CEO 25-3—June 11, 2025

## LOBBYING RESTRICTIONS

## APPLICATION OF THE IN-OFFICE LOBBYING BAN TO CITY MAYOR

*To: Tim Marden, Mayor (Newberry)*

**SUMMARY:**

In-office lobbying ban found in Article II, Section 8(f)(2), Florida Constitution, does not apply when an elected mayor is not principally employed for governmental affairs in his private capacity.

**QUESTION:**

May an elected mayor advocate for certain policies on behalf of his private employer before the federal government?

This question is answered as follows.

In your ethics inquiry, you indicate that you were recently elected to be the Mayor of Newberry, Florida. You state that during the election, concerns were raised because you had recently registered as a lobbyist of the federal government due to your work at the John Birch Society, your private employer.

Regarding your work in your private capacity, you indicate you are employed as the National Development Officer with the John Birch Society, which is a paid position. You state your primary job duties involve raising money for your employer through soliciting donations, business advertisements, and making arrangements with those who are including the John Birch Society in their estate plans. You indicate you also work on special projects and advancing the overall mission of your employer.

Separate from these job duties, you indicate you plan to go to Washington, D.C., once every other month to advocate for certain policies on behalf of the John Birch Society. Regarding the scope of your duties as they pertain to these trips, you note that you will be advocating for elected officials to adhere to the Constitution on various legislative matters, which includes advocating for anti-war and anti-central banking policies, as well as advocating for the withdrawal of the United States from the United Nations. Outside of the trips to Washington, D.C., you state you may also periodically send written correspondence or documentation to follow up on a visit.

You state you are the only registered lobbyist for your employer, but that you only registered as a lobbyist for transparency purposes. Specifically, you noted you did not feel that your interactions with public officials of the federal government rise to the level of a "traditional lobbyist," but, since it was free to register and increased transparency, your CEO agreed to have you register anyway.

Against this backdrop, you ask whether the work you do for your employer would violate the in-office lobbying ban found in Article II, Section 8(f)(2), Florida Constitution. Turning to the language of the in-office lobbying ban, Article II, Section 8(f)(2), Florida Constitution, states:

> A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office.

The in-office lobbying ban prohibits public officers lobbying for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of the state during their term of office. Therefore, it must be determined whether you are a public officer subject to the ban and whether the conduct you have described in your inquiry amounts to lobbying for compensation.

The term "public officer" for purposes of the in-office lobbying ban is defined in Article II, Section 8(f)(1), Florida Constitution. This provision states:

> For purposes of this subsection, the term "public officer" means a statewide elected officer, a member of the legislature, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, an elected special district officer in a special district with ad valorem taxing authority, or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government.

You indicate you were recently elected to serve as the Mayor of Newberry, Florida. Given that the term "elected municipal officer" is included in the definition of "public officer" for purposes of the in-office lobbying ban, as an elected mayor of a municipality, the in-office lobbying ban is applicable to you.

Since you are a public officer subject to the in-office lobbying ban, we must now determine whether the conduct you have described in your inquiry amounts to "lobbying for compensation," as that is the conduct that Article II, Section 8(f)(2), Florida Constitution, prohibits during the course of a public officer's term of office.

The definition of the term "lobby for compensation" is found in Section 112.3121(12)(a)-(b), Florida Statutes. This provision states:

> (12)(a) "Lobby for compensation" means being employed or contracting for compensation, for the purpose of lobbying, and includes being principally employed for governmental affairs to lobby on behalf of a person or governmental entity.
> (b) The term "lobby for compensation" does not include any of the following:
> 1. A public officer carrying out the duties of his or her public office.
> 2. A public or private employee, including an officer of a private business, nonprofit entity, or governmental entity, acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs.
> 3. Advice or services to a governmental entity pursuant to a contractual obligation with the governmental entity.
> 4. Representation of a person on a legal claim cognizable in a court of law, in an administrative proceeding, or in front of an adjudicatory body, including representation during prelitigation offers, demands, and negotiations, but excluding representation on a claim bill pending in the Legislature.
> 5. Representation of a person in any proceeding on a complaint or other allegation that could lead to discipline or other adverse action against the person.
> 6. Representation of a person with respect to a subpoena or other legal process.

Relevant to your inquiry, Section 112.3121(12)(b)2., Florida Statutes, excludes from the definition of "lobby for compensation" instances where a public or private employee is acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs. Because the advocacy you will be engaged in during your trips to Washington, D.C., will be part of the normal course of your private job duties at the John Birch Society, we must determine whether you are "principally employed for governmental affairs" by your employer.

The term "principally employed for governmental affairs" is defined in Section 112.3121(15), Florida Statutes. Section 112.3121(15) states:

> "Principally employed for governmental affairs" means that the principal or most significant responsibility of the employee is to oversee the employer's various relationships with governmental entities or representing the employer in its contacts with governmental entities.

In sum, the term "principally employed for governmental affairs" means that the most significant responsibility of the employee is to oversee the employer's various relationships with governmental entities or to represent the employer in its contacts with governmental entities. Here, you have indicated that your primary responsibility in your employment involves raising money for the organization through various means, including soliciting donations, business advertisements, and seeking the inclusion of your employer in people's estate plans. Regarding your representation of your employer in its contacts with governmental entities, you state that you will only be going on trips to Washington, D.C., once every other month, or six times per year. Based on these facts, therefore, it does not appear that your employment brings you into the definition of being "principally employed for governmental affairs," as your primary and most significant responsibilities with your employer involve fundraising, not representing your employer in its contacts with governmental entities.

Because you are not "principally employed for governmental affairs" in your private capacity, and because you would be acting in the normal course of your private job duties in taking trips to Washington, D.C., to advocate on behalf of your employer, it does not appear that the activities you will be engaged in as National Development Officer of the John Birch Society constitute "lobbying for compensation" as that term is defined in Section 112.3121(12), Florida Statutes. Therefore, the conduct you have described in your inquiry as it relates to your private employment will not violate the in-office lobbying ban found in Article II, Section 8(f)(2), Florida Constitution.

Your question is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on June 6, 2025, and **RENDERED** this 11th day of June 2025.

Luis M. Fusté, *Chair*

CEO 19-12—July 31, 2019

**APPOINTMENT OR EMPLOYMENT OF RELATIVES OF SCHOOL SUPERINTENDENTS**

**EFFECT OF CHAPTER 2018-005, LAWS OF FLORIDA**

*To: Joy Frank, Esq., Attorney for Florida Association of District School Superintendents (Tallahassee)*

**SUMMARY:**

Advice is provided regarding the amendment to Section 1012.23(2), Florida Statutes, which became effective on July 1, 2019. While the provision's language has been extended to include district school superintendents, prohibiting them from appointing or employing a "relative," as that term is defined in Section 112.3135, Florida Statutes, to work under their direct supervision, it does not apply when a superintendent only makes a recommendation concerning the appointment or employment of a relative. Referenced are CEO 09-16, CEO 02-3, and CEO 00-17.

**QUESTION:**

Under the recently-added language of Section 1012.23(2), Florida Statutes, are district school superintendents prohibited not only from appointing or employing "relatives," as that term is defined in Section 112.3135, Florida Statutes, to work under their direct supervision, but also from making recommendations to appoint or employ "relatives" to work under their direct supervision?

Your question is answered in the negative.

In your letter of inquiry, you indicate you are inquiring on behalf of several district school superintendents about the applicability of language in Section 1012.23(2), Florida Statutes, which became effective (via Chapter 2018-005, Laws of Florida, HB 1279) on July 1, 2019. While Section 1012.23(2) previously prohibited only district school board members from appointing or employing "relatives," as that term is defined in Section 112.3135, Florida Statutes,[1] to work under their direct supervision, the amended language extends the prohibition to district school superintendents, stating:

> Neither the district school superintendent nor a district school board member may appoint or employ a relative, as defined in s. 112.3135, to work under the direct supervision of that district school board member or district school superintendent. The limitations of this subsection do not apply to employees appointed or employed before the election or appointment of a school board member or district school superintendent. The Commission on Ethics shall accept and investigate any alleged violations of this section pursuant to the procedures contained in ss. 112.322-112.3241.

(emphasis added).

Your question stems from the fact that, despite the language in the amendment, district school superintendents do not have authority to appoint or employ district employees, but only to make recommendations to the school board concerning appointment or employment decisions. As support, you cite Section 1012.22, Florida Statutes, which provides in part:

> PUBLIC SCHOOL PERSONNEL; POWERS AND DUTIES OF THE DISTRICT SCHOOL BOARD.--The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

*(a) Positions, qualifications, and appointments.—*

1. The district school board shall act upon written recommendations submitted by the district school superintendent for position to be filled, for minimum qualifications for personnel for the various positions, and for the persons nominated to fill such positions.

2. The district school board may reject for good cause any employee nominated.

3. If the third nomination by the district school superintendent for any positions is rejected for good cause, if the district school superintendent fails to submit a nomination for initial employment within a reasonable time as prescribed by the district school board, or if the district school superintendent fails to submit a nomination for reemployment within the time prescribed by law, the district school board may proceed on its own motion to fill such position.

4. The district school board's decision to reject a person's nomination does not give that person a right of action to sue over the rejection and may not be used as a cause of action by the nominated employee . . .[2]

Given the foregoing, you ask what effect the amended language of Section 1012.23(2) will have on district school superintendents, considering they do not have statutory authority to appoint or employ, but only to make recommendations.

Our interpretation of Section 1012.23(2) necessarily involves recognition of the general principal that, as a penal statute, it must be strictly construed, meaning any doubts as to the meaning of its terms must be construed most favorably toward a potential respondent (i.e., the person against whom it would be applied). City of Miami Beach v. Galbut, 626 So. 2d 192, 194 (Fla. 1993). Strictly construing a statute allows those covered by it to have clear notice of what it proscribes. See CEO 09-16 and CEO 02-3. It also ensures we do not usurp the role of the Legislature by impermissibly broadening a law or enlarging the terms or used in the law. See CEO 00-17.

Here, we find it reasonable that the Legislature knew of the limited role that district school superintendents play in the hiring and appointment process, a role clearly laid out in Section 1012.22. The fact that the Legislature still chose not to include language extending the prohibition in Section 1012.23(2) to situations where a district school superintendent recommends the hiring of a relative shows, to us, that it did not intend for the statute to apply in such a circumstance.[3] To interpret the statute otherwise would broaden its scope beyond the plain meaning of its language.[4] For this reason, we find the amended language in Section 1012.23(2) applies to district school superintendents only in situations where they appoint or employ a relative (as "relative" is defined in Section 112.3135) to work under their direct supervision, not in situations where they make recommendations to the district school board for the board to appoint or employ their relative.

Regarding your remaining issues, you inquire whether a district school superintendent may recommend a relative, as defined in Section 112.3135, for employment if that relative does not fall under the superintendent's direct supervision. As previously indicated, we do not interpret the amended language in Section 1012.23(2) as extending to making employment recommendations. Moreover, to the extent the statute applies to superintendents, it is only when a superintendent appoints or employs a relative to work under his or her direct supervision. So long as a person other than the superintendent will be the direct supervisor of the relative, the statute will not be triggered.

Similarly, in response to your next issue, we find that a district school superintendent will not trigger the statute if he or she recommends for employment a relative of a district school board member. Again, we do not interpret the statute's language to encompass recommendations. In addition, the amended language in Section

1012.23(2) would apply only if a superintendent appointed or employed one of his or her relatives, not when a superintendent appointed or employed a relative of another district officer or employee, such as a relative of a school board member.

Nor will the provision be triggered if a school superintendent proposes a salary increase or bonus for a teacher or school employee who happens to be a relative. As described above, we must strictly interpret Section 1012.23(2). Its language only applies to appointment or employment.

Your final issue concerns the grandfathering language included in the amendment to Section 1012.23(2), which states, in pertinent part, "[t]he limitations of this subsection do not apply to employees appointed or employed before the election or appointment of a . . . district school superintendent." You note that most school personnel are hired pursuant to an annual contract. You inquire whether the grandfathering protection will apply if a relative of a district school superintendent is employed before the superintendent was elected or appointed, and then, following the election or appointment, the relative's annual contract is renewed by the school board upon recommendation of the superintendent.

In view of our findings earlier in this opinion and the high likelihood that no particular superintendent will be faced with a potential "grandfathering" situation, we decline at this time to opine on this point. However, should a superintendent be presented with a concrete grandfathering issue in the future, do not hesitate to contact us for advice.

Your question is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on July 26, 2019, and **RENDERED** this 31st day of July, 2019.

Kimberly B. Rezanka, *Chair*

[1]The term "relative" is defined in Section 112.3135(1)(d), Florida Statutes, to mean ". . . father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

[2]No other statute directly addresses the hiring process for district school employees, although Section 1001.42(5)(a), Florida Statutes, gives district school board members appointment authority over district personnel and Section 1001.51(7), Florida Statutes, states district school superintendents are responsible "for directing the work of the personnel."

[3]While the bill analyses for the amendment do not address the addition of district school superintendents with any specificity, they do state the intent of the amendment was only to prohibit superintendents "from employing or appointing a relative to work under their direct supervision."

[4] In contrast to the language of Section 1012.23(2), that of Section 112.3135(2)(a), Florida Statutes, which does not apply to school districts, school boards, or school superintendents (see Opinion of the Attorney General AGO 82-48), contains a prohibition related to recommendations as well as an appointment/employment prohibition. It states a public official "may not appoint, employ, promote, or advance, or advocate for the appointment, employment promotion, or advancement" of a relative.