



THE FLORIDA SENATE
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Opinion 14-01

TO: The Honorable
FROM: George T. Levesque 
SUBJECT: Conflict of Interest

You have requested a formal opinion concerning a _____ over which you preside as an officer and board member. Presently, the _____ is going through the process of restructuring from a _____ institution into a _____ institution. You have inquired as to whether this transition would create any conflicts of interest or require additional disclosures under Florida law.

Based on our conversation and also upon my independent research, for the reasons stated below, I believe the conversion of your _____ into a _____ institution would not create any prohibited conflicts of interest, nor would it result in additional financial disclosure requirements.

Statement of Facts:

You are an elected member of the Florida Senate. You are the president of _____, a _____ and wholly-owned subsidiary of _____, a Florida corporation. You intend to convert _____ from a _____ into a _____. Neither your _____ nor any of its parent corporations or subsidiaries employ lobbyists that represent the _____ interest before the Legislature.

Analysis:

Your situation raises two main potential conflicts of interest: conflicts in employment with and ownership of the _____ and voting conflicts requiring disclosure. Each potential conflict will be addressed in turn in the opinion below.

Section 112.313(7), Fla. Stat., provides:

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

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

You are a Member of the Florida Senate, your “agency” for the purposes of this analysis. The first part of the provision prohibits you from being employed by or having a contractual relationship with any business entity that is subject to the regulation of, or doing business with the Legislature; however, subparagraph 2 provides an exception permitting such employments and contracts where the regulatory power is exercised through the passage of laws. The Commission on Ethics has consistently recognized this exception with respect to members of the Florida Legislature. *See e.g.* CEO 11-3, CEO 8-20, CEO 91-1, and CEO 90-8. Accordingly, I believe your continued ownership of _____ does not create a prohibited conflict of interest, even if its conversion into a _____ will render it subject to regulation by state legislation.

Given your position as a State Senator and your _____ potential interests before the Legislature, the question then arises as to what activities you may permissibly engage in, if any, related to matters that come before the Legislature that may impact your _____. As a statutory matter, there is nothing in the Code of Ethics that proscribes your activities as a legislator in the legislative process, e.g., there is no statute that prohibits you from filing and voting on bills, engaging members, or meeting with constituents on matters that come before the Legislature. *Compare* § 112.3143(4), Florida Statutes (limiting an appointed public officer’s participation in certain conflicts).

It is fundamental to a representative democracy that a citizen legislator be allowed to fully represent the interests of his or her constituents, notwithstanding the potential conflicts. Examining permissible activities, the Commission on Ethics has concluded that § 112.313(7), Florida Statutes, does not prohibit a State Senator’s filing and supporting general and special legislation of interest to his domestic insurance company, where a Senator is the Chairman of the Senate Banking and Insurance Committee, and where a Senator is not compensated in any way by the company for his efforts as a member of the Legislature. *See* CEO 95-21; *see also* CEO 91-8 (State Representative who was an officer and shareholder of corporation engaged in the business of

developing detention facilities while serving on a corrections committee); CEO 03-11 (State Senator representing a hospital before county commissions while participating in legislation affecting that hospital); and CEO 81-12 (State Representative's participation in both general and special legislation affecting his client did not create an impermissible conflict of interest).¹ Based on these opinions, it would appear that you may meet with constituents and others related to legislation that may affect your employer, including legislation that may create a special private gain to your employer; however, for the reasons stated below, your legislative meetings may not involve or include your employer or lobbyists which represent your employer.

The Commission has treated the issue of lobbying differently than other types of employment and contractual conflicts. A member may not lobby the Legislature on behalf of an employer or client. Such activity would violate the prohibition on representation before state agencies as well as the provisions contained in § 112.313(7), Florida Statutes, which address frequently reoccurring conflicts. *See* CEO 03-3; 90-8. In situations where a state legislator's law firm was retained to lobby clients before the Legislature, the Commission recommended the following safeguards:

- (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 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.

CEO 03-3. Your situation is dramatically different from that of a law firm hired by a wide variety of clients, and neither your employer nor its parent corporation retains any lobbyists before the legislature. However, you should be scrupulous in refraining from any involvement with the legislative activities that may be orchestrated by your or its parent corporation in the future. Further, though I do not believe it would be legally required, I would suggest that you not file legislation that relates to your or its parent corporation so as to avoid any appearance that you are being compensated to act on your employer's behalf.

¹ There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Fla. Stat., only requires a member to disclose conflicts, and when the conflict is personal to the member abstain from voting, unlike other prohibitions that extend to participation. If the Legislature had intended to expand the scope of the prohibition to advocacy, it could have done so.

As for financial reporting, converting _____ into a _____ will not create additional financial disclosure obligations. Under § 112.3145(5), Florida Statutes:

(5) Each elected constitutional officer and each candidate for such office, any other public officer required pursuant to s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests, and each state officer, local officer, specified state employee, and candidate for elective public office who is or was during the disclosure period an officer, director, partner, proprietor, or agent, other than a resident agent solely for service of process, of, or owns or owned during the disclosure period a material interest in, any business entity which is granted a privilege to operate in this state shall disclose such facts as a part of the disclosure form filed pursuant to s. 8, Art. II of the State Constitution or this section, as applicable. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest.

Further, the definition of a "person or business entities provided a grant or privilege to operate" expressly includes both _____ and _____. See § 112.312(19), Fla. Stat. Therefore, your financial disclosure obligations regarding your _____ will remain the same.

As for voting conflicts, it is impossible to say with certainty what may constitute a conflict of interest that requires disclosure at this time; however, I can provide this direction. You are obligated to vote on legislation that affects either your _____ or its parent corporation, and are required to disclose voting conflicts that create a special private gain or loss for them. See Senate Rule 1.20 (requiring every senator to vote on matters put forth before him or her unless required to abstain); see also § 112.3143, Fla Stat. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based upon facts that you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties to secure a special privilege, benefit, or exemption for himself or others." See § 112.313(6), Fla. Stat. Moreover, a member "may not disclose or use information not available to members of the general public and gained by reason of his or her official position . . . for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity." See § 112.313(8), Fla Stat. While I am not aware of any facts that would indicate that these provisions are applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.