

File 2702 – August 22, 2017

**CONFLICT OF INTEREST AND
GIFT ACCEPTANCE AND REPORTING**

**CITY COMMISSIONER APPEARING AT
EVENTS AND IN MEDIA PLATFORMS**

To: *Marlon Bolton, City Commissioner (Tamarac)*

SUMMARY:

A city commissioner would not have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, were he to retain a public relations firm to identify, create, and engage "meet and greet" events and other media platforms to gain exposure, where the public relations firm is not doing business with, or regulated, by the city commission. To the extent the commissioner has paid the firm the full and fair market value for the services provided, they would not constitute a "gift" under Section 112.3148, Florida Statutes. CEO 08-29, CEO 08-2, CEO 05-11 and CEO 91-45 are referenced.¹

QUESTION 1:

Would a prohibited conflict of interest exist were you to retain a public relations firm to identify, create, and engage "meet and greet" events and media platforms through which you may gain exposure in the community?

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry and supplemental information provided to staff, you relate that you

¹ Prior opinions of the Commission on Ethics may be obtained from its website

are a city commissioner, and you plan to retain a public relations and/or marketing firm (the "Firm"), at your own expense and at fair market price, to assist you with community outreach. You state that the Firm is owned by an individual who serves with you on the board of directors of a non-profit organization, and that the Firm is not doing business with the city nor is it regulated by the city or the city commission. You further relate that you anticipate having the Firm set up "meet and greet" events giving you a forum to communicate with members of the public throughout the community. The "meet and greet" events may include breakfasts, luncheons, galas, networking events, seminars, expos, festivals, fun days, sporting events, summits, and other events and mediums. You also anticipate that the Firm will create other platforms through which you can gain exposure, including mobile applications, printed materials, podcasts, social media posts, door hangers, promotional videos, newsletters, and all media advertising. You advise that the Firm may engage businesses in the community to sponsor some of the events and platforms. Finally, you relate that your participation on some of these platforms may be at no cost to you, where you are invited by the Firm and the same opportunities are opened up to other elected officials.

You inquire whether any provisions of the Code of Ethics would prohibit your engaging the Firm for these purposes, and under these circumstances. Section 112.313(7)(a), Florida Statutes, is relevant to your inquiry. It 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 this provision prohibits you from having an employment or contractual relationship with any business entity regulated by or doing business with your agency. As the Firm is not doing business with the city and is not regulated by the city or the city commission, this part of the statute does not apply to your situation.

The second part of Section 112.313(7)(a) prohibits you from having *any* contractual relationship which will create a continuing or frequently recurring conflict between your private interests and the performance of your public duties or which would impede the full and faithful discharge of your public duties. A "conflict" or a "conflict of interest" is defined by Section 112.312(8), Florida Statutes, as "a situation in which regard for a private interest tends to lead to disregard of a public duty or interest." In order for the second part of Section 112.313(7)(a) to apply, there must be an adequate intersection between the private interests of the public officer and the functions, duties, or subject matter of his public agency. Nothing in the information you have provided—including the fact that the Firm's owner serves with you on the board of a nonprofit—suggests this or any other conflicting dynamic. Therefore, the second part of the statute does not apply to your situation.

Accordingly, we find that hiring the Firm to assist you with community outreach, including setting up "meet and greet" events and other media advertising, will not create a prohibited conflict of interest under Section 112.313(7)(a).

Question 1 is answered accordingly.

QUESTION 2:

Would services provided you by the Firm constitute a gift to you under Section 112.3148, Florida Statutes, where you have engaged the Firm to promote you and to assist you with gaining exposure in the community, and have paid fair market value for the services provided by the firm?

Your question is answered as follows.

Section 112.312(12)(a), Florida Statutes, which defines "gift" for purposes of Section 112.3148, Florida Statutes, states:

"Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, *for which equal or greater consideration is not given within 90 days*, including:

1. Real property.
2. The use of real property.
3. Tangible or intangible personal property.
4. The use of tangible or intangible personal property.
5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
6. Forgiveness of an indebtedness.
7. Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.
8. Food or beverage.
9. Membership dues.
10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
11. Plants, flowers, or floral arrangements.
12. Services provided by persons pursuant to a professional license or certificate.
13. Other personal services for which a fee is normally charged by the person providing the services.

14. Any other similar service or thing having an attributable value not already provided for in this section.

In your letter of inquiry, you relate that you will be paying full market value for most of the "meet and greet" events you will attend, and for the media advertising services that you will receive from the Firm. The statute provides that when a recipient has provided equal or greater consideration for an item, the receipt of the item does not constitute a gift. See also CEO 91-45, in which we opined that passes and tickets to a golf tournament from the tournament sponsor did not constitute gifts to a mayor who had provided equal or greater consideration.

To the extent you provide full and fair market value to the Firm for the "meet and greet" events, media services, and other platforms, they do not constitute a "gift" as defined in Section 112.312(12)(a), and, therefore, are not prohibited or required to be reported pursuant to Section 112.3148, Florida Statutes.

Your materials also indicate you may be invited by the Firm to attend events at no cost to yourself where other elected officials are also invited to participate, and that at this time it is not clear who will pay for these events, or whether you and the other elected officials attending will be asked to share in the cost of producing these events. In addition, you state you believe that the Firm may engage businesses in the community to sponsor some events, but you are unsure as to the specifics of such sponsorships.

These scenarios could implicate the gift laws in Section 112.3148, particularly as we have opined that free publicity may be a gift. See, CEO 08-29, CEO 08-2, and CEO 05-11. In addition, Section 112.3148(4), Florida Statutes, prohibits you from accepting "directly or indirectly" a gift worth more than \$100 from certain donors.

Without more factual detail, we cannot render an opinion as to whether events or platforms

funded or sponsored, in whole or in part by others, may be a gift, and, if so, whether such gift may be prohibited or required to be reported. We can only recommend that prior to accepting anything for which you have not given equal or greater consideration, you review the statute and Rule 34-13.310(8)(c), Florida Administrative Code, which sets forth the various factors used to determine whether an "indirect gift" has been made. We invite your further inquiry, as necessary, when additional facts become available.

Question 2 is answered accordingly.

cc: Commissioner Marlon Bolton

MA/jmk

July 24, 2017

VIA EMAIL AND REGULAR MAIL

Virlindia Doss, Executive Director
Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709

Re: Request for Florida Commission on Ethics Advisory Opinion

Dear Ms. Doss:

This correspondence shall serve as a request for a formal opinion from the Florida Commission on Ethics ("FCE"). The undersigned is an elected official in the City of Tamarac (the "City"), and has standing to request an opinion from the FCE pursuant to Rule 34-6.002(1) of the Rules of the FCE.

The substantive issues for which I am seeking an advisory opinion are as follows:

- 1) WHETHER AN ELECTED OFFICIAL MAY USE PERSONAL FUNDS TO RETAIN A PUBLIC RELATIONS/MARKETING FIRM TO IDENTIFY, ENGAGE AND OR CREATE PLATFORMS THROUGH WHICH THE ELECTED OFFICIAL MAY BE PROMOTED?
- 2) IF THE ANSWER TO QUESTION ONE IS "YES," DOES THE FCE'S OPINION CHANGE IF THE PUBLIC RELATIONS/MARKETING FIRM ENGAGED BY THE ELECTED OFFICIAL IS OWNED BY AN INDIVIDUAL WHO SITS ON THE BOARD OF A NONPROFIT WITH THE ELECTED OFFICIAL?

FACTUAL BACKGROUND

I am currently a City Commissioner representing District 1 in the City of Tamarac. Aside from serving as an elected official, I also sit on the board of directors of several nonprofits.

It is my intention to engage a public relations and/or marketing firm (the "Firm") to assist me with community outreach. I anticipate having the firm set up "meet-and-greet" events, including, but not limited to breakfasts, luncheons, galas, networking events, seminars, expos, festivals, fun days, sporting events, summits and other events and mediums where I will be given a forum to communicate with members of the public throughout the community. These events will occur throughout the community and may not be limited to the City that I serve as an elected official. I also anticipate that the Firm will create or make me apart of other platforms through which I may

gain exposure; these could include but not be limited to, mobile applications, printed materials and magazines, podcasts, social media posts, door hangers, promotional videos, newsletters and all media advertising. The firm may engage businesses in the community to sponsor some of these events and platforms. I will not be playing any direct role in the solicitation of sponsorships for these events and platforms. I will be paying a fair market value for the services requested by me and provided to me by the Firm out of my personal funds. In other words, the only benefits that I will personally gain are those that I pay for to be exclusively promoted; but I am mindful that I could be promoted free of cost only on occasions where I am invited by the firm to participate on platforms, where the same opportunities are opened up to other elected officials, city, county or statewide, for the benefit of the public.

The firm that I intend to hire is owned by an individual who serves with me on the board of directors of a nonprofit.

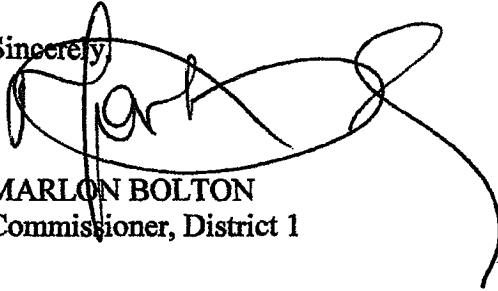
STATUTORY PROVISIONS

After reviewing Ch. 112, F.S., it is my understanding that several provisions could be applicable to facts set forth herein, including Section 112.313, F.S., and Section 112.3148, F.S. Since I will be paying fair market value for any services provided by the firm and will not be receiving a preferential rate, I do not suspect that there will be any gift issues related to this inquiry. While I see no other provision of Section 112.313, F.S. which directly addresses the facts detailed herein, I would appreciate the FCE's insight into this inquiry.

CONCLUSION

In an abundance of caution, the undersigned seek a formal advisory opinion of the FCE addressing and clarifying the issues detailed herein. Thank you for your attention and consideration to this matter. Please do not hesitate to contact our office if there is any additional information that we can provide.

Sincerely,



MARLON BOLTON
Commissioner, District 1

Anderson, Chris

From: Doss, Virindia
Sent: Wednesday, July 26, 2017 9:58 AM
To: Anderson, Chris
Subject: FW: Request for Florida Commission on Ethics Advisory Position
Attachments: DOC154.PDF; ATT00001.htm

He's requesting a formal opinion; who would you like it assigned to?

From: m8169b@gmail.com [mailto:m8169b@gmail.com]
Sent: Tuesday, July 25, 2017 6:27 PM
To: Doss, Virindia <DOSS.VIRLINDIA@leg.state.fl.us>
Subject: Request for Florida Commission on Ethics Advisory Position

Good Evening Ms. Doss,

I am forwarding the attached request for your attention and the attention of the Ethics Commission.

Thank you for your time and I look forward to hearing from you,

KNIGHT.JOHN

From: Marlon D. Bolton <m8169b@gmail.com>
Sent: Tuesday, August 22, 2017 8:20 AM
To: KNIGHT.JOHN
Subject: Request for Formal Opinion_Answers

Hello Mr. Knight:

Here are the answers to your questions, In red.

1. What makes you think that it is a problem to hire the Firm? To be clear, I do not believe that there is any problem with me hiring the firm. I am requesting this opinion in an abundance of caution. As a newly elected official, I am very mindful of Ch. 112, F.S., and I want to be certain that any initiative I pursue is consistent with the statutory ethics requirements, as well as the requirements of our local code of ethics.
2. Is the Firm doing business with, or regulated by the City? The firm does not do business with the City of Tamarac and is not regulated by the City or the City Commission.

As I said, your letter raises several “gift” issues, and I need additional information to be able to address the issue fully:

1. In your letter, you state that the Firm may engage businesses in the community to sponsor some of the events and platforms. What form will the sponsorships take? It is unknown at this time, as I will be relying on the firm for their professional guidance. In my opinion request letter I tried to identify a number of different types of programs and events that I envision occurring. I suspect that sponsorships could be either in kind or financial, depending on the type of event.
2. Will the sponsors be solicited for specific events/persons/individuals? As noted in my request, I will not be playing a role in the solicitation of sponsorships. I intend to defer to the firm as to how they approach this issue.
3. Or, are the sponsors giving money to the Firm to use the money as the Firm deems best? Again, I have to defer to the firm here. I do not know whether sponsorships will be for specific events or to be used in the firm’s discretion. As noted, I will not be engaged in the solicitation process.
4. Can you provide any examples of the type of “platforms” that the Firm will invite you and other elected officials to participate in? In my request letter I mention seminars, festivals, networking events, platforms etc...I imagine that these will be marketed events and other elected officials may be invited to attend and/or participate. I will defer to the firm’s professional judgment on how these events should be organized.
5. If you are participating in some of these platforms “free of cost”, do you know who will pay for them? Please provide examples if you know. As noted in my request, I will be paying fair market value for the services provided by the firm. I anticipate that the firm will put on seminars and other similar events where elected officials may be given a platform to speak. In such instances, I do not know for certain whether elected officials, myself included, will be asked to pay to participate in these events in order to offset the production costs. I would defer to the firm as to how they intend to finance such promotional events.

While I attempted to list a number of examples of types of events in my opinion request, I do not know which types of events will come to fruition. If I am legally able to pursue this opportunity, and I hope that I am, I imagine that I will need to meet with the firm to develop a marketing plan within my budget that will work for them.

Best Regards,