

VALENCIA COLLEGE

The District Board of Trustees

Ethics Laws in Florida and Florida College System District Boards of Trustees¹ Fall, 2019

A. The “Code of Ethics for Public Officers and Employees” adopted by the Legislature is found in Chapter 112 (Part III) of the Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service. **College employees and trustees are subject to Florida’s Ethics Laws, found in Part III of s. 112, F.S.**

B. The "Sunshine Amendment," adopted by Florida voters through a constitutional initiative in 1976 as Article II, Section 8, Florida Constitution, contains standards of ethical conduct and disclosures applicable to public officers and employees; it also requires the Legislature to adopt the code of ethics described above.

C. Doing Business with One’s Own Agency Prohibition

1. F.S. 112.313(3) contains two prohibitions, the first of which prohibits a public officer acting in an official capacity or public employee acting in an official capacity as a purchasing agent from directly or indirectly purchasing, renting or leasing realty, goods, or services for the person’s own agency from a business entity of which the person or the person’s spouse or child (or combination) is an officer, partner, director, proprietor, or the owner of a “material interest.” Note that neither the first nor the second prohibition of 112.313(3) prohibits a public officer’s or public employee’s purchase of realty, goods, or services from his or her own agency – however this type of transaction could be violative of other sections of the law, such as where it would impede the full and faithful discharge of his or her public duties, or s. 112.313(7), prohibiting conflicting employment and contractual relationships.

2. The second prohibition in s. 112.313(3) is against a public officer or employee acting in a private capacity to rent, lease or sell any realty, goods or services to the person’s agency. “Acting in a private capacity” includes situations where one is personally involved in the sale to the agency, as well as where one is an officer, director, or owner of more than a 5% interest in a business that is selling to the agency. There are several exceptions to this prohibition (emergency, sole source, sealed bid with disclosure, and for universities only, intellectual property and research transactions). Donations to

¹ (adapted from Florida Commission On Ethics Guide To The Sunshine Amendment/ Code Of Ethics for Public Officers & Employees)

one's agency do not fall within the scope of this prohibition. Also, F.S. 112.313(3) expressly "grandfathers" in certain existing contracts, including those entered into prior to qualification for elective office, appointment to public office, or beginning public employment. At the local government level, when the business is to be transacted by rotation among all qualified suppliers, the official's business may be placed on the rotation list. "Qualified" means that reasonable, but not unduly restrictive, conditions may be placed on the suppliers by the purchasing agency, such as the ability to supply merchandise of acceptable quality or specifications. When the business is to be transacted through a sealed, competitive bidding process, the official's business may submit a bid and be awarded the contract. However, the official must file a written disclosure prior to or at the time the bid is submitted (Commission Form 3A), and must not participate in the process. When the official's business is the only source of supply within the political subdivision, an exemption is provided, as long as disclosure is made prior to the transaction.

D. Conflicting Employment and Contractual Relationships – s. 112.313(7) prohibits a public officer or employee from having a contractual relationship or employment with an agency or business entity that is either subject to the regulation of, or doing business with, the officer's or employee's agency. S. 112.313(7) also prohibits a public officer or employee from having a contractual relationship or employment that will create a "continuing or frequently recurring" conflict of interest or that would "impede the full and faithful discharge" of public duties.

1. The prohibitions against doing business with one's agency and having conflicting employment may not apply pursuant to various specified exemptions, including when the business is awarded by sealed, competitive bidding and the official, his or her spouse, or child have not attempted to persuade agency personnel to enter the contract.
2. Past or possible future contractual relationships do not violate the statute; the contractual relationship or employment must exist simultaneously with the other elements of the statute.
3. With regard to the prohibition of a public officer or employee from having a contractual relationship or employment that will create a "continuing or frequently recurring" conflict of interest or that would "impede the full and faithful discharge" of public duties, the statute is grounded in the principle that one cannot serve two masters. It does not require proof that the public officer or employee has failed to perform his/her responsibilities or has acted corruptly; the statute is entirely preventative in nature, intended to prevent situations in which private economic considerations may override the faithful discharge of public responsibilities. It is concerned with what might happen, with the temptation to dishonor. An impediment to public duty can be based on a single incident or transaction.

4. "Employment" requires that one be compensated, or receive some consideration. Refusal, in advance and in writing, of compensation has been held to negate the required element of compensation. Whether a "contractual relationship" exists has been governed by the substantive law of contract. It has not been limited to contracting parties, but has been found to include third party beneficiaries. A business entity is "doing business with" an agency where the parties have entered into a lease, contract, or other type of arrangement where one party would have a cause of action against the other in the event of a breach or default.

5. When a public officer or employee privately purchases goods or services from a business entity which is doing business with his or her agency, the transaction is exempted from 112.313(7) if the purchase is "at a price and upon terms available to similarly situated members of the general public."

E. Misuse of Public Position Prohibition – Public officers/employees may not corruptly use or attempt to use their official position or any property or resource within their trust, or perform their official duties, to secure a special privilege, benefit or exemption for themselves or another. S. 112.313(6), F.S.

1. In order to have acted "corruptly," one must have acted with reasonable notice that conduct was inconsistent with the proper performance of his/her public duties and would be a violation of the law or the code of ethics. Mismanagement, waste in government, and negligent acts are not sufficient; there must be intentional conduct to benefit oneself or another. Sexual harassment can be a violation.

F. Prohibition Against Solicitation and Acceptance of Certain Gifts - No public officer/employee shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public employee would be influenced by such gift. S. 112.313(2), F.S. Essentially amounts to bribery and requires a quid pro quo.

G. Prohibition against Unauthorized Compensation/Gifts - No public officer/employee or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public employee knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the employee was expected to participate in his or her official capacity. S. 112.313(4), F.S.

H. Disclosure or Use of Certain Information - Public officers and employees are prohibited from disclosing or using information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others. S. 112.313(8), F. S. This does not prohibit the use of one's general expertise or skill, but

can be violated where one would work privately regarding a particular project or matter about which he/she gained knowledge or expertise via his/her public position.

I. Voting Conflicts Of Interest

1. A voting conflict arises when the official is called upon to vote on 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.

2. Whether a measure inures to the *special* private gain of an officer or his principal will turn in part on the size of the class of persons who stand to benefit from the measure. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he stands to gain more than the other members of the class. Where the class of persons benefiting from the measure is extremely small, the possibility of special gain is much more likely. In some situations the Commission has concluded that any gain or loss resulting from the measure would be so remote or speculative that it could not be said to inure to the official's special gain or loss.

3. If they do not intend to "participate" in the measure, local officials holding appointive positions (college trustees) must abstain from voting on the measure; and before the vote, publicly state to the assembly the nature of his or her interest in the matter; and within 15 days of the vote, file a memorandum of voting conflict (Commission on Ethics Form 8B) with the person responsible for recording the minutes of the meeting, who incorporates the form in the minutes. If they do intend to participate, they must abstain but must make their disclosure before they participate. This is accomplished by either:

a. Filing the memorandum of voting conflict (***Form 8B – attached to this outline***) prior to the meeting, in which case the memorandum is to be provided immediately to the other members of the agency and is to be read publicly at the next meeting after its filing; or

b. If the disclosure has not been made prior to the meeting at which the measure will be considered or the conflict was unknown prior to the meeting, making the disclosure orally at the meeting before participating, followed by the written memorandum (Form 8B) within 15 days after the oral disclosure, which would be provided immediately to the other members of the agency and be read at the next meeting after its filing.

J. Anti-Nepotism Prohibition

1. The anti-nepotism law (F.S. 112.3135) prohibits a public official from appointing, employing, promoting, or advancing, or advocating the appointment,

employment, promotion, or advancement of a relative. It does not prohibit two relatives from being employed within the same agency. The law addresses placement in "a position in [an] agency," and thus has been found not to address situations in which a relative is hired as an independent contractor.

2. At the State level, the law applies to all agencies (executive, legislative, and judicial), except for "an institution under the jurisdiction of the Board of Governors of the State University System." At the local level, the law applies to counties, cities, and "any other political subdivision," except for school and Florida College System institution districts. However, the Florida School Code prohibits a district school board member from employing or appointing a "relative" (as defined in F.S. 112.3135) to work under the direct supervision of the member. A city charter school authority (as opposed to its sponsoring school district) is subject to F.S. 112.3135. And see, F.S. 1002.33(24), making certain charter school officers or personnel subject to F.S. 112.3135 or to similar restrictions.

3. The anti-nepotism law does not apply to actions other than appointment, employment, promotion, advancement, or advocacy of the same. Supervising or assigning work to a relative is not addressed or prohibited in the law. The law applies to paid and unpaid positions and to reappointments.

K. Enforcement and Penalties – The Commission on Ethics created in F.S. 112.320 serves as the guardian of the standards of conduct provided in the Code of Ethics for Public Officers and Employees (Part III, Ch. 112, F.S.); and as the independent commission provided for in Art. II, Sec. 8 (f), Fla. Const., to "conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission." The Commission does so, primarily, in two ways:

1. By rendering binding, judicially-reviewable advisory opinions [F.S. 112.322(3); relevant rules are in Ch. 34-6, Florida Administrative Code]; and

2. By investigating complaints [F.S. 112.324; relevant rules are in Ch. 34-5, Florida Administrative Code]

Note: There are no criminal penalties for violation of the Sunshine Amendment or the Code of Ethics. Penalties for violation of those laws may include: impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received.

*If you have questions or need additional information, please contact
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