COCONUT CREEK
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CITY ATTORNEY'S OFFICE
4800 WEST COPANS ROAD
COCONUT CREEK, FLORIDA 33063

TERRILL C. PYBURN
CITY ATTORNEY

EVE M. LEWIS
ASSISTANT CITY ATTORNEY

MEMORANDUM

DATE: May 9, 2017
TO: Board Members
FROM: Terrill C. Pyburn, City Attorney tcp
SUBJECT: Overview of Florida Sunshine Law; Public Records Laws; Ethics Laws; and Coconut Creek's Lobbyist Registration Ordinance

I. Introduction

I want to share with you a quick overview of Florida's Sunshine, Public Records, and Ethics laws, as well as the City's Lobbyist Registration Ordinance. For your convenience, I have attached some helpful materials to this Memorandum.

II. Overview

As a Board Member, you are an appointed officer of the City of Coconut Creek, subject to the requirements of the Florida Government in the Sunshine Act (i.e. meetings of two (2) or more members must be noticed and open to the public with minutes taken). Any record that you create in relation to City business must be made available to the public for inspection (including, but not limited to, e-mails and Facebook postings). You must deliver honest services to the City (free of improper influence) and any personal voting conflicts must be publicly disclosed. Lobbyists who seek to meet with you must be registered with the City and all meetings with Lobbyists must be properly logged and disclosed.

III. Sunshine Law

The Sunshine Law applies to any gathering, whether formal or informal, of two (2) or more members of the same board or commission to discuss some matter upon which foreseeable action will be taken by the board or commission. Such discussions must be noticed, made open to the public, with minutes taken. See generally Florida Statutes, Section 286.011, "Public meetings and records; public inspection; criminal and civil penalties," and *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973), attached as Exhibit 1.

In this age of technology, it is imperative that you take extra precautions to avoid inadvertent violations of the Sunshine Law. For example, if a board member sends an e-mail or makes a post on a social media website that pertains to board business, there may be a Sunshine Law violation where another board member responds to that e-mail or comment, as such conversation was not noticed, open to the public, and no minutes were taken. Please remember that all conversations, virtual or otherwise, that are held between board members regarding board business must comply with the Sunshine Law. See Attorney General Opinion 2001-66, involving board discussions held over the internet, and Attorney General Opinion 2009-19, discussing a City's Facebook page, attached as Exhibit 2.

IV. Public Records Law

All e-mails, texts, or writings that pertain to City business are public records. It does not matter whether the e-mail or writing resides on a City computer, personal computer, tablet or smart phone. The determining factor of whether a document or e-mail is a public record is the nature of the communication, not its physical location. See generally Florida Statutes, Section 119.07, "Inspection and copying of records; photographing public records; fees; exemptions," and *State of Florida v. City of Clearwater*, 863 So.2d 149 (Fla. 2003), and Informal Attorney General Opinion dated June 1, 2016, discussing Twitter records as public records, attached as Exhibit 3.

V. Florida Ethics Laws

Pursuant to the Florida Ethics Code, City Board members are "public officers" and are prohibited from using their position to take or fail to take any action that will result in a financial benefit to: 1) himself/herself; 2) his/her relative (including his/her father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law); or 3) his/her business associate and/or principal. If you or someone close to you will receive a special economic benefit or harm as a result of your action or inaction as a public officer, you may have a voting conflict. Please contact the City Attorney's Office in advance of the vote to obtain the specific disclosure and reporting forms. See generally Florida Statutes, Section 112.3143, and potential forms, attached as Exhibit 4.

Also, you must not accept any gift(s) from any person based upon an understanding that your vote as a public officer would be influenced thereby. Please review the State Code of Ethics found within the Florida Statutes, Chapter 112, Part III, "Code of Ethics for Public Officers and Employees," as well as Broward County's Code of Ethics found within the Broward County Code of Ordinances, Section 1-19, "Code of Ethics for Elected Officials." Each describe other conduct that is also prohibited. See generally Florida Statutes, Section 112.313, "Standards of conduct for public officers, employees of agencies, and local government attorneys," Broward County Code of Ordinances, Section 1-19, "Code of Ethics for Elected Officials," and an Ethics Comparison Chart attached as Exhibit 5.

VI. Practical Tips

Please remember that all documents concerning City business housed anywhere, on any medium, are public records. Public records must be retained and made available for copying and/or distribution upon request. You have a duty to preserve all e-mails and other documents in your possession that are public records. For your convenience, please forward all e-mails and written documents to the City Clerk for safe-keeping by forwarding to publicrecords@coconutcreek.net. (In the subject line please reference the name of your Board and "For Public Record.")

In addition to verbal communications, the Sunshine Law applies to all written communication if there is an exchange between two (2) or more board members concerning a matter that may reasonably come before the board for action. Take extra care not to communicate with fellow board members on those matters until you are at a duly noticed, public, and recorded meeting. ***As a friendly reminder, please refrain from whispering at meetings. To comply with the Sunshine Law, all responses must be audible for the record and loud enough for the public to hear.

As a general proposition, board members of the same City board may attend other City board meetings. However, when two (2) or more City board members from the same

board are in attendance at another City board meeting, any discussion or debate between the two (2) of them at that meeting may trigger the Sunshine Law. If you plan to attend another City board meeting, please notify the City Clerk's Office in advance so that the City may properly notice your attendance in an abundance of caution to comply with the Sunshine Law. See Attorney General Opinion 2000-68, discussing public officers attending other city board meetings, attached as Exhibit 6.

VII. Penalties for Violating the Law

Penalties for violating Florida's Sunshine, Public Records, and Ethics Laws may include criminal penalties, suspension or removal from office, public censure and reprimand, monetary fines, declaration of the official action as void, cost of opposing party's attorney's fees, and damages. See generally Florida Statutes, Sections 286.011 (Sunshine Penalties), 119.10 & 119.12 (Public Records Penalties), 112.317 (Ethics Penalties), 838.015 (Bribery), and 838.022 (Official Misconduct) attached as Exhibit 7.

VIII. City of Coconut Creek's Lobbyist Registration Ordinance

"*Lobbying*" is defined as communicating directly or indirectly, either in person or by other means, with the City's public officers or staff for the purpose of influencing legislation or other official action. Lobbying does **not** include: 1) a request for information, 2) the submission of an application for a City permit, or 3) making inquiries regarding such permit application. Communication made on the record at a duly-noticed public meeting is also **not** considered "*Lobbying*." See City Ordinance No. 2011-030, enacting Article XIII, "Lobbyists," attached as Exhibit 8.

A "*Lobbyist*" means a person who is retained, with or without compensation, for the purpose of lobbying or principally to lobby on behalf of that other person or entity. The following people are not considered "*Lobbyists*": 1) a public official or employee of Broward County or of any municipality within Broward County communicating in his or her official capacity; 2) an individual who communicates on his or her own behalf, or on behalf of a person or entity employing the individual unless the individual is principally employed by that person or entity to lobby; 3) any employee, officer, or board member of a homeowners' association, condominium association, or neighborhood association when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members; or 4) any employee, any officer, or any board member of a nonprofit public interest entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue impacting a constituent of that entity.

All lobbyists must properly register with the City Clerk prior to engaging in any lobbying activities, and must log every meeting (date/time/place) held with the City's public officers or certain City staff. To ensure compliance with the City's Ordinance, before accepting a meeting with someone seeking to influence your decision related to City business, please contact the City Clerk's Office at 954-973-6774 to verify if the individual is a lobbyist.

IX. Conclusion

If you have any questions or are unsure of what to do in a particular scenario, please contact the City Attorney's Office at 954-973-6797.

Thank you.

EXHIBIT 1

Select Year: 2016 Go

The 2016 Florida Statutes

Title XIX Chapter 286 View Entire Chapter
PUBLIC BUSINESS PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding $500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the

court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Wood v. Battle Ground School Dist., Wash.App. Div. 2, July 27, 2001

278 So.2d 288
District Court of Appeal of Florida, Third District.

J. Robert HOUGH, Individually and as a member of the Council of the City of North Miami, et al., Appellants,
v.
John STEMBRIDGE, Appellee.
The STATE of Florida ex rel. CITY OF NORTH MIAMI, a municipal corporation, et al., Relators,
v.
Thomas A. TESTA, as Judge of the Circuit Court of the Eleventh Judicial Circuit, In and For Dade County, Florida, Respondent.

Nos. 72—85, 72—1228.
|
May 22, 1973.
|
Rehearing Denied June 15, 1973.

Consolidated causes, one an appeal and the other an original proceeding for writ of prohibition, arising out of a final summary judgment issued by the Dade County Circuit Court, in a case involving alleged violations of the government in the Sunshine Law. The District Court of Appeal, Haverfield, J., held that members-elect of boards, commissions, agencies, etc. are within the scope of the government in the Sunshine Law. The Court further held that the government in the Sunshine Law does not prohibit a board or commission from taking action on a matter which has not been placed on an agenda, but it does prohibit a board or commission from holding 'a public meeting' without reasonable notice to the public.

Order in accordance with opinion.

West Headnotes (5)

[1] **Administrative Law and Procedure**
Meetings in general

In order for there to be a violation of the government in the Sunshine Law, a meeting between two or more public officials must take place which is violative of the statute's spirit, intent and purpose. F.S.A. § 286.011.

4 Cases that cite this headnote

[2] **Administrative Law and Procedure**
Meetings in general

Obvious intent of the government in the Sunshine Law is to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board. F.S.A. § 286.011.

3 Cases that cite this headnote

[3] **Administrative Law and Procedure**
Meetings in general

Members-elect of boards, commissions, agencies, etc. are within the scope of the government in the Sunshine Law. F.S.A. § 286.011.

1 Cases that cite this headnote

[4] **Administrative Law and Procedure**
Meetings in general

Government in the Sunshine Law does not prohibit a board or commission from taking action on a matter which has not been placed on an agenda, but it does prohibit a board or commission from holding "a public meeting" without reasonable notice to the public. F.S.A. § 286.011.

8 Cases that cite this headnote

[5] **Appeal and Error**
Nature of judgment or decree

Appeal taken by city from judgment granting injunction predicated on the government in the Sunshine Law operated as a supersedeas, thereby staying execution or performance of the judgment; accordingly, rule to show cause, issued by trial court on application alleging violation of the terms of the injunction, constituted a proceeding for the enforcement

of the injunction while the supersedeas was in effect, and therefore was improper. F.S.A. § 286.011; 32 F.S.A. Florida Appellate Rules, rule 5.12(1).

1 Cases that cite this headnote

Attorneys and Law Firms

***288** Kahn & Clein and Alan J. Kan, North Miami, for appellants-relators.

John E. Bassett, North Miami, for Stembridge.

Leo Greenfield, North Miami, for Thomas A. Testa.

Before PEARSON, CHARLES CARROLL and HAVERFIELD, JJ.

Opinion

***289** HAVERFIELD, Judge.

These consolidated causes grow out of a final summary judgment issued by Circuit Court Judge Thomas A. Testa in a case involving alleged violations of the Florida Government in the Sunshine Law, F.S. s 286.011, F.S.A.

The first, an appeal by J. Robert Hough, Martin D. Kahn, Arthur Wilde and the City of North Miami, involves alleged violations of Florida Statute 286.011 by these members of the North Miami City Council. The second matter, a writ of prohibition filed against Judge Testa, is based on part of the verbiage contained in the final summary judgment.

The factual situation out of which these matters arose is as follows:

On May 18, 1971 the City of North Miami held a runoff election in which Robert Hough, Jr., an incumbent councilman, was elected to the office of Mayor and Arthur Wilde and Michael Colodny were elected to the office of councilman. Plaintiff, John Stembridge, in his petition for injunction, alleged that following this election several violations of Florida Statute 286.011 had occurred on various occasions and in particular: (1) on May 19, 1971 in Robert Hough's home at a meeting at which in attendance were Hough, Wilde, Colodny, Martin Kahn [1] and several other individuals, and (2) on June 1, 1971 with no notice having been given nor agenda having been published at a meeting of all the North Miami councilmen with E. May Avil, the City Clerk and Acting City Manager.

[1] **[2]** In order for there to be a violation of F.S. s 286.011, F.S.A., a meeting between two or more public officials must take place which is violative of the statute's spirit, intent, and purpose. The obvious intent of the Government in the Sunshine Law, supra, was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board. Board of Public Instruction of Broward County v. Doran, Fla.1969, 224 So.2d 693 and Canney v. Board of Public Instruction of Alachua County, Fla.1973, 278 So.2d 260 (1973).

Appellants contend that the trial court erred in holding that the meeting of May 19, 1971 came within the ambit of Florida Statute 286.011 in that this gathering was not a meeting of members of a governing body. In support of their contention they argue that Arthur Wilde and Michael Colodny were councilmen-elect on May 19, 1971 and only J. Robert Hough, Jr. was undisputedly a member of the council, as Group 2 Councilman. Thus, Mr. Hough was the only individual whose conduct was meant to be within the purview of F.S. s 286.011 and, therefore, there was no assemblage of a board or commission.

We simply cannot accept this line of reasoning. To adopt this viewpoint would in effect permit as in the case sub judice members-elect of a public board or commission to gather with impunity behind closed doors and discuss matters on which foreseeable action may be taken by that board or commission in clear violation of the purpose, intent, and spirit of the Government in the Sunshine Law.

We find the position untenable to hold on the one hand that Florida Statute 286.011 is applicable to elected board or commission members who have been officially sworn in and on the other hand inapplicable to members-elect who as yet merely have not taken the oath of public office. An individual upon immediate election to public office loses his status as a private individual and acquires the position more akin to that of a public trustee.

[3] Therefore, we hold that members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law. To hold otherwise ***290** would be to frustrate and violate the intent of the statute which 'having been enacted for the public benefit, should be interpreted most favorably to the public.' See

Canney v. Board of Public Instruction of Alachua County, supra.

Turning to the case at bar we find the trial judge to be eminently correct in determining that the meeting of May 19, 1971 was a meeting of members of a governing body in which matters concerning city business were discussed and, therefore, a violation of the Florida Sunshine Law resulted. Accordingly, we affirm that part of the summary judgment as it affects the meeting of May 19, 1971.

Next, we carefully considered the details and circumstances of the June 1, 1971 meeting and find them to be neither clear nor complete in the record on appeal. However, the only relief prayed for by the plaintiff in this case was an injunction to restrain the defendant officials from holding such future meetings in violation of the Sunshine Law and a showing was made that members of the council were pursuing a practice of informal meetings of conferences which appeared to be of the kind prohibited by the Sunshine Law. See City of Miami v. Berns, Fla.1971, 245 So.2d 38; Times Publishing Company v. Williams, Fla.App.1969, 222 So.2d 470, and cases cited hereinabove. Therefore, we are in agreement with the court's granting the injunction [2] prayed for by the plaintiff insofar as that injunction (to be discussed at some length hereafter) enjoins the defendants from so meeting without notice to the public in violation of Florida Statute 286.011.

The judgment entered by the trial court contained four ordered provisions. First, the court ruled that any action taken by the council as a result of discussions at meetings held on May 19, 1971 and June 1, 1971 were in violation of s 286.011 Fla.Stat., F.S.A., the Sunshine Law. Second, it was held that legislation enacted as a result of said improper meetings could be made effective by the city council if subsequently re-enacted or ratified at a public meeting held pursuant to s 286.011. Third, the court awarded certain costs to the plaintiss to be paid by named defendants on a prorated basis. Fourth, the court granted an injunction as follows:

> '4. That the City of North Miami, Florida, through its elected and appointed officials, are permanently restrained and enjoined from holding any meeting wherein public business is discussed or contemplated, or enacted without first providing reasonable notice to the public accompanied by a provised agenda.'

[4] Both the appeal in this first cause of action and the suggestion for prohibition in the second cause of action challenged the propriety of that injunction under which it would be a violation of the Sunshine Law for a board or commission to hold 'a public meeting' without reasonable notice to the public and to take action on a matter which had not been placed on an agenda.

The agenda plots the orderly conduct of business to be taken up at a noticed public meeting as provided for by city charter or ordinance. F.S. s 286.011 does not embody this subject matter nor does it contemplate ***291** the necessity for each item to be placed on the agenda before it can be considered by a public noticed meeting of a governmental body. Although the drawing up of an agenda is a matter related to a noticed public meeting, it essentially is an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by city charters and ordinances. Furthermore, the necessity of items to appear on an agenda before they could be heard at a meeting would foreclose easy access to such meeting to members of the general public who wish to bring specific issues before the governmental body. Therefore, that part of the summary judgment which refers to the necessity of an agenda under the Sunshine Law is erroneous and argument based thereon is without merit.

The second feature of the challenged injunction deals with the question as to the necessity for reasonable notice for governmental meetings to be given to the public as a requirement of the Sunshine Law. Although F.S. s 286.011, F.S.A. does not specifically mention such a requirement, as a practical matter in order for a public meeting to be in essence 'public', we hold reasonable notice thereof to be mandatory. Turning to the case sub judice, we note also that the North Miami City Charter, not at all unlike many other city charters, requires its city clerk to issue notice of city council meetings. For the reasons stated hereinabove, we hereby modify provision 4 of the summary judgment to read as follows:

> '4. That the City of North Miami, Florida through its elected and appointed officials, are permanently

> restrained and enjoined from holding any meeting wherein public business is discussed or contemplated or enacted without first providing reasonable notice to the public.'

Accordingly, the summary judgment in this first cause of action is affirmed in part and modified in part.

While this appeal from Judge Testa's summary judgment was pending, the intervenors in the second cause of action, on whose behalf the rule to show cause was entered, were before the Circuit Court in another case in which they sought the entry of an order that would require the City of North Miami to issue a building permit to them. The court in that case entered such an order, and at a subsequent meeting of the City Council of North Miami it was decided to appeal that order. Following that decision to appeal, the intervening relators went to Judge Testa and sought a rule to show cause against the city on the basis that the city was violating Judge Testa's summary judgment and the Sunshine Law by reason of such action taken by the council not on its agenda. Judge Testa issued a rule to show cause. The suggestion for prohibition directed thereto which was ifiled by the appellants was treated by this court as a motion for a stay, and a stay of proceedings on the rule to show cause was granted pending this appeal.

[5] The appeal taken by the City of North Miami from the judgment granting the injunction operated as a supersedeas, thereby staying 'execution or performance of the judgment.' Rule 5.12(1) FAR, 32 F.S.A. The rule to show cause, issued by the trial court on an application alleging violation of the terms of the injunction, constituted a proceeding for the enforcement of the injunction judgment while the supersedeas was in effect, and therefore was improper. Powell v. Florida Land & Improvement Co., 41 Fla. 494, 26 So. 700 (1899); City of Miami Beach v. Lansburgh, Fla.App.1969, 217 So.2d 348; City of Miami v. City of Coral Gables, Fla.App.1970, 233 So.2d 7.

The matter with which the rule to show cause was concerned having since been determined by separate litigation, and it appearing that no useful purpose remains for enforcement or for further proceedings thereon, the said rule to show cause is discharged.

It is so ordered.

All Citations

278 So.2d 288

Footnotes

1 City Attorney for the City of North Miami.

2 '286.011 Public meetings and records; public inspection; penalties
'(1) All meetings of any board or commission of any state agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.
'(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizens of this state.' (Emphasis supplied)

End of Document

EXHIBIT 2

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2001-66
Date: September 19, 2001
Subject: Sunshine Law, use of internet to conduct meeting

Mr. Joseph C. Shoemaker
Leesburg City Attorney
Post Office Box 491357
Leesburg, Florida 34749-1357

RE: GOVERNMENT IN THE SUNSHINE LAW--AIRPORT AUTHORITY--INTERNET--MEETINGS--use of computers to conduct airport authority meetings with access to public given through Internet. s. 286.011, Fla. Stat.

Dear Mr. Shoemaker:

On behalf of the Leesburg Regional Airport Authority, you ask the following question:

May the Leesburg Regional Airport Authority conduct discussions/meetings over the Internet where such discussions/meetings are noticed to the general public, viewable by the general public, open to input by the general public, and recorded for public inspection?

In sum:

Airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. Such interactive access must include not only public access via the Internet but also designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. Notice of such discussions and workshops should include the locations where such computers with Internet access will be located. For meetings, however, where a quorum is necessary for action to be taken, physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. Internet access to such meetings, however, may still be offered to provide greater public access.

Section 286.011, Florida Statutes, Florida's Government in the Sunshine Law, provides a right of access to government proceedings at both the state and local levels.[1] As a statute enacted in the public interest to protect the public from "closed door" politics, the Sunshine Law must be broadly construed to effect its remedial and protective purpose.[2]

A fundamental requirement of the Sunshine Law is that meetings of entities covered by the Sunshine Law be "open to the public." The term "open to the public" as used in section 286.011, Florida Statutes, means open to *all* persons who choose to attend.[3] In addition, the courts of this state have held that the Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission.[4] Thus, informal discussions held by airport authority members regarding authority business are subject to the requirements of section 286.011, Florida Statutes.

While members of the airport authority would not appear to be precluded from utilizing the Internet to conduct informal discussions, such discussions which are subject to the Sunshine Law must be accessible by the public.[5] The airport authority, therefore, must ensure access is provided to *all* members of the public who wish to attend such discussions.

Thus, access must be available not only to those members of the public possessing a computer with Internet access but also to those who may not have access to the Internet. The airport authority, therefore, would be required to designate places within the authority boundaries where it will make available computers with Internet access to members of the public who wish to participate in such discussions. The notice of such discussions, required under the Sunshine Law, should include the locations where such computers with Internet access will be located.

For meetings, however, where a quorum is required, this office, in an informal opinion to the Town of Gulf Stream,[6] stated that while the town may not be subject to a statutorily imposed requirement that the governing body meet at a public place in the town, concerns about the validity of official actions taken by a public body when less than a quorum is present argue for a very conservative reading of the statute. This office has concluded that, in the absence of a statute to the contrary, the requisite number of members must be physically present at the meeting in order to constitute a quorum.[7]

While a quorum is not required for a meeting to be subject to section 286.011, Florida Statutes,[8] to the extent that the airport authority is required to have a quorum in order to conduct official business, it appears that the members of the authority would, in the absence of a statute to the contrary, have to be physically present

in order to constitute a quorum.[9] Nothing, however, prevents the airport authority from also broadcasting the meeting via the Internet.

Accordingly, I am of the opinion that airport authority members may conduct informal discussions and workshops over the Internet provided proper notice is given and interactive access to members of the public is provided. Such interactive access must include not only public access via the Internet but also designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have computers with Internet access. Notice of such discussions should include the locations where such computers with Internet access will be available. For meetings, however, where a quorum is necessary for action to be taken, physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. Internet access to such meetings, however, may still be offered to provide greater public access.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

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[1] A right of access to meetings of collegial public bodies is also recognized in the Florida Constitution. *See* Art. I, s. 24, Fla. Const. *And see Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law "is of both constitutional and statutory dimension."

[2] *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983); *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

[3] *See, e.g.*, Op. Att'y Gen. Fla. 99-53 (1999).

[4] *See Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973) (Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission).

[5] *See* Op. Att'y Gen. Fla. 89-39 (1989), stating that a board of county commissioners may use a computer network in the course of their official business; however, any discussions between the

members of the board via computer on issues pending before the board would be subject to the provisions of s. 286.011, Fla. Stat.

[6] Informal Op. to John C. Randolph, dated November 24, 1997.

[7] *See, e.g.*, Ops. Att'y Gen. Fla. 83-100 (1983), and 89-39 (1989), quoting 62 C.J.S. *Municipal Corporations* s. 399 which provides:

"In order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone."

Cf. Penton v. Brown-Crummer Inv. Co., 131 So. 14 (Ala. 1930) (where there was no quorum present at meeting of city council, but resolution was attempted to be passed by calling up absent members over the telephone, resolution of city council was ineffective); *Fargnoli v. Cianci*, 397 A.2d 68 (R.I. 1979) (in determining whether "quorum" was present at city council meeting, it was error to include member who was not physically present).

[8] *See* n. 4, *supra*.

[9] *See* Op. Att'y Gen. Fla. 98-28 (1998), recognizing that the authorization in s. 120.54(5)(b)2., Fla. Stat., for the use of communications media technology to conduct meetings applied only to state agencies.

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2009-19
Date: April 23, 2009
Subject: Records, municipal facebook page

Mr. Samuel S. Goren
Coral Springs City Attorney
9551 West Sample Road
Coral Springs, Florida 33065

RE: MUNICIPALITIES-RECORDS-GOVERNMENT IN THE SUNSHINE LAW-INTERNET -public record implications for city's Facebook page. s. 119.011 (12), Fla. Stat.; Art. I, s. 23, Fla. Const.

Dear Mr. Goren:

On behalf of the Coral Springs City Commission, you ask the following questions:

1. If the city chooses to maintain a Facebook page, would all contents of the city's page, including information about the city's "friends" and their pictures, and the friend's respective Facebook pages, be subject to the Public Records Law, Chapter 119, Florida Statutes?

2. If Question One is answered in the affirmative, is the city obligated to follow a public records retention schedule as set forth in the State of Florida General Records Schedule GSI for State and Local Government Agencies?

3. If Question One is answered in the affirmative, is Florida's Right of Privacy, as guaranteed in Article I, section 23, Florida Constitution, implicated by the inclusion of information about the city's "friends" and the respective link to the friends' Facebook pages linked to the city's page?

4. Would communications on the city's Facebook page regarding city business be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes?

In sum:

1. Since the city is authorized to exercise powers for a municipal

purpose, the creation of a Facebook page must be for a municipal, not private purpose. The placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes. In any given instance, however, the determination would have to be made based upon the definition of "public record" contained in section 119.11, Florida Statutes. Similarly, whether the Facebook page of the friends would also be subject to the Public Records Law, Chapter 119, Florida Statutes, would depend on whether the page and information contained therein was made or received in connection of the transaction of official business by or on behalf of a public agency.

2. The city is under an obligation to follow the public records retention schedules established by law.

3. While Article I, section 23, Florida Constitution, may be implicated in determining what information may be collected by the city, the constitutional provision expressly states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law." Thus, to the extent that information on the city's Facebook page constitutes a public record within the meaning of Chapter 119, Florida Statutes, Article I, section 23, Florida Constitution, is not implicated.

4. Communications on the city's Facebook page regarding city business by city commissioners may be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes. Thus, members of a city board or commission must not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

You state that Facebook is a social networking website maintained by privately-owned Facebook, Inc., which allows users to create profiles that include personal interests and pictures. According to your letter, Facebook allows users to build networks of "friends" which allows such friends, once they have been added to the user's profile, to appear on the user's profile. Facebook also contains interactive features, including instant messaging and a "Wall" which allows friends to post messages and attachments which may be viewed by anyone who may view the user's profile.

As you have not provided this office with a specific fact situation, my comments must be general in nature.

Question One

Section 166.021(1), Florida Statutes, sets forth the authority of municipalities, stating:

"As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for *municipal purposes*, except when expressly prohibited by law." (e.s.)

The Florida Supreme Court has stated that this constitutional provision "expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services."[1] The only limitation on the power of municipalities under this constitutional section is that such power must be exercised for a valid municipal purpose.[2] The determination of what constitutes a valid municipal purpose for the expenditure of public funds is one that must be made by the city commission and cannot be delegated to this office.[3] In making this determination, the commission must make appropriate legislative findings.

Accordingly, the city would appear to have the authority to establish a Facebook page under its home rule powers provided the establishment of such a page is for a valid municipal purpose and the city commission has made the appropriate legislative findings. You have not advised this office as to the nature of the information that will be contained on the city's page. Section 119.011(12), Florida Statutes, however, defines "Public records" for purposes of Chapter 119, Florida Statutes, to include

"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[4] It is the nature of the record created rather than the means by which it is created which determines whether it is a public record.[5] The placement of information on the city's Facebook page would appear to communicate knowledge. Thus, the determination in any given instance as to whether information constitutes a public record will depend on whether such information was made or received in connection with the transaction of official business by the city.

As noted above, you have not advised this office as to what will be placed on the Facebook page. Inasmuch as the page must be established for a municipal purpose and in the absence of specific

information as to the material placed on the city's Facebook page, this office presumes that the information contained on the page would be made or received in connection with the official business of the city. I recognize that the Florida Supreme Court ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage:

"Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,'. . . private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer."[6]

Therefore, there may be material placed on the city's Facebook page that is personal and does not relate to the transaction of official business. However, as noted above, the creation of a Facebook page must be for a municipal, not private, purpose. Accordingly, the placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes. In any given instance, however, the determination would have to be made based upon the definition of "public record" contained in section 119.011, Florida Statutes, as defined by the courts.

You also inquire whether the Facebook page of the friends would also be subject to the Public Records Law, Chapter 119, Florida Statutes. You do not indicate who these "friends" of the city may be. In the absence of more information, this office cannot categorically conclude that the Facebook pages of such "friends" would be subject to Chapter 119; rather such a determination would depend on whether the information contained on such pages was made or received in connection of the transaction of official business by or on behalf of a public agency such as the city. In light of the above, the city, should it establish a Facebook page, may wish to post a warning regarding the application and implications of the Public Records Law.[7]

Question Two

Section 119.021(2)(a), Florida Statutes, requires the Division of Library and Information Services (division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules.[8] The division shall establish a time period for the retention or disposal of each series of records.[9]

Section 257.36(6), Florida Statutes, provides that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division." This office in

Attorney General Opinion 96-34, recognizing that the definition of "public records" is comprehensive and encompasses all such material regardless of its physical form or characteristics, stated that electronic public records such as e-mail messages are subject to the statutory limitations on destruction of public records. More recently, this office stated in Attorney General 08-07 that the public records on a website maintained by a city council member that related to the transaction of city business would appear to be subject to the city's policies and retention schedule regarding city records.

The General Records Schedule GS1-SL for State and Local Government Agencies states that "[a]ll Florida public agencies are eligible to use the GS1-SL, which provides retention periods for the most common administrative records such as routine correspondence and personnel, payroll, financial, and legal records."[10] Thus, to the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established by law.

Questions relating to the applicability of a retention schedule or retention of a specific record, however, should be referred to the Division of Library and Information Services in the Department of State.

Question Three

Article I, section 23, Florida Constitution, provides:

"Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

Therefore, while the Florida Constitution recognizes a right of privacy for Florida citizens in Article I, section 23, Florida Constitution, it also states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law." The Florida courts have determined that no federal or state right of privacy prevents access to public records.[11] It is the Legislature that has balanced the private versus public rights by creating the various exemptions from public disclosure.[12] Thus, in Florida, "neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency."[13]

While Article I, section 23, Florida Constitution, may be implicated in determining what information may be collected by the city,[14] to

the extent that information on the city's Facebook page constitutes a public record within the meaning of Chapter 119, Florida Statutes, Article I, section 23, Florida Constitution, is not implicated. As noted *supra,* the city may wish to post a notice on its Facebook page regarding the Public Records Law.

Question Four

Section 286.011, Florida Statutes, the Government in the Sunshine Law, has three basic requirements:

(1) meetings of public boards or commissions must be open to the public;
(2) reasonable notice of such meetings must be given; and
(3) minutes of the meetings must be taken and promptly recorded.

The law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.[15] The law extends to the discussions and deliberations as well as the formal action taken by a public board or commission, with no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes.

While the Sunshine Law generally applies to meetings of "two or more" members of the same board or commission,[16] the Florida Supreme Court has stated that the Sunshine Law is to be construed "so as to frustrate all evasive devices."[17] Thus, the courts and this office have found that there are instances where the physical presence of two or more members is not necessary in order to find the Sunshine Law applicable. Thus, this office has stated that members of a public board may not use computers to conduct a private discussion among themselves about board business.[18]

In Attorney General Opinion 08-07, this office concluded that the use of a website blog or message board to solicit comment from other members of the board or commission by their response on matters that would come before the board would trigger the requirements of the Sunshine Law. As stated therein:

"While there is no statutory prohibition against a city council member posting comments on a privately maintained electronic bulletin board or blog, . . . members of the board or commission must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action. The use of such an electronic means of posting one's comments and the inherent availability of other participants or contributors to act as liaisons would create an environment that could easily become a forum for members of a board or commission to

discuss official issues which should most appropriately be conducted at a public meeting in compliance with the Government in the Sunshine Law. It would be incumbent upon the commission members to avoid any action that could be construed as an attempt to evade the requirements of the law."

Such concerns would appear to be equally applicable to the issue at hand. While there would not appear to be a prohibition against a board or commission member posting comments on the city's Facebook page,[19] members of the board or commission must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

Accordingly, communications on the city's Facebook page regarding city business may be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes.

Sincerely,

Bill McCollum
Attorney General

BM/tjw

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[1] *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

[2] *Id. And see* Ops. Att'y Gen. Fla. 83-06 (1983) and 72-198 (1972) for the proposition that a municipality's home rule power is tempered by the basic proposition that municipal funds may be used only for a municipal purpose. *See also* Art. VII, s. 10, Fla. Const. (municipality prohibited from lending or using its taxing power or credit to aid private parties).

[3] *See, e.g.*, Ops. Att'y Gen. Fla. 88-52 (1988), 86-87 (1986), 84-76 (1984), and 83-05 (1983) (legislative determination and findings as to the purpose and the benefits accruing to the county from the program could not be delegated to the Attorney General, nor could the Attorney General undertake to make such legislative findings on behalf of the county).

[4] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

[5] *See* Op. Att'y Gen. Fla. 08-07 stating that an email created by a public official in connection with the transaction of official business is a public record whether it is created on a publicly or privately owned computer and concluding that the posting of comments relating to city business by a city commissioner on a web page which

he maintains would be subject to the Public Records Law.

[6] *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003).

[7] *Cf.* s. 668.6076, Fla. Stat., requiring any agency as defined in s. 119.011, Fla. Stat., or legislative entity that operates a website and uses electronic mail to post the following statement in a conspicuous location on its website:

"Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

[8] Section 119.021(2)(b), Fla. Stat. *And see* s. 119.021(2)(c), Fla. Stat., providing that public officials must "systematically dispose" of records no longer needed, subject to the consent of the division in accordance with s. 257.36, Fla. Stat.

[9] *Id.*

[10] The general retention schedules, including GS1-SL, are available at: http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm.

[11] *See, e.g., Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985) (no federal or state right of privacy prevents access to public records); *Forsberg v. Housing Authority of Miami Beach*, 455 So. 2d 373 (Fla. 1984); *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980) (no federal or state disclosural right of privacy prevents a member of the public from seeing public records); *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981).

[12] *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997). *Cf. Berkeley v. Eisen*, 699 So. 2d 789 (Fla. 4th DCA 1997) (although Art. I, s. 23, Fla. Const., recognizes that the right of privacy shall not be construed to limit the public's right of access to public records, there is a statutory exemption from Florida's public records disclosure where the Department of Banking and Financing is investigating or has concluded its investigation of a securities customer's complaint).

[13] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991), *appeal after remand*, 619 So. 2d 983 (Fla. 5th DCA 1993).

[14] *Cf. Thomas v. Smith*, 882 So. 2d 1037 (Fla. 2d DCA 2004), in which the appellant taxpayers had filed a timely application for ad valorem tax exemption, but refused to make the required disclosure

of their social security numbers. Their application was denied based on their refusal to make the required disclosure. Appellants argued that the required disclosure of their social security number in order to claim the exemption violated, among others, Art. I, s. 23, Fla. Const. The district court concluded that the lower court erred in concluding that the taxpayers had no legitimate expectation of privacy in their social security numbers; rather the court should first have determined whether the taxpayers had a legitimate expectation of privacy in their social security numbers without regard to other considerations such as the necessity to submit an application in order to obtain the benefit of the homestead tax exemption. The district court therefore remanded the case for further proceedings on this claim.

[15] *See, e.g., Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). *And see City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); and *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977).

[16] *Hough v. Stembridge, supra. And see City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989); *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988) (requisite to application of the Sunshine Law is a meeting between two or more public officials); and *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976).

[17] *See, e.g., Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979).

[18] Op. Att'y Gen. Fla. 89-39 (1989). *Compare* 01-20 (2001) (a one-way e-mail communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law; however, such e-mail communications are public records and must be maintained by the records custodian for public inspection and copying).

[19] *Cf.* Op. Att'y Gen. Fla. 07-35 (2007), concluding that members of a commission may exchange documents that they wish other members of the commission to consider on matters coming before the commission for official action, provided there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting. It was noted, however, that if the commissioners intended to exchange individual position papers on the same subject, this office would express the same concerns as discussed in Attorney General Opinion 01-21. In that opinion, this office was asked whether the preparation and distribution of individual position statements on the same subject by several city

council members to all other council members would constitute an interaction or exchange by the council that would be subject to the requirements of the Government in the Sunshine Law. This office determined that such a practice would violate the Sunshine Law to the extent that any such communication is a response to another council member's statement.

EXHIBIT 3

Select Year: 2016 Go

The 2016 Florida Statutes

Title X — PUBLIC OFFICERS, EMPLOYEES, AND RECORDS
Chapter 119 — PUBLIC RECORDS
View Entire Chapter

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not

dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by $8\frac{1}{2}$ inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to $1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

History.—s. 7, ch. 67-125; s. 4, ch. 75-225; s. 2, ch. 77-60; s. 2, ch. 77-75; s. 2, ch. 77-94; s. 2, ch. 77-156; s. 2, ch. 78-81; ss. 2, 4, 6, ch. 79-187; s. 2, ch. 80-273; s. 1, ch. 81-245; s. 1, ch. 82-95; s. 36, ch. 82-243; s. 6, ch. 83-215; s. 2, ch. 83-269; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-18; s. 1, ch. 85-45; s. 1, ch. 85-73; s. 1, ch. 85-86; s. 7, ch. 85-152; s. 1, ch. 85-177; s. 4, ch. 85-301; s. 2, ch. 86-11; s. 1, ch. 86-21; s. 1, ch. 86-109; s. 2, ch. 87-399; s. 2, ch. 88-188; s. 1, ch. 88-384; s. 1, ch. 89-29; s. 7, ch. 89-55; s. 1, ch. 89-80; s. 1, ch. 89-275; s. 2, ch. 89-283; s. 2, ch. 89-350; s. 1, ch. 89-531; s. 1, ch. 90-43; s. 63, ch. 90-136; s. 2, ch. 90-196; s. 4, ch. 90-211; s. 24, ch. 90-306; ss. 22, 26, ch. 90-344; s. 116, ch. 90-360; s. 78, ch. 91-45; s. 11, ch. 91-57; s. 1, ch. 91-71; s. 1, ch. 91-96; s. 1, ch. 91-130; s. 1, ch. 91-149; s. 1, ch. 91-219; s. 1, ch. 91-288; ss. 43, 45, ch. 92-58; s. 90, ch. 92-152; s. 59, ch. 92-289; s. 217, ch. 92-303; s. 1, ch. 93-87; s. 2, ch. 93-232; s. 3, ch. 93-404; s. 4, ch. 93-405; s. 4, ch. 94-73; s. 1, ch. 94-128; s. 3, ch. 94-130; s. 67, ch. 94-164; s. 1, ch. 94-176; s. 1419, ch. 95-147; ss. 1, 3, ch. 95-170; s. 4, ch. 95-207; s. 1, ch. 95-320; ss. 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, ch. 95-398; s. 1, ch. 95-399; s. 121, ch. 95-418; s. 3, ch. 96-178; s. 1, ch. 96-230; s. 5, ch. 96-268; s. 4, ch. 96-290; s. 41, ch. 96-406; s. 18, ch. 96-410; s. 1, ch. 97-185; s. 1, ch. 98-9; s. 7, ch. 98-137; s. 1, ch. 98-255; s. 1, ch. 98-259; s. 128, ch. 98-403; s. 2, ch. 99-201; s. 27, ch. 2000-164; s. 54, ch. 2000-349; s. 1, ch. 2001-87; s. 1, ch. 2001-108; s. 1, ch. 2001-249; s. 29, ch. 2001-261; s. 33, ch. 2001-266; s. 1, ch. 2001-364; s. 1, ch. 2002-67; ss. 1, 3, ch. 2002-257; s. 2, ch. 2002-391; s. 11, ch. 2003-1; s. 1, ch. 2003-100; ss. 1, 2, ch. 2003-110; s. 1, ch. 2003-137; ss. 1, 2, ch. 2003-157; ss. 1, 2, ch. 2004-9; ss. 1, 2, ch. 2004-32; ss. 1, 2, ch. 2004-62; ss. 1, 3, ch. 2004-95; s. 7, ch. 2004-335; ss. 2, 3, 4, 5, 6, 7, 8, 9, 11,

12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, ch. 2005-251; s. 74, ch. 2005-277; s. 1, ch. 2007-39; ss. 2, 4, ch. 2007-251.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Miami-Dade County v. Professional Law Enforcement Ass'n, Fla.App. 3 Dist., January 14, 2009

863 So.2d 149
Supreme Court of Florida.

STATE of Florida, Petitioner,
v.
CITY OF CLEARWATER, Respondent.
Times Publishing Company, Petitioner,
v.
City of Clearwater, Respondent.

Nos. SC02–1694, SC02–1753.
|
Sept. 11, 2003.

Newspaper petitioned for mandamus and permanent injunctive relief, seeking order compelling city to release all e-mail sent from or received by two city employees who used government-owned computers for communication. The Circuit Court, Pinellas County, Anthony Rondolino, J., denied petition. Newspaper appealed. The Second District Court of Appeal, 830 So.2d 844, affirmed and certified the question as one of great public importance. The Supreme Court, Pariente, J., held that personal e-mails did not fall within the definition of public records subject to disclosure by virtue of their placement on a government-owned computer system.

Approved.

West Headnotes (7)

[1] **Records**
Judicial enforcement in general

The determination of what constitutes a public record is a question of law entitled to de novo review.

6 Cases that cite this headnote

[2] **Statutes**
Plain Language;Plain, Ordinary, or Common Meaning

In construing a statute, courts look first to the statute's plain meaning.

Cases that cite this headnote

[3] **Records**
Court records

Judicial records subject to public disclosure are limited to those made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business. West's F.S.A. R.Jud.Admin.Rule 2.051(b)(1)(A, B).

1 Cases that cite this headnote

[4] **Records**
Matters Subject to Disclosure; Exemptions

The determining factor of whether a document is a public record subject to disclosure is the nature of the record, not its physical location. West's F.S.A. Const. Art. 1, § 24; West's F.S.A. § 119.011(1).

7 Cases that cite this headnote

[5] **Records**
Matters Subject to Disclosure; Exemptions

City's policy that its computer resources were city property and that users had no expectation of privacy did not expand the definition of public records subject to disclosure to include personal e-mail communication between city employees on city-owned computers. West's F.S.A. Const. Art. 1, § 24; West's F.S.A. § 119.011(1).

4 Cases that cite this headnote

[6] **Records**
Matters Subject to Disclosure; Exemptions

E-mail system's automatic creation of a header for each article of correspondence generated or received on a city computer did not make individual headers or attached e-

mails public records subject to disclosure, regardless of their content or intended purpose, absent any evidence that headers were prepared with the intent to perpetuate, communicate, or formalize knowledge of some type. West's F.S.A. Const. Art. 1, § 24; West's F.S.A. § 119.011(1).

5 Cases that cite this headnote

[7] **Records**
Matters Subject to Disclosure; Exemptions

Personal e-mails are not "made or received pursuant to law or ordinance or in connection with the transaction of official business" and, therefore, do not fall within the definition of "public records" that are subject to disclosure by virtue of their placement on a government-owned computer system. West's F.S.A. § 119.011.

13 Cases that cite this headnote

Attorneys and Law Firms

***150** Christopher M. Kise, Solicitor General, and Louis F. Hubener, Chief Deputy Solicitor General, Tallahassee, Florida; and David F. Chester, Assistant Attorney General, on behalf of Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, for Petitioner, State of Florida.

Pamela K. Akin, City Attorney, and Leslie K. Dougall Sides, Assistant City Attorney, Clearwater, Florida, for Respondent, City of Clearwater.

Carole Sanzeri, Senior Assistant County Attorney, and Michael A. Zas, Senior Assistant County Attorney, Clearwater, Florida, Amicus Curiae, Pinellas County on behalf of Florida Association of County Attorneys.

George K. Rahdert, Alison M. Steele, Penelope T. Bryan, and Thomas E. Reynolds of Rahdert, Steele, Bryan & Bole, P.A., St. Petersburg, Florida, for Petitioners, Times Publishing Company.

Opinion

PARIENTE, J.

We have for review a decision of the Second District Court of Appeal, which certified the following question of great public importance:

> WHETHER ALL E-MAILS TRANSMITTED OR RECEIVED BY PUBLIC EMPLOYEES OF A GOVERNMENT AGENCY ARE PUBLIC RECORDS PURSUANT TO SECTION 119.011(1), FLORIDA STATUTES (2000), AND ARTICLE I, SECTION 24(A), OF THE FLORIDA CONSTITUTION BY VIRTUE OF THEIR PLACEMENT ON A GOVERNMENT-OWNED COMPUTER SYSTEM IF THE AGENCY HAS A WRITTEN POLICY THAT INFORMS THE EMPLOYEES THAT THE AGENCY MAINTAINS A RIGHT TO CUSTODY, CONTROL AND INSPECTION OF E-MAILS?

Times Publishing Co. v. City of Clearwater, 830 So.2d 844, 848-49 (Fla. 2d DCA 2002). We have jurisdiction, *see* art. V, § 3(b)(4), Fla. Const, and rephrase the certified question as follows:

> WHETHER ALL E-MAILS TRANSMITTED OR RECEIVED BY PUBLIC EMPLOYEES OF A GOVERNMENT AGENCY ARE PUBLIC RECORDS PURSUANT TO SECTION 119.011(1), FLORIDA STATUTES (2000), AND ARTICLE I, SECTION 24(A) OF THE FLORIDA CONSTITUTION BY VIRTUE OF THEIR PLACEMENT ON A GOVERNMENT-OWNED COMPUTER SYSTEM.

For the reasons stated below, we answer the rephrased question in the negative and approve the Second District's decision.

FACTS

The facts of this case are straightforward. In October 2000, a Times Publishing Company reporter requested that the City of Clearwater provide copies of all e-mails either sent from or received by two city employees over the City's computer network between October 1, 1999, and October 6, 2000. Pursuant to the City's procedures, the employees reviewed their e-mails and sorted them into two categories, personal and public. No one else reviewed ***151** the e-mails deemed by the employees to be personal. The City copied the public e-mails and provided them to Times Publishing.

Times Publishing filed an action in the circuit court to obtain the e-mails the employees had designated as private. Times Publishing asserted that it was entitled to all the e-mails generated by and stored on the City's computers. The circuit court granted Times Publishing's request for a temporary injunction and ordered the City to "make every reasonable effort to retrieve, preserve and secure from destruction" all e-mails sent or received by the employees in question between October 1, 1999, and October 6, 2000.

After a final hearing at which three of the City's employees testified, the trial court issued a detailed and thorough order denying Times Publishing's request for a writ of mandamus and permanent injunctive relief. The Second District affirmed the trial court's order without prejudice to Times Publishing seeking an *in camera* review of the disputed e-mails. *See Times Publishing,* 830 So.2d at 848. The Second District concluded that "private" or "personal" e-mails fall outside the current definition of public records because they are neither "made or received pursuant to law or ordinance" nor "created or received 'in connection with official business' of the City or 'in connection with the transaction of official business' by the City." *Id.* at 847. Because its decision affects how every state agency and municipality maintains its electronic records and the public's access to those records, the Second District certified the question of great public importance to this Court. *See id.* at 848–49. [1]

ANALYSIS

[1] This case involves the narrow legal issue of whether personal e-mails are considered public records by virtue of their placement on a government-owned computer system. [2] "The determination of what constitutes a public record is a question of law entitled to de novo review." *Media Gen. Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit,* 840 So.2d 1008, 1013 (Fla.2003).

Times Publishing argues that the placement of e-mails on the City's computer system makes the e-mails public records, regardless of their content or intended purpose. The State contends that the headers created by e-mails when they are sent are akin to phone records or mail logs, which the State asserts are clearly public records. We conclude that both of these arguments are without merit.

Access to public records is currently guaranteed by article I, section 24 of the Florida Constitution, and chapter 119 Florida Statutes (2002). Article I, section 24 provides in pertinent part:

> (a) Every person has the right to inspect or copy any *public record made or received in connection with the official business* of any public body, officer, or employee of the state, or persons acting ***152** on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive and judicial branches of government....

(Emphasis supplied.) Chapter 119 defines public records as

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, *made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.*

§ 119.011(1), Fla. Stat. (2002) (emphasis supplied). Thus, both article I, section 24 and chapter 119 specify that public records are those records that are in some way connected to "official business."

A review of the history of Florida's public records law indicates that the connection between public records and official business was established well before the Legislature enacted the first public records statute. In *Bell v. Kendrick*, 25 Fla. 778, 6 So. 868 (1889), this Court considered whether evidence of a certificate of a deed was admissible in an action for ejectment when the deed was lost and had never been recorded. The Court noted that records kept by persons in public office are generally admissible, and explained:

> [W]henever a written record of the transactions of a public officer is a convenient and appropriate mode of *discharging the duties of his office, it is not only his right, but his duty, to keep that written memorial,* ... and, when kept, it becomes a public document—a public record—belonging to the office, and not to the officer.

Id. at 869 (emphasis supplied). The Court concluded that because "[i]t was clearly the duty of the register of state lands to keep in his office a register of sales and conveyances of land," a certified transcript of these entries was admissible as evidence of the execution of the conveyance. *Id.* at 870.

Twenty years after *Bell*, the Legislature enacted Florida's first public records statute, which mandated that "all State, county and municipal records" be open "for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen." Ch. 5942, Laws of Fla. (1909). The statute did not provide a definition of public records and this Court continued to apply the "discharge of duty" analysis established in *Bell*. *See Amos v. Gunn*, 84 Fla. 285, 94 So. 615, 634 (1922) ("A public record is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done.").

In 1967 the Legislature first defined the term "public records":

> "Public Records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, *made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.*

Ch. 67–125, § 1(a) at 254, Laws of Fla. (emphasis supplied). This definition, codified in section 119.011(1), has remained essentially unchanged. The most significant change to section 119.011(1) occurred in 1995 when the Legislature amended the definition of "public records" to include "data processing software" and information regardless of "means of transmission." *See* ch. 95–296, § 6 at 2727, Laws of Fla. Thus, electronic documents stored in a ***153** computer can be public records provided they are "made or received pursuant to law or ordinance or in connection with the transaction of official business." § 119.011(1), Fla. Stat. (2002).

[2] "In construing a statute, we look first to the statute's plain meaning." *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So.2d 898, 900 (Fla.1996). Based on the plain language of section 119.011(1), we agree with the Second District's conclusion that "private" or "personal" e-mails "simply fall[] outside the current definition of public records." *Times Publishing*, 830 So.2d at 847. As the Second District explained:

> Such e-mail is not "made or received pursuant to law or ordinance." Likewise, such e-mail by definition is not created or received "in connection with the official business" of the City or "in connection with the transaction of official business" by the City. Although digital in nature, there is little to distinguish such e-mail from personal letters delivered to government workers via a government post office box and stored in a government-owned desk.

Id. This conclusion is supported by this Court's decision in *In re Amendments to Rule of Judicial Administration 2.051—Public Access to Judicial Records*, 651 So.2d 1185 (Fla.1995), in which we discussed the public's right of access to the judicial branch's official business e-mail:

> Official business e-mail transmissions must be treated just like any other type of official communication received and filed by the judicial branch.... *E-mail may include transmissions that are clearly not official business and are, consequently, not required to be recorded as a public record.*

Id. at 1187 (emphasis supplied).

[3] Although public access to records of the judicial branch is governed by court rule rather than by chapter 119,[3] we recently acknowledged that the definition of "judicial records" contained in Florida Rule of Judicial Administration 2.051 "is virtually identical to the legislative definition of 'public records' contained in section 119.011(1) ... insofar as section 119.011(1) defines 'public records' as 'all documents ... *made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.*' " *Media Gen. Convergence,* 840 So.2d at 1014. Thus, this Court's determination that judicial e-mails that are not made or received in connection with official business are not required to be recorded as public records also applies to agency e-mails governed by chapter 119.[4]

***154** Further, Times Publishing's argument that the placement of e-mails on the City's computer network automatically makes them public records is contrary to this Court's decision in *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633 (Fla.1980). In *Shevin,* this Court rejected the First District's conclusion that "section 119.011(1) applies to almost everything generated or received by a public agency." *Id.* at 640. Although this Court acknowledged that the Legislature broadened the class of public records in enacting section 119.011(1), this Court concluded that the definition of the term "public records" limited "public information to those materials which constitute *records*—that is, materials that have been prepared *with the intent* of perpetuating or formalizing knowledge." *Id.* (second emphasis supplied). Thus, it cannot merely be the placement of the e-mails on the City's computer system that makes the e-mails public records. Rather, the e-mails must have been prepared "in connection with official agency business" and be "intended to perpetuate, communicate, or formalize knowledge of some type." *Id.*

[4] We agree with the trial court's observation that "[c]ommon sense ... opposes a mere possession rule." The trial court explained:

> This court noted several times during hearings on this case the absurd consequences of such an application of the law. If the Attorney General brings his household bills to the office to work on during lunch, do they become public record if he temporarily puts them in his desk drawer? If a Senator writes a note to herself while speaking with her husband on the phone does it become public record because she used a state note pad and pen? The Sheriff's secretary, proud of her children, brings her Mother's Day cards to the office to show her friends. Do they become public records if she keeps them in the filing cabinet?

Times Publishing Co. v. City of Clearwater, No. 00–8232–CI–13 at 10 (6th Cir Ct. order filed May 21, 2001). Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of "public records," *see Wisner v. City of Tampa Police Dep't,* 601 So.2d 296, 298 (Fla. 2d DCA 1992), private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer. The determining factor is the nature of the record, not its physical location.

[5] Moreover, we agree with the City that its "Computer Resources Use Policy," which states that the City's computer resources are the property of the City and that users have no expectation of privacy, cannot be construed as expanding the constitutional or statutory definition of public records to include "personal" documents. Times Publishing conceded at oral argument that its position —that all e-mails on the City's computer should be considered public record—does not hinge on the City's Computer Resources Use Policy. Further, as noted by the Second District, "[a]lthough the City's policy may

prevent the employees from asserting a privacy right to contest disclosure, the policy did not and could not alter the statutory definition of public records for purposes of chapter 119." *Times Publishing*, 830 So.2d at 846. *Cf. Tribune Co. v. Cannella*, 458 So.2d 1075, 1077 (Fla.1984) (stating ***155** that it is a "fundamental principle that a municipality may not act in an area preempted by the legislature" and holding that the Public Records Act preempted the City of Tampa's regulation that delayed the production of requested personnel records).

[6] Finally, we disagree with the narrower view asserted by the Attorney General that the creation of an e-mail "header" makes all e-mails, regardless of their content or intended purpose, public records. Relying on the Department of State's public records retention schedule, the Attorney General describes the header information of an e-mail as "including all date/time stamps, routing information, etc." [5] The Attorney General asserts that the e-mail system's creation of this header information distinguishes e-mails from paper documents and makes all e-mails generated on or received by a City computer subject to disclosure under chapter 119. The Attorney General supports this assertion by comparing the creation of e-mail headers to the creation of mail logs or phone records, which the Attorney General maintains are clearly public records even if they contain information that is personal.

Assuming *arguendo* that an agency's mail logs or phone records are public records, [6] we cannot equate the automatic creation of a header for each article of correspondence by an e-mail program with a log. The Attorney General contends that the only difference between phone records or traditional mail logs and the e-mail header information is that traditional logs are contained as one single document, not as multiple, independent entries. We conclude that this is an essential difference.

In this case, there is no evidence in the record that the City maintains or generates, in its normal course of operations, a list of e-mail headers created by its employees' use of the computer network. The fact that mail logs and phone records are *purposely compiled and maintained* by an agency distinguishes them from e-mail headers, which are by-products of the employee's use of the agency's e-mail system, and are neither *purposely* compiled nor maintained in the course of an agency's operations. Simply stated, e-mail headers are not "prepared" with the intent to "perpetuate, communicate, or formalize knowledge of some type." *Shevin*, 379 So.2d at 640. Therefore, neither the individual header nor the attached e-mail is a "public record" subject to disclosure under chapter 119.

[7] Based on the foregoing, we conclude that "personal" e-mails are not "made or received pursuant to law or ordinance or in connection with the transaction of official business" and, therefore, do not fall within the definition of public records in section 119.011(1) by virtue of their placement on a government-owned computer system. Accordingly, we answer the rephrased question in the negative and approve the Second District's decision. [7]

It is so ordered.

***156** ANSTEAD, C.J., and WELLS, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.

All Citations

863 So.2d 149, 149 Lab.Cas. P 59,783, 20 IER Cases 641, 28 Fla. L. Weekly S682, 31 Media L. Rep. 2240

Footnotes

1 After the Second District released its initial decision in this case, the State, through the Attorney General, filed a motion to intervene in support of Times Publishing's motion for certification of a question of great public importance. The Second District withdrew its initial decision and reissued its opinion, granting the Attorney General's motion and certifying the question of great public importance to this Court.

2 As noted by the Second District, this case does not involve: (1) "e-mail[s] that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers"; (2) "a balancing of the public's interest in open public records and an individual's right to privacy"; or (3) "an in camera inspection of records." *Times Publishing*, 830 So.2d at 845–46.

3 Chapter 119 applies only to "agency" records. "Agency" is defined as:

> [A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

§ 119.011(2), Fla. Stat. (2002).

4 In *Report of the Supreme Court Workgroup on Public Records,* 825 So.2d 889, 896 (Fla.2002), the Court amended rule 2.051, replacing the term "judicial records" with the term "records of the judicial branch," which includes both "court records" and "administrative records." "Records of the judicial branch" are defined as "all records, regardless of physical form, characteristics, or means of transmission, *made or received in connection with the transaction of official business* by any judicial branch entity." Fla. R. Jud. Admin. 2.051(b)(1) (emphasis supplied). "Court records" are the contents of the court file and "administrative records" are "all other records *made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business* by any judicial entity." Fla. R. Jud. Admin 2.051(b)(1)(A)-(B) (emphasis supplied). Thus, judicial records subject to public disclosure are still limited to those "made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business."

5 *See* Division of Library and Information Services, Department of State, *General Records Schedule GS1–L for Local Government Agencies* ii (2001) *available at* http:// dlis.dos.state.fl.us/barm/genschedules/gensched.htm.

6 *Compare* Op. Att'y Gen. Fla. 99–74 (1999) (advising a school board that its phone records were public records even if the calls indicated were personal and paid for by the employee) *with Media Gen. Operation, Inc. v. Feeney,* 849 So.2d 3, 6 (Fla. 1st DCA 2003) (holding that records of personal phone calls made by staff employees of the House of Representatives "fall outside the current definition of public records and were properly redacted").

7 We decline to address the remaining issue raised by the parties because it is beyond the scope of the certified question. *See Crocker v. Pleasant,* 778 So.2d 978, 990–91 (Fla.2001).

End of Document

Florida Attorney General
Advisory Legal Opinion

Number: INFORMAL
Date: June 1, 2016
Subject: Public Records -- Twitter

Ms. Nicolle Shalley, City Attorney
City of Gainesville
Office of the City Attorney
Post Office Box 490, Station 46
Gainesville, Florida 32627

Dear Ms. Shalley:

On behalf of the City of Gainesville and its elected officials, you have requested assistance in determining whether a list or record of accounts which have been blocked from posting to or accessing an elected official's personal Twitter feed is a public record as defined in section 119.011(12), Florida Statutes, and therefore subject to public inspection and copying. Attorney General Bondi has asked me to respond to your letter.

In the absence of a statutory exemption, Florida's Public Records Law provides a right of access that applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate, or formalize knowledge.[1] However, the question presented in your request involves mixed questions of law and fact that this office cannot resolve.

A determination of whether the list of blocked accounts is a public record requires resolution of the question of whether the "tweets" which resulted in the blocked accounts, were public records. If the "tweets" the public official is sending are public records, then a list of blocked accounts, prepared in connection with those public records "tweets," could well be determined by a court to be a public record.

Several recent public records cases may be helpful to you and to the public official involved in determining whether these records are public records within the scope of Florida's Public Records Law. See, e.g., Butler v. City of Hallandale Beach, 68 So. 3d 278 (Fla. 4th DCA 2011), *rehearing denied* (personal email sent by the mayor was not sent in connection with the discharge of any municipal duty and therefore was not a public record under Chapter 119); and *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003) (private documents stored in government computers cannot be deemed public records solely by virtue of their placement on an agency-owned computer).

I trust that these informal comments will be helpful to you in advising your client.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

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[1] *See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assoc., Inc.*, 379 So. 2d 633 at 640 (Fla. 1980).

EXHIBIT 4

Select Year: 2016 Go

The 2016 Florida Statutes

Title X
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

Chapter 112
PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

View Entire Chapter

112.3143 Voting conflicts.—

(1) As used in this section:

(a) "Principal by whom retained" means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer.

(b) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(c) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(d) "Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

(2)(a) A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss. Any state public officer who abstains from voting in an official capacity upon any measure that the officer knows would inure to the officer's special private gain or loss, or who votes in an official capacity on a measure that he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained other than an agency as defined in s. 112.312(2); or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, shall make every reasonable effort to 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. If it is not possible for the state public

officer to file a memorandum before the vote, the memorandum must be filed with the person responsible for recording the minutes of the meeting no later than 15 days after the vote.

(b) A member of the Legislature may satisfy the disclosure requirements of this section by filing a disclosure form created pursuant to the rules of the member's respective house if the member discloses the information required by this subsection.

(3)(a) 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, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the 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.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer 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; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

(6) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.—s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2; s. 6, ch. 2013-36.

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 ❑ OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: ❑ ELECTIVE ❑ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I,_____, hereby disclose that on_____, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____ ;

___ inured to the special gain or loss of my relative,_____ ;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____ , which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

_____ _____

Date Filed Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

ATTESTATION REGARDING IMMEDIATE FAMILY MEMBER OF ELECTED OFFICIAL SEEKING TO DO BUSINESS WITH ELECTED OFFICIAL'S GOVERNMENT ENTITY

Name of immediate family member conducting business with Elected Official's government entity: _____

Government entity served by undersigned:_____

I attest that I do not share a primary residence with the above-named person. I further attest that the above-named person is not listed as a dependent on my most recently filed federal tax return and that I am not listed as a dependent on that person's most recently filed federal tax return.

Signature of Elected Official:_____

Date:_____

EXHIBIT 5

Select Year: 2016 Go

The 2016 Florida Statutes

Title X	Chapter 112	View Entire Chapter
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS	

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(1) DEFINITION.—As used in this section, unless the context otherwise requires, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) SOLICITATION OR ACCEPTANCE OF GIFTS.—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, 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.

(3) DOING BUSINESS WITH ONE'S AGENCY.—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. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

(a) October 1, 1975.

(b) Qualification for elective office.

(c) Appointment to public office.

(d) Beginning public employment.

(4) UNAUTHORIZED COMPENSATION.—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.

(5) SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) MISUSE OF PUBLIC POSITION.—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.

(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, 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.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) 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.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—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.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 2 years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in s. 112.3215.

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in s. 112.317 and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

a. A person employed by the Legislature or other agency prior to July 1, 1989;

b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;

c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;

d. A person who has reached normal retirement age as defined in s. 121.021(29), and who has retired under the provisions of chapter 121 by July 1, 1991; or

e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to 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. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The 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;

2. The official or the official's 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 such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of

the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.

(f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed $500 per calendar year.

(g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.

(h) The transaction is made pursuant to s. 1004.22 or s. 1004.23 and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.

(i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:

1. The price and terms of the transaction are available to similarly situated members of the general public; and

2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person

or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The "government body or agency" of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The "government body or agency" of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The "government body or agency" of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The "government body or agency" of an elected special district officer is the special district.

(e) The "government body or agency" of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer's agency and:

(a) The officer's employment is not directly or indirectly compensated as a result of such contract or business relationship;

(b) The officer has in no way participated in the agency's decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c) The officer abstains from voting on any matter which may come before the agency involving the officer's employer, publicly states to the assembly the nature of the officer's interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s. 112.3143.

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, "local government attorney" means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, "unit of local government" includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney's law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. 11.045.

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34; s. 3, ch. 2013-36.

Sec. 1-19. - Code of ethics for elected officials.

(a)

Statement of Policy. It is the policy of Broward County that the Board of County Commissioners work for the benefit of the citizens of the County and elected officials of municipalities work for the benefit of the citizens of their respective municipalities. County Commissioners and elected municipal officials shall not receive any personal economic or financial benefit resulting from their service on their local governing bodies beyond legally authorized direct compensation. It is the responsibility of each County Commissioner and elected municipal official to act in a manner that promotes public trust and confidence in government with complete transparency and honesty in their services, and to avoid even the appearance or perception of impropriety.

(b)

Definitions. For purposes of this Elected Official Code of Ethics:

(1)

" Contractor " means any person or entity currently under contract with the applicable local governmental entity.

(2)

" Covered Individual " means (i) any member of the Board of County Commissioners; (ii) any member of a governing body of any municipality within Broward County; and (iii) any municipal mayor. For purposes of the prohibition on lobbying under section (c)(2) below, "Covered Individual" also includes (i) any member of a final decision-making body under the jurisdiction of the Board of County Commissioners or under the jurisdiction of the governing body of any municipality within Broward County; (ii) any individual directly appointed to a County or municipal employment position by the Board of County Commissioners, by a governing body of any municipality within Broward County, or by a municipal mayor; (iii) any individual serving on a contractual basis as a municipality's chief legal counsel or chief administrative officer, when such individual is acting in his or her official capacity; (iv) any member of a selection, evaluation, or procurement committee that ranks or makes recommendations to any final decision-making authority regarding a County or municipal procurement; (v) any employee, any official, or any member of a committee of Broward County or of any municipality within Broward County that has authority to make a final decision regarding a public procurement; (vi) the head of any department, division, or office of Broward County or of any municipal government who makes final recommendations to a final decision-making authority regarding items that will be decided by the final decision-making authority; and (vii) members of other local governmental entities within Broward County, including taxing authorities, quasi-judicial boards, appointed boards, and commissions.

(3)

" Elected Official " means any member of the Board of County Commissioners and any Municipal Official as defined below.

(4)

" Filed for Public Inspection " means either (a) that the form is completed legibly and is filed with the applicable governmental entity's chief administrative official or clerk, with a copy of the form or all information contained thereon subsequently inputted into the applicable governmental entity's database, which database shall be searchable by internet; or (b) all required information, including an input date and electronic signature, is directly inputted into the database, which database is searchable by internet. For any municipality that does not maintain a website sufficient to meet the requirements of this paragraph, the form or information may be inputted into a database maintained by the Broward League of Cities, provided that database is searchable by internet.

(5)

" Final Decision-Making Authority " means (i) the Board of County Commissioners; (ii) the governing body of any municipality within Broward County; (iii) municipal mayors; (iv) final decision-making bodies under the jurisdiction of the Board of County Commissioners or under the jurisdiction of the governing body of any municipality within Broward County; and (v) any employee, official, or committee of Broward County or of any municipality within Broward County that has authority to make a final decision to select a vendor or provider in connection with a public procurement. For purposes of the prohibition of lobbying under section (c)(2) below, "Final Decision-Making Authority" also includes other local governmental entities within Broward County, including taxing authorities, quasi-judicial boards, appointed boards, and commissions.

(6)

" Immediate Family Member " means a parent, spouse, child, sibling, or registered domestic partner.

(7)

" Lobby ," " Lobbying ," or " Lobbying Activities " means a communication, by any means, from a lobbyist to a covered individual regarding any item that will foreseeably be decided by a final decision-making authority, which communication seeks to influence, convince, or persuade the covered individual to support or oppose the item. "Lobbying" does not include communications:

a.

Made on the record at a duly-noticed public meeting or hearing; or

b.

From an attorney to an attorney representing Broward County or any municipality within Broward County regarding a pending or imminent judicial or adversarial administrative proceeding against Broward County or against any municipality within Broward County.

(8)

" Lobbyist " means a person who is retained, with or without compensation, for the purpose of lobbying, or a person who is employed by another person or entity, on a full-time or part-time basis, principally to lobby on behalf of that other person or entity. "Lobbyist" does not include a person who is:

a.

An Elected Official, employee, or appointee of Broward County or of any municipality within Broward County communicating in his or her official capacity;

b.

An individual who communicates on his or her own behalf, or on behalf of a person or entity employing the individual on a full-time or part-time basis, unless the individual is principally employed by that person or entity to lobby;

c.

Any employee, officer, or board member of a homeowners' association, condominium association, or neighborhood association when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members; or

d.

Any employee, an officer, or a board member of a nonprofit public interest entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue impacting a constituent of that entity.

(9)

" Municipal Official " means any individual serving as a member of the governing body of a municipality within Broward County or serving as a municipal mayor within Broward County.

(10)

" Outside or Concurrent Employment " means providing services for any person or entity, other than the Elected Official's governmental employer, in exchange for remuneration. For purposes of disclosing outside or concurrent employment and remuneration therefrom, the Elected Official's employer is the person or entity that pays the salary, wages, or other compensation, not the individual clients or customers of that person or entity.

(11)

" Relative " shall have the meaning stated in Section 112.3135, Florida Statutes.

12)(

"Remuneration " means the monetary payment received in return for services provided in connection with outside or concurrent employment, including salary, wages, commissions, tips, and bonuses (collectively, "wages"). "Remuneration" also includes (a) profit and other distributions received from a person or entity that has paid wages during the applicable disclosure period; and (b) direct employer contributions into retirement plans (including pensions, 401K, and deferred compensation plans). Notwithstanding anything to the contrary stated above, remuneration does not include gifts, business expense reimbursements, paid training (including travel incident thereto), direct employer contributions toward insurance and other employee benefits (other than retirement plan contributions), and return of capital or payment of interest related to a return of one's capital contribution.

(13)

" Vendor " means a person or entity that is currently supplying any goods or services to the applicable local governmental entity, that has supplied any goods or services to the applicable local governmental entity within the current or prior two (2) calendar years, or that has, by submitting a response to a currently-open competitive solicitation, expressed an interest in supplying any goods or services to the applicable governmental entity. Commencing January 1, 2017, "Vendor" shall also include a person or entity that submitted a response to a competitive solicitation during the current or prior two (2) calendar years.

All operative words or terms used in this Elected Official Code of Ethics but not defined herein shall be as defined, in order of priority in the event of inconsistency, by Part III of Chapter 112, Florida Statutes, the Broward County Code of Ordinances, and the Broward County Administrative Code.

(c)

Standards of Conduct. In addition to the provisions of Chapter 112, Part III, Florida Statutes, Code of Ethics for Public Officers and Employees; Chapters 838 and 839, Florida Statutes; Title 18, Chapter 63 of the United States Code; and Chapter 26, Article V of the Broward County Code of Ordinances, sec. 26-67 et seq., the following Standards of Conduct shall apply to each Elected Official.

(1)

Acceptance of Gifts.

a.

No Elected Official or relative, registered domestic partner, or governmental office staff of any Elected Official, shall accept any gift, directly or indirectly, with a value in excess of $5.00, from lobbyists registered with the governmental entity on whose behalf they (or their registered domestic partner or relative) serve, or from any principal or employer of any such registered lobbyist, or from vendors or contractors of such governmental entity. In order to effectuate this provision, no lobbyist shall engage in any lobbying activity prior to registering as a lobbyist with the applicable governmental entity. For purposes of this paragraph, neither Broward County, any municipality within Broward County, or any other governmental entity shall be considered a registered lobbyist, a principal or employer of a registered lobbyist, or a vendor or contractor of any governmental entity within Broward County.

b.

Elected Officials may accept gifts from other sources given to them in their official capacity, where not otherwise inconsistent with the provisions of Chapter 112, Part III, Florida Statutes, up to a maximum value of $50.00 per occurrence. Gifts given to an Elected Official in his or her official capacity up to $50.00 in value are deemed to be de minimis . A governmental entity giving a gift to its own Elected Official shall not be considered a gift from an "other source" for purposes of the $50.00 limitation.

c.

The $50.00 limitation does not apply to gifts given to Elected Officials in their personal (nonofficial) capacity. Such gifts are still subject to the reporting requirements of Section 112.3148, Florida Statutes.

d.

When not otherwise permitted by this part (c)(1), "Acceptance of Gifts," the following items may be accepted to the full extent permissible under state law:

1.

Items customarily given to express condolences or sympathy, such as flowers, food items, or cards, given to an Elected Official in connection with the death or significant injury or illness of the Elected Official or an immediate family member of the Elected Official;

2.

Training, including the payment or reimbursement of expenses incurred in connection therewith, provided the training relates to the Elected Official's public service. The receipt of such training is deemed to directly benefit the public on whose behalf the Elected Official serves;

3.

Nonalcoholic beverages; and

4.

Admission tickets to charitable events available to the public, provided that any Elected Official or governmental office staff of the Elected Official who receives such tickets shall:

a.

Within fifteen (15) days after receiving such tickets, files for public inspection a disclosure form stating the name of the donor, the value of the tickets received, and the date and location of the event; and

b.

Within thirty (30) days after the event, reimburses the donor for the value of the food and beverages consumed by the person(s) using the tickets.

(2)

Outside/Concurrent employment.

a.

Elected Officials shall not lobby any covered individual. Such lobbying is deemed to be in substantial conflict with the proper discharge of an Elected Official's duties in the public interest.

b.

Elected Officials may engage in other employment consistent with their public duties and where not otherwise inconsistent with the provisions of Chapter 112, Part III, Florida Statutes. All outside or concurrent employment by an Elected Official, including employment pursuant to contract, as well as any remuneration received from that employment, must be disclosed on a form created by the Office

of the County Attorney, which form shall provide the option of disclosing an exact remuneration amount or one (1) of the following amount ranges: Under $1,000; $1,001—$5,000; $5,001—$10,000; $10,001—$25,000; $25,001—$50,000; $50,000—$100,000; Over $100,000. Remuneration in the form of direct employer contributions into retirement plans may be disclosed in the reported exact remuneration amount or by checking the box on the applicable form indicating that such remuneration has been received. The disclosure of remuneration from outside or concurrent employment, if any, shall be done quarterly by County Commissioners and annually by Municipal Officials. The required disclosure form must be filed for public inspection within thirty (30) days after the end of each calendar quarter for County Commissioners, and, for Municipal Officials, must be filed by July 1 of the year after the calendar year in which the outside or concurrent employment occurred.

c.

No immediate family member or County or municipal office staff of an Elected Official shall lobby any covered individual or, except as permitted in the sentence immediately below, conduct business as a vendor or contractor with the local governmental entity served by the Elected Official. An immediate family member of an Elected Official may conduct business as a vendor or contractor with the local governmental entity served by the Elected Official where such activity is permissible under state law, provided that the Elected Official attests in writing, on a form filed for public inspection within fifteen (15) days after such attestation, that such immediate family member and the Elected Official do not share a primary residence, the immediate family member is not listed as a dependent on the Elected Official's most recently filed federal tax return, and that the Elected Official is not listed as a dependent on the immediate family member's most recently filed federal tax return. Any conduct of business as a vendor or contractor in violation of this paragraph shall be deemed to provide a prohibited financial benefit to the Elected Official.

(3)

Lobbyists.

a.

Elected Officials should avoid even the appearance of impropriety in their interaction and dealings with lobbyists registered under their local governmental entity's lobbyist registration system and with the principals or employers of such lobbyists.

b.

The changes to this section (c)(3) shall take effect April 1, 2016. To promote full and complete transparency, lobbyists who lobby an Elected Official must, contemporaneously with the lobbying activity or as soon thereafter as is practicable (but in any event within three (3) business days after the lobbying activity occurs), legibly complete a contact log which contains the following information:

1.

The lobbyist's name;

2.

The name of the entity by which the lobbyist is employed;

3.

The name of the person or entity for whom or which the lobbyist is lobbying;

4.

The name of each Elected Official lobbied by the lobbyist;

5.

The name of each person attending or participating in any portion of the meeting or communication during which the lobbying activity occurred;

6.

The date and time of the meeting or other communication during which the lobbying activity occurred;

7.

The location of the meeting and mode of communication, as applicable (e.g., in person, by telephone, by email exchange); and

8.

The specific subject matter discussed in such meeting or communication.

c.

The obligation to complete the contact log referenced in paragraph (b) above applies regardless of the location of the lobbying activity and applies whether the activity occurs in person, by telephone, by electronic communication, by video conference, or in writing.

d.

The contact log referenced in paragraph (b) above shall be filed for public inspection.

e.

By April 1, 2016, the County and each municipality covered by this code shall create and maintain an online contact log system accessible by registered lobbyists. In lieu of creating and maintaining its own online contact log system, any municipality may utilize any such system maintained by the Broward League of Cities, provided such municipality provides a link to such system on the municipality's website. For any municipality that fails to create an online contact log system by April 1, 2016, or fails to maintain the system thereafter, and further fails to use, by April 1, 2016, any such system maintained by the Broward League of Cities, any lobbyist disclosure required by this section (c)(3) shall be required to be filed by the lobbied Elected Official.

(4)

Honest Services.

a.

An Elected Official may not engage in a scheme or artifice to deprive another of the material intangible right of honest services or any activity in contravention of his or her duty to provide loyal service and honest governance for the residents of the governmental entity that he or she serves.

b.

This section shall be construed, to the extent possible, in accordance with the standards and intent set forth under 18 U.S.C. § 1346, as may be amended, and Chapter 838, Florida Statutes.

(5)

Solicitation and Receipt of Contributions.

a.

Charitable Contribution Fundraising.

1.

The solicitation of funds by an Elected Official for a nonprofit charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect benefit between the parties to the solicitation.

2.

To promote the full and complete transparency of any such solicitation, an Elected Official shall disclose, on a form created by the Office of the County Attorney, the name of the charitable organization, the event for which the funds were solicited, and the name of any individual or entity that requested that the Elected Official engage in the charitable fundraising solicitation. The form shall be filed for public inspection within fifteen (15) days after the solicitation of funds by the Elected Official.

3.

An Elected Official may not use staff or other resources of his or her governmental entity in the solicitation of charitable contributions.

4.

The requirements and prohibitions of this subpart shall not apply to actions of an Elected Official in connection with charities or fundraising events formally approved by the official's governmental entity.

5.

Salary received by a Municipal Official from a nonprofit charitable organization employing the Municipal Official shall not be considered a quid pro quo or other special consideration for purposes of paragraph 1 above. Additionally, the disclosure requirement contained in paragraph 2 above shall

not apply to Municipal Officials who are employed by a nonprofit charitable organization when soliciting charitable contributions on behalf of that organization.

b.

Campaign Contribution Fundraising.

1.

It is the intent of this code to promote the full and complete transparency of campaign contributions received by Elected Officials, consistent with the disclosure requirements provided by state statute.

2.

Any campaign finance disclosure that an Elected Official must submit to the Supervisor of Elections, or to the appropriate municipal election official, in accordance with the provisions of Chapter 106, Florida Statutes, shall, contemporaneously, be filed for public inspection. Where such disclosure forms are inputted into a separately maintained searchable-by-internet public database, the "filed for public inspection" requirement shall be deemed met by providing a link to that separate database on the governmental website on which the other disclosure forms filed by Elected Officials of that governmental entity may be accessed.

3.

Elected Officials who solicit campaign contributions for other candidates for public office shall disclose, on a form created by the Office of the County Attorney, the name of the candidate for whom they are soliciting, the location and date of any associated event, and both the name and contribution amounts of any individual who provided contributions, directly or indirectly, to the Elected Officials for subsequent delivery to the candidate. The form shall be filed for public inspection within fifteen (15) days after the solicitation of funds by the Elected Officials.

4.

An Elected Official may not use any staff or other resources of his or her governmental entity in the solicitation or receipt of campaign contributions.

5.

Campaign or political contributions may not be made, solicited, or accepted in any government-owned building.

c.

The Board of County Commissioners shall be prohibited from waiving the provisions of Section 18.63 of the Broward County Administrative Code as it pertains to the County's acceptance of donations.

(6)

Procurement Selection Committees.

a.

It shall be a conflict of interest for any Elected Official to serve as a voting member of a Selection/Evaluation Committee in connection with any prospective procurement by the Elected Official's governmental entity. Elected Officials shall not be included as members on any Selection/Evaluation Committee and shall not participate or interfere in any manner at Committee meetings or in the selection of Committee members, which members shall be appointed by the County Administrator or appropriate municipal staff, as relevant. Upon the completion of the selection process by the Committee, Elected Officials may inquire into any and all aspects of the selection process and express any concerns they may have to their Purchasing Director or, where applicable, other employee with responsibility to oversee the procurement process.

b.

The prohibitions stated in the preceding paragraph shall not apply to strong mayors with a charter-prescribed strong mayor form of government or to Elected Officials who, under their charter, are required to participate in the procurement process in a manner that would be inconsistent with such prohibitions. The prohibitions stated in the preceding paragraph shall also not apply to the hiring (or contractual procurement, in lieu of hiring) of individuals who report directly to a local governing body. Additionally, the prohibitions stated in the preceding paragraph shall not be interpreted as prohibiting any Elected Official from attending any Selection/Evaluation Committee meeting provided the Elected Official does not actively participate or otherwise interfere in the meeting.

(7)

Financial Disclosure.

a.

Each County Commissioner, contemporaneously with the annual filing of the Form 6 Disclosure of Financial Interest with the State of Florida Commission on Ethics, shall file such form for public inspection. Each Municipal Official, contemporaneously with the annual filing of the Form 1 Statement of Financial Interests with the Broward County Supervisor of Elections, shall file such form for public inspection. Where such disclosure forms are inputted into a separately maintained searchable-by-internet public database, the "filed for public inspection" requirement shall be deemed met by providing a link to that separate database on the governmental website on which the other disclosure forms filed by Elected Officials of that governmental entity may be accessed.

(8)

Advisory Opinions.

a.

Any Elected Official may request an advisory opinion about how the Broward County Elected Official Code of Ethics applies to his or her own situation. Requests for opinions from County Commissioners shall be made to the Broward County Attorney or to the County Attorney's designee. Requests for opinions from Municipal Officials shall be made to the municipality's chief attorney or to that attorney's designee. Requests for opinions shall state all material facts necessary for the advising attorney to understand the circumstances and render a complete and correct opinion, and such facts shall be recited in the issued opinion. If at any time after receipt of a request, the advising

attorney believes that additional information is needed, the Elected Official requesting the opinion shall furnish such additional information promptly upon request from the advising attorney.

b.

Until amended or revoked, an advisory opinion rendered pursuant to this section shall be binding on the conduct of the Elected Official covered by the opinion unless material facts were omitted or misstated in the request for the advisory opinion. If the Elected Official acts in accordance with a binding advisory opinion, the Elected Official's action may not be found to be in violation of the Broward County Elected Official Code of Ethics. However, any opinion rendered under this section shall not be binding as to whether the Elected Official's action complies with state or federal ethics requirements.

c.

The Elected Official shall ensure that, within fifteen (15) days after he or she receives an advisory opinion, the opinion is sent in searchable "pdf" format to ethicsadvisoryopinions@broward.org for inclusion in the searchable database of advisory opinions to be maintained by the County.

(d)

Training and Education.

(1)

Newly Elected Officials Training Requirement. In addition to meeting the annual training requirement referenced in paragraph (d)(2) below, Newly Elected Officials shall, between election and one hundred twenty (120) days after taking office, receive a minimum of four (4) hours of training from their governmental entity's attorney (or as directed by that attorney) which addresses ethics topics including Section 8, Article II, of the Florida Constitution, the state's Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes), Florida's public records and public meetings laws, and the ethical standards imposed by the Board pursuant to its authority under Section 112.326, Florida Statutes. Each Newly Elected Official shall certify his or her participation in this training in a form filed for public inspection within fifteen (15) days after the completion of such training or within fifteen (15) days after taking office, whichever is later. At least two (2) hours of this training shall be received in an interactive setting (group or individual). Additional training for Newly Elected Officials offered by the Florida Association of Counties or the Florida League of Cities is strongly encouraged. For purposes of this paragraph, Newly Elected Officials are those Elected Officials who did not occupy an office that was subject to this code at any time within the one-year period prior to their current election to office.

(2)

Annual Training Requirement. Each Elected Official shall, on an annual basis, attend or participate in a minimum of four (4) hours of continuing education training which addresses ethics topics including Section 8, Article II, of the Florida Constitution, the state's Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes), Florida's public records and public meetings laws, and the ethical standards imposed by the Board pursuant to its authority under Section 112.326, Florida Statutes. Training programs may be available through regional universities, municipal or local government organizations, or through state or regional Bar associations. Commencing January 1,

2017, the four (4) hour annual training requirement shall be met on a calendar-year basis, and at least two (2) hours of annual training during each calendar year shall be received in an interactive setting (group or individual). Each Elected Official shall annually certify that he or she has met this requirement in a form filed for public inspection within thirty (30) days after the end of each calendar year. To facilitate the transition to a calendar-year cycle, Elected Officials shall be deemed to have met the annual training requirement for their term year which commenced in 2016 if they received, during calendar year 2016, at least four (4) hours of ethics training on the topics of Sunshine Law, public records, and public service ethics, with at least two (2) hours of that training occurring in an individual or group interactive setting.

(3)

The certifications referenced in this section (d) shall provide the date of each training session, the number of hours completed during each session, and the mode of each session (i.e., live individual training, live group training, online training, or watching/listening to recorded materials).

(Ord. No. 2010-22, § 1, 8-10-10; Ord. No. 2011-19, § 1, 10-11-11; Ord. No. 2015-55, § 1, 12-8-15; Ord. No. 2017-01, § 1, 1-10-17)

	State Ethics Code / Chapter 112, Fla. Stat.	Election Code Chapter 106, Fla. Stat.	Broward County Ethics Ordinance Section 1-19
GIFTS	"Gift," means that which is accepted by a recipient or on his/her behalf, directly, indirectly, or by any other means, for which equal or greater consideration is not given in return within 90 days. [Ex: Real property, tangible or intangible personal property, a preferential rate or terms on a loan, forgiveness of an indebtedness, transportation (other than that provided by an agency in relation to governmental business), lodging, parking, food, beverage, membership dues, entrance fees, admission fees, plants, flowers, services provided by professionally licensed persons, other personal services for which a fee is normally charged, and any other similar service or thing having an attributable value not already provided for above.] *Sec. 112.312(12)(a)* 1. **You shall not** solicit any gift from vendors, political committees, lobbyists, nor principals. *Sec. 112.3148(3)* 2. **You shall not** solicit or accept anything of value from anyone based upon any understanding that your official duties would be influenced thereby. *Sec. 112.313(2)* 3. **You shall not** accept any gift, directly or indirectly, from vendors, political committees, lobbyists, nor principals, with a reasonable value in **excess of $100**. *Sec. 112.3148(4)* a. EXCEPT: A gift in **excess of $100** may be accepted on behalf of a governmental entity or charitable organization. Recipient **shall not** maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift to the governmental entity or charity. 4. **You may** accept a gift given by governmental entity in your official capacity with a value in **excess of $100** if a public purpose is shown for gift, provided that specific reporting requirements are met. *Sec. 112.3148(6)(b)* 5. **All other gifts permissibly received**, in either your official or personal capacity, with a value in **excess of $100**, must be reported quarterly on Form 9. *Sec. 112.3148(8)(a)* a. EXCEPT: Gifts from relatives, prohibited gifts as outlined above, and gifts requiring a specific method of reporting as outlined above, are **not** included on the quarterly report.		Adopts State law definition of "gift." 1. **You shall not** accept, in your official nor personal capacity, any gift from a lobbyist, principal, vendor, or contractor that is **over $5** in value. *Sec. 1-19(c)(1)a.* 2. **You may** accept a gift from others given in your official capacity that is **$50 or less** in value. *Sec. 1-19(c)(1)b.* 3. **You may** accept a gift from others given in your personal capacity **over $50** in value, subject to reporting requirements of State Ethics Code. *Sec. 1-19(c)(1)c.* 4. Notwithstanding the above limitations (i.e. giver may be anyone): a. **You may** accept, in your official capacity, items customarily given to express condolences or sympathy (i.e. flowers, food, cards) in connection with death or significant injury or illness of immediate family member up to a **value of $100**. *Sec. 1-19(c)(1)d.1.* b. **You may** accept training given in your official capacity related to public service, including admission and reimbursement of expenses incurred, up to a **value of $100**. *Sec. 1-19(c)(1)d.2.* c. **You may** accept nonalcoholic beverages, in either your official or personal capacity, up to a **value of $100**. *Sec. 1-19(c)(1)d.3.* d. **You may** accept admission tickets to charitable events, given in your official capacity, provided that specific public disclosure is made and recipient reimburses the giver within thirty (30) days of the event for the value of the food and beverages consumed by the ticket holders. *Sec. 1-19(c)(1)d.4.*

OUTSIDE EMPLOY-MENT **AND** **CONFLICT-ING EMPLOY-MENT**	1. **You shall not** accept public employment with the State or any of its political subdivisions if you know, or with the exercise of reasonable care should know, that the position is being offered by the employer for the purpose of gaining influence or other advantage based on your office or candidacy. *Sec. 112.3125(2)* a. Any public employment accepted by a public officer must be in a position that was already in existence or was created by the employer without the knowledge or anticipation of the public officer's interest in such position; have been publicly advertised; have subjected the public officer to the same application/hiring process as other candidates for the position; and be a position in which the public officer meets or exceeds the required qualifications. *Sec. 112.3125(3)* 2. **You shall not** accept, directly or indirectly through a spouse or minor child, any compensation, payment, or thing of value when you know or should know that it was given to influence a vote or other action in which you were expected to participate in your official capacity. *Sec. 112.313(4)* 3. **You shall not**, directly or indirectly, in your official capacity, purchase, rent, or lease any realty, goods, or services from the City that will benefit you, your spouse or child's personal interests, subject to specific exceptions. *Sec. 112.313(3) & (12)* 4. **You shall not**, in your personal capacity, sell any realty, goods, or services to the City, subject to specific exceptions. *Sec. 112.313(3) & (12)* 5. **You shall not** have or hold any employment or business relationship which is subject to the regulation of (or doing business with) the City, subject to specific exceptions. *Sec. 112.313(7)(a), (b) & (12) & (15)* 6. **You shall not** have or hold any employment or business relationship that will create an ongoing conflict between your personal interests and your public duties, subject to specific exceptions. *Sec. 112.313(7)(a), (b) & (12) & (15)* 7. **You shall not** be employed by the City while being an elected official of the City. *Sec. 112.313(10)*	1. **You may** have outside/concurrent employment that is consistent with your public duties and not inconsistent with State law, but notwithstanding such permissible outside/concurrent employment, an elected official shall not lobby any covered individual as part of that employment. *Sec. 1-19(c)(2)a.* a. "Covered individual" includes: members of a governing body in the county or any city within Broward, final decision-makers at County and City government levels, employees directly appointed by governing body in the county or any city within Broward, chief attorney and chief administrative officer when acting in official capacity, procurement/selection committee members, public procurement employees with final decision-making authority, heads of departments who make final recommendations, and other similar boards, authorities and commission members. *Sec. 1-19(b)2.* 2. **You shall** disclose remuneration received from outside/concurrent employment either in exact dollar amount or by selecting a designated range. Disclosure form is provided by the County Attorney's Office and filed annually (by July 1) with City Clerk for public inspection. *Sec. 1-19(c)(2)b.* 3. **You shall not** allow any immediate family member (parent, spouse, child, sibling, or registered domestic partner) nor office staff to lobby a covered individual, conduct business as a vendor or contractor with government entity that you serve. *Sec. 1-19(c)(2)c.* a. EXCEPT: An immediate family member may be a vendor/contractor as allowable under State law, provided that the elected official makes specific attestations which establish a degree of separation between the immediate family member and the elected official, submitted for public disclosure within a specific time-frame. (If such attestations cannot be made by the elected official, the conduct of business by the immediate family member shall constitute a prohibited financial benefit.)

LOBBYISTS	Definition of Lobbyist 1. "Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding twelve (12) months, to influence the governmental decision-making of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding twelve (12) months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency. *Sec. 112.3148(b)*	Definition of Lobbyist: 1. "Lobbyist" means a person who is retained, with or without compensation, for the purpose of lobbying, or a person who is employed by another person or entity, on a full-time or part-time basis, principally to lobby on behalf of that other person or entity. *Sec. 1-19(b)8.* 2. "Lobbyist" **does not include** a person who is: a. An Elected Official, employee, or appointee of Broward County or of any municipality within Broward County communicating in his or her official capacity; b. An individual who communicates on his or her own behalf, or on behalf of a person or entity employing the individual on a full-time or part-time basis, unless the individual is principally employed by that person or entity to lobby; c. Any employee, officer, or board member of a homeowners' association, condominium association, or neighborhood association when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members; or d. Any employee, an officer, or a board member of a nonprofit public interest entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue impacting a constituent of that entity. *Sec. 1-19(b)8.* 3. **You shall** avoid appearance of impropriety in all dealings with Lobbyists registered in the City and their principals or employees. *Sec. 1-19(c)(3)a.* 4. The City created and maintains an online Lobbyist Contact Log system wherein Lobbyists have access and must enter specific information each time they meet with a "covered individual" as defined in *Sec. 1-19(b)2.* The online Contact Log system relieves you from the duty of filing a contact log for public inspection. *Sec. 1-19(c)(3)e.* *Prior to accepting a meeting with a Lobbyist, always make sure he/she is registered in the City's system.

HONEST SERVICES	MISUSE OF PUBLIC POSITION 1. **You shall not** corruptly use or attempt to use your official position or any property or resource which may be within your trust, or perform your official duties, to secure a special privilege, benefit, or exemption for yourself or others. *Sec. 112.313(6)* DISCLOSURE OR USE OF CERTAIN INFORMATION 1. **You may not** disclose or use information not available to the general public and gained by reason of your official position for your personal benefit or for the personal benefit of any other person or business entity. *Sec. 112.313(8)* See other column for general prohibitions provided in Chapter 838, "Bribery; Misuse of Public Office," Florida Statutes.	Adopts general standards set forth in 18 U.S.C. § 1346, "Definition of 'scheme or artifice to defraud'" and Chapter 838, "Bribery; Misuse of Public Office," Florida Statutes. *Sec. 1-19(c)(4).* Such concepts are generally set forth below: 1. **You shall not** engage in a scheme or artifice to deprive another of the material intangible right of honest services or any activity in contravention of the duty to provide loyal and honest governance of the City. 2. **You shall not** engage in bribery (understanding to give or receive something in exchange for a benefit not authorized by law); 3. **You shall not** receive unlawful compensation or reward for official behavior (same as bribery minus the understanding); 4. **You shall not** be a victim of threat or coercion in relation to any official act or omission (person trying to influence the official is guilty of a felony); 5. **You shall not** disclose active criminal investigative or intelligence information with the intent to obstruct, impede, or prevent a criminal investigation or prosecution; and 6. **You shall not** knowingly influence or attempt to influence a competitive solicitation undertaken by the City.
PROCURE-MENT		IN PROCUREMENT COMMITTEE CONTEXT: 1. **You shall not** serve as a voting member of a selection/evaluation committee. *Sec. 1-19(c)(6)a.* 2. **You shall not** participate or interfere in any manner at selection/evaluation committee meetings or in the appointment of members to the committee. *Sec. 1-19(c)(6)a.* a. EXCEPT: Mere attendance at a committee meeting shall not constitute participation nor interference for purposes of the above prohibition. *Sec. 1-19(c)(6)b.*

SOLICITING CHARITABLE CONTRIB.	State law does not address this issue.	1. **You shall not** solicit a nonprofit charitable organization where there exists a quid pro quo or other special consideration that inures to the direct or indirect benefit of the individuals engaging in the solicitation, excluding such solicitations that are made in connection with charities and fundraising events formally approved by the City Commission. *Sec. 1-19(c)(5)a.1. & 4.* 2. **You shall not** use City Staff or any other City resources to conduct nonprofit charitable organization solicitations, except City Staff and City resources may be used in such solicitations that are made in connection with charities and fundraising events formally approved by the City Commission. *Sec. 1-19(c)(5)a.3. & 4.* DISCLOSURE OF LAWFUL CHARITABLE SOLICITATIONS: 1. **You shall** disclose solicitation on a form provided by the County Attorney's Office which lists the name of the charitable organization, the event for which the funds were solicited, and the name of any individual or entity that requested you to make the charitable fundraising solicitation. *Sec. 1-19(c)(5)a.2.* 2. **You shall** submit the form to the City Clerk for public inspection within fifteen (15) days after the solicitation occurs. *Sec. 1-19(c)(5)a.2.* a. EXCEPTION TO ABOVE: The Charitable Solicitation Disclosure Form is not required where you are employed by the nonprofit charitable organization for which you are soliciting. Such outside employment shall be disclosed on the form provided by the County Attorney's Office for remuneration yielded from outside employment (pursuant to *Sec. 1-19(c)(2)b.)* and such remuneration is not considered quid pro quo or other special consideration for purposes of the above prohibition.

SOLICITING CAMPAIGN CONTRIB.	1. **You shall not**, nor shall any member of your immediate family, solicit or knowingly accept, directly or indirectly, any gift from a political committee. *Sec. 112.31485(2)(a)* a. Under this section "gift" means something of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to Chapter 106, Florida Statutes. *Sec. 112.31485(1)(a)* b. "Political Committee" is defined in Section 106.011(16), Florida Statutes. 2. **You may not**, in the furtherance of your candidacy for election to public office in any election, use the services of any state, county, municipal, or district officer or employee during working hours. *Sec. 106.15(3)* 3. **You shall not** solicit or knowingly accept, by hand delivery, any political contribution in a building owned by a governmental entity. *Sec. 106.15(4)* a. EXCEPT: Notwithstanding the above, contributions may be solicited and accepted within a government-owned building when it is lawfully rented for the specific purpose of holding a campaign fund raiser. *Sec. 106.15(4)* 4. **You may not**, as a candidate, solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good. *Sec. 106.08(5)(b)*	GENERALLY: 1. **You may not** use City Staff or other City resources in the solicitation or receipt of campaign contributions. *Sec. 1-19(c)(5)b.4.* 2. **You may not** solicit, make or accept a campaign or political contribution in any government-owned building. *Sec. 1-19(c)(5)b.5.* YOUR CAMPAIGN CONTRIBUTIONS: 1. **You shall** contemporaneously file with the City Clerk copies of all campaign finance disclosure forms that are required by Chapter 106, "Campaign Financing," Florida Statutes, for public inspection. *Sec. 1-19(c)(5)b.2.* CAMPAIGN CONTRIBUTIONS FOR OTHERS: 1. **You shall** disclose solicitation on a form provided by County Attorney's Office which lists the name of the candidate, the location and date of any associated event, and the name and contribution amount of any individual who provided contributions, given directly or indirectly, for subsequent delivery to the candidate. *Sec. 1-19(c)(5)b.3.* 2. **You shall** submit the form to the City Clerk for public inspection within fifteen (15) days after the solicitation occurs. *Sec. 1-19(c)(5)b.3.*
SOLICIT OR ACCEPT HONORARIA	Definition of Honorarium: "Honorarium" means a payment of money or anything of value, directly or indirectly, to you or any other person on your behalf, as consideration for you to speak or give an oral presentation or provide a writing (other than a book) which has been or is intended to be published. *Sec. 112.3149(1)* 1. **You shall not** solicit honoraria related to your public office or duties. *Sec. 112.3149(2)* 2. **You shall not** knowingly accept an honorarium from a political committee, lobbyist who has lobbied the City within the past twelve (12) months, or principal of such a lobbyist, or from a vendor doing business with the City. a. EXCEPT: **You may** accept payment of expenses related to an honorarium event from such individuals or entities, provided that specific reporting requirements are met. *Sec. 112.3149(6)*	Broward County Ordinance does not address this issue.

TRAINING REQUIRED	1. Beginning January 1, 2015, **you must** complete four (4) hours of ethics training each calendar year which addresses, at a minimum, the "Ethics in government" provisions of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of Florida. *Sec. 112.3142(2)(b)* a. The above training **must** be completed before December 31ST of the year in which your term of office began. *Sec. 112.3142(2)(d)* b. Completed training pursuant to State law is reported by checking a box on Form 1, "Financial Disclosure," each year. (See FINANCIAL DISCLOSURE SECTION BELOW.)	NEWLY ELECTED OFFICIALS (*Sec. 1-19(d)(1)*): 1. **You shall** receive at least four (4) hours of training from the City Attorney, or as directed by that attorney, within one hundred twenty (120) days after taking office on Sunshine Law, Public Records, and Public Service Ethics. a. At least two (2) hours of this training must be held in an interactive (live) setting. 2. **You shall** certify completion through a form, provided by County Attorney, submitted to the City Clerk for public inspection within fifteen (15) days after completion of training. ANNUAL TRAINING FOR ALL (*Sec. 1-19(d)(2)*): 1. **You shall** receive at least four (4) hours of continuing education on Sunshine Law, Public Records, and Public Service Ethics. a. Shall be on a term-year basis; and b. At least two (2) hours of this training must be held in an interactive (live) setting. 2. **You shall** certify completion through a form, provided by County Attorney, submitted to the City Clerk for public inspection within thirty (30) days after the end of each term-year (in March).

VOTING CONFLICTS	1. **You shall not** vote upon any measure which would inure to your special private gain/loss nor upon any measure which you know would inure to the special private gain/loss of: a. Any principal by whom you've been retained or to the parent/subsidiary organization of a corporate principal by which you've been retained; or b. A relative, i.e. father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law; or c. A business associate. *Sec.112.3143(3)(a)* 2. If a voting conflict exists **you must** contact the City Attorney's Office to determine if the conflict violates your ethical duties under any other section of the Ethics Code, in which case, simply abstaining may not be a solution. 3. If the conflict is determined permissible under the Ethics Code, **you shall**, prior to the vote being taken, publicly state at the meeting the nature of your interest in the matter and abstain from the vote. *Sec.112.3143(3)(a)* a. Within fifteen (15) days after the vote occurs, **you shall** disclose the nature of your interest in writing on Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Local Public Officers" and file it with the City Clerk who shall incorporate the form into the Commission Meeting minutes. *Sec.112.3143(3)(a)*	1. **You shall not** allow any immediate family member (parent, spouse, child, sibling, or registered domestic partner) nor office staff to conduct business as a vendor or contractor with the City. *Sec. 1-19(c)(2)c.* a. EXCEPT: An immediate family member may be a vendor/contractor as allowable under State law, provided that you make specific attestations which establish a degree of separation between the immediate family member and your personal interests, submitted for public disclosure within a specific time-frame. (If such attestations cannot be made by the elected official, the conduct of business by the immediate family member shall constitute a prohibited financial benefit.) Keep in mind that you may still need to abstain from voting and file the appropriate State disclosure forms.
FINANCIAL DISCLOSURE	1. **You shall** file Form 1, "Statement of Financial Interests," annually with the Broward County Supervisor of Elections. *Sec. 112.3145(2)(b)* a. Beginning January 1, 2015, **you must** certify on Form 1 that you have completed the required training pursuant Section 112.3142, Florida Statutes. *Sec. 112.3145(4)*	1. **You shall** contemporaneously file Form 1, "Statement of Financial Interests," annually with the Broward County Supervisor of Elections and the City Clerk for public inspection on or before July 1. *Sec. 1-19(c)(7)a.*

ADVISORY OPINIONS	SAFE HARBOR ADVISORY OPINIONS FROM STATE LAW: 1. When in doubt about the applicability and interpretation of the State Ethics Code or Section 8, Art. II of the State Constitution to your particular circumstance, **you may** request that the City Attorney's Office submit in writing the facts of the situation to the Florida Commission on Ethics with a request for an advisory opinion to establish the standard of public duty. 2. Such opinion, until amended or revoked, shall be binding on your conduct, unless material facts were omitted or misstated in the request for the advisory opinion. *Sec. 112.322(3)(a) & (b)* LEGAL OPINIONS FROM ATTORNEY GENERAL: 1. **You may** request that the City Attorney's Office submit to the Attorney General a request for an official opinion and legal advice in writing on any question of State Law relating to your official duties as a City Commissioner, subject to few exceptions determined at the discretion of the Attorney General. *Sec. 16.01(3)* LEGAL OPINION FROM DIVISION OF ELECTIONS: 1. **You may** request that the City Attorney's Office contact the Division of Election to provide you with an advisory opinion relating to any provisions or possible violations of Florida election laws with respect to your election-related duties as a City Commissioner. 2. If you rely in good faith upon such an advisory opinion provided, you shall not be subject to any criminal penalty provided for under the Florida Election Code, and such an opinion, until amended or revoked, shall be binding on you unless material facts were omitted or misstated in the request for the advisory opinion. *Sec. 106.23(2)*	SAFE HARBOR ADVISORY OPINIONS FROM BROWARD COUNTY ETHICS RULES: 1. **You may** request an opinion about how the Broward County Elected Official Code of Ethics applies to your situation. Requests shall be made to the City Attorney or her designee and shall include a statement of all material facts necessary to understand the circumstances and render a complete and correct opinion. *Sec. 1-19(c)(8)a.* 2. If you act in accordance with a binding advisory opinion, your actions may not be found to be a violation of the Broward Ethics Code. *Sec. 1-19(c)(8)b.* 3. **You shall** ensure that the advisory opinion is sent to ethicsadvisoryopinions@broward.org in pdf format within fifteen (15) days of receipt of opinion. *Sec. 1-19(c)(8)c.* [The City Attorney's Office will do this.] ***Please note: SAFE HARBOR OPINIONS FROM THE CITY ATTORNEY are ONLY available for those issues that require analysis under the Broward County Ethics Code, not the State Ethics/Election Laws.

EXHIBIT 6

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2000-68
Date: November 17, 2000
Subject: Sunshine Law. meeting attended by city commissioners

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Mr. Charles J. Billias
Cocoa Beach City Manager
Post Office Box 322430
Cocoa Beach, Florida 32932-2430

RE: MUNICIPALITIES--GOVERNMENT IN THE SUNSHINE LAW--MEETINGS--CITY COMMISSION--applicability of Sunshine Law to meetings attended by city commissioners. s. 286.011, Fla. Stat.

Dear Mr. Billias:

You have asked for my opinion on substantially the following question:

Is it a violation of section 286.011, Florida Statutes, for elected city commissioners to attend other city board meetings and comment on agenda items that may subsequently come before the commission for final action?

In sum:

It is not a violation of the Government in the Sunshine Law for elected city commissioners to attend other city board meetings and comment on agenda items that may subsequently come before the commission for final action. However, the city commissioners in attendance at such meetings may not engage in a discussion or debate about these issues among themselves.

According to your letter, members of the City of Cocoa Beach Commission frequently attend meetings of various city boards. At these meetings city commissioners may comment on agenda items and non-agenda items, announcing that they are speaking as citizens and residents rather than as commissioners. More than one commissioner typically attends such board meetings, and on certain occasions all commissioners may be present at a meeting.

Section 286.011(1), Florida Statutes, the Government in the Sunshine Law, requires:

"All meetings of any board or commission of . . . any agency or authority of any county . . . or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings."

Application of the statute is not limited to meetings at which final, formal actions are taken. It applies to any gathering of members where members deal with some matter on which foreseeable action will be taken by the board.[1] Florida courts have recognized that it is the entire decision-making process that is covered by the Government in the Sunshine Law, not merely meetings at which a final vote is taken.[2]

This office has stated on several occasions that members of a public board or commission may attend private forums sponsored by private organizations and express their position about issues facing the commission without violating the Sunshine Law, so long as they do not discuss or debate the issues among themselves.[3] This conclusion was based on the reasoning of an earlier Attorney General's Opinion holding that it was not a violation of the Sunshine Law for one commissioner to send a report to another commissioner for informational purposes, as long as there was no interaction between the commissioners.[4] Similarly, this office has concluded that the Sunshine Law is not violated by a board member expressing his or her views or voting intent on an upcoming matter to a news reporter who the member knows will publish the account in a local newspaper prior to the meeting, as long as the member is not using the reporter as an intermediary to communicate with other members to circumvent or evade the requirements of the Sunshine Law.[5]

Finally, in Attorney General's Opinion 98-79, this office considered whether a city commissioner or a group of commissioners could attend a community board meeting and express their views on a proposed ordinance that had been referred by the city commission to the community development board for a recommendation. The city commissioners were interested in attending the meeting of the community development board at which the board considered the ordinance in order to express their support or opposition to the ordinance. Based on a review of previously issued court opinions and Attorney General Opinions, the opinion concludes that

"[A] city commissioner may attend a community development board meeting and express his or her views on a proposed ordinance even though other city commissioners may be in attendance. However, the

city commissioners attending such meeting should be cautioned not to engage in debate or discussion with each other. The adoption of the ordinance is a responsibility resting with city commission, and the city commission's discussions and deliberations on the proposed ordinance must occur at a duly noticed city commission meeting. Moreover, if the community development board has been advised of the city commission members' intention to speak on the proposed ordinance, it may be advisable for the board, in noticing its meeting, to include notice of the possible attendance and participation of city commission members."[6]

You have described a situation similar to that considered in Attorney General Opinion 98-79, that is, members of the City of Cocoa Beach Commission wish to attend other city board meetings and comment on agenda items that may subsequently come before the commission for final action. Based on the reasoning of the cases and opinions discussed above, it is my opinion that city commission members may attend the meetings of other city boards or commissions to express their opinions and make comments on agenda items that may ultimately come before the city commission for consideration. Such attendance would not violate the Government in the Sunshine Law. However, if more than one city commissioner is in attendance at such a meeting, no discussion or debate may take place among the commissioners on these issues.

In sum, it is my opinion that it is not a violation of the Government in the Sunshine Law for elected city commissioners to attend other city board meetings and comment on agenda items that may subsequently come before the commission for final action. However, the city commissioners in attendance at such meetings may not engage in a discussion or debate about these issues among themselves.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] *See Board of Public Instruction of Broward County v. Doran,* 224 So. 2d 693 (Fla. 1969); *Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973).

[2] *See, e.g., Times Publishing Company v. Williams,* 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company,* 462 So. 2d 821 (Fla. 1985), in which the district court stated:

"Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an 'official act,' an indispensable requisite to 'formal action,' within the meaning of the act."

[3] *See* Ops. Att'y Gen. Fla. 94-62 (1994) and 92-05 (1992), and Inf. Op. to Mr. John C. Randolf dated June 4, 1996.

[4] Attorney General Opinion 89-23 (1989).

[5] Attorney General's Opinion 81-42 (1981). *Cf.* Op. Att'y Gen. Fla. 77-138 (1977), stating that the Sunshine Law does not prohibit members of city commission from attending public meetings of a board established by the commission and subsequently voting at a public meeting of the commission on recommendations submitted by the board.

[6] *Cf.* Op. Att'y Gen. Fla. 91-95 (1991) (while county commissioner may attend a meeting of a county board on which another county commissioner serves, it may be advisable to include mention in the published notice of the county board meeting of county commission members' possible attendance and participation).

EXHIBIT 7

Select Year: 2016 Go

The 2016 Florida Statutes

Title XIX Chapter 286 View Entire Chapter
PUBLIC BUSINESS PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding $500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the

court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

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The 2016 Florida Statutes

Title X — PUBLIC OFFICERS, EMPLOYEES, AND RECORDS
Chapter 119 — PUBLIC RECORDS
View Entire Chapter

119.10 Violation of chapter; penalties.—

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding $500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 10, ch. 67-125; s. 74, ch. 71-136; s. 5, ch. 85-301; s. 2, ch. 2001-271; s. 11, ch. 2004-335.

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The 2016 Florida Statutes

Title X Chapter 119 View Entire Chapter
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS PUBLIC RECORDS

119.12 Attorney's fees.—If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

History.—s. 5, ch. 75-225; s. 7, ch. 84-298; s. 13, ch. 2004-335.

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The 2016 Florida Statutes

Title X	Chapter 112	View Entire Chapter
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS	

112.317 Penalties.—

(1) Any violation of this part, including, but not limited to, failure to file disclosures required by this part or violation of any standard of conduct imposed by this part, or any violation of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, under applicable constitutional and statutory procedures, constitutes grounds for, and may be punished by, one or more of the following:

(a) In the case of a public officer:

1. Impeachment.
2. Removal from office.
3. Suspension from office.
4. Public censure and reprimand.
5. Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
6. A civil penalty not to exceed $10,000.
7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of which the public officer was a member or to the General Revenue Fund.

(b) In the case of an employee or a person designated as a public officer by this part who otherwise would be deemed to be an employee:

1. Dismissal from employment.
2. Suspension from employment for not more than 90 days without pay.
3. Demotion.
4. Reduction in his or her salary level.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed $10,000.
7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency by which the public employee was employed, or of which the officer was deemed to be an employee, or to the General Revenue Fund.
8. Public censure and reprimand.

(c) In the case of a candidate who violates this part or s. 8(a) and (i), Art. II of the State Constitution:

1. Disqualification from being on the ballot.
2. Public censure.
3. Reprimand.

4. A civil penalty not to exceed $10,000.

(d) In the case of a former public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred before the officer's or employee's leaving public office or employment:

1. Public censure and reprimand.

2. A civil penalty not to exceed $10,000.

3. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.

(e) In the case of a person who is subject to the standards of this part, other than a lobbyist or lobbying firm under s. 112.3215 for a violation of s. 112.3215, but who is not a public officer or employee:

1. Public censure and reprimand.

2. A civil penalty not to exceed $10,000.

3. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the person or to the General Revenue Fund.

(2) In any case in which the commission finds a violation of this part or of s. 8, Art. II of the State Constitution and the proper disciplinary official or body under s. 112.324 imposes a civil penalty or restitution penalty, the Attorney General shall bring a civil action to recover such penalty. No defense may be raised in the civil action to enforce the civil penalty or order of restitution that could have been raised by judicial review of the administrative findings and recommendations of the commission by certiorari to the district court of appeal. The Attorney General shall collect any costs, attorney fees, expert witness fees, or other costs of collection incurred in bringing the action.

(3) The penalties prescribed in this part shall not be construed to limit or to conflict with:

(a) The power of either house of the Legislature to discipline its own members or impeach a public officer.

(b) The power of agencies to discipline officers or employees.

(4) Any violation of this part or of s. 8, Art. II of the State Constitution by a public officer constitutes malfeasance, misfeasance, or neglect of duty in office within the meaning of s. 7, Art. IV of the State Constitution.

(5) By order of the Governor, upon recommendation of the commission, any elected municipal officer who violates this part or s. 8, Art. II of the State Constitution may be suspended from office and the office filled by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the Governor. The Senate may, in proceedings prescribed by law, remove from office, or reinstate, the suspended official, and for such purpose the Senate may be convened in special session by its President or by a majority of its membership.

(6) In any case in which the commission finds probable cause to believe that a complainant has committed perjury in regard to any document filed with, or any testimony given before, the commission, it shall refer such evidence to the appropriate law enforcement agency for prosecution and taxation of costs.

(7) In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of

this part, the complainant shall be liable for costs plus reasonable attorney fees incurred in the defense of the person complained against, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

History.—s. 7, ch. 67-469; s. 1, ch. 70-144; s. 2, ch. 74-176; s. 8, ch. 74-177; s. 2, ch. 75-199; s. 7, ch. 75-208; s. 5, ch. 82-98; s. 10, ch. 90-502; s. 10, ch. 91-85; s. 8, ch. 94-277; s. 1413, ch. 95-147; s. 1, ch. 95-354; s. 13, ch. 2000-151; s. 8, ch. 2006-275; s. 2, ch. 2009-126; s. 15, ch. 2013-36.

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The 2016 Florida Statutes

Title XLVI CRIMES | Chapter 838 BRIBERY; MISUSE OF PUBLIC OFFICE | View Entire Chapter

838.015 Bribery.—

(1) "Bribery" means to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

(3) Any person who commits bribery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 60, ch. 74-383; s. 35, ch. 75-298; s. 44, ch. 91-110; s. 1314, ch. 97-102; s. 3, ch. 2003-158; s. 2, ch. 2016-151.

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The 2016 Florida Statutes

Title XLVI CRIMES | Chapter 838 BRIBERY; MISUSE OF PUBLIC OFFICE | View Entire Chapter

838.022 Official misconduct.—

(1) It is unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by:

(a) Falsifying, or causing another person to falsify, any official record or official document;

(b) Concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act; or

(c) Obstructing, delaying, or preventing the communication of information relating to the commission of a felony that directly involves or affects the government entity served by the public servant or public contractor.

(2) For the purposes of this section:

(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.

(b) An official record or official document includes only public records.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 5, ch. 2003-158; s. 4, ch. 2016-151.

ORDINANCE NO. 2011-030

AN ORDINANCE OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING CHAPTER 2, CODE OF ORDINANCES, ENTITLED "ADMINISTRATION" BY CREATING A NEW ARTICLE XIII THEREOF, ENTITLED "LOBBYISTS" BY CREATING SECTIONS 2-1000 THROUGH 2-1005, WHICH SECTIONS REQUIRE ALL PERSONS WHO ARE LOBBYISTS TO REGISTER WITH THE CITY CLERK'S OFFICE; PROVIDING FOR A DEFINITION OF A LOBBYIST; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Commission deems it necessary to comply with the mandates of Broward County Ordinance No. 2011-19, which ordinance requires the registration of persons intending to lobby municipal officials;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing "Whereas" clause is hereby ratified and confirmed as being true and correct and is hereby made a part of this Ordinance.

Section 2: Chapter 2, Code of Ordinances, entitled "Administration" is hereby amended by the creation of a new Article XIII, entitled "Lobbyists" to read and provide as follows:

CHAPTER 2. ADMINISTRATION

****

ARTICLE XIII

LOBBYISTS

Sec. 2-1000 Intent and purpose.

The City Commission of the City of Coconut Creek, Florida, hereby determines and declares that the intent and purpose of this Article is to comply with the mandates of Broward County Ordinance No. 2011-19, which ordinance requires the registration of persons intending to lobby municipal elected officials.

Sec. 2-1001. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

Legislation means any ordinance, resolution, contract, bid award, action, decision or proposal of any kind that is the subject of present or prospective action by the City Commission, a City board, or committee; or any action, decision or recommendation of the City Manager or City staff regarding any legislation to be considered or foreseeably to be considered by the City Commission, City Boards, or committees.

Lobbying means communicating directly or indirectly, either in person, by telephone, letter, electronic means or other method, with the City Commission members, City Board members or Committee members or the City Manager or City staff for the purpose of influencing legislation or other official action. Lobbying does not include the activities of a person undertaken in connection with a request for information, the submission of an application for a City permit, making inquiries regarding such application or providing any information required to be submitted in support of such application. Lobbying does not include communications:

a. Made on the record at a duly-noticed public meeting or hearing; or

b. From an attorney to an attorney representing the City of Coconut Creek regarding a pending or imminent judicial or adversarial administrative proceeding against the City of Coconut Creek.

"Lobbyist" means a person who is retained, with or without compensation, for the purpose of lobbying, or a person who is employed by another person or entity, on a full-time or part-time basis, principally to lobby on behalf of that other person or entity. "Lobbyist" does not include a person who is:

a. An Elected Official, employee, or appointee of Broward County or of any municipality within Broward County communicating in his or her official capacity.
b. An individual who communicates on his or her own behalf, or on behalf of a person or entity employing the individual unless the individual is principally employed by that person or entity to lobby.
c. Any employee, officer, or board member of a homeowners' association, condominium association, or neighborhood association when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members; or
d. Any employee, any officer, or any board member of a nonprofit public interest entity (e.g., Sierra Club, NAACP, ACLU) when addressing an issue impacting a constituent of that entity.

Person means any individual, business, corporation, association, firm, partnership, nonprofit organization or other organization or group.

Principal means a person who authorizes a lobbyist to act on their behalf as an agent to undertake lobbying.

Sec. 2-1002. Lobbying registration and statements.

(1) *Registration required.* Prior to engaging in lobbying activities, every lobbyist shall file with the City Clerk and provide under oath the following information for each principal that the lobbyist represents:

a. The lobbyist's full name, business name and address, telephone number, fax number and email address as well as the nature of business, occupation, or profession.

b. The name, business name, business address and nature of the business, occupation or profession of the lobbyists' principal.

c. The general and specific subject matters that the lobbyist seeks to influence.

d. The extent of any direct business association by the lobbyist with any current elected or appointed official or employee of the City of Coconut Creek. For the purposes of this article, the term "direct business association" shall mean any mutual endeavor undertaken for profit or compensation.

(2) A lobbyist representing a person or entity shall, prior to engaging in lobbying, receive appropriate written authorization from said person or entity to lobby on that person's or entity's behalf upon a particular subject matter. A copy of the applicable documentation, including but not limited to letters, agreements, minutes, motions or other evidence of action authorizing the lobbyist to lobby on behalf of the person or entity shall be provided with the information required by this section.

a. Completed registration forms shall be public records and open to public inspection, copying, and in an on-line data base.

b. Each lobbyist who withdraws representation for a principal shall file with the City Clerk notice of withdrawal as a lobbyist for that principal.

c. The City Clerk's office shall maintain a current list of registered lobbyists and all documentation required under this article. The registration must be signed by the lobbyist and attested to under penalty of perjury. The City Clerk may approve a form of registration consistent with this Ordinance, which shall be used in all cases, except where unavailable.

d. A lobbyist shall file a separate statement for each principal on whose behalf he or she lobbies.

e. An annual lobbyist registration fee may be established by resolution of the City Commission. Such fee shall be for the purpose of providing funding to the City to offset the cost of recording, transcription, administration or any other costs incurred in compiling and maintaining these records and making them available to the public.

f. Registration will be yearly, running from October 1 to September 30 of each year, and shall be renewed for each year during which lobbying activities are to take place. Only one annual registration form is required per principal. However, if any of the information required in the registration form is new or changed (for example, a new principal, or a new specific subject of lobbying), then the lobbyist must supplement or amend the registration before additional lobbying.

Sec. 2-100 3. Statement of representation.

All persons engaging in lobbying activities shall make a statement of representation at the beginning of their conversation, presentation, letter, telephone call, e-mail or facsimile transmission or other method of communication with the City Commission members, City Board members or Committee members or the City Manager or City staff, stating the name of the principal for whom he or she is lobbying. In addition, the City Clerk shall maintain a contact log, which shall contain all of the information required in Section 2-1002, and shall be required every time a lobbyist meets with or intends on meeting with City Commission members, City Board members, or Committee members.

Sec. 2-1004 Persons excluded.

The following persons shall not be required to register or make a statement of representation and shall not be prohibited from lobbying:

(1) Any person who in his or her individual capacity communicates with the City Commission members, City Board members or Committee members or City Manager or City staff for the purpose of self-representation without compensation or reimbursement for such communication, to express support of or opposition to any legislation.

(2) Any person who lobbies as a representative of a not-for-profit corporation or entity such as a homeowners association without compensation or reimbursement for the appearance.

(3) Any public officer, employee or appointee who only appears in his or her official capacity.

(4) Notwithstanding any provision to the contrary in this Ordinance, no person shall be required to register solely as a result of the fact that the person has spoken at any public hearing or public meeting in the City of Coconut Creek, Florida.

Sec. 2-1005. Penalties.

Violation of any provision of this article shall be punishable by reprimand, censure or a prohibition of the violator from lobbying the City Commission members, City Board members or Committee members or the City Manager or City staff for a period not to exceed two (2) years.

Section 3: That in the event any provision or application of this Ordinance shall be held to be invalid, it is the legislative intent that the other provisions and applications hereof shall not be thereby affected.

Section 4: That the provisions of this Ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 5: That all Ordinances or parts of Ordinances in conflict herewith are to the extent of said conflict, hereby repealed.

Section 6: That this Ordinance shall be in full force and effect immediately upon its passage.

PASSED FIRST READING this 1st **DAY OF** December **, 2011.**

PASSED SECOND READING this 8th **DAY OF** December **, 2011.**

Lou Sarbone, Mayor

ATTEST:

Barbara S. Price, MMC
City Clerk

	1st	2nd
Sarbone	Aye	Aye
Belvedere	Aye	Aye
Gerber	Aye	Aye
Tooley	Aye	Aye
Aronson	Aye	Aye