

Broward County Attorney Office

Ethics Workshop

Broward County Florida

Overview

Main Potential Issues for Board Members.

1. Gifts
2. Conflicting Employment or Contractual Relationships
3. Voting Conflicts

Gifts

County gift provisions applicable to all board members.

Gifts

1. Something received
2. Directly or indirectly
3. Value
4. Donee does not give equal or greater consideration within 90 days.

Source: Florida statute 112.312 12a

Same definition under county's code.

Gifts

Who The Donor is Matter!

Cannot accept gift directly or indirectly from vendor, contractor, lobbyist or principal of a lobbyist, regardless of value.

Cannot accept gift from other sources in their official capacity if fifty dollars or more.

No limitation for gifts in personal capacity.

Gifts (slide 6)

Organizational chart

County.

Lobbyist, Vendor, Contractor, Principal of Lobbyist and zero dollars.

County

All others.

Official capacity.

Fifty dollars.

County.

All others.

Personal capacity.

No Limit

Conflicting Employment or Contractual Relationship

General Rule

Public Officers (including board members) and Employees cannot have employment/contractual relationship: with a business or agency that is regulated by or is doing business with the agency in which officer or employee serves, or that will create continuing or frequently recurring conflict between employee/officer's private interests and his/her public duties.

Florida Statue 112.313(7) BCC 26-73(c)

Conflicting Employment or Contractual Relationship

Agency? Advisory v. decision-making bodies.

Doing business with? Lawyers v. everyone else

Conflicting Employment or Contractual Relationship

Example: County Board member serving in an advisory board will not be able to have a contract with a childcare facility.

Why not? The agency of an advisory board member is the County. The County regulates childcare facilities. Advisory member cannot have a business or contractual relationship with an entity that is regulated by Board member's agency (here County).

Conflicting Employment or Contractual Relationship

Example 2: Member of the Housing Finance Authority can have a contractual relationship with childcare facility. Why? The agency of a member of a board that has decision-making power is the board itself, so the agency of Housing Finance Authority member is the Housing Finance Authority. Childcare facilities are regulated by County, but not by the Housing Finance Authority. There is no indication that there would be a frequently recurring conflict of interest

Conflicting Employment or Contractual Relationship

If a conflicting relationship arises, the appointing Board (Broward County Commission) can waive the conflict under Section 112.313(12) upon full disclosure of the conflict and 2/3 vote of the Board. Full disclosure requires completion of a Form 4A. See <http://www.ethics.state.fl.us/Documents/Forms/Form4a.PDF?cp=2018524>. Other exemptions may apply, so consult with your board's counsel if you believe you might have a conflicting employment or contractual relationship.

Voting Conflicts

Public officer including board members cannot vote on matter which benefits:

Public officer.

Public officer's principal.

Parent company or subsidiary of officer's principal.

Public officer's relatives; or

Public officer's business associate

Source Florida Statute 112.3143(3)(a)

Voting Conflicts

Family Member
Father/mother.
Son /daughter.
Brother/sister.
Father in law/mother in law.
Husband/wife.
Son in law/daughter in law.

Source Florida Statue 112.3143 (1)(c),

Voting Conflicts

Business Associate?
Any person or entity.

Carrying out business w/ public officer, employee or candidate.

As partner, joint venturer, co-owner of property, or shareholder where shares not listed on any

national or regional stock exchange. Source Florida Statue 112.312(4),

Voting Conflicts

Principal by Whom Retained?

Employer.

Client.

Parent /subsidiary/sibling organization of one's client or employer. Source Florida Statue 112.3143(1)(a)

Voting Conflicts

Benefit?

Remote and speculative benefits do not count.

The benefit and cost must be special and private.

Typically, a financial interest.

Voting Conflicts

Example:

Member of BC's Health Facilities Authority is a lobbyist for Memorial Hospital.

Memorial is coming before the Health Facilities Authority to seek the issuance of bonds to fund its new state-of-the-art maternity wing.

May member vote on the issuance of the bonds?

Voting Conflicts

The Analysis:

Is member a public officer?

Is Memorial an employer, client?

Would a private special gain inure to member, member's employer, or member's client?

Voting Conflicts

We have an **actual** conflict... Now what?

YOU MUST:

Announce nature of conflict.

Abstain from voting.

File disclosure within 15 days.

Voting Conflicts

We have an apparent conflict... Now what?

Florida Law:

YOU MAY:

abstain from voting.

IF YOU CHOOSE TO ABSTAIN, THEN YOU MUST.

Disclose nature of the conflict prior to abstention.

File disclosure within 15 days.

Voting Conflicts

County Law

If the conflict falls within Section 1-234 of the County's Code (member of a county-created board also serves as employee of public entity or as officer or member of board of directors of a private entity which stands to specifically gain or lose from action taken by the board) special rules apply:

YOU MUST:

Abstain from voting and participating on item

Announce nature of conflict per Florida law

File disclosure within 15 days per Florida law

Voting Conflicts

Example

Member of the Health Facilities Authority is a big pro-life advocate.

Memorial Hospital is coming before the Health Facilities Authority to seek the issuance of bonds to fund its new state-of-the art maternity wing.

Memorial Hospital has the highest rate of abortion procedures of any hospital in the County. As such, Member refuses to vote on any matter involving Memorial.

May he abstain from voting?

Voting Conflicts

Cannot Abstain from voting unless there is a conflict or appearance of a conflict under:

112.311: conflict arising from financial interest, business transaction, professional activity, or other obligation.

112.313: conflicting employment or contractual relationship

112.3143: voting conflict

Sunshine Law

All meetings of any board or commission must be open to the public.

Broad definition of meeting: two people from a board or commission discussing public business equal meeting. Because meeting includes conversations between just two people, no side conversation should take place on the dais. If you are invited to an event/panel that you expect

will also be attended by a second board member, please let us know so we can analyze it in advance. Fines assessed for violations of Sunshine laws.

Public Records

Assume everything you generate or receive to perpetuate or communicate knowledge in connection with County/board business is a public record and must be maintained.

Key is content, not where generated. If content is board business public record regardless of whether communication took place via text message, private email, etc. Conversely, if content is private not a public record (even if discussed on County email system).

Avoid using text messages and personal emails to discuss County/board business. Could subject your personal communications to court scrutiny. Use outlook folders to organize emails.

Questions?

Broward County Attorney's Office Ethics Workshop. Broward County Florida.