

**April 18, 2018**

**ADVISORY OPINION AS TO BUILDING DEPARTMENT ENGINEERS OR ARCHITECTS  
WORKING INDEPENDENTLY OF MUNICIPALITIES**

**Issue:**

Synopsis: The Broward County Certification Committee has asked the attorney if it is permissible for an engineer or architect to obtain employment beyond the scope of their duties in Broward county.

The question is posed where the strict language of Chapter 71-575, Laws of Florida, Special Acts of 1971 does not appear to prohibit “off duty” employment by engineers or architect.

**Rule:**

**(a) Special Act 71-575**

The Laws of Florida, Special Act 71-575 states *inter alia*:

(b) Any Inspector (such as and including but not limited to structural , engineering, plumbing, mechanical, or electrical) **or other building official charged with enforcing or otherwise supervising or inspecting any work covered under any section of the South Florida Building Code as applicable to Broward County pursuant to Chapter 71-575, Laws or Florida**, and who is required to hold or who otherwise holds a Certificate of Competency in any area of construction shall not use that Certificate of Competency to engage in free enterprise thereby competing against persons or firms whose work he may also inspect, nor may he allow his Certificate of Competency to be used by another person or firm.

See F.B.C. Chapter 71-575 , Sec 4(b).

In this case, the Rule clearly includes not only “inspectors” but “other building official charged with enforcing or otherwise supervising or inspecting any work covered under any section of the South Florida Building Code as applicable to Broward County pursuant to Chapter 71-575,” Both engineers and architects employed by any building department. These positions would necessarily include engineers and architects working in the various municipal building departments located in Broward County.

As long as the engineers or architect's job duties include enforcement, supervision or inspection of any work covered under "any section of the Florida Building Code" then the engineer and/or architect is prohibited from securing "off duty" employment."

**(b) Florida Statutes Sec 112 Public Officers and Employees General Provisions/Part III Code of Ethics for Public Officers and Employees**

A second means of analysis provided through the state of Florida, Public Officers and Employees Guidelines and ethics provisions can be had from F.S. Section 112 et.al..

In Zerweck v. State, 409 So. 2d 57, (Fla. 4<sup>th</sup> DCA 1982) former city official, John Zerwyck (Margate) challenged an order of the State of Florida Commission on Ethics, which found that appellant's outside employment posed a frequently recurring conflict with public duties in violation of Fla. Stat. ch. 112.313(7)(a) (1979). More specifically, Margate City Commissioner, John. Zerweck, accepted the position of development coordinator for DJM Properties, Inc., an industrial site developer engaged in the business of building and leasing warehouse facilities in the City of Margate while he was City Commissioner. During that same time, forty-two items came before the Margate City Commission which affected, directly or indirectly, property owned by DJM Properties or David J. Mears, the controlling stockholder of DJM Properties, Inc. On each of these occasions Mr. Zerweck acknowledged his relationship with DJM Properties and either abstained from voting or voted and filed a voting conflict statement.

Mr. Zerwyck's abstention notwithstanding, he was charged by the State Commission on Ethics charged Mr. Zerwyck with a violation of F.S. Section 112.313(7)(a) which states *inter alia*:

No public officer shall have or hold any employment...with any business entity ... which is subject to the regulation of ... an agency of which he is an officer ..., nor shall an officer ... have or hold any employment ... that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

See Zerwyck at 59.

Mr. Zerwyck appealed the findings of the lower court and the Fourth District determined that:

A primary objective of the Code of Ethics is that government officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public. There is nothing new or startling about this concept. The avoidance of the appearance of impropriety is an ethical norm which has governed the conduct of attorneys and judges for decades. Certainly,

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there is nothing to prevent the Legislature from extending the application of this norm to all branches of government. Indeed, this is precisely what the Legislature intended as can be seen from Section 112.311(5), Florida Statutes (1979):

It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

...

In the same vein, the United States Supreme Court in *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 81 S. Ct. 294, 5 L. Ed. 2d 268 (1961), upheld a federal conflict of interest statute and noted:

It is also significant, we think, that the statute does not specify as elements of the crime that there be actual corruption or that there be any actual loss suffered by the Government as a result of the defendant's conflict of interest. This omission indicates that the statute establishes an objective standard of conduct, and that whenever a government agent fails to act in accordance with that standard, he is guilty of violating the statute, regardless of whether there is positive corruption. The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation." (Emphasis supplied). 364 U.S. at 549-550, 81 S. Ct. at 309.

*See Zerwycjk* at 61.

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**Conclusion:**

Based upon the specific wording of Laws of Florida, Special Act section 71-575, Florida Statutes Sec 112.31'3(7)(a), the findings of both the Fourth District of the state of Florida and precedent set in the United States Supreme Court it is clear that neither engineers nor architects may seek off duty employment where they are employed with any of the various municipal building departments located in Broward County.

Respectfully,

Charles M. Kramer, Esq. for  
The Broward County Board of Rules and Appeals