

FILE 2677 – May 18, 2016

CONFLICT OF INTEREST; VOTING CONFLICT
COUNTY COMMISSIONER EMPLOYED BY COMPANY
DOING BUSINESS WITH COUNTY

To: *Josh Altman, Hamilton County*

SUMMARY:

A prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, by a County Commissioner's employment with a business that sells vehicle parts to the County. However, if the business is the sole source within the County of certain products, the County Commissioner's conflict, as to those products, would be negated under the exemption in Section 112.313(12)(e), Florida Statutes. The County Commissioner must comply with the voting conflicts law regarding measures affecting his interest or the interests of his business. CEO 99-11, CEO 81-27, CEO 78-24, and CEO 78-17 are referenced.¹

QUESTION:

Would you have a prohibited conflict of interest if you were to serve as a County Commissioner while also being employed by a business that sells vehicle parts to the County?

Under the circumstances presented, your question is answered as set forth below.

In your letter and additional information provided to our staff, you state that you are

¹Opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).

considering becoming a candidate for a seat on a County Commission and that you also would like to continue employment with a local retail store that sells vehicle parts and products to the County.

You state that the store, owned by your grandfather, sells vehicle products including hydraulic hoses, filters, air fittings, tire hardware, ignition parts, automotive specialty tools, brake pads and rotors, batteries, and certain car-care products that are available within the County only through this store. You explain that the store sells these products on an as-needed basis, without contracts, to the County Road Department, Emergency Medical Services, the County Recreation Department, the County landfill, and County Emergency Management, and that payment for such sales is through the County Commission. You further state that, although two other stores in the County carry limited inventories of vehicle supplies, your employer is the only store that sells the products listed herein which the County requires.

The prohibitions of the Code of Ethics implicated are in Sections 112.313(3) and 112.313(7)(a), Florida Statutes. The prohibitions in Section 112.313(3) provide:

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 first part of Section 112.313(3) prohibits a public officer from buying realty, goods, or services from a business of which he (or his spouse or child) is an officer, partner, director, or proprietor. Under the facts you present, this part of the provision would not apply to your situation, in that your position with the store would be employee and not officer, partner, director, or proprietor.

However, the second part of Section 112.313(3) would prohibit you, if you were to serve on the County Commission, from acting in your private capacity as a store employee to sell goods, services, or realty to your public agency or to any part of your political subdivision. Absent the applicability of an exemption, this prohibition would prohibit you, as a store employee, from selling to any part of County government.²

Also implicated by your situation is Section 112.313(7)(a), which provides:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.-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 . . . ; 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.

The first part of Section 112.313(7)(a) prohibits a public officer from having an employment or contractual relationship with a business entity that is regulated by or is doing business with the public officer's agency. If you were to serve on the County Commission and continue working at the store, you would hold employment with a business that sells vehicle products to your agency (the County). Absent the applicability of an exemption, you would have a prohibited conflict under the first part of Section 112.313(7)(a).

Among the exemptions in the Code of Ethics to the above-cited conflicts in Sections 112.313(3) and 112.313(7)(a) is the exemption provided in Section 112.313(12)(e), Florida Statutes, which states:

²"Agency" is defined in Section 112.312(2), Florida Statutes, as "any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative." See also CEO 99-11.

(12) EXEMPTION.— . . . In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(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.

This provision can negate a conflict of interest under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, where the business entity involved is the sole source of supply within the political subdivision of the public officer and where there is full disclosure by the public officer of his interest in or employment with the business entity to the governing body (e.g., County Commission) prior to the transaction. In CEO 78-17, the Commission on Ethics found that a fire district could purchase items from a hardware store owned by a district board member as long as that store remained the only source of supply of those particular items within the district. See also CEO 81-27 and CEO 78-24. Assuming that your private employer is the sole source of supply within your political subdivision (the County) of particular vehicle parts and products purchased by the County, if you were to serve as a County Commissioner, your employment with the store would be exempt from prohibited conflict under Sections 112.313(3) and 113.313(7)(a), Florida Statutes.³ You should complete CE Form 4A (Disclosure of Business Transaction, Relationship, or Interest) for disclosure of your private employment to the County Commission in order to avail yourself of the protection of the "sole source" exemption.

³The Commission on Ethics has found that a purpose of the sole source exemption is to alleviate hardships for local governments in their purchasing. See CEO 78-24. And, the Commission has found that whether a store stocks an item is relevant to applicability of the exemption. Therefore, we find that, if your employer is the only store in the County that stocks a particular item, that store will be the sole source of that item, regardless of whether another business could order the item which it does not ordinarily keep in stock.

Finally, if a measure (e.g., a vote to purchase or pay for sole source products from your employer) that would inure to your special private gain or loss, to that of your private employer, or to that of other persons or entities listed in Section 112.3143(3)(a), Florida Statutes, were to come before the County Commission, you would be required to adhere to the procedures in Section 112.3143(3)(a). See CE Form 8B, available at www.ethics.state.fl.us.

Accordingly, we find that, if you were to serve as a County Commissioner, your employment with a store that does business with the County would be exempt under Section 112.313(12)(e), Florida Statutes, from prohibited conflicts as to particular vehicle parts and products as long as the store is the sole-source provider within the County of those particular items, but that you remain subject to the voting conflicts law of Section 112.3143(3)(a), Florida Statutes.

cc: Mr. Josh Altman

SMW/bd/dw

To Whom it May Concern,

April 22nd, 2016

My name is Josh Altman and I am considering running for County Commissioner in Hamilton County this year. Before I submit my paperwork and become eligible for the position, under my unique circumstances, I wanted to be sure I am not violating any ethics laws. The purpose of this letter is to explain my current job title with Jasper Auto Supply and the business transactions we do with the county. I feel the current economic situation in Hamilton County and our history with the county will provide an exemption from Florida Statute 112.313. I wanted to get an informal opinion from the Ethic Board to be sure I am qualified to hold this position if elected.

My family has owned and operated Jasper Auto Supply Inc. in Jasper, Florida since 1965. My grandfather, Estes Altman, is still the owner and at 83 years young still comes in and makes sure everything is running smoothly. I am third generation working here and have been an employee since 2005. We currently have 2 employees other than myself along with my Grand Mother, who serves as our secretary and bookkeeper. We are vested in Hamilton County and love our community. Which is why after college, my wife and I moved back here to raise our family and work here. Jasper Auto has been doing business with the county for over 35 years. We have always had a great business relationship. These transactions have happened without the use of an outside salesman, contracts, or bids. We are the only auto parts store in Jasper, the county seat, and currently have close to \$200,000 in inventory. This includes many everyday items you would find in an auto parts store and some that wouldn't. Staying in business for over 50 years in a small community is an accomplishment. I feel that with our business history and being the only Auto Parts store in Jasper that we qualify for the Sole Source exemption in the Florida Statutes.

Our inventory and availability to non stock items from our Jacksonville Warehouse give our community the options to quality items: We have a delivery truck that runs daily from Jacksonville. The County Road Dept. and county officials use this to their advantage with us being in such a small community. The problem with using this sole source exemption is that there is a small parts store in Jennings located about 12 miles north of Jasper. That store has an inventory of approximately \$15,000 and is geared toward agriculture. The store owner is a local farmer. The inventory is such that the Town of Jennings also does business with Jasper Auto Supply. Although we are both considered Auto Parts stores, our expansive inventory and volume couldn't make us any further apart. Also the logistics of us being ¼ mile from the Maintenance Garage compared to 12 miles. Another issue with the sole source that has been brought to my attention is with the local hardware store. They sell a small line of tools, adhesives, and grease just like we do. However the County buys filters, batteries, air line fittings, ignition relays, and toggle switches that cannot be found at any supplier within the county. Jasper Hardware is geared toward just that, Hardware and plumbing supplies. If I started selling nails in my store, that doesn't qualify me to call it a Hardware Store. However with them selling these few automotive items does that make me disqualified from using this exemption? We stock specific items that the county needs and perform special order tasks that would be otherwise unavailable within our county. And to adhere to the statute they receive no special pricing on these items. The only special pricing that they receive is on the filters they buy for vehicles and tractors. We are a NAPA store and with the volume of filters they buy, they get a 40-50% discount. This discount is available to any customer that meets the sales criteria. We currently have 10 customers on this sale. The county saves almost \$3000 a year by using this program.

I understand that if I am approved by the Ethics Board and elected to the position that I would have to abstain from voting on paying bills when it comes to Jasper Auto. I hope that this has explained some of the issues that I am facing and the unique situation we have in Hamilton County. We are a very small community as you know and some of the Statutes seem to disqualify many people in an area such as this. I would not give up my job at Jasper Auto to pursue this position. My family and this business

mean much more to me. However if given the permission from the Ethics Board, I feel that I would be a qualified candidate given my business background and my ability to communicate with the general public. The qualifying deadline is May 20th Thank you for your time and consideration on this matter and I appreciate and value your opinion.

Josh Altman
Jasper Auto Supply
386-792-1320

Anderson, Chris

From: Josh Altman <jasperautosupply@gmail.com>
Sent: Friday, April 22, 2016 11:54 AM
To: Anderson, Chris
Subject: Re: Hamilton County Commissioner

My mailing address is

853 NW County Road 141
Jennings, FL. 32053

Thanks again.

On Fri, Apr 22, 2016 at 11:48 AM, Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us> wrote:

Josh,

Please email me your U.S. Mail address.

Chris Anderson

C. Christopher Anderson, III

General Counsel and Deputy Executive Director

Florida Commission on Ethics

(850) 488-7864

From: Josh Altman [mailto:jasperautosupply@gmail.com]
Sent: Friday, April 22, 2016 11:35 AM
To: Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us>
Subject: Hamilton County Commissioner

Thank you for our discussion the other day. Attached is a letter explaining my situation. I hope it helps in having the Ethics Board understand my issues. If there is anything else I can do. Please contact me. I look forward to hearing what the review board has to say. Thanks again.

Josh Altman

Daley, Betsy

From: Josh Altman <jasperautosupply@gmail.com>
Sent: Monday, May 09, 2016 11:41 AM
To: Daley, Betsy
Subject: Re: To Josh Altman - questions re: your ethics inquiry

No, neither my wife or my children are employees or officers of Jasper Auto. My Grandfather is President and Owner, my Grandmother is Secretary. Thanks once again for your time and effort.

Josh Altman

On Mon, May 9, 2016 at 11:08 AM, Daley, Betsy <DALEY.BETSY@leg.state.fl.us> wrote:

Josh,

Thanks for your detailed answers. I have just one more question:

Is your spouse or your child an officer, partner, director, or proprietor of your family's auto parts store?

Please reply ASAP. Thanks!

Betsy Daley

Senior Attorney

Florida Commission on Ethics

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(850) 488-3077 (fax)

daley.betsy@leg.state.fl.us

www.ethics.state.fl.us

From: Josh Altman [mailto:jasperautosupply@gmail.com]

Sent: Monday, May 02, 2016 5:54 PM

To: Daley, Betsy <DALEY.BETSY@leg.state.fl.us>

Subject: Re: To Josh Altman - questions re: your ethics inquiry

Mrs. Daley,

First off I want to Thank You again for taking the time and consideration into looking at these issues. I want to be sure that I am doing everything the right way before I go any further into the campaign.

We do not have any contracts with the county. They purchase on a as needed basis. They call in a order and if we have it in stock they send an employee over with a purchase order number. If I do not have it in stock

they allow me to order it for same day or overnight delivery. As far as the department we sell to they are as follows; The Hamilton County Road Dept., EMS, Hamilton Co. Recreation Dept., Hamilton Co. Landfill, and

Hamilton Co. Emergency Management all have active accounts with Jasper Auto. These accounts are paid thru the Board of County Commissioners. All accounts are due monthly.

I have no ownership in Jasper Auto. We are a corporation, so I am listed as Vice President of the company. I plan on resigning from this position to stay within the parameters of the Florida Statutes. Estes Altman

has been the sole owner since 1965. I have been an employee since 2004.

Jasper Hardware is just what the name implies, a hardware store. They have a building dept, that sells lumber, nails, cement, and any outdoor building supply. The outdoor center sells guns, ammunition, and outdoor power tools. Along with flowers and garden supplies. They also sell indoor plumbing supplies and paint. The items that we share in are few. they offer a small line of hand tools, to include sockets and ratchets. They also have a display of solvents and epoxies. These items include PB Blaster, WD40, and JB Weld just to name a few. We make hydraulic hoses, stock filters(oil, air, hydraulic), full line of air fittings and tire hardware, ignition parts (relays, spark plugs, control modules), Specialty tools that are specific to automotive repair, HSI Industrial Cleaners, Brake pads and Rotors, Interstate Batteries, and car care products. None of these products are available from Jasper Hardware.

The store in Jennings is a auto parts store. However the owner is a local farmer so their inventory is geared toward agriculture. They keep bearings and filters in stock for farm tractors and machinery with some

auto parts too. The air line fittings and tire hardware, specialty tools, HSI Industrial Cleaners, and Interstate Batteries are some of the products that we keep that are not available from this location. They stock less than \$10K in parts where we keep almost \$200K.

I hope this answers some of your questions and if you need more information I will be glad to answer them the best way I know how. Thanks again for your time.

Josh

Altman

On Mon, May 2, 2016 at 9:06 AM, Daley, Betsy <DALEY.BETSY@leg.state.fl.us> wrote:

OK. No problem!

bd

From: Josh Altman [mailto:jasperautosupply@gmail.com]
Sent: Monday, May 02, 2016 8:46 AM
To: Daley, Betsy <DALEY.BETSY@leg.state.fl.us>
Subject: Re: To Josh Altman - questions re: your ethics inquiry

I apologize for the delay. I have been out of town the last couple of days. Thank you very much for your consideration and helping me resolve these issues. I will be emailing you a formal response today.

Josh Altman

On Fri, Apr 29, 2016 at 11:05 AM, Daley, Betsy <DALEY.BETSY@leg.state.fl.us> wrote:

Mr. Altman,

I have been assigned to draft the ethics opinion you requested, which we anticipate will be considered by the Commission at its regular meeting on Friday, June 3, 2016.

In order to fully analyze your question, I need some further information from you. Please answer the following questions:

1. Does Jasper Auto Supply have a contract with the County for purchase of products from your company? If so what are the dates the current contract begins and ends?
2. If there is no contract, what is the County purchasing process?
3. Does your store sell to a particular County department or departments? If so, which department(s)?
4. Are you an officer of the company (Jasper Auto Supply)? If not, do you have an ownership interest?
5. Regarding the auto parts store 12 miles north of Jasper: Does your store sell products to the County that are unavailable to the County through that store? If so, what products?
6. Regarding the Jasper hardware store: Does your store sell products to the County that are unavailable to the County through that store? If so, what products?

Please reply via email at your earliest convenience.

Thanks!

Betsy Daley

Senior Attorney

Florida Commission on Ethics

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