

FILE 2779 — April 16, 2021

CONFLICT OF INTEREST

CITY COUNCIL MEMBER CONTRACTING WITH CITY FOR USE OF RECREATION CENTER FOR KARATE CLASSES

To: *Meredith Abel, City Council Member (Temple Terrace)*

SUMMARY:

Under the particular facts presented, Section 112.316, Florida Statutes, will negate a conflict of interest under Section 112.313(7)(a), Florida Statutes, were a member of a City Council to enter into a contract with the City for usage of the City recreation center to host karate classes. No conflict is found under Section 112.313(3), Florida Statutes. Referenced are CEO 92-25, CEO 10-15, CEO 15-2, and CEO 16-12.

QUESTION:

Is a prohibited conflict of interest created where a member of the City Council enters into a contract with the City for usage of the City recreation center to host karate classes?

Under the particular circumstances presented, this question is answered in the negative.

You are a member of the City Council of a City, a position to which you were elected on November 3, 2020. You also are a karate instructor, performing private instruction at the residences of your students and at a local mosque, and, in both instances, the students pay tuition

to you for your instruction. Also, until you were elected, you performed private karate instruction for children at the City's recreation center, for which you received compensation from the students.

The City has a program that is administered by the City's Leisure Services Department whereby clubs and activity groups can use space in City-owned resources, such as the recreation center or parks, to host their gatherings. The City forms a contract with the activity instructor and allows him or her to use the City-owned space for the gathering in exchange for a percentage of the recreation center membership fees paid by class attendees, or an \$8 surcharge for attendees who are not recreation center members. In practice, before you were elected, you would collect the fees from the students and remit the percentage owed to the City under the contract on a monthly basis. Among other terms, the contract includes an indemnification clause wherein the instructor agrees to hold the City harmless and to indemnify the City for damages and an agreement that the City has the right to advertise the class in a brochure, but other advertising is the responsibility of the instructor.

Since your election, parents have expressed a demand for you to continue teaching karate at the recreation center. You ask if you may volunteer your time, receiving no income from tuition,¹ as a karate instructor at the recreation center. You explained to Commission on Ethics staff on the telephone that that students would pay the tuition to the recreation center and that the tuition would result in no payment to you, but it would still be necessary for you to charge students for your cost, with no profit margin, for uniforms, belt testing,² and gear, as needed, because those things are essential to administering the program. With this background, you ask

¹ You state that you are unsure if this means the recreation center would charge the students no tuition or if it would keep the tuition, but in either event, you would earn no income from any tuition that might be charged.

² "Belt testing" is a test of the karate curriculum a student has learned. The costs for belt testing include a new belt, a certificate, and an ice cream party. Belt testing occurs every three months.

whether the proposed arrangement would pose a conflict of interest under the Code of Ethics for Public Officers and Employees.

We find that Section 112.313(3), Florida Statutes, is not applicable to your situation.

Section 112.313(3) states:

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 . . . This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

Based on the facts you present, it does not appear you are acting in an official capacity to purchase karate instruction for the City and you are not acting in a private capacity to sell karate instruction to the City. Therefore, Section 112.313(3) does not apply to pose any prohibited conflict of interest.

Also relevant to your inquiry, Section 112.313(7)(a), Florida Statutes, states:

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 clause of this statute prohibits a public officer or employee from having employment or a contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of this statute prohibits a public officer or employee from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or that would create an impediment to the full and faithful discharge of his or her public duties.

Considering, in insolation, the first clause of the prohibition, the contract with the City would appear to be conflicting, given that you, a self-employed business entity, would have a contractual relationship with the City. See CEO 16-12 (*citing* CEO 10-15 for the proposition that even a self-employed person can be a business entity). However, we believe that Section 112.316, Florida Statutes, operates to negate this conflict under the particular circumstances presented.

Section 112.316 states:

Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

We note that there are two exemptions to the conflict of interest statute that are not directly applicable to your situation, but the spirit of these exemptions demonstrates that any conflict of interest arising from the scenario you present should be negated by Section 112.316.

The first exemption is found at Section 112.313(12)(f), Florida Statutes. It provides an exemption to conflicts found under Section 112.313(3) and (7)(a) when "[t]he total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500

per calendar year." This exemption concerns situations where the public agency is purchasing less than \$500 per calendar year from a public officer's or public employee's business. See CEO 92-25 and CEO 15-2.

The second exemption is found at Section 112.313(12)(i), Florida Statutes. It provides an exception to conflicts found under Section 112.313(3) and (7)(a) when:

[t]he public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

Considered without reference to Section 112.316, these two exemptions would not apply to you because the City is not purchasing from you (instead, students would be paying the City directly for your usage of the City's facility) and because you are not purchasing from a business entity doing business with the City (instead, you are, in a sense, purchasing from the City itself). However, in a situation where you are remitting less than \$500 to the City each calendar year for the use of the facility and that usage affords you less than \$500 in income per calendar year, and where the usage of the facility is available to similarly-situated members of the public at the same terms, we find that the spirit of these exemptions gives rise to an operation of Section 112.316 that negates the conflict of interest.

Your question is answered accordingly.

JL/sjz/ks

cc: Meredith Abel

From: Zuilkowski, Steven
Sent: Tuesday, March 09, 2021 10:56 AM
To: Anderson, Chris
Subject: Fw: Ethics request timeline

Formal opinion request confirmed.

From: Abel, Meredith <MAbel@Templeterrace.com>
Sent: Monday, March 8, 2021 9:44 PM
To: Zuilkowski, Steven
Subject: Re: Ethics request timeline

Thank you for your reply. Yes, I would like to have this matter considered for a formal opinion. There is no urgency, however, since I have no plans currently to initiate such a program.

With gratitude,

Meredith Abel

Sent from my iPad

> On Mar 8, 2021, at 11:16 AM, Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us> wrote:

>

> Good morning,

> With this new wrinkle, I think your situation is appropriate for a formal opinion from our Commission, rather than an informal guidance letter from staff. With your approval, we can put your inquiry in the queue for a formal opinion. The earliest date our Commission could consider the matter is 4/16. Let me know soon if you want a formal opinion so staff here can begin processing the request and performing the required research.

> Steve Zuilkowski

> Attorney

> Commission on Ethics

>

> From: Abel, Meredith <MAbel@Templeterrace.com>

> Sent: Monday, March 8, 2021 8:08 AM

> To: Zuilkowski, Steven

> Subject: Re: Ethics request timeline

>

> Dear Mr. Zuilkowski,

>

> Thank you again for taking the time to research my question about any exceptions that would allow me to teach karate on City property.

>

> I'm happy to report that parents offered up their yards and I can begin a program teaching on private property.

>

> However, I did have an additional question. My city attorney said that I could conceivably volunteer to continue my karate program in city's recreation center. At some point, I might consider doing this. However, even if I teach for free, there are still costs associated that I would need to charge students: uniforms, belts, student manuals, etc.

>

> Is there an exception allowing this, if revenues do not exceed a certain amount? I remember reading \$500 somewhere in my own research.

>

> Thank you for any insight,

>

> Meredith Abel

>

> Sent from my iPad

>

>> On Mar 3, 2021, at 9:21 AM, Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us> wrote:

>>

>> I will call you at 2:30. Thank you so much.

>>

>>

From: Abel, Meredith <MAbel@Templeterrace.com>

>> Sent: Wednesday, March 3, 2021 8:34 AM

>> To: Zuilkowski, Steven

>> Subject: Re: Ethics request timeline

>>

>> Dear Mr. Zuilkowski,

>>

>> Thank you for your reply. I can talk before 10am or between 2:00 and 5:00pm. I can be reached at 813-997-1637. Please let me know when to expect you so I can be sure to pick up.

>>

>> Thank you,

>>

>> Meredith Abel

>>

>> Sent from my iPad

>>

>>>> On Mar 2, 2021, at 4:43 PM, Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us> wrote:

>>>>

>>>> Good evening, Council Member Abel. Are you available sometime tomorrow to chat on the phone? Please tell me what time and the best phone number to reach you.

>>>> Sincerely,

>>>> Steven J. Zuilkowski

>>>> Attorney

>>>> State of Florida, Commission on Ethics

>>>>

>>>>

From: Abel, Meredith <MAbel@Templeterrace.com>

>>>> Sent: Tuesday, March 2, 2021 3:27 PM

>>>> To: Zuilkowski, Steven

>>>> Subject: Ethics request timeline

>>>>

>>>> Dear Mr. Zuilkowski,

>>>>

>>>> Good afternoon, I just wanted to reach out about the written ethics request to inquire about the timeline I should anticipate.

>>>>

>>>> Thank you for looking into this matter for me.

>>>>

>>>> Sincerely,

>>>>

>>> Meredith Abel
>>> Temple Terrace City Council
>>>
>>>
>>> Sent from my iPad



Steverson, Kathryn

From: Zuilkowski, Steven
Sent: Wednesday, March 3, 2021 3:10 PM
To: Steverson, Kathryn
Subject: Fw: Ethics request timeline

Request withdrawn after guidance given over the phone. Please close informal.

From: Abel, Meredith <MAbel@Templeterrace.com>
Sent: Wednesday, March 3, 2021 2:46 PM
To: Zuilkowski, Steven
Subject: Re: Ethics request timeline

Good afternoon,

Are you still available for a call this afternoon?

Thank you,

Meredith Abel

Sent from my iPad

> On Mar 3, 2021, at 9:21 AM, Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us> wrote:

>

> I will call you at 2:30. Thank you so much.

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> Sent: Wednesday, March 3, 2021 8:34 AM

> To: Zuilkowski, Steven

> Subject: Re: Ethics request timeline

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> Please let me know when to expect you so I can be sure to pick up.

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> Thank you,

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> Sent from my iPad

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>> Sincerely,

>> Steven J. Zuilkowski

>> Attorney
>> State of Florida, Commission on Ethics
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>> Sent: Tuesday, March 2, 2021 3:27 PM
>> To: Zuilkowski, Steven
>> Subject: Ethics request timeline
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>> Dear Mr. Zuilkowski,
>>
>> Good afternoon, I just wanted to reach out about the written ethics request to inquire about the timeline I should anticipate.
>>
>> Thank you for looking into this matter for me.
>>
>> Sincerely,
>>
>> Meredith Abel
>> Temple Terrace City Council
>>
>>
>> Sent from my iPad

Steverson, Kathryn

From: Anderson, Chris
Sent: Tuesday, February 23, 2021 11:23 AM
To: Abel, Meredith
Cc: Zuilkowski, Steven; Steverson, Kathryn
Subject: RE: Informal written ethics analysis request

Meredith,
Your inquiry has been assigned to Steve Zuilkowski. He will be in touch with you.
Steve,
Please respond to Meredith.
Kathy,
Please list to Steve.
Thank you,
Chris Anderson
C. Christopher Anderson, III
Executive Director and General Counsel
Florida Commission on Ethics
(850) 488-7864

From: Abel, Meredith <MAbel@Templeterrace.com>
Sent: Monday, February 22, 2021 3:14 PM
To: Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us>
Subject: Informal written ethics analysis request

Dear Mr. Anderson,

I am an elected City Council member serving in Temple Terrace, FL since December 1, 2020. In the past, prior to my election to office, I taught Karate to children in the City's recreation center. I taught classes three times per week and per the agreement I had with the City I paid 20% of all proceeds to the City on a monthly basis, as is the procedure for all independent special interest club teachers. At the end of December 2020 I ceased teaching classes at the recommendation of my City Attorney when I asked her about it out of concern that there may be a conflict of interest. She advised me to reach out to the Ethics Commission for an opinion since I am passionate about providing quality martial arts instruction to kids in my community.

Because many parents are asking me to resume the classes and I want to make it all above board, I would like to once again resume classes to again engage in my private capacity in private business where as a natural person I would hold Karate classes for children on public City property. In the past I taught IN the Rec Center, but now parents are requesting outdoor classes in a local park, which I am told is still subject to the same type of agreement with the City. This agreement would not be dissimilar to my previous agreement, which you will find attached to this message.

I estimate that I will have approximately 10 students paying \$50/month for a total revenue of \$500/month. Twenty percent of that, or \$100 per month would be paid to the City. There is a possibility the program could grow in the future.

I would like to request an informal written ethics analysis with information on what conflicts of interest may be present and what exceptions may apply.

Thank you,
Meredith Abel
Temple Terrace City Council Member
(813) 997-1637
mabel@templeterrace.com

"What we do is more important than what we say or what we say we believe." -Bell Hooks



CITY OF TEMPLE TERRACE LEISURE SERVICES DEPARTMENT

INSTRUCTOR AGREEMENT

THIS AGREEMENT, entered into this 17 day of February, 2020 by and between the CITY OF TEMPLE TERRACE LEISURE SERVICES DEPARTMENT, a political subdivision of the State of Florida, hereinafter referred to as "CITY" and Meredith Abel a provider of instruction in Karate, hereinafter referred to as "INSTRUCTOR" whose address is 6103 Liberty Ave, Temple Terrace, FL, 33617 and whose telephone number is 813-997-1637.

WITNESSETH

WHEREAS, the City is owner of certain real property located in Temple Terrace, Florida or property maintained by the City of Temple Terrace referred to hereinafter as FACILITY; and

WHEREAS, Instructor desires to utilize certain amenities located at the Facility for purposes hereinafter set forth; and

WHEREAS, the City is devoted to the provision of services and programs pursuant to the enhancement of the quality of life through participation in recreation activities.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows;

1. **Term** - The term of this Agreement shall commence on the execution of this Agreement and shall terminate on **ongoing**. Either party may terminate this Agreement for any reason by notifying the other party in writing thirty (30) days prior to the date of termination.
2. **Independent Instructor Status** – It is the express intention of the parties that Instructor is an independent contractor and not an employee, agent, joint venturer, or partner of the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between City and Instructor or any employee or agent of Instructor. Both parties acknowledge that Instructor is not an employee for state or federal purposes. Instructor shall retain the right to perform services for others during the term of this Agreement.
3. **Use of Property** - The City agrees to permit the Instructor to utilize Facility for the purpose of providing instruction in Karate subject to the terms and conditions set forth herein. Instructor is solely responsible for the provision and storage of all necessary materials and supplies involved in the instruction of the activity, as well as area set-up, break-down, and cleanliness. Instructor is also responsible for supervising and maintaining any City equipment that may be involved.

4. **Guidelines and Non-Exclusive Rights** - This Agreement is specifically conditioned upon Instructor continuing to run the identified activity in such a manner that instruction is open to all eligible persons who wish to participate regardless of ability, sex, religion, race, color, creed, or national origin.

This Agreement may not be assigned or transferred in any manner by instructor.

5. **Certification** - The City, through the Leisure Services Department, may require instructor to be certified as an instructor of their respective activity where such certifications exist.

6. **Communication** - Communication, information, or requests by instructor for service should be made directly to the Recreation Supervisor or his/her designee.

7. **Schedule of Instruction** - Instructor agrees to provide instruction in said activity as outlined below.

Class Title: Karate

Start Date: March, 2nd 2020 End Date: Ongoing Total Number of Weeks: Ongoing

Day of Week: Open Begin Time: Open End Time: Open

Class Fee: For Small Group Training and Group Fitness: 20% of member rate (\$40 member = \$8 paid to the Rec) paid to the City; 100% of non-member fee + 20% of member rate paid to the City (\$60 non-member = \$28 paid to the Rec)

Any changes to class dates, times, locations, general participation requirements, and/or fees at the request of the instructor must be made to the Recreation Supervisor. Any such changes identified as necessary by the Recreation Supervisor will be communicated to the Instructor prior to implementation.

Instructor agrees to be on time and ready to begin class at advertised time as noted above. If Instructor is unable to attend, the Facility must be contacted 24 hours in advance, except in the event of an unanticipated medical emergency or similar emergency, and a make-up date scheduled through the Recreation Supervisor or his/her designee. The Recreation Supervisor must approve any use of substitute instructors in advance. Substitute instructors may be required to possess any/all certifications required of Instructor.

8. **Advertisement** – The City may advertise all classes/activities including description, fees, schedules, and locations in the Leisure Services Department printed program brochure. This brochure is published two (2) times per year (April and October) and the deadline for submissions will be explained to Instructor. Any additional advertisement is the sole responsibility of the Instructor, but additional promotion of such activities are at the Instructor's expense and must be reviewed by the City of Temple Terrace prior to publication.

9. **Collection of Fees and Payment** – All class/activity registration including payment of non-member fees will be conducted through the Customer Service Center located at the Family Recreation Complex utilizing the registration software program. Fees collected through Karate classes, must be submitted on the 1st business day of each month. If payment is not received by the 7th business day, a \$25.00 late fee will be assessed. If payment is not received by 7th business day, special interest instructor status is subject to cancellation.
10. **Indemnification** – The Instructor shall be responsible from the time of the beginning of instruction, for all injury or damage of any kind resulting from said instruction, to persons or property regardless of who may be the owner of the property. In addition to the liability imposed upon the Instructor on account of personal injury (including death) or property damage suffered through the Instructor's negligence, which liability is not impaired or otherwise affected hereunder, the Instructor assumes the obligation to hold the City harmless and to indemnify the City from every expense, liability, or payment arising out of or through injury (including death) to any person or persons or damage to property (regardless of who may be the owner of the property), or any place in which instruction is conducted, arising out of or suffered through any act or omission of the Instructor or any Assistant Instructor, or anyone directly or indirectly employed by or under the supervision of this Instructor in the overall performance duties and or operations included this contract.
11. **Entire Agreement of the Parties** – The parties agree that this Agreement supercedes any and all agreements, either oral or written, between the parties with respect to rendering instructor's services. The parties agree that this Agreement acknowledges the terms by which they are bound to. Any modification of this Agreement will be effective only in writing and signed by the respective parties. This Agreement is governed by Florida Law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 17 day of February, 2020.

INSTRUCTOR:



Instructor's Signature

2-17-20

Date

CITY OF TEMPLE TERRACE:



Leisure Services Department Director
City of Temple Terrace

2-17-20

Date