

FILE 2703 – October 20, 2017

POST-EMPLOYMENT RESTRICTIONS

FORMER DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION EMPLOYEE REPRESENTING CLIENTS BEFORE DEPARTMENT DIVISIONS, BUREAUS, AND BOARDS WITHIN TWO YEARS OF LEAVING PUBLIC EMPLOYMENT

To: *Mr. Anthony J. Glover (Tallahassee)*

SUMMARY:

Advice is provided to a former employee of the Florida Department of Business and Professional Regulation regarding applicability of Section 112.313(9)(a)4, Florida Statutes, to his particular situation and work history. Referenced are CEO 14-1, CEO 11-24, CEO 11-10, CEO 09-6, and CEO 00-11.

QUESTION:

How does the post-public-employment "representation" restriction of Section 112.313(9)(a)4, Florida Statutes, apply to you, a former employee of the Department of Business and Professional Regulation, given your public employment history?

Your question is answered as set forth below.

Through your letter of inquiry, you state you are a former employee of the Florida Department of Business and Professional Regulation (DBPR), where you served in two positions. You indicate you first served as the Deputy Division Director for the Division of Alcoholic Beverages and Tobacco (ABT), a position that required you to supervise the chiefs of the three bureaus housed within ABT (Auditing, Enforcement, and Licensing). You state this was a Selected Exempt Service (SES) position and that your final day of employment with ABT was April 29,

2016. After you left ABT, you next served as the Director of the Division of Pari-Mutuel Wagering (PMW), a Senior Management Service (SMS) position, where you remained until September 5, 2017, at which time you left public employment entirely. You emphasize you were not employed at DBPR in any capacity except in your positions with ABT and PMW, and that your responsibilities were confined to those two Divisions.¹ You inquire to what extent, if any, the two-year post-employment restriction found in Section 112.313(9)(a)4, Florida Statutes, will affect your representation of persons or entities before DBPR.

Section 112.313(9)(a)4 provides:

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.

(emphasis added). Essentially, the provision prohibits a former agency employee from representing persons or entities for compensation before his former agency.² For purposes of the prohibition, the term "employee" is defined in Section 112.313(9)(a)2.a.(I), Florida Statutes, as:

Any person in the executive or legislative branch of government

¹ You also indicate that unlike other divisions at DBPR, no professional boards or commissions are housed within ABT or PMW.

² The term "represent" is defined in Section 112.312(22), Florida Statutes to include:

Actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

For examples of what will and will not constitute a prohibited representation under Section 112.313(9)(a)4, see CEO 09-6.

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 . . .

In your situation, because your service with ABT was as a SES employee, and because your service with PMW was as a SMS employee, the two-year prohibition found in Section 112.313(9)(a)4 applies to both positions. The questions then becomes whether your "agency" encompasses the entirety of DBPR or merely the Divisions where you worked.

Section 112.312(2), Florida Statutes, in pertinent part, defines "agency" as "any department, division, bureau, commission, authority or political subdivision . . ." Thus, we have found that one's agency is not necessarily one's entire Department, but rather the lowest departmental unit within which one's influence would extend. See CEO 11-10 and CEO 00-11.

Here, you were employed in two separate DBPR Divisions—ABT and PMW—each housing bureaus where your influence extended. For the purposes of Section 112.313(9)(a)4, we find it reasonable, under your public work history, to consider the Divisions themselves to be separate agencies. We therefore find your "agencies" for the purposes of Section 112.313(9)(a)4 to be ABT and PMW, meaning you will be prohibited from representing persons or entities for compensation before these Divisions, or any bureaus located within them, although the prohibition will not extend to divisions, bureaus, or professional boards located outside ABT and PMW.

We note that when you left ABT, you transferred to PMW, where you remained until you left public employment over a year later. You indicate you had no further responsibilities regarding ABT after you transferred. As discussed above, we consider ABT and PMW to be two separate "agencies" under the facts of your situation. Accordingly, the two-year representation prohibition regarding ABT began to run on the date that you left ABT (April 29, 2016), while the prohibition

regarding PMW began to run on the date that you left public employment there (September 5, 2017). See, generally, CEO 14-1 (treating Florida Department of Transportation Districts as separate "agencies," each warranting separate applications of Section 112.313(9)(a)4).

You also inquire whether you will you are prohibited from advising private clients on issues related to the alcoholic beverages and tobacco industries during the two-year prohibition period applicable to ABT, as well as whether you are prohibited from advising private clients on issues related to the pari-mutuel wagering industry during the two-year prohibition period applicable to PMW.³ As explained above, Section 112.313(9)(a)4 prohibits you from representing persons or entities for compensation before your former agencies. However, it does not prohibit you from providing advice concerning a particular subject matter with which you were involved while in public employment, provided the giving of advice does not involve any of the conduct listed in Section 112.312(22).⁴

Your inquiry is answered accordingly.

cc: Mr. Anthony J. Glover

MA/gps/dw

³ It is assumed that your advice will not include disclosing information unavailable to members of the general public and gained due to your employment at ABT and PMW, as such conduct would be prohibited by Section 112.313(8), Florida Statutes, even after leaving public employment.

⁴ You ask no questions concerning the post-public-employment prohibitions of Section 112.3185, Florida Statutes. However, please be aware that the work you perform for clients must be within the parameters set forth in that statute. For general information concerning Section 112.3185, see CEO 11-24.

Westberry, Diana

From: Anderson, Chris
Sent: Wednesday, September 20, 2017 3:06 PM
To: Westberry, Diana
Subject: FW: Request for Opinion - Florida Commission on Ethics
Attachments: DBPROrgChart_000.pdf; ATT00001.htm

From: Doss, Virindia
Sent: Monday, September 18, 2017 4:08 PM
To: Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us>
Subject: Fwd: Request for Opinion - Florida Commission on Ethics

Formal?

Sent from my iPhone, so please forgive brevity and typos.

Begin forwarded message:

From: Tony Glover <anthonyjglover@gmail.com>
Date: September 18, 2017 at 1:29:38 PM EDT
To: doss.virlindia@leg.state.fl.us
Subject: Request for Opinion - Florida Commission on Ethics

Director Doss -

By this communication, I am requesting an opinion from the Florida Commission on Ethics relating to post-employment restrictions following my departure from the Florida Department of Business and Professional Regulation ("the Department"). Thank you in advance for your consideration and guidance. I am requesting that the Commission withhold my name, and I am available to answer any follow-up questions if needed. My contact information is included below.

State Employment

I served in two senior management positions within two separate divisions during my term of employment at the Department. I was initially employed as a select exempt service employee (Deputy Division Director) within the Division of Alcoholic Beverages and Tobacco (ABT). In that role, I worked on a day to day basis with each of the three bureaus within ABT (Auditing, Enforcement, and Licensing) and directly supervised the chiefs of those bureaus. My final day of employment at and involvement with ABT was April 29, 2016. I subsequently worked as a senior management service employee (Division Director) within the Division of Pari-Mutuel Wagering (PMW), where I was responsible for the management of the entire division and all of the bureaus therein. My final day of employment at PMW was September 5, 2017.

The Department is quite large and regulates a broad swath of disparate industries. Accordingly, the Department is home to a large number of other divisions, bureaus and offices under other divisions, and professional boards. The nature of the department's responsibilities necessitates a siloed organizational structure, and an organizational chart is attached and [linked](#) to this message. I have not been employed in any other capacity at the Department, and had no formal or informal responsibilities for any bureau outside of ABT and PMW.

Request for Guidance

Partially due to a 2015 Florida Commission of Ethics opinion relating to PMW and ABT (CEO 15-4), I have been exposed to some of these concepts. I have also reviewed a series of recent Commission opinions stating that the two year prohibition on representation applies only to the lowest departmental

unit within which the employee's influence might reasonably be considered to extend. *E.g.*, CEO 16-14, CEO 14-30, CEO 14-1, CEO 12-22, CEO 11-10. Nevertheless, I take matters of ethics very seriously and file this request in an abundance of caution.

I am requesting guidance on the following questions:

- 1) Do the Florida Statutes impose any post-employment restrictions as it relates to departmental divisions, bureaus, or professional boards that I was not previously employed by and where I did not hold any responsibilities?
- 2) Given that I vacated my position at the Division of Alcoholic Beverages and Tobacco on April 29, 2016, and that I had no subsequent involvement in the management of that division, when did my two year post-employment restriction period begin to run as it relates to the Division of Alcoholic Beverages and Tobacco?
- 3) Within two years of vacating my position at the Division of Alcoholic Beverages and Tobacco, may I advise private clients on issues related to the alcoholic beverage and tobacco industries, provided that I do not personally represent a client before the Division of Alcoholic Beverages and Tobacco?
- 4) Within two years of vacating my position at the Division of Pari-Mutuel Wagering, may I advise private clients on issues related to the pari-mutuel wagering industry, provided that I do not personally represent a client before the Division of Pari-Mutuel Wagering?

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