



ETHICS PRIMER FOR PUBLIC EMPLOYEES

BACKGROUND

- Sources for Requirements
 - Article II, Section 8, Fla. Constitution
 - Chapter 112, Fla. Statutes, specifically
 - Section 112.313 (note definition of “agency” includes local government – section 112.312(2))
 - Section 112.3187
 - Federal Law
 - Honest Services Act
 - Mail Fraud Laws
- Why?
 - Transparency
 - Trustworthiness
 - Validity of Actions



THE BIG FIVE - POSITIVE

1. Honesty
2. Integrity
3. Fairness
4. Equality
5. Dignity



THE BIG FIVE - NEGATIVE

- 1. GOSSIP**
- 2. THEFT**
- 3. UNDISCLOSED BIAS**
- 4. PROFIT OVER QUALITY**
- 5. PASSIVE OMISSION**



THE FAMOUS (INFAMOUS) FIVE

- GIFTS
- SOLICITATION/BUSINESS/CONFLICT
- COMPENSATION
- INFLUENCE
- CONFIDENTIALITY

Focus is on improper benefit gained through or by means of connection to public employment.



GIFTS

- 112.313(2) - No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, favor, service, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.
- Prohibits public officers/employees (& their spouses & minor children) from accepting compensation, payment, or a “thing of value,” when the officer knows, or should know, that it was given to influence his or her vote or official action



- A “gift” would include: real property, the use of real property, tangible or intangible personal property or the use of same, preferential rates or terms on a debt/loan/goods/services, forgiveness of a debt, food or beverage, membership dues, tickets to events, floral arrangements, personal or professional services
- But not: awards, plaques, certificates, & other similar items given in recognition for public service



- Accepting a gift worth more than \$100 from a lobbyist, vendor, or political committee is prohibited.
- Accepting a gift valued at not exceeding \$100 from a lobbyist, vendor, or political committee is allowable, but any gifts valued at over \$25 (but not exceeding \$100) must be reported quarterly.
- Soliciting any gift from a lobbyist, vendor of the agency, or political committee is prohibited.
- Accepting gifts from relatives is allowable and not reported.
- Accepting gifts worth more than \$100 in value from certain governmental agencies for a public purpose is allowable but must be reported.
- All other gifts that are worth over \$100 must be disclosed quarterly.





The value of a gift is the actual cost, less taxes & gratuities, or the customary charge for a service.

Gifts are valued on a per occurrence (per occasion) basis.

Examples: Lodging for several consecutive days is one gift; annual membership dues would be one gift.



WHAT NOT TO DO

Former Tallahassee City Manager Rick Fernandez allegedly solicited & received FSU football tickets (\$2,000 value) from lobbyist, & accepted \$7,000 discount from caterer who was later hired by the City; fined \$6,000 by the Florida Commission on Ethics

Florida Atlantic University administrator Paulo Brida was found by the Ethics Commission to have received a \$9500 personal loan from a vendor; fined \$2500

Chattahoochie City Manager Elmon Lee Garner: Did not report gift of two football tickets & dinner; fined \$1652

Former Flagler County Sheriff Donald Fleming: Failed to disclose honorary membership at resort; fined \$500 & had to repay \$3800



IT'S JUST A FAVOR

Diane is responsible for inputting beneficiary information into the system from which decisions are made as to the types of benefits citizens are eligible to receive. In an effort to make sure all the agency resources are “properly used,” Diane will “adjust” the income or qualification information for certain citizens. In order to show how grateful they are, certain clients will help Diane out with certain favors. One clean Diane’s house once a week. Another comes by with gas or gift cards every so often.



REMINDER:

FORM 9 is DUE the last day of the calendar quarter (for gifts valued in excess of \$100 that were rec'd during the previous quarter)

Form 9		QUARTERLY GIFT DISCLOSURE		
		(GIFTS OVER \$100)		
LAST NAME -- FIRST NAME -- MIDDLE NAME:		NAME OF AGENCY:		
MAILING ADDRESS:		OFFICE OR POSITION HELD:		
CITY:	ZIP:	COUNTY:	FOR QUARTER ENDING (CHECK ONE):	YEAR
			<input type="checkbox"/> MARCH <input type="checkbox"/> JUNE <input type="checkbox"/> SEPTEMBER <input type="checkbox"/> DECEMBER	20__



DOING BUSINESS WITH YOUR COUNTY

112.313(3) - No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest.

Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.



CONFLICTING EMPLOYMENT



112.313(7)(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.



EXCEPTIONS

No violation if the business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

The county official (or the official's spouse or child) has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

The county official (or spouse or child) has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter the contract other than by the mere bid submission;

The county official, prior to or at the time of the bid submission, has filed a statement with the supervisor of elections of the county disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.



Also, there would be no violation of the Code of Ethics if the business entity involved is the only source of supply within the officer's political subdivision, and there is full disclosure by the officer of his or her interest in the business entity prior to the purchase, rental, sale, leasing, or other business being transacted



WHAT NOT TO DO

Florida Commission on Ethics found that a Washington County commissioner committed two violations of the Code of Ethics...

Had a conflicting contractual relationship: He owned a janitorial services company that cleaned the offices of an entity that leased space from the County

Had a voting conflict: Commissioner voted on the lease between the County and the entity, when he should have declared a conflict and abstained from voting

\$3,500 penalty



BRIBERY & MISUSE OF PUBLIC OFFICE

See Gift Section above - No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, favor, service, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

And 112.313(6) - No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.



AND MORE

112.313(4) - No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

112.313(8) - A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.



It is also unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept any pecuniary or other benefit not authorized by law, for:

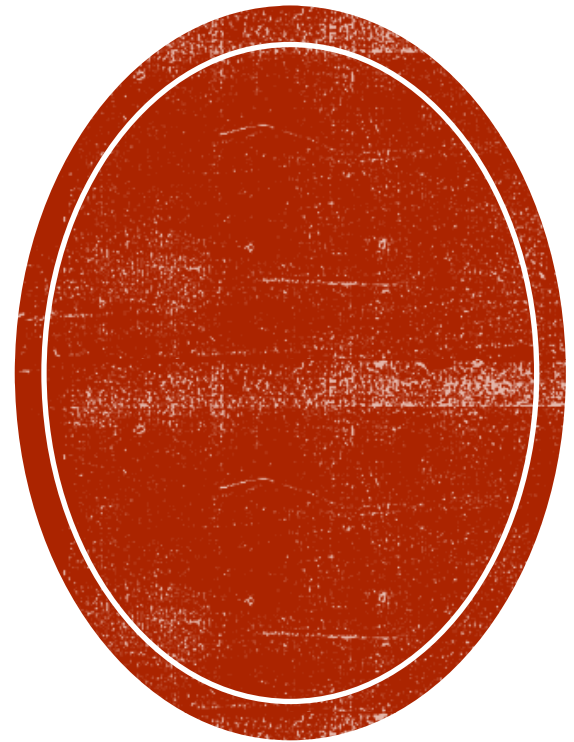
- Past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant in violation of a public duty or in performance of a public duty; or
- Past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been or which is represented to him or her as having been, either within the official discretion of the other public servant in violation of a public duty or in performance of a public duty.



It is also unlawful for a public servant or a public contractor who has contracted with a governmental entity to engage in bid tampering in the competitive solicitation process

Violation is a felony of the second degree, punishable by:

- Imprisonment not exceeding 15 years;
- Fine not to exceed \$10,000;
- Restitution; and
- 250 hours of community service



BIDDING TO WIN

Steve is the Assistant County Administrator and directly supervises Public Works. Steve's son has a contracting business and submits a bid for a County Public Works-related project. Steve's son's business is the lowest bidder. Can the contract go ahead?

BUT . . .

What if Steve offered to take the Public Works director on a chartered fishing trip for the director's birthday?

AND

Steve's son's business was not the lowest bid but certain criteria allowed for selection of the "best value" for the County?



IT WON'T BE MISSED

Rodney works in the facilities department for the County. Monty is a coworker and Rodney's friend. Rodney is in charge of ordering supplies for certain projects. Monty comes to Rodney one day and asks Rodney to include in the order for a County project additional materials Monty will use for a repair at his house, stating Monty will pay the County back or replenish the materials. When Rodney expresses concern, Monty states he always did it for others when he was in a similar position and there was no harm. Four months later, Monty has not paid back or replenished the supplies.





VOTING CONFLICTS

A vote must be recorded and counted for each official/board member who is present at a board meeting, unless a conflict of interest exists, or appears to exist

Official may abstain from voting on a measure to avoid creating an appearance of impropriety only where such impropriety amounts to a conflict of interest



HOW WILL I KNOW?

Existence of a conflict of interest depends on whether or not the public official's private interests are impacted to a significantly greater (or significantly lesser) degree than the interests of other similarly situated persons.

Commission on Ethics typically finds that no conflict exists when a voting official's interest in a measure constitutes one percent (1%) or less of the "size of the class" of similarly situated persons who are affected by the measure.

Where the "size of the class" of affected persons is large, the gain or loss to the officer tends to be of a general nature.

Where the "size of the class" of affected persons is small, then the possibility of a special gain or loss for the officer is more likely.



If the gain or loss resulting from the measure being voted on is so remote or speculative that the measure cannot be said to inure to the official's special private gain or loss, then a voting conflict would not be triggered.





Official/Board member may also abstain from voting if there is, or appears to be, a conflict of interest under a locally adopted code of ethics.

If the conflict arises under the local code of ethics, board member would follow the disclosure requirements specified in the local code.

Board member may also abstain from voting in a quasi-judicial proceeding “if the abstention is to assure a fair proceeding free from potential bias or prejudice” (Sec. 286.012, Fla. Stat.).



WHAT TO DO?

If a conflict of interest exists (or appears to exist) under the state Code of Ethics for Public Officers and Employees, the board member should:

- prior to the vote being taken, publicly state the reasons for abstaining from voting;
- abstain from voting on the matter; and
- file a Memorandum of Voting Conflict (Commission on Ethics Form 8B) with the clerk of the board within 15 days



What if a board member is in attendance at a board meeting, but happens to be out of chambers during the vote on an issue in which the board member has or appears to have a conflict of interest?

Commission on Ethics says that an official/board member would be required to publicly announce the basis of a conflict of interest and file a Memorandum of Voting Conflict even if the board member was in attendance but temporarily absent from that portion of the meeting when the board considered the matter of conflict.

Statutory duty to vote may not be avoided by a “temporary” absence of a member during the vote on a matter which comes before the board during a meeting at which the member is present.



REMINDER:

Memorandum of Voting Conflict Form 8B should be filed with the clerk of the board within 15 days after the vote occurs

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION:
	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE





- All elected constitutional officers (& candidates for office) are required to file full & public disclosures of financial interests (Commission on Ethics Form 6)
- Must report: net worth; description/value of each asset valued at over \$1000 (household goods/personal effects that exceed \$1000 can be listed aggregately); amount of liabilities in excess of \$1000 (& the name/address of creditors); name/address/amount of primary sources of income over \$1000; name/address of secondary sources of gross income over \$1000; interests (5% ownership or more) in certain businesses.
- In lieu of itemizing the sources of income, a complete copy of a federal income tax return with attachments may be provided.

WHAT NOT TO DO

- County commission candidate failed to properly disclose net worth on Form 6 when qualifying to run for office (\$500 penalty).
- County commissioner filed inaccurate Form 6 (\$500 penalty).
- Commissioner failed to properly disclose assets for 5 years (\$2000 penalty).
- Commissioner failed to file a complete Form 6 for 5 years (\$2400 penalty).
- Commissioner failed to properly disclose financial interests for 3 years (\$3000 penalty).
- Commissioner failed to accurately disclose net worth, income, assets, & liabilities for 3 years (\$4500 penalty).



- Commission on Ethics can utilize various collection methods to collect unpaid fines, including wage garnishment & a collection agency
- As of September 30, 2019, unpaid fines totaling \$667,742 had been referred to collection agencies for collection
- If a person holding public office fails or refuses to file a full and public disclosure of financial interests and has accrued the maximum fine, the Commission on Ethics is to initiate an investigation and conduct a public hearing on the matter
- If the Commission on Ethics determines that the person willfully failed to file the statement of financial interests, the Commission is to enter an order recommending removal from office



Federal Public Corruption Convictions 2004-2023

Texas: 1,435

California: 1,225

Florida: 1,134

(LA – 736)



what are other
words for
misappropriation?



embezzlement, defalcation,
peculation, misapplication,
theft, misuse, stealing,
mishandling, pilfering



FORFEITURE OF RETIREMENT BENEFITS

- Any public officer or employee who is convicted of a felony involving a breach of the public trust is subject to the forfeiture of all retirement benefits received under a public retirement system or pension plan. (Art. II, s. 8(d), Fla. Const.)
- Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination. (Sec. 112.3173(3), Fla. Stat.)



“SPECIFIED OFFENSES”

- **Embezzlement of public funds**
- **Theft from the government entity**
- **Bribery**
- **Committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position**



A public officer or employee who is convicted of the “specified offenses” forfeits all rights and benefits received under any public retirement system.



CONCLUSION

