

## **ETHICS PITFALLS**

### **SOME MISPERCEPTIONS AND MISTAKES ABOUT THE ETHICS LAWS**

(Prepared June 2021, by C. Christopher "Chris" Anderson III, Executive Director and General Counsel, Florida Commission on Ethics, for 2021 FACA Annual CLE Seminar)

- The Commission on Ethics loses jurisdiction over possible violations of the ethics laws when a public officer or public employee leaves their public position.
- Training in the ethics laws is mandatory for all public officers and public employees.
- The anti-nepotism law, F.S. 112.3135, does not apply to unpaid positions.
- Abstaining from a board vote to appoint or hire one's relative insulates the related board member from a violation of the anti-nepotism law.
- Lack of application of the anti-nepotism law to public school districts also means that a school board member can vote on a measure specially affecting the member's relative.
- One who is a "public official" as defined in F.S. 112.3135 in relation to the appointment or hiring of his or her relative can avoid the proscription of the anti-nepotism law by delegating the appointment or hiring of his or her relative to another.
- The anti-nepotism law does not apply to recommendations; it applies only to appointments/hires.
- F.S. 112.3135 is an absolute prohibition on two relatives holding positions in the same agency.
- The anti-nepotism law does not apply to reappointments.
- F.S. 112.313(3) addresses the sale of goods, realty, or services from government agencies to the private sector.
- "Donations" to a public agency can never trigger the prohibitions of F.S. 112.313(3).
- A public officer or public employee must hold a leadership position in a company for F.S. 112.313(3) to apply.
- For purposes of F.S. 112.313(3) and F.S. 112.313(7), a "business entity" includes only corporations or other entities which have a legal person status independent from that of their human principals.
- Exemptions to the prohibitions of F.S. 112.313(3) and F.S. 112.313(7) which are found in F.S. 112.313(12) negate all possible conflicts under F.S. 112.313(7).

## **Misperceptions and Mistakes**

- The competitive bidding exemption [found in F.S. 112.313(12)(b)] to conflicts under F.S. 112.313(3) and F.S. 112.313(7) can be based in RFPs and ITNs, as well as in sealed, competitive bidding to the lowest or best bidder.
- A public officer can represent a client or his or her own company before his or her public board provided he or she abstains from voting on matters concerning the client or company.
- A corrupt use of public position under F.S. 112.313(6) is limited to situations in which the public officer or public employee personally benefits from his or her conduct.
- The relatively recently adopted provision in the Florida Constitution against abuse of public position is identical to the corrupt use of public position provision of F.S. 112.313(6).
- The prohibition of F.S. 112.313(8) against use or disclosure of information gained via one's public position and unavailable to the general public is limited to information that is confidential or exempt from disclosure under Chapter 119, Florida Statutes.
- F.S. 112.313(4) requires for a violation actual knowledge that a thing of value is provided in order to influence one's official conduct.
- As long as all gifts are timely disclosed on the proper form, F.S. 112.3148 ("the gifts law") will not be violated.
- The definition of "gift" is the same for F.S. 112.3148 and for F.S. 112.31485.
- An independent contractor local government attorney is not subject to the prohibitions of the Code of Ethics.
- The two-year revolving-door representation restriction of F.S. 112.313(14) is triggered only in the context of a former elected officer making remarks to personnel of his or her former government body or agency at an official meeting of his or her former government body or agency.
- Abstaining from the vote is all that is required when one is presented with a voting conflict under F.S. 112.3143.
- Vacating one's public position ends one's obligation to file financial disclosure.
- On a Form 6 financial disclosure, net worth is properly calculated by subtracting the total of listed liabilities from the total of listed assets.
- Compliance with a locally-instituted standard of conduct relieves one of the obligation to comply with a similar standard of conduct found in the Code of Ethics.

## **Misperceptions and Mistakes**

- Recovery of attorney fees and costs after a Florida Commission on Ethics proceeding is based in a prevailing party standard.