

June 1, 2006

Ron Greenstein  
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Resource Recovery Board  
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Dear Ron,

This is in reply to your oral query “Whether a member of the Technical Advisory Committee, which is not a public employee may (1). participate and (2). vote on matters which may ultimately benefit benefit the member or the member’s private employer.”

The answer is: (1). probably in the affirmative and (2) in the negative. That is, the member may probably participate in discussions and making motions but must abstain from voting on matters that may benefit or adversely affect a member’s employer.

Section 112.313 of the Florida Statutes provides as follows:

**(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, 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.

The above section is applicable to the Technical Advisory Committee of the Resource Recovery Board as subsection 112.313 includes “any person serving on an advisory body of any agency as a “public officer.” (Agency is defined in section

112.312(2) to include any “county”, “local” or “municipal government entity of this state”, “whether executive, judicial or legislative, any department division, bureau commission, authority or political subdivision of the state therein.”

F.S. 112.313(7) does not apply to public officers or employees of T.A.C. as benefit to their employers is not seen as a private benefit.

However, two exemptions apply to the general conflict provided in F.S. 112.313(7). One is contained in subdivision (12) of F.S. 112.313. It states:

(12) EXEMPTIONS. The requirements of subsections (3) and (7) as they pertain persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body.

This exemption would necessitate that each time a private member of T.A.C. wished to participate in a particular matter which could benefit or adversely effect the member or the company that employs the member, the Resource Recovery Board would, after full disclosure by the private T.A.C. member, allow the member to participate by a 2/3 vote. This would be impractical as much of what T.A.C. recommends has an effect on solid waste haulers or recycling companies which are represented on T.A.C. Thus the R.R.B. would have to vote on each particular issue to allow the private members to participate. Further this would not cure the frequently recurring or continuing conflict which each vote would necessitate.

The other exemption is contained in subsections (b) of F.S. 112.313(7). It provides:

“This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.”

Section 5.7 of the Interlocal Agreement of 1986 providing for the creation of the Broward Solid Waste Disposal District provides:

“Technical Advisory Committee. There is hereby created a Technical Advisory Committee composed of representatives of each CONTRACT COMMUNITY and unincorporated County as follows... The Resource Recovery Board may appoint for two (2) year terms up to five (5) additional members representing waste generators, recycling or environmental interests and private waste collection companies.”

Clearly, this language meets the exemption in F.S. 112.313(7)(b) above.

Unfortunately, while much of the 1986 I.L.A. tracks identical language in Broward County Ordinance 87-3 which promulgated the framework of the Broward Solid Waste Disposal District and the 86 I.L.A., no mention of the Technical Advisory Committee is made in County Ordinance. Thus the above language in section 5.7 of the Interlocal Agreement is not provided by “ordinance.”

However, I believe it may be argued that the “employment” of the private T.A.C. members is “permitted by law” as provided in the exemption provided in F.S. 112.313(7)(b).

Part I of Chapter 163 of the Florida statutes is entitled the “Florida Interlocal Cooperation Act of 1969.”

Such chapter provides in section 163.01 for joint powers of local government to be exercised by interlocal agreement. Section 163.01(7)(b) provides:

“A separate legal or administrative entity created by an interlocal agreement shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement.”

Thus the powers of both the county and the cities which are a part of the Broward Solid Waste Disposal District are provided for purposes of the 1986 Interlocal

Agreement. This includes the power of permanent establishment of the Technical Advisory Committee of the Resource Recovery Board (This is a board that would be established by the ordinance power of a municipality or county-see F.S. 166.041(1)(a). This law provides for the power to permanently establish the Technical Advisory Committee.)

Notwithstanding my above analysis I believe it would be most prudent for Broward County to amend ordinance 87-3 to re-state section 5.7 of the 1986 Interlocal Agreement, pursuant to Broward law. This would ensure that no private member of the Technical Advisory Committee would face penalties if my opinion was not shared by the Florida Ethics Commission.

Aside from section 112.313 of the Florida Statutes, F.S. 112.3143 applies to the non-governmental members of T.A.C. as well.

F.S. 112.3143(1)(a) defines “Public” officer to also include “any person serving on an advisory body.”

Subsection (3) of F.S. 112.3143 reads:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained. Such public officer shall, prior to the vote being taken, publicly state to assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Thus where a private member of T.A.C. or the company which employs the T.A.C. member would gain or lose by the action recommended by T.A.C., the private

member must abstain and file a disclosure of conflict. This would be either at the full committee or subcommittee level. (This section does not apply to public employees on T.A.C. as they or their employers get no “private” gain by actions of the Resource Recovery Board.)

In conclusion, I believe that members of the Technical Advisory Committee, to the Resource Recovery Board of the Broward Solid Waste Disposal District, who are employed by private companies, may continue to participate in Board functions. However they must abstain and file disclosure forms when they or their companies would gain or lose by the actions recommended by T.A.C. I further recommend that the Technical Advisory Board of the Broward Solid Waste Disposal District be confirmed by an ordinance of Broward County.

Very truly yours,

Eugene M. Steinfeld  
Counsel