House of Representatives. However, the message would not contain partisan or political commentary. Additionally, the prepaid phone cards would not include the House seal nor other markings identifying them as connected with the government of the State of Florida. The charitable organization also proposes to send a solicitation letter on its own letterhead, but with your signature. This letter will also not include the House seal.

Section 112.3148, Florida Statutes, prohibits a Member of the Legislature from soliciting gifts from lobbyists and those who employ lobbyist where the gift is for the personal benefit of the Member or another government official subject to the gift provisions of the Code on Ethics. While the scheme you describe may include solicitation from such persons, the gift would not be for the benefit of you or another person subject to the gift. Additionally, section 112.3148(4), Florida Statutes, specifically permits you to accept any gift on behalf of a charitable organization and section 112.3148(5), Florida Statutes specifically permits a lobbyist to make a donation to a

charitable organization through a public official. Accordingly, it is my opinion that you may assist the charitable organization in the manner requested if you choose to do so.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-07**

To: The Honorable Anne M. Gannon
Representative, District 88

From: Tom Tedcastle, General Counsel

Date: July 19, 2002

Re: changing residence prior to election

You have requested my opinion as to whether you may change your residence prior to the November 2002 General election. The new residence is located in the House district which you seek to represent, but is not located in the district you presently represent.

Article III, Section 15(c) of the Florida Constitution requires that "[e]ach legislator shall be … an elector and resident of the district from which elected …" Because Article III, Section 2 of the Constitution vests sole jurisdiction in the Florida House of Representatives to determine if a person meets the qualification for office, there are no court opinions which address the issue which you have raised.(See English v. Bryant, 152 So.2d 167 (Fla. 1963)). A review of decisions rendered by the Florida House of Representatives also provides no direct guidance on this issue.

Under the provisions of the Florida Constitution, you would be required to be a resident of the new district upon assuming office, which will occur, if you are reelected, at 12:01 a.m. on the day following the General election. Until that minute, you will continue to represent the district which you presently represent. If one requires a literal reading of Article III, Section 15(c), you would be required to reside in the present district until the moment you assume the new office. In essence you would be required to move from one residence to another at the exact moment you assume the new office. It is my opinion that such a reading would be an absurd reading of the Florida Constitution.

Although I can find no written opinion, I am aware of verbal opinions in which Members have been advised that when running for a new office, or in redistricting years in which they seek reelection to the House of Representatives, they may change their official residence to the district to be represented following the period established for qualification. Accordingly, I would advise you that if you change your residence at any time following qualifying for office, it is my opinion that you have complied with the residency requirement for the 2000-2002 term of office.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Tom Feeney, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 02-08**

To: Identification Not Requested

From: Tom Tedcastle, General Counsel

Date: September 23, 2002

Re: representation before state agencies

You have requested my opinion as to whether you may serve as the "point person" on behalf of a county school board in the development of interlocal agreements. You inform me that your law partner is the general counsel for the school board and that you are called upon to provide legal counsel to the school board as well. You further state that you would be required to "interface with state agencies on behalf of [the school board]."

Pursuant to Article II, Section 8 of the Florida Constitution, and Section 112.313(9), Florida Statutes, no Member of the Legislature may represent another for compensation before any state agency. The term another is not limited to only private entities, but also would prohibit you from representing a public agency before a state agency. In your letter you mention potential involvement with the regional planning council, the Department of Education, and the Department of Community Affairs. While the planning council is not a state agency for the purpose of the prohibition on representation, both the Department of Education and the Department of Community Affairs are. Accordingly, you would be prohibited from representing the school board before them.

I note in your letter you state that you would be required to "interface" with the state agencies. While that term does not necessarily suggest representation, I note that the law requires the interlocal agreements to become part of comprehensive plans which must be submitted for review to state agencies. It would appear, therefore, that at some point, if not at all points, you would be clearly representing the school board before a state agency. Accordingly, I would

suggest that you should not accept the designation as the point person on behalf of the school board.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Johnnie Byrd, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 03-01**

To: Identity Not Requested

From: Tom Tedcastle, House General Counsel

Date: February 14, 2003

Re: Appearance Before PSC

You have requested my opinion on the following questions:

May you appear before the PSC to discuss the acquisition of a utility by a local government in your district, if you disclose to the PSC that your firm may receive bond work if the acquisition is approved.

Can you appear before the PSC to represent the people of your district in the PSC's decision on whether to regulate the rates of a utility, if your firm works for the utility but not on matters relating to regulation of utility rates by the public service commission.

As discussed below, it is my opinion that you should avoid making an appearance before the Public Service Commission in either situation.

Article II, Section 8(e), of the Florida Constitution provides, in pertinent 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."1
The Florida Supreme Court has determined that the Public Service Commission is not a judicial tribunal with respect to this prohibition. *Myers v. Hawkins*, 362 So.2d 926 (1978). It is clear, therefore, that you would be prohibited from appearing before the PSC on behalf of the utility.

While your question suggests that you would be representing your constituents, and not your

1 See, also, Rule 15.7, Rules of the Florida House of Representatives.

client, your appearing before the PSC would at a minimum create the appearance that your activities are motivated in part by your firm's representation of the utility. Rule 15.2 of the Rules of the Florida House of Representatives requires each Member to perform in a manner that promotes public confidence in the integrity and independence of the House and of the Legislature." In recognition of this admonition, I have previously advised Members of the House that they should avoid even the appearance of impropriety, and refrain from contacting agencies in support of positions which would specifically benefit a client, notwithstanding the fact that neither they nor the firm would be specifically remunerated for that particular appearance.

Your questions raise an interesting twist in that they are predicated upon the assumption that you would disclose to the agency that a client of your firm has an interest in the outcome of the agencies decision and that, with respect to the first question, your firm is likely to be benefited by the decision of the Public Service Commission. While such disclosure would be in keeping with the obligation to support the integrity of the House and consistent with the disclosure requirements which are imposed on a Member when voting on legislation, providing notice that your firm and its clients have a personal stake in the outcome of the decision may be viewed as an attempt to improperly influence the decision making process of the commission. While a Legislator must vote on matters before the Legislature in such a situation and must disclose the potential for a conflict, it is the constitutional obligation of the Legislator to represent his or her constituents before the Legislature; a legislator does not have a similar constitutional duty to represent the public before the PSC. In fact, Florida law specifically provides for the appointment of a public counsel to fulfill that advocacy role. Additionally, while only you may represent your constituents within the House of Representatives, to the extent a legislative voice should be provided before the PSC, the bicameral system of the Florida Legislature assures that the constituents are not without such a voice.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Johnnie Byrd, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 03-02**

To: The Honorable Charles S. Dean
Representative, 43rd District

From: Tom Tedcastle, House General Counsel

Date: April 30, 2003

Re: Voting Conflicts

You have requested my opinion as to whether you may abstain from voting on HB 1903, relating to the regulation of telecommunications companies. You inform me that your son has applied for a permit to construct a cell tower on your farm which would be available for lease by a telephone company. The bill has an impact on telephone companies.

Rule 9.1 of the Rules of the Florida House of Representatives provides that each Member must vote on each measure before the House, unless excused from the session. The only exception is found in Rule 3.1, which provides that a Member shall abstain when a measure would inure to the special private gain of the Member. The rules do not permit a Member to abstain from voting on a measure which would inure to a family member or to the principal of the Member or a family member. In these cases, the Member is required to vote but must file a disclosure statement.

Under the facts provided, it is clear that the bill will not provide a special benefit to you, and thus you may not abstain from voting. Likewise, the bill will not inure to the special private gain of any member of your family. Thus, neither you nor your son having any present business relationship with a telephone company, the provisions of the House rules requiring a disclosure of a conflict involving a principal would also not apply. Accordingly, you must vote on the bill and no disclosure is required.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

CEO 03-3 – April 25, 2003

CONFLICT OF INTEREST; VOTING CONFLICT

STATE SENATOR HAVING RELATIONSHIP WITH LAW FIRM OTHER ATTORNEYS OF WHICH APPEAR BEFORE LEGISLATURE AND SENATOR VOTING ON FIRM-RELATED MATTERS

To: Name withheld at person's request (Tallahassee)

SUMMARY:

Notwithstanding that a conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, were a State Senator to personally represent a client before the Legislature, a prohibited conflict would not be created were another attorney of a law firm with which a State Senator has an "of counsel" relationship to represent a client before the Legislature, provided certain conditions are adhered to. In addition, attorneys of the firm other than the Senator would not be prohibited from representing clients before State agencies; and the Senator would not be prohibited from representing clients before courts and local government boards. Further, the Senator is not required by Section 112.3143, Florida Statutes, to abstain from voting on any measure affecting himself, the firm, or the firm's clients; but he may have to disclose his relationships via the filing of a memorandum.[1]

QUESTION 1:

Would a conflict of interest be created under Section 112.313(7), Florida Statutes, were you, a State Senator, to have an "of counsel" relationship with a law firm, members of which represent clients before the Legislature?

Your question is answered in the negative, subject to the conditions noted herein.[2]

By your letter of inquiry, we are advised that you are a member of the Florida Senate[3] and

---

[1] Advisory opinions of the Commission on Ethics cited herein are viewable on the Commission's website: www.ethics.state.fl.us

[2] Contextually, we note that we are not the only body or authority to consider matters similar to your inquiry. In February 1999, the Board of Governors of The Florida Bar withdrew Professional Ethics Opinion 67-5 (and its supplemental opinion to Opinion 67-5). Opinion 67-5 determined that 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, does not share in any fees generated by the lobbying activities, and disqualifies himself from voting on the proposal for which the lobbying service was rendered. In addition, see Professional Ethics Opinion 59-31. Apparently, the withdrawal of Opinion 67-5 was based, at least in part, on adoption of the Sunshine Amendment (Article II, Section 8, Florida Constitution) and the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes), subsequent to the issuance of Opinion 67-5, and the resulting adequacy of the Amendment and the Code to address, without the aid of a Florida Bar-based prohibition, situations involving lawyer/legislators.

[3] Elected from the 27th District.

an attorney; that you intend to practice law with a State-wide law firm,[4] including general litigation before various courts and municipal boards in the State; but that your practice will not include your appearing before the Legislature as a private attorney. In addition, you advise that some members of the firm represent clients on legislative and regulatory matters before the Legislature; that the employment contract between yourself and the firm will prohibit a member of the firm from lobbying you in behalf of any client of the firm; and that the contract will prohibit the firm from identifying you as a Senator on firm documents.

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 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.

Initially, we note that you focus in part on Section 112.313(7)(a)2, Florida Statutes, and inquire as to whether it applies to your situation. Section 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. [E.S.]

We find that Section 112.313(7)(a)2 is inapplicable to your situation. While we have often found the provision applicable to exempt from the prohibition of Section 112.313(7)(a) situations in which the potentially conflicting relationship was based on the possible "regulation" of a business entity by the Legislature (situations applicable to many "citizen-legislators"),[5] we

[4] You advise that you will receive an annual salary from the firm; that you will not be part of any profit-sharing arrangement with the firm; and that the only bonus compensation for which you will be eligible consist of annual bonuses relating to your hours worked and any new business that you generate for the firm.

[5] See, inter alia, CEO 75-197 (State Legislator acting as city attorney), CEO 76-167 (State Senator owner of material interest in business selling to State agencies), CEO 77-6 (State Legislator consultant to business entity performing work for agencies of government), CEO 77-10 (State Senator partner in investment group owning land contiguous to municipal airport), CEO 77-13 (State Representative leasing property to Department of Health and Rehabilitative Services), CEO 77-129 (State Representative whose law firm represents condominium associations participating in condominium legislation by authorship, vote, and debate), CEO 79-56 (law firm of State Representative retained by State Attorney), CEO 81-6 (State Representative acting as attorney for corporation eligible to receive State funds),

have treated the lobbying interface with the Legislature differently, irrespective of whether the firms or persons lobbying (and to whom a legislator was connected) were law firms or attorneys.

Especially instructive regarding our treatment of the lobbying interface and illustrative of the inapplicability of Section 112.313(7)(a)2 to the interface are CEO 90-8 and CEO 91-1. In CEO 90-8, issued to a member of the House of Representatives who chaired the Appropriations Committee, who shortly would become Speaker, and who desired to become president and chief executive officer of a private corporation formed to promote the interests of private colleges and universities in Florida, we stated:

> 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 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.

Accordingly, in CEO 90-8 we determined that the member/Speaker would not have a prohibited conflict under the second part of Section 112.313(7)(a) because he would have no role in the organization's efforts to lobby the Legislature and because he would not personally engage in lobbying activities. In CEO 91-1 (issued to a physician/Senator who sought to be employed as a consultant for Legislative activities of an association of professionals lobbying the Legislature), we stated:

> [Section 112.313(7)(a)] prohibits a public officer from having employment or a contractual relationship that will create a continuing and [sic] 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 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

---

CEO 81-12 (State Representative participating in legislation affecting housing authority represented by his law firm), CEO 83-13 (State Representative employed by engineering firm), CEO 89-6 (State Representative working with law firm to market collection and account receivable services to hospitals), CEO 89-18 (State Representative owning company which operates concessions at public airports), CEO 90-59 (State Representative owning construction company participating in city and county affordable housing programs), CEO 91-8 (State Representative principal of corporation developing county detention facilities), CEO 93-28 (State Senator's company providing collection services to insurance receiver), CEO 96-4 (State Senator employed in health care industry), CEO 95-25 (State Representative employed by community college to coordinate fundraising activities of college foundation), CEO 89-60 (Speaker of the House serving as chief administrative officer of community college), and CEO 85-86 (State Legislator employed as executive director of community action agency).

> dishonor.'" Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982). . . . .
>
> 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.
>
> 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).

Consequently, we found that the physician/legislator's proposed endeavor would be conflicting in that the subject matter of his proposed private employment[6] arose out of his public position and related directly to issues that would be expected to come before him in his official capacity.

In addition, in CEO 93-24, we found that 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, reasoning that the Senator's firm's activities would not be linked to his legislative position. In CEO 93-24, we stated:

> 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. . . . .
>
> 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 interests. Accordingly, we

[6] The physician/legislator's proposed private work included assisting the association in legislative and political education projects, contributing articles for association publication educating the readership on Legislative sessions and outcomes, serving as a liaison with component groups of the association, and advising the association's executive committee on legislative and political activities of the association.

> 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 finding no conflict in CEO 93-24, we distinguished it from the situation of the physician/legislator, stating:

> Further, in [CEO 91-1], 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 [CEO 91-1], 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 [Joint Underwriting] 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.

In CEO 93-28, where a subsidiary of a State Senator's company was providing collection services to an insurance receiver, we again distinguished the first part of Section 112.313(7)(a) from the second part, vis-à-vis Section 112..313(7)(a)2, and stated:

> 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 public 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).

Further, see CEO 95-21, in which we found that a State Senator's service on a domestic insurance company's board of directors would not create a prohibited conflict of interest with his duties as a Senator and as Chairman of the Senate Banking and Insurance Committee, because the company was not doing business with the Legislature, because the company was subject to the Legislature's regulation only through legislation, and because his private duties did not involve personally engaging in lobbying activities and did not encompass any activities related to lobbying.

Thus, from the foregoing discussion, it can be seen that our application of Section 112.313(7)(a)2, regarding a wide variety of legislators' employments and endeavors, has been in relation to the prohibition contained in the first part or clause of Section 112.313(7)(a), not in

relation to the whole of the statute's prohibitions. Our relatively narrow application is consistent with logical application of the exception, in that the first part of Section 112.313(7)(a) contains the prohibition based in a public agency's "regulation" of a business entity or another agency, with the prohibition of the second part of Section 112.313(7)(a) not being limited to conflicts arising out of regulatory contexts, and in that the exception of Section 112.313(7)(a)2 thus logically "mirrors" or addresses the first part's prohibition via reference to "regulatory power."[7] And thus it can be seen further that the linchpin of our decisions finding no prohibited conflict in the context of legislators holding employment or positions with entities involved with lobbying the Legislature has been the legislator's lack of involvement with lobbying or matters related to lobbying.

Therefore, in light of our decisional history specific to members of the Legislature,[8] we find[9] that Section 112.313(7)(a) does not prohibit your having a relationship with the law firm, notwithstanding that other members of the firm lobby the Legislature, provided your relationship comports with the following conditions[10] designed to separate you from legislative lobbying and related matters:

(1) You do not lobby other members of the Legislature in behalf of your firm or its clients, or in regard to matters of concern to the firm or its clients.

(2) Your income from your relationship with the firm, whether characterized as salary, profit-sharing, or some other item, must not flow from the firm's legislative lobbying activities or from fees or moneys paid the firm for lobbying or related activities. That is, your income or remuneration must come from your activities as a litigator before

---

[7] Since Section 112.313(7)(a)2 is an exception to a prohibition contained in Section 112.313(7)(a) it must be strictly construed. See State v. Nourse, 340 So. 2d 966 (Fla. 3d DCA 1976), in which the court stated:

> Being an exception to a general prohibition, any such statutory provision is normally construed strictly against the one who attempts to take advantage of the exception. (citations omitted) And, unless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted. (citations omitted) Any ambiguity in an exception statute is normally construed in a manner that restricts the use of the exception. (citations omitted)

Further, the Commission has wide discretion to interpret Section 112.313(7), Florida Statutes, and courts must defer to its interpretation unless clearly erroneous. Velez v. Commission on Ethics, 739 So. 2d 686 (Fla. 5th DCA 1999).

[8] We find that our decisions not involving members of the Legislature, even though they may address public officers' holding of an "of counsel" relationship with a firm lobbying their public agencies (e.g., CEO 96-1, regarding a member of the Jacksonville Electric Authority [JEA]) or may address representation before one's public body (e.g., In re Mary Jane Arrington, Commission Complaint No. 01-092), are not dispositive of your inquiry.

[9] Of course, we also find that Section 112.313(7)(a), Florida Statutes, as well as Article II, Section 8, Florida Constitution, and Section 112.313(9)(a)3, prohibits your personal representation of clients before the Legislature; and we also find that Article II, Section 8, and Section 112.313(9)(a)3 do not apply to representations by members of your firm who are not themselves members of the Legislature.

[10] While an "of counsel" (admittedly a label whose substance is elusive, see CEO 96-1) relationship between you and the firm might be more likely to implement the conditions than your being a partner, shareholder, or associate of the firm, our aim is to achieve a substantive separation between your work at the firm and its legislative lobbying and related matters. Therefore, a reworking of your proposed compensation package as outlined in your letter of inquiry will be required.

courts and local government bodies, from your other work unconnected to legislative lobbying, and from firm work unconnected to legislative lobbying; and it must not include bonuses, finders fees, or similar compensation, related to lobbying clients.

(3) You must abstain from voting on or participating regarding claims bills concerning the firm or its clients.

(4) You must not file any legislation for the firm or its clients.

(5) You must disclose your firm's representation of clients before the Legislature (in order to reveal potential for conflict).

(6) Your employment agreement with the firm prohibits members of the firm from lobbying you on behalf of any firm client.

In essence, one of our purposes in issuing this opinion is to provide you with guidance enabling you to litigate and otherwise practice law in a Statewide firm, while not engaging in or profiting from lobbying or lobbying-related activities concerning the Legislature, thus simultaneously recognizing your status as a part-time citizen-legislator (necessarily involved in earning a living beyond your legislative salary) and preserving the public trust regarding you as a lawmaker.[11]

Accordingly, we find that a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, would not be created were attorneys from your firm other than yourself to represent clients before the Legislature, provided the conditions herein are adhered to.[12]

QUESTION 2:

Would a voting conflict of interest requiring your disclosure (via filing of a memorandum, CE Form 8A) be created under Section 112.3143, Florida Statutes, were you to vote on legislative measures affecting yourself, the firm, and/or the firm's clients?

This question is answered as set forth below.

---

[11] As discussion in this opinion shows, we have issued advisory opinions to a number of legislators in a variety of contexts, and this opinion, like others, is based on a situation regarding a particular public officer in a given context. While our previous opinions and your opinion will most certainly provide guidance to other legislators in other contexts (including lawyer-legislators and legislators in other professions), we cannot provide in this opinion a set of "guidelines applicable to all professions." Therefore, we encourage other legislators to seek our advice as necessary.

[12] For purposes of isolating the substantive question answered above, we rephrased your inquiry (enumerated by you as two numbered questions) as one question. Regarding the other aspects of your inquiry, neither Article II, Section 8, Florida Constitution (Sunshine Amendment), nor any provision of Part III, Chapter 112, Florida Statutes (Code of Ethics for Public Officers and Employees), prohibits your personal representation of clients before courts or before local (e.g., municipal) boards while you serve in the Legislature. Further, while Article II, Section 8 (e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, restrict your personal representation of clients before State agencies while you serve in the Legislature, neither provision applies to members of your firm who are not themselves members of the Legislature (see CEO 01-3); however, please note the quarterly client disclosure required of you by Section 112.3145(4), Florida Statutes (see CE Form 2).

Initially, it is important to note that Section 112.3143 itself provides absolutely no bar to a legislator's voting[13] on any measure or matter whatsoever. In relevant part, with emphasis supplied, the statute provides:

> (1) As used in this section:
>
> (a) 'Public officer' includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.
>
> (b) 'Relative' means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.
>
> (2) 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

[13] Section 112.3143(4), Florida Statutes, does not apply to elective public officers, such as members of the Legislature. Section 112.3143(4) provides, with emphasis supplied:

> (4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.
>
> (a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.
>
> (b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.
>
> (c) For purposes of this subsection, the term 'participate' means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

> incorporate the memorandum in the minutes. [Section 112.3143(1)&(2), Florida Statutes.]

Regarding State public officers (such as legislators), the statute merely requires disclosure, and then only if the officer actually votes on certain measures. Concerning the issue of which measures you would be required to disclose your relationships, CEO 96-1 (our opinion regarding the JEA board member/"special counsel") is instructive.[14] In CEO 96-1, we opined:

> Section 112.3143(3), Florida Statutes, prohibits the Board member from voting on a measure which inures to his special private gain or loss, to the special private gain or loss of a principal by whom he is retained, or to the special private gain or loss of a relative or business associate. It also contains an affirmative duty of disclosure so that interested parties and the public will understand why he abstained from voting.
>
> Because the Board member receives a fixed amount of compensation every month from the law firm, which compensation apparently is not dependent on any action that the JEA takes, and because the Board member does not appear to have any other interest in any matter that would be coming before the JEA that would inure to his special gain or loss, it appears that the only reason that he would be prohibited from voting is if [he] knows a matter before the JEA inures to the special gain or loss of a principal by which he is retained, such as the law firm. The mere presence of one of the law firm's clients before the JEA on some matter does not create a voting conflict of interest. It is only when the Board member knows that a matter before the Board inures to the special gain or loss of the law firm that he is required to abstain from voting. Because of the lack of specific information provided to us concerning matters with which the law firm was involved and which came before the JEA, it is difficult for us to provide any

[14] Notwithstanding that CEO 96-1 involved a local public officer (one required to abstain from voting in certain situations) and did not involve a State public officer (one never required to abstain by Section 112.3143), its analysis regarding special private gain or loss and the identities of persons or entities affected by measures of a public officer's public body is instructive in the instant inquiry because the relevant statutory language is the same. Section 112.3143(3)(a), Florida Statutes, provides:

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

> further guidance as to whether the Board member has been presented with voting conflicts of interest . . . .

Thus, while it is apparent that there likely will be situations in which you will not (and situations in which you will) be required to file a memorandum disclosing your vote, we invite your specific inquiries in the future as to particular measures.

Accordingly, we find that you are not required under Section 112.3143 to abstain from voting on any measure affecting you, your firm, or the firm's clients,[15] but that you may, depending on the particular facts of a given situation, be required to disclose via memorandum your relationship to persons or entities affected by a measure.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 24, 2003 and **RENDERED** this 25th day of April, 2003.

_____
Patrick Neal
Chair

[15] Notwithstanding that Section 112.3143 does not require your abstention as to any matter, we remind you of the condition of Question 1 herein related to your abstention from voting on certain claims bills.

Florida House of Representatives

Johnnie Byrd, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 03-03**

To: The Honorable Bob Allen
Representative, 32nd District

From: Tom Tedcastle, House General Counsel

Date: August 26, 2003

Re: Conflict of interest with respect to selection of members of the Governing Commission of the Technological Research and Development Authority

---

You have requested my opinion as to whether you are prohibited from participating in the selection of nominees to be presented to the Governor for the appointment of members of the Governing Commission of the Technological Research and Development Authority. You inform me that you are an employee of the authority but have resigned such employment effective August 28, 2003. The selection of nominees is to be completed on August 29, 2003.

Your question is answered in the negative. You are not prohibited from participating, including casting a vote, in the selection of nominees for members of the commission that will take office after the effective date of your resignation.

Rule 3.1, Rules of the Florida House of Representatives, provides that "No Member may vote on any measure that the Member knows or believes would inure to the Member's special private gain." Because your employment by the authority could have been impacted by the makeup of the commission, it could certainly be argued that the decision as to who would serve on the commission could result in a special private gain or loss to you. However, now that you will no longer be employed by the authority, the decision would not inure to a special private gain or loss to you and thus you may no longer be excused from voting on matters that impact the authority.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

Florida House of Representatives

Johnnie Byrd, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 03-04**

To: The Honorable Stacy J. Ritter
Representative, District 96

From: Tom Tedcastle, House General Counsel

Date: October 2, 2003

Re: Offer of the Government of the Republic of China on Taiwan

---

Pursuant to the provisions of section 112.3148, Florida Statutes, and Rule 15.8 of the Rules of the Florida House of Representatives, you have requested my opinion as to whether you may accept the following offer:

The Government of the Republic of China on Taiwan has extended to you and other legislators an invitation to visit Taiwan. The government has offered to pay for transportation between Miami and Taiwan and for food, lodging, and travel within Taiwan for a one-week visit.

It is my opinion that you may not accept this offer.

Section 112.3148, Florida Statutes, prohibits a Member of the Legislature from accepting a gift from an entity which employs a lobbyist before the Legislature if the gift has a value in excess of $100. Section 112.312(12), Florida Statutes, specifically provides that the term "gift" includes transportation, lodging, and food and beverages.

Section 112.3148(2)(b), Florida Statutes, defines the term "lobbyist" as a natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of legislators. With respect to an entity like the Legislature, the term is, however, limited to those persons required to register as lobbyists pursuant to the provisions of section 11.045, Florida Statutes.

Section 11.045 requires each 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" to register as a lobbyist. The term "lobbying" is defined as influencing or attempting to influence legislative action. The term "legislative action" is defined to mean "introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment ...of...either house of the Legislature or committee thereof" (emphasis added).

During the 2003 Regular Session of the Legislature, a governmental representative of the Government of the Republic of China on Taiwan did seek to influence the action of Members of the Florida House of Representatives with respect to a resolution in support of the government. While the person sought only support of a resolution, rather than support of or opposition to substantive legislation, it appears from the clear reading of section 11.045, Florida Statutes, that the law governing lobbyists before the Legislature is intended to apply to persons seeking to influence legislative action with regard to resolutions as well as to substantive legislation. Although such person did not register as a lobbyist, it is my opinion that the person was required to register under the provisions of section 11.045, Florida Statutes, and is therefore a lobbyist for the purposes of section 112.3148, Florida Statutes.

Accordingly, as the Government of the Republic of China on Taiwan did employ or retain a lobbyist before the Florida Legislature during the 2003 Regular Session, it is my opinion that a Member of the Legislature is prohibited from accepting a gift from that government for a period of 12 months following the 2003 Regular Session of the Legislature. I must therefore advise you that you may not accept the offer.

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office

CEO 03-11 -- January 13, 2004

CONFLICT OF INTEREST

STATE SENATOR ATTORNEY REPRESENTING HOSPITAL BEFORE LOCAL GOVERNMENT AND PARTICIPATING IN GENERAL AND LOCAL LEGISLATION AFFECTING HOSPITAL

To: Name withheld at person's request (Naples)

SUMMARY:

No prohibited conflict of interest exists where a State Senator/attorney represents a client (a hospital) before county commissions and in various other matters not involving the Legislature, and where he participates in legislation affecting the client. Under Article II, Section (8)(e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes, his representation of the client is before local (not State-level) agencies. Under the first part of Section 112.313(7)(a), Florida Statutes, the hospital is neither subject to the regulation of nor doing business with the Legislature; and under the second part of the statute no continuing or frequently recurring conflict or impediment to the full and faithful discharge of public duty exists.[1]

QUESTION:

Does a prohibited conflict of interest exist where you, a member of the Florida Senate who also are an attorney, represent a hospital on a variety of legal issues and participate in legislation affecting your client?

Your question is answered in the negative.

By your letter of inquiry, we are advised that you serve as a member of the Florida Senate and that you are a practicing attorney. In addition, you advise that you represent a public hospital on a variety of issues,[2] and that your representation includes meeting regularly with members of the hospital's management team to discuss/address issues of concern to the hospital as they arise from time to time. More specifically, you advise that you have been tasked with assisting the hospital's children's hospital (located in a county within your Senate District) in its efforts to develop charitable fundraising programs in another county located within your District, and that the

---

[1] Opinions of the Commission on Ethics cited herein are viewable on the Commission's website: www.ethics.state.fl.us

[2] You advise that your representation of the hospital began in September 2001 and continued (under a written agreement) until termination of the written agreement on June 1, 2003. The terms of the agreement, you advise, included the hospital's payment to you of two thousand dollars per month (for an average of fifteen hours per month of your time). Further, you advise that during July 2002 and August 2002 you were specifically tasked with representing the hospital before the Collier County Commission in an effort to obtain funding from the County for the hospital's trauma center, for which you charged the hospital (independent of your monthly retainer) one hundred fifty dollars per hour (for actual time spent on the task), plus expenses.

representation includes meeting with various people and helping develop documentation for charitable giving. Further, you advise that you currently are billing the hospital for actual time spent on specific tasks (your previous retainer agreement having terminated on June 1, 2003), exemplified by your current representation of the hospital before the Lee County Commission on issues regarding the County's sign ordinance and the hospital's signs.[3]

Also, you advise that as a Senator you filed general legislation that would have produced funding for all of Florida's trauma centers, including the hospital's trauma center, and that you filed and supported a local bill that created a trauma services special district for the hospital, for purposes of stabilizing the funding of the hospital's trauma center. However, you stress that the hospital did not compensate you in any way for your efforts as a member of the Legislature.

Thus, you seek our advisory scrutiny of your situation as set forth above, under Article II, Section 8, Florida Constitution, and the Code of Ethics for Public Officers and Employees.[4]

Regarding Article II, Section 8 (e), Florida Constitution, and Section 112.313(9)(a)3, Florida Statutes,[5] which prohibit, in relevant part, a legislator's compensated representation of a person or entity before a state agency, it is clear that the situation you describe is not prohibited. While the Counties and their governing boards before whom you have represented the hospital (your paying client) most certainly are "agencies,"[6] they are local level agencies, not State agencies, within the meaning of the prohibitions. See, for example, CEO 91-54. Further, while the Legislature most certainly is a State agency, the situation you describe relevant to your legislative activity indicates your performance as an elected lawmaker introducing and participating in legislation affecting a constituent within your District and the State as a whole, rather than your paid representation of the hospital as an attorney.

Regarding Section 112.313(7)(a), Florida Statutes,[7] we also find that the scenario you

---

[3] Additionally, you advise that as an attorney for the hospital you are registered as a "lobbyist" pursuant to a Collier County ordinance and a Lee County ordinance; that you have disclosed all compensation received from the hospital; and that when appearing (as an attorney representing the hospital) before a Lee County Commissioner, a Collier County Commissioner, or any other person or entity, you have fully disclosed the nature of your representation.

[4] Part III, Chapter 112, Florida Statutes.

[5] Article II, Section (8)(e) and Section 112.313(9)(a)3 provide in relevant part, respectively:

> 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.
>
> 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.

[6] "Agency" is defined at Section 112.312(2), Florida Statutes, to mean

> 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.

[7] Section 112.313(7)(a) provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—No public

present does not indicate a prohibited conflict. The first part of the statute addresses a public officer's or employee's holding employment or a contractual relationship with a business entity or a public agency which is subject to the regulation of or which is doing business with his or her public agency. This does not apply to your situation because the Legislature (your public agency) is neither "regulating"[8] nor "doing business with" (e.g., contracting with) the hospital. Further, under the second part of the statute, which potentially applies to any employment or contractual relationship held by a public officer or employee, we find that the situation you present is not indicative of a prohibited conflict of interest occasioned by your representation of clients before county governments. See CEO 77-22 (State Senator attorney appearing before county commissioners of county within his district to request rezoning for client) and CEO 83-25 (State Senator representing private clients in suits against county water authority).

Also, we must address the issue of whether your filing and supporting general and special legislation of interest to the hospital created a prohibited conflict under the second part of Section 112.313(7)(a). Under the scenario you present (which includes, very importantly, your representation that you were not compensated in any way by the hospital for your efforts as a member of the Legislature), we find that it did not. While it does not appear that we have squarely considered the issue of whether a legislator's participation in general and special legislation of concern to his or her private client creates a prohibited conflict under the second part of the statute, we have in a number of opinions found no prohibited conflict in such situations, specifically addressing the first part of Section 112.313(7)(a) in conjunction with Section 112.313(7)(a)2. The very strong implication of these decisions is that participation in legislation affecting one's client is not violative of either the first or second parts of the statute. See CEO 77-129 (State Representative's law firm representing condominium associations and Representative participating in condominium legislation), CEO 80-7 (State Representative whose law firm represents a bank participating in banking legislation), CEO 81-12 (State Representative whose law firm represents a housing authority participating in legislation affecting the authority), CEO 91-8 (State Representative serving on corrections committee officer and shareholder of corporation engaged in the business of developing detention facilities), and CEO 95-21 (State Senator chairing banking and insurance committee and serving as director of insurance company). Especially, we note that although Question 3 of CEO 81-12, which specifically dealt with a legislator's participation in both general and special legislation affecting his client, did not address Section 112.313(7)(a), the

---

> 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.

[8] See, for example, CEO 03-3 (Question 1); and see 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.

opinion (in its entirety) addressed, inter alia, Section 112.313(7)(a) and concluded that the legislator's situation was not conflicting.

We also find that your participation in special and general legislation under the scenario you describe is not violative of Article II, Section (8)(e), Florida Constitution, or Section 112.313(9)(a)3, Florida Statutes. See, for example, CEO 81-12 and CEO 90-8.

In our view, the ethical concerns raised by your situation are similar to those raised whenever a member of the Legislature contracts with or is employed by an entity that is represented before the Legislature. While we have recognized that our elected representatives are expected to serve as citizen-legislators rather than as full-time public officials and that in some instances their employers will be represented before the Legislature, we have insisted 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)." CEO 91-1, where we concluded that a State Senator was prohibited from being employed as a consultant for the legislative and educational activities of a professional association that lobbied the Legislature. Therefore, the critical fact here is that neither you nor your firm has been employed or compensated to lobby the Legislature for the hospital. This fact also distinguishes your situation from that in CEO 03-3, which concerns the limitations on a legislator's relationship to a law firm that is engaged to lobby the Legislature. In addition, we commend the current terms of your agreement with the hospital, under which you are compensated only for the actual time spent on specific tasks, as we believe that this helps to avoid the even the appearance that you may be compensated for matters relating to the legislative affairs of the client.

Accordingly, we find that the situation you describe is not conflicting under either Article II, Section (8)(e), Florida Constitution, Section 112.313(9)(a)3, Florida Statutes, or Section 112.313(7)(a), Florida Statutes.

ORDERED by the State of Florida Commission on Ethics meeting in public session on July 24, 2003 and **RENDERED** this 29th day of July, 2003.

_____

Richard L. Spears, *Chairman*

Florida House of Representatives

Johnnie Byrd, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM — OPINION 04-01

To: The Honorable Mary Brandenburg
Representative, District 89

From: Tom Tedcastle, House General Counsel

Date: January 5, 2004

Re: Retention of e-mails

You have requested my opinion as to the retention of e-mails sent and received from your state email address. Under the state constitution, if the e-mails involve state business, they are public records. However, such records need be retained only as long as required by rules and policies of the House.

Under Rule 14.2, records required to be created by the rules (i.e., bills, amendments, committee records) must be maintained. These records are maintained centrally by the House; thus, you are not required to keep copies in your office. Additionally, records that have sufficient administrative, legal, or fiscal significance must be maintained. Generally, with respect to records maintained by Members, these are the records concerning the expenditure of your various accounts. All other records, including e-mails, may be disposed of systematically pursuant to Rule 14.2 (b). The decision as to how frequently to dispose of such records received or created by the Member or by staff in the district office is left to the Member under Rule 14.2(3).

TT/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office
Michael Dodson, JLMC Counsel

Florida House of Representatives

Johnnie Byrd, Speaker
Office of the General Counsel

Tom Tedcastle
General Counsel

MEMORANDUM **OPINION 04-02**

To: The Honorable Dave Murzin
Representative, 2nd District

From: Michael Dodson, Interim House General Counsel

Date: March 26, 2004

Re: Voting Conflicts

You have requested my opinion as to whether you may abstain from voting on House Bill 773, relating to the satellite hospital facilities. You inform me that you are presently employed by the Baptist Health Care Corporation as a Planning Analyst. Baptist Hospital, Inc., is a subsidiary of your employer. The bill, in its present form, would authorize certain hospitals to establish satellite hospital facilities without first obtaining a certificate of need, if the hospitals meet certain criteria. Baptist Hospital, Inc., operates at least one hospital that appears to meet the criteria. It further appears from the Staff Analysis for HB 773 that approximately 32 other hospitals in the state may also meet the criteria.

Rule 9.1 of the Rules of the Florida House of Representatives provides that each Member must vote on each measure before the House, unless excused from the session. The only exception is found in Rule 3.1(a), which provides that a Member shall abstain when a measure would inure to the special private gain of the Member. The rules do not permit a Member to abstain from voting on a measure which would inure to the special private gain of a family member or to the principal of the Member or a family member. In these cases, the Member is required to vote but must file a disclosure statement.

Under the facts provided, it is clear that the bill will not provide a special benefit to you, and thus Rule 9.1 requires you to vote on the bill.

Notwithstanding the requirement for you to vote on the bill, Rule 3.1(b) requires a Member to disclose the nature of any interest of a principal by whom the Member is retained or employed if

the bill will inure to the special private gain of that employer. What constitutes "special private gain" depends in part on the size of the class of persons or entities to be affected by the legislation as compared to the general public or to a broader class of similarly situated persons or entities. This concept was explained by the Commission on Ethics in a 1980 opinion on Section 112.3143, Florida Statutes, which is similar to Rule 3.1. The Commission stated that:

> [W]e 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.

Commission on Ethics Opinion 80-61 (September 19, 1980). This concept has been applied in myriad House General Counsel Opinions. See most recently, HCO's 02-04, 01-09, 01-08, 01-07, 00-08, 00-07, 00-06, and 99-06.

The number of hospitals, 33, that may benefit from HB 773 is neither particularly large nor extremely small. Nevertheless, under the present circumstances I believe disclosure is advisable because the size of the benefit to your employer is not insignificant. Being able to establish a 100 bed hospital without first obtaining a certificate of need could be a most valuable asset to Baptist Hospital, Inc.

To summarize, you must vote on HB 773, but when voting, you should disclose, pursuant to Rule 3.1(b), your employment and the possibility that the bill may provide a benefit to your employer.

MD/cv

cc: Committee on Rules, Ethics and Elections
Commission on Ethics
Stephen Kahn, Senate Counsel
Office of the Clerk
Democratic Office
Republican Office