



THE FLORIDA SENATE
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April 29, 2014

OPINION 14-02

TO: The Honorable
FROM: George T. Levesque 
SUBJECT: Voting Conflict

You have asked whether your prior representation of a client whose deed was improperly notarized by an individual whose notary license may be revoked pursuant to action by the Florida Senate creates a conflict of interest requiring your abstention and disclosure of a voting conflict or, at a minimum, requiring a declaration of a voting conflict.

For the reasons stated below, I believe you need not declare a conflict of interest and must vote on the matter should it come before you in the Senate Chamber.

Statement of Facts:

You are an elected member of the Florida Senate and a member of the Ethics and Elections Committee. In your letter dated April 8, 2014, you indicate that from July 29, 2013, until February 18, 2014, you represented _____ in a foreclosure case from which you withdrew due to irreconcilable differences. You have not represented _____ since February 18, 2014, and are unsure whether you will represent him or an affiliated company in the future. You did not represent _____ at the time of the committee vote on the suspension of _____ notary license.

The committee vote occurred on April 8, 2014, relating to the suspension of a notary commission for _____ involving allegations of improper notarization of a deed for a commercial building to _____. You are unsure whether the notarization in question involved any of your prior representation of _____.

Analysis:

Senate Rule 1.20 obligates every member to vote on each matter that comes before him or her within the Senate Chamber and in any committee meeting unless required to abstain due to a conflict of interest as provided by Senate Rule 1.39. Stated differently, unless a member *must*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

abstain on a particular matter, the member *must* vote on that matter. *See also* § 112.3143(2)(a), Fla. Stat. (“A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss.”).

Where a matter would personally inure to the special private gain or loss of the Senator, both an abstention and a disclosure would be required. *See* Senate Rule 1.39 and § 112.3143(2)(a), Fla. Stat. Where there is no special private gain or loss to the Senator, a Senator must vote on the matter and the Senator must disclose a conflict on any measure that the member knows would inure to the special private gain or loss of:

1. Any principal by whom the Senator or the Senator’s spouse, parent, or child is retained or employed,
2. Any parent organization or subsidiary of a corporate principal by which the member is retained or employed, or
3. An immediate family member or business associate of the Senator.

See Senate Rule 1.39(2) and § 112.3143(2)(a), Fla. Stat. An “immediate family member” includes a Senator’s parent, child, spouse, or sibling as well as a parent-in-law or child-in-law. *See* Senate Rule 1.39(2)(b) and § 112.3143(1)(c), Fla. Stat.

The Legislature has recently defined “special private gain or loss as:

... an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

Fla. Stat. § 112.3143(1)(d). Thus, it is not enough for a member or one of the member's conflict relations to receive a benefit or adverse impact from passage or non-passage of a measure. He or she must receive a *disproportionate impact* compared to the rest of those affected by the measure in a large class or be a part of a small impacted class.

Florida’s voting conflict statute further defines “principal by whom retained” as “an individual or entity... that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client...” § 112.3143(1)(a), Fla. Stat. The Commission on Ethics has construed this statute as applying only in the present tense, requiring a current relationship between the official and the affected persons or entities. *See* CEOs 09-9 and 06-5; *see also* CEO 78-96 (finding no prohibited conflict of interest where a city councilman voted on matters affecting potential clients of his real estate firm).

Under the rule and the statute, where such a conflict exists, the member must file a memorandum disclosing the nature of the conflict within 15 days after the vote. *See* Senate Rule 1.39(3) and § 112.3143(2)(a), Fla. Stat. For floor votes, the memorandum should be filed with the Secretary. For committee or subcommittee votes, the memorandum should be filed with the corresponding administrative assistant. *Id.*

In this instance, you indicate that your representation of _____ ceased on February 18, 2014. Because _____ was not your client at the time you voted — that is, on April 8, 2014 — he was not your principal and could not be the source of a voting conflict during your vote in the Ethics and Elections Committee. Assuming he is still not your principal, i.e. you still do not represent _____, during a floor vote, you will be obligated to vote on the matter and need not disclose any conflict.

The above opinion is based upon the facts 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.