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"A Public Office is a Public Trust"

MEMORANDUM

TO: All Interested Persons

FROM: Kerrie Stillman, Executive Director

SUBJECT: Updated Legislative Recommendations for 2022

DATE: October 8, 2021

For 2022, the Commission on Ethics makes the following recommendations regarding legislative changes to the Code of Ethics for Public Officers and Employees (Code of Ethics):

Conflicts of Interest

Section 112.313(7)(a), Florida Statutes, prohibits a public officer or employee from having a contractual relationship with a company doing business with the official's own agency. So City Councilman A cannot contract with Business B, if Business B is doing business with his City. But if Councilman A creates "A, Inc.," that corporation can do business with Business B without violating the law, even if "A, Inc.," is solely owned by Councilman A. The Commission has seen this as thwarting the underlying goal of the law, which is to prevent officials from having relationships with companies doing business with their agencies.

Voting Conflicts Law

Under current law, Section 112.3143, Florida Statutes, local elected officials can participate in the discussion of a measure in which they have a conflict without revealing the existence of that conflict until the vote is actually taken. This means the official can make every effort to persuade his or her colleagues without telling them (and the public) about the conflict.

Appointed officials, in contrast, must declare their conflict before participating in the discussion of the measure. Elected officials should have to adhere to the same standard.

In addition, state officers only have to abstain if the measure helps or hurts them personally. Unlike local officials, they do not have to abstain when the measure benefits their employer, relative, etc.

The Commission has expressed that the voting conflict standard should be the same for everyone, whether the official is appointed or elected and whether the official is a state or local official; and that the exemption from using the Commission's conflict disclosure form applicable only to Legislators be eliminated.

Enhanced Financial Disclosure for Local Elected Officials

Elected municipal officials are very important and administer vast amounts of public resources. For these, and other reasons, their disclosure should be on par with that of county officials and others who file Form 6, rather than Form 1. The Commission believes the enhanced disclosure should be applied to all elected municipal officials regardless of the population of the municipality.

Dismissal of Complaints Alleging de minimis Financial Disclosure Violations

Section 112.324(11), Florida Statutes, currently allows the Commission to dismiss complaints alleging de minimis violations attributable to inadvertent or unintentional error, except for financial disclosure complaints. The Commission believes the statute should be amended to allow for dismissal of financial disclosure complaints, too.

Dismissal of Lobbying Firm Audit matters

Section 112.324(12), Florida Statutes, which allows the Commission to dismiss complaints when it finds that the public interest would not be served by proceeding further on the complaint, currently is not available for dismissal of lobbying firm audit matters under Section 112.3215, Florida Statutes, even when circumstances justify such a dismissal. The Commission recommends amending Section 112.324(12) to allow for dismissal of audit matters.

Increase of Civil Penalties

Currently, Section 112.317, Florida Statutes, provides for a maximum fine of \$10,000 for a violation of the ethics laws. This amount has not been increased since 1994. Due to inflation and seriousness of ethics offenses, the Commission believes the maximum fine amount should be increased.

Whistle Blower-like Protection for Ethics Complainants

The Commission believes that the threat of adverse employment or personnel actions in retaliation for a person's filing of an ethics complaint discourages the filing of valid complaints. Thus, the Commission seeks the enactment of protections or remedies, akin to those in the "Whistle-blower's Act," Sections 112.3187-112.31895, Florida Statutes, for the benefit of ethics complainants.

Ethics Training

Pursuant to the provisions of Section 112.3142(2)(e), Florida Statutes, a constitutional officer or elected municipal officer assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which their term of office began. In 2019, the law was amended to require commissioners of community redevelopment agencies to complete 4 hours of ethics training. However, they were not included in the new office or new term of office exemption language contained in Section 112.3142(2)(e), Florida Statutes. As a result, CRA board members are required to take the training regardless of when they take office. The Commission believes CRA board members should be added to the exemption language appearing in Section 112.3142(2)(e), Florida Statutes.

Amendment 12 Lobbying Restrictions

The Commission encourages the legislature to support the most stringent penalties with respect to violations of the 6-year lobbying ban, were they to be proposed, even were they to include criminal penalties, should those be proposed.

Representing Clients Before One's Own Board

The Commission has opinions as early as 1977 and even since 2020 interpreting Section 112.313(7), Florida Statutes, to say, in essence, that if a person serves on a board, he cannot represent clients before that board, and neither can other members of his professional firm. This interpretation is similar to the Rules of Professional Conduct of the Florida Bar, which impute the conflict of one lawyer to all lawyers in the firm. The Commission views this as an important public protection, and opposes any relaxation of this standard.

Gifts, Expenditures, or Compensation from Lobbyists

The Commission opposed HB 1435 and SB 1490 in the 2020 session. These bills, which did not pass, would have allowed donations from lobbyists or their principals, *unlimited in amount*, to certain public employees and appointed public officials if the donations were used toward costs associated with serious injury, disease, or illness of the employee, appointed officer, or his or her child. Such a vast exemption to the gift and expenditure laws, aimed at public officials when they are most vulnerable to undue influence from special interests, would seriously undermine effective restrictions and prohibitions which have protected the public trust for many years. The Commission continues to oppose an unlimited exemption to the gift and expenditure laws.