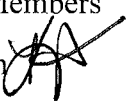


MEMORANDUM

To: Commission Members

From: Kerrie Stillman 

Date: January 11, 2023

Re: Additional Legislative Items

At the December meeting, I was asked to add a couple items for discussion that had arisen from recent cases. The first item relates to Executive Branch Lobbyist Registration (EBLR) audit proceedings.

The Commission's 2023 legislative recommendations includes the following EBLR recommendation:

Section 112.324(12), Florida Statutes, which allows the Commission to dismiss complaints when it finds that the public interest would not be served by proceeding further on the complaint, currently is not available for dismissal of lobbying firm audit matters under Section 112.3215, Florida Statutes, even when circumstances justify such a dismissal. The Commission recommends amending Section 112.324(12) to allow for dismissal of audit matters.

If this were to become law, the Commission could dismiss a lobbyist audit matter under the Rudd Amendment, but the Commission would still not have the option to find "probable cause – no further action." This change could be added to the recommendations, if that were the will of the Commission.

The second item relates to gift valuation for lodging in a personal residence. This valuation is specifically provided in Section 112.3148(7)(e), Florida Statutes:

Lodging provided on consecutive days shall be considered a single gift. Lodging in a private residence shall be valued at the per diem rate provided in s. 112.061(6)(a)1. less the meal allowance rate provided in s. 112.061(6)(b).

Section 112.061(6), Florida Statutes, provides:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or

...

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast.....\$6
2. Lunch.....\$11
3. Dinner.....\$19

The valuation in Section 112.3148 has existed in statute since the early 1990's which was the dawn of the gift law, as we know it today. Accordingly, the current valuation is \$44/night, regardless of the property value of the home. If the per diem rate increases, then the valuation of lodging in the gift law increases as a result. This provides reporting individuals with a definitive valuation to rely upon when determining whether or not a gift is reportable or prohibited under the statute.

The Commission has interpreted personal residence to exclude homes that are rented on a short-term basis. When a property is used as a rental, the valuation has been based on the customary rental rate. See In re James L. Manfre, Complaint No. 14-097, DOAH Case No. 15-4877EC, Final Order No. 16-042.

If you were to recommend increasing the valuation to a particular amount, that could be done in Section 112.3148(7), without seeking a change the per diem rate. However, it would be difficult in practice, to say the least, to create a sliding scale or subjective valuation for staying in a personal residence. It would create a great deal of complexity and uncertainty in the law, potentially making it more difficult for reporting individuals comply with the requirements of the law and more complex for the Commission to enforce.