



THE FLORIDA SENATE
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OPINION 13-01

TO: The Honorable [redacted] District
 FROM: George T. Levesque [signature]
 SUBJECT: Conflict between employment and legislative activities

You have asked what limitations exist, if any, on your legislative activities in light of your employment as

Based on our conversation and also upon my independent research, the following facts are relevant to the analysis: The [redacted] is a 501(c)(3) charitable organization established to honor and memorialize "those [redacted] who have sacrificed their lives for the nation and the [redacted] program by sponsoring the [redacted] and by implementing innovative education technology programs."¹ [redacted] receives fifty percent of the funds generated by the annual use fees related to the sale of the license plate. See § 320.08058, Fla. Stat.² These funds make up a significant portion of [redacted] budget. Additionally, [redacted] is a principal and has hired a registered contract lobbyist to represent [redacted] before the Florida Legislature.

You are the [redacted] and a salaried employee of that entity. Your duties do not include lobbying the Legislature, and your compensation is in no way associated with your legislative efforts as a State Senator. In fact, you are not involved with the legislative efforts of your employer, and the contract lobbyists retained by [redacted] report to the Vice Chair of the Board of Directors.

Analysis

As a prefatory matter, I do not believe any prohibited conflict exists that would bar your employment with [redacted]. Section 112.313(7), Florida Statutes, addresses employment or contractual conflicts of interest relating to a public officer or employee and entities which are

¹ [redacted] last accessed on January 22, 2013.

² The other half of funds generated by the sale of the [redacted] license plates is distributed to the [redacted] See § 320.08058, Fla. Stat. Based on information and belief, the [redacted] will be dissolved in the near future.

regulated by or doing business with their agency. Although your employer is a principal which retains a lobbyist to represent its interests before the Legislature, the Commission on Ethics has found that a prohibited employment conflict under this statute would not exist where the officer is not engaged in legislative lobbying activities on behalf of the officer's employer or client. *See* CEO 90-8, 95-21, 03-3; *compare* CEO 06-12. Accordingly, there is no conflict of interest which would prohibit your employment in the present context.

Given your position as a State Senator and your employer's interests before the Legislature, the question then arises as to what activities you may permissibly engage in, if any, related to matters which come before the Legislature that may impact your employer. 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* § 112.3148(4), Fla. Stat. (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) does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where a Senator is not compensated in any way by the client for his efforts as a member of the Legislature. *See* CEO 03-11; *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 95-21 (State Senator chairing banking and insurance committee while serving as director of insurance company); 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).³ 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 meetings may not involve or include your employer or lobbyists which represent your employer.

The Commission has treated the issue of lobbying differently from 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) 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

³ There is no prohibition or restriction in law on a member's legislative advocacy activities. Section 112.3143, Florida Statutes, only requires a member to disclose conflicts 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.

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. While your situation is dramatically different from that of a law firm hired by a wide variety of clients, I believe the safeguard described in item (6) of CEO 03-3 would be applicable to your situation. You should be scrupulous in refraining from any involvement with the legislative activities that are orchestrated by your employer's contract lobbyist. Further, though I do not believe it would be legally required, I would suggest that you not file legislation that relates to your employer so as to avoid any appearance that you are being compensated to act on your employer's behalf.

You would still be obligated to vote on legislation that affects your employer, but would be required to disclose voting conflicts that create a special private gain or loss for your employer. *See* Senate Rule 1.20 (requiring every senator to vote on matters put before him or her unless required to abstain); and Senate Rule 1.39 (setting forth voting conflicts which require disclosure). As for voting conflicts, it is impossible to assess whether conflicts exist at this time. Such an analysis requires an examination of the matter pending and the facts potentially giving rise to the conflict. In the present case, the principal would be your employer. Determining how the legislation affects your employer and others would be required as prerequisite to assessing whether a conflict exists which would require disclosure. 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 which 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, no member "shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity." *See* § 112.313(8), Fla. Stat. While I am not aware of any facts which 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.