

Schafer, Grayden

From: Steverson, Kathryn
Sent: Friday, February 13, 2026 3:34 PM
To: Schafer, Grayden
Cc: Zuilkowski, Steven
Subject: FW: Request for Informal Opinion - Arnaud Girard - Key West Bight Management District Board member
Attachments: Request for Informal Opinion - Arnaud Girard 02.13.26.pdf; EXHIBIT 1 -- FY25 Budget_202410041614344649.pdf; EXHIBIT 2 - Key West, FL Code of Ordinances - DIVISION 10 - KEY WEST BIGHT MANAGEMENT DISTRICT BOARD.pdf

Gray,

Please see the attached ethics request assigned to you.

Thank you,

Kathryn Steverson
Assistant to the Executive Director

*Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 Fax
www.ethics.state.fl.us*

Physical address:
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

From: Stillman, Kerrie
Sent: Friday, February 13, 2026 2:56 PM
To: Steverson, Kathryn ; Zuilkowski, Steven
Subject: FW: Request for Informal Opinion - Arnaud Girard - Key West Bight Management District Board member

We received the following opinion request. Please handle.

From: Arnaud <arnaudgirardkwbightboard@gmail.com>
Sent: Friday, February 13, 2026 11:16 AM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Cc: Monica Haskell <monica.haskell@cityofkeywest-fl.gov>; Arnaud <arnaudgirardkwbightboard@gmail.com>

Subject: Request for Informal Opinion - Arnaud Girard - Key West Bight Management District Board member

Good day Ms. Stillman,

Please find attached a request for informal ethics opinion along with Exhibit attachments referenced therein.

I am also sending a copy of this email to the City Commission who appointed me to the Board, Commissioner Monica Haskell.

Thank you.

Best regards,

Arnaud Girard d'Albissin (Girard)
305-731-7299

Schafer, Grayden

From: Schafer, Grayden
Sent: Friday, February 13, 2026 3:47 PM
To: 'arnaudgirardkwightboard@gmail.com'
Cc: Steverson, Kathryn
Subject: Ethics Inquiry

Mr. Girard:

The Commission on Ethics has received your ethics inquiry, which you sent earlier today. I will be reviewing the inquiry and will let you know if more information is required.

Thank you,

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

Schafer, Grayden

From: Arnaud <arnaudgirardkwightboard@gmail.com>
Sent: Friday, February 13, 2026 4:40 PM
To: Schafer, Grayden
Cc: Steverson, Kathryn
Subject: Re: Ethics Inquiry

Thank you.

Arnaud Girard
(305) 731-7299

Sent from my iPhone

On Feb 13, 2026, at 3:47 PM, Schafer, Grayden wrote:

Mr. Girard:

The Commission on Ethics has received your ethics inquiry, which you sent earlier today. I will be reviewing the inquiry and will let you know if more information is required.

Thank you,

Gray Schafer

Assistant General Counsel

Florida Commission on Ethics

(850)-488-7864

Schafer, Grayden

From: Arnaud <arnaudgirardkwightboard@gmail.com>
Sent: Tuesday, February 17, 2026 5:12 PM
To: Schafer, Grayden
Cc: Steverson, Kathryn
Subject: Re: Questions regarding Ethics Inquiry

Good day Mr. Schafer,

Thank you. I will provide the answers you are seeking as soon as possible.

Best regards,

Arnaud Girard
(305) 731-7299

Sent from my iPhone

On Feb 17, 2026, at 12:32 PM, Schafer, Grayden wrote:

Mr. Girard:

Hope you are doing well. I have reviewed your inquiry about service on the Key West Bight Management Board, as well as the other materials that you sent. I have some questions for you to better clarify the facts before I begin my analysis. I have tried to group the questions into different categories. If you would, please provide your answers to the following questions in a reply to this email. And if you need to have any of these questions clarified, please let me know.

Regarding the general responsibilities of the Board

1. Section 2-554(a)(1) of the Code of Ordinances indicates the Board oversees the “operation and development of an expanded public marina[.]” Is this in reference to the 8.8 acres of upland commercial property, the marina where your business is currently leasing a slip, or both?
2. Assuming the Ordinance quoted above relates to the marina, in what matters has the Board become involved—even preceding your appointment—related to the operation or development of the marina? How often do these matters arise?
3. Does the Board receive reports concerning the operation and development of the marina? If so, how often does it receive such reports, who delivers such reports, and what actions does the Board take on them?
4. Section 2-554(a)(6) of the Code of Ordinances indicates the Board approves rental rates and lease terms negotiated by its manager for all marina tenants. How often do such approvals come before the Board? Does this mean simply approving standard terms to be included in all leases, or does it mean approving each individual lease?
5. If the dockage rates for marina leases were to increase or decrease, would that need to be approved by the Board? If so, how often are new dockage rates approved?

6. Section 2-554(a)(70 indicates the Board reviews—and makes final determinations—on all conflicts between the marina manager and tenants. How often do matters concerning such conflicts come before the Board? What would be examples of such conflicts?
7. You indicate there are 188 wet slips at the marina, and that 60 are designated for commercial use and the remaining are for transient dockage. For the slips designated for transient dockage, are they used by citizens on an as-needed, temporary basis, with no long-term leases?

Regarding your service on the Board

1. Am I correct in understanding that you were appointed to the Board by a City Commissioner in November 2024?
2. Section 2-549(b) of the Code of Ordinances indicates the City Commission “shall attempt to ensure that at least one person [] from each of the following disciplines shall be represented on the [B]oard,” and then lists several different types of disciplines, including “maritime.” Has the City Commission followed through on this Ordinance by attempting to appoint individuals from the various enumerated disciplines? And, if so, are you the designated Board member from the “maritime” discipline?

Regarding the agreement between Key West Marine Assistance LLC and the Board

1. Am I correct in understanding that you are the sole proprietor of Key West Marine Assistance LLC?
2. Are you compensated by Key West Marine Assistance LLC?
3. When did Key West Marine Assistance enter into a lease with the Board to use a slip at the marina?
4. Has the lease been renewed, extended, or amended since you have been serving on the Board? If the lease has been renewed since your appointment to the Board, was the renewal for a time certain provided for in the original lease? And, if the lease has been renewed, are the terms under the renewal exactly the same as in the original lease?
5. How long is the lease term between Key West Marine Assistance LLC and the Board?
6. To the best of your knowledge, is there anything special or unique about the lease between Key West Marine Assistance LLC and the Board, as compared to other commercial lease tenants at the marina? For example, are your dockage rates more or less than other tenants?
7. Section 2-546 of the Code of Ordinances indicates the marina will have a “manager” who will negotiate lease terms with existing tenants and set market rental amounts, subject to Board approval. Did the marina manager negotiate and set the lease terms for Key West Marine Assistance LLC? Did the Board have to approve the lease with Key West Marine Assistance LLC after those terms were set?
8. If Key West Marine Assistance LLC needs to have its lease renewed or modified, would this have to be approved by the Board or would it be handled solely by the marina manager?
9. Is there any other dock in the City that your business could use, or is the Bight marina uniquely positioned for your business? If it is uniquely positioned, please explain why.

Regarding discussing and proposing remedial action regarding the Board’s business with the State of Florida

1. Is the bay bottom lease held by the Internal Improvement Trust Fund? If so, how is the Florida Department of Environmental Protection involved?
2. You indicate the City is receiving a 30% discount from the State pertaining to the bay bottom lease. What is the basis for providing that 30% discount? I understand, given your inquiry, that you do not feel the City is entitled to the discount, but I am unclear on what the discount was for.
3. Does the proposed remedial action concern only the marina, or does it also pertain to the upland commercial property?

4. You state in your inquiry that “correcting the problem will have no impact on Bight tenant rents.” What is your basis for believing there will be no impact?
5. Is the Board considering taking a vote to pursue this remedial action? If so, what action would be taken? (i.e., Would you be contacting the Internal Improvement Trust Fund? Contacting the Department of Environmental Protection? Taking the matter to the City Commission?)

Thank you,
Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)488-7864

Schafer, Grayden

From: Arnaud <arnaudgirardkwightboard@gmail.com>
Sent: Thursday, February 19, 2026 3:18 PM
To: Schafer, Grayden
Cc: Steverson, Kathryn
Subject: Re: Questions regarding Ethics Inquiry
Attachments: Exh 1 -- Key West Bight - marina - wet slip tenant information.pdf; RESPONSES to Ethics Commission questions - 02-19-2026.pdf; Exh 2 -- BOARD Agenda ACTION ITEMS Nov 2024 - Jan 2026 - chronological order .pdf; Exh 3 -- TABLE - BOARD Agenda ACTION ITEMS Nov 2024 - Jan 2026 - by category.pdf

Good day Mr. Schafer,

Please see the attached in response to your questions.

Thank you.
Best regards,

Arnaud Girard
(305) 731-7299

On Tue, Feb 17, 2026 at 5:12 PM Arnaud <arnaudgirardkwightboard@gmail.com> wrote:
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(305) 731-7299

Sent from my iPhone

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better clarify the facts before I begin my analysis. I have tried to group the questions into different categories. If you would, please provide your answers to the following questions in a reply to this email. And if you need to have any of these questions clarified, please let me know.

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Contacting the Department of Environmental Protection? Taking the matter to the City Commission?)

Thank you,

Gray Schafer

Assistant General Counsel

Florida Commission on Ethics

(850)488-7864

Schafer, Grayden

From: Schafer, Grayden
Sent: Thursday, February 19, 2026 3:50 PM
To: 'Arnaud'
Cc: Steverson, Kathryn
Subject: RE: Questions regarding Ethics Inquiry

Thank you, Mr. Girard. I will review these and let you know if I need anything else.

Gray Schafer

From: Arnaud
Sent: Thursday, February 19, 2026 3:18 PM
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Cc: Steverson, Kathryn
Subject: Re: Questions regarding Ethics Inquiry

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(305) 731-7299

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Thank you,

Gray Schafer

Assistant General Counsel

Florida Commission on Ethics

(850)488-7864

CEO 82-10 -- February 18, 1982

CONFLICT OF INTEREST

CITY COUNCIL MEMBER SERVING AS OFFICER, TRUSTEE, AND GENERAL COUNSEL OF NONPROFIT CORPORATIONS LEASING PROPERTY FROM CITY

To: James W. Martin, City Council Member, St. Petersburg

SUMMARY:

No prohibited conflict of interest exists where a city council member serves as an officer, trustee, and general counsel of two nonprofit corporations which have entered into an agreement with the city for the establishment of an art museum and into leases of property from the city prior to his appointment as a member of the council. Although the nonprofit corporations are doing business with the city, their relationship with the city has been fixed by contracts and through the leases prior to the individual's service on the city council. Therefore, as in CEO's 80-88, 77-37, 76-114, and 76-48, Section 112.316, Florida Statutes, provides the equivalent of "grandfather clause" exempting a situation which would have been prohibited if the relationship between the nonprofit corporation and the city had occurred while the council member was in office.

QUESTION:

Does a prohibited conflict of interest exist where you, a city council member, serve as an officer, trustee, and general counsel of two nonprofit corporations which have entered into an agreement with the city for the establishment of an art museum and into leases of property from the city prior to your appointment as a member of the council?

Your question is answered in the negative.

In your letter of inquiry you advise that approximately two years ago you were involved with a group of business people seeking to encourage an art museum to relocate to St. Petersburg. The project contemplated a State University System program under which the museum would be located in a building owned by the City of St. Petersburg, which the City would contribute to the project. In June, 1980, the Legislature appropriated two million dollars to the University System to be used as a grant to the City to fund the cost of renovating the building, relocating the museum, and setting up operations in St. Petersburg. Future fundings to support operating deficits of the museum in the first several years would come directly to the institute from the University System by State grants.

Further, you advise that the museum is operated by a nonprofit foundation of which you are the secretary, a trustee, and the general counsel. Although you are paid legal fees as counsel, you advise, you receive no compensation as trustee or secretary. You also advise that after the Legislature's appropriation for the museum project, a nonprofit institute was incorporated to raise funds and to establish an educational program involving the museum. You advise that you are the secretary, a trustee, and the general counsel also of this nonprofit corporation. Similarly,

although you receive no compensation as trustee or secretary of the institute, you receive legal fees for your services as counsel.

In September, 1980, you advise, the City received the \$2 million grant from the State and entered into a written agreement with the institute, the foundation, and the donor of the art collection. You negotiated and prepared the agreement on behalf of the institute and the foundation, while the City Attorney represented the City. At that time you were not a member of the City Council or any other body of the City.

Under the agreement, the City was to use a portion of the State grant to renovate and improve the building for the museum. This work has been substantially performed and completed by the City at the present time, and the museum is now occupied by the museum staff.

Under the agreement, the City was to allocate the rest of the State grant to the institute to use for relocating the collection and for start-up expenses, with funds being paid to the institute on request. The City has placed the funds into its fiduciary funds account and not into its general revenue account, since the funds are held in trust by the City because of the Legislature's intent to benefit the institute, with the funds. At the present time, you advise, funds exist in this account, and it is expected that it may be one year before these funds are fully drawn by the institute. The City Council does not take action on the draws, you advise, since the draws are purely ministerial acts handled by the staff of the City and the staff of the institute.

Also under the agreement, the City was to sever the completed building and improvements from its underlying realty and to transfer title of the building to the institute when construction was complete; the City also was to lease for one dollar a year the underlying realty to the institute at the same time.

In a telephone conversation with our staff, you advised that additional land surrounding the building has been leased to the institute also. Although the City could not convey the land and building to the institute, as had been initially contemplated, the City did transfer ownership of the building improved with the State grant and did lease the land for a substantial period. The terms of the leases are thirty years and five years, but if the City decides not to renew the leases, it is required to construct identical facilities for the museum at the City's expense, to move the museum at this expense, and to fully indemnify the museum of loss during the move. Thus, you advise, the leases have such harsh consequences for failure to renew that the leases are practically perpetual. All of the documents have been fully signed by the City and the institute, you advise, and the institute now owns the building and has the right to occupy the underlying land by virtue of the leases.

Finally, you advise that the City Council recently has decided to appoint you to a vacancy on the Council until the next election in March of 1983. For this reason you question whether your relationship with the nonprofit foundation and the nonprofit institute would create a prohibited conflict of interest with your responsibilities as a member of the City Council.

The Code of Ethics for Public Officers and Employees in part prohibits a public officer from being an officer or director of a business entity which is selling any realty, goods, or services to his own agency. Section 112.313(3), Florida Statutes (1981). We find that this provision does not apply to your situation, as neither the nonprofit institute nor the nonprofit foundation is selling any realty, goods, or services to the City. Rather, the institute is leasing realty from the City.

The Code of Ethics also 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 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), F.S. (1981).]

The first part of this provision would prohibit a City Council member from having any employment or contractual relationship with a business entity which is doing business with the City. In previous opinions, we have advised that noncompensated service as an officer or as a member of the board of directors of a nonprofit corporation does not constitute an employment or contractual relationship with that entity. See, for example, CEO 80-46 and CEO 77-167. Your service as general counsel to each of the nonprofit corporations, on the other hand, would constitute a contractual relationship with each of those clients. See CEO 80-79.

We are of the opinion that each of the nonprofit corporations is a "business entity," as that term is defined in Section 112.312(3), Florida Statutes. In addition, we are of the opinion that the institute is doing business with the City by virtue of its leasing property from the City, if not by virtue of the agreement under which the City releases funds to the institute. A similar situation appears in CEO 80-10.

However, in determining whether a prohibited conflict of interest exists it is significant that the relationship between the nonprofit corporation and the City has been fixed prior to the time of your membership on the City Council. In that respect, the Code of Ethics provides:

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 duties to the state or the county, city, or other political subdivision of the state involved. [Section 112.316, F.S. (1981).]

In previous advisory opinions, we have read this provision to imply a "grandfather clause" which would exempt from Section 112.313(7) business transactions occurring prior to the time the subject official took office. See CEO's 80-88, 77-37, 76-114, and 76-48. In light of this precedent, we are of the opinion that Section 112.313(7)(a) would not prohibit you from serving as a member of the City Council under the situation you have described. The leases, drafted before your service on the Council, for all practical purposes remove any element of discretion on the part of the City Council in the decision to renew them. Similarly, the payment of fiduciary funds from the City to the institute is made on the request of the institute and does not require any action by the City Council.

Accordingly, we find that no prohibited conflict of interest exists where you serve as an officer, trustee, and general counsel of the two nonprofit corporations while serving on the City Council.

CEO 90-18 -- March 8, 1990

CONFLICT OF INTEREST

CANDIDATE FOR PORT AUTHORITY DOING BUSINESS WITH THE PORT

To: *(Name withheld at the person's request.)*

SUMMARY:

A prohibited conflict of interest would be created were a member of the Port Everglades Commission also to lease office space and pay fees to the port. Section 112.313(3), Florida Statutes, would not apply inasmuch as the member is not selling services to the port but, rather, paying fees and rentals to the port. However, Section 112.313(7)(a), Florida Statutes, would prohibit the individual from serving as a commissioner under these circumstances as he would hold employment with a business entity doing business with his agency.

QUESTION:

Would a prohibited conflict of interest be created were you to become a member of the Port Everglades Authority where your company has various business relationships with the Port?

Your question is answered in the affirmative.

In your letter of inquiry and in telephone conversations with our staff, you have advised that you are considering running for office as a Commissioner of the Port Everglades Authority. You also advise that you are the chief operating officer of a marine construction company. This company leases office space from the Port Authority, having done so for a number of years. In addition, the company holds a permit from the Authority which allows it to perform services in the port for various private entities. On occasion, vessels owned by the company pay set fees for use of Port facilities, while at other times fees for the company's vessels are paid by the private entity for whom the work is being performed. Finally, you advise that you also serve as an officer in a nonprofit association which leases office space from the Port Authority. You inquire whether you may serve as a Port Commissioner under these circumstances.

The Code of Ethics provides in part:

DOING BUSINESS WITH ONE'S AGENCY.--No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee of his 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 his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of

business. 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.

Were you to serve as a Commissioner, this provision would prohibit you from purchasing services or leasing realty for the Port Authority from your company and would prohibit your company from selling services or leasing realty to the Port. However, in the instances described, you would not be selling services to the Port, but rather would be leasing space from the Port, paying fees to the Port, and selling services to private parties who use the Port. Under these circumstances, this section would be inapplicable. See CEO 84-63.

In addition, Section 112.313(7)(a), Florida Statutes, 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 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 private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

This section would prohibit you from holding employment or a contractual relationship with your company or the association if it were regulated by or doing business with the Port which you serve as a Commissioner. Applying this section to the facts presented requires an examination of the business relationships between the Port, the association, and your company. First, we find that the permit you hold from the Port to transact business with private parties in the Port would constitute regulation by or doing business with the Port. See CEO 84-63. Secondly, your post with an association leasing space in the Port also would constitute doing business with the Port Authority. In CEO 82-14, we found that membership in a voluntary unincorporated association is a contractual relationship with a business entity. While we found that mere membership in that association did not create a prohibited conflict, you have indicated in this case that you are an officer of the association. On that basis, we find that you have a contractual relationship with a business entity doing business with the Port Authority. Finally, your company is doing business with the Port by leasing space and paying fees for use of Port facilities. Further, your employment as chief executive officer of the corporation would constitute employment or a contractual relationship within the meaning of Section 112.313(7)(a). Under this provision, your company apparently would be prohibited from holding these business relationships while you served as a Commissioner.

However, several exceptions to this prohibition are provided which may be considered here. In reviewing these exceptions, it appears that only two could potentially apply to the facts presented. See also Section 112.313(12), Florida Statutes. First, Section 112.313(7)(b), Florida Statutes, provides that this provision shall not prohibit practice of an occupation when that practice is required or permitted by law or ordinance. In CEO 84-63, we found that this exception applied where an appointee to the Port Everglades Commission was required to be a

representative of business entities doing business with or at the Port. However, you have advised that the conditions for the seat you are considering require only that a candidate reside in a certain geographical area but do not mention business or occupational status. Therefore, this provision would not apply.

Secondly, in prior opinions we have advised that an official would not be in violation of Section 112.313(7)(a), Florida Statutes, where the contracts which otherwise would result in violation were entered into prior to the individual's assuming office. In CEO 82-10, we noted that the conditions of the pre-existing lease involved there made the contract term virtually perpetual, such that the officer's agency had no discretion in continuing the lease. In CEO 80-88, we advised that an existing insurance contract written by a port commissioner's agency could continue after the commissioner took office but that no new contracts could be entered into after that time. On this basis, you would not be precluded from assuming office while your business held an existing contract with the Port, but you would be precluded from renewing or entering new contracts which involve any discretionary action by the Port. Under the rationale of these opinions, both renewal of the lease for office space for your company and payment of any new fees not covered under an existing agreement for use of Port facilities would create a violation of Section 112.313(7)(a).

Accordingly, we find that a prohibited conflict of interest would be created were you to serve as a Port Commissioner where your company also holds leases and agreements with the Port and where you serve as an officer of an association that is leasing space from the Port, unless those business transactions are conducted under agreements which predate your assuming the office of Commissioner.

CEO 96-31—December 3, 1996

**CONFLICT OF INTEREST
CITY COUNCIL MEMBER OWNING SUBSTANTIAL INTEREST IN CORPORATION
WHICH IS ASSIGNEE OF LEASEHOLD OF CITY-OWNED PROPERTY**

To: Don J. Caton, City Attorney (Pensacola)

SUMMARY:

No prohibited conflict of interest is created by a city's consenting to the assignment of a leasehold of city-owned property from one corporation to another in which a newly appointed member of the city council owns a substantial interest and where the terms of the lease agreement remain substantially the same as they had been prior to the assignment and the city councilman's appointment. Because the assignee corporation is leasing the property from the city, rather than to the city, Section 112.313(3), Florida Statutes, does not apply. Although the city councilman would have a contractual relationship with a business entity doing business with his agency, where the terms of the lease agreement between the assignee lessee and the city remain the same, the lease agreement is grandfathered-in. CEO 85-40 is referenced. However, the city councilman is prohibited by Section 112.3143(3)(a), Florida Statutes, from voting on the city's giving its written consent to the assignment of the leasehold, as the vote would inure to his special private gain or loss.

In addition, where the Councilman's business partners and/or co-investors are involved in separate businesses that are doing business with the city and have invested their personal funds in the business venture with the Councilman, no prohibited conflict of interest is created, because the Councilman's contractual relationship is with his business partners and/or investors individually, rather than with a business entity doing business with his agency. As the councilman's business partners and/or co-investors are his business associates, Section 112.3143(3)(a), Florida Statutes, prohibits him from voting on transactions between the city and the businesses of his business partners and/or co-investors.

QUESTION 1:

Would a prohibited conflict of interest be created if a corporation in which a newly appointed member of the City Council owns a substantial interest were to become the assignee of the leasehold of city-owned property?

Your question is answered in the negative.

On behalf of Douglas Halford, a newly appointed City Councilman, you write that the City owns a parcel of land which was first leased and developed as a marina in 1985. The 1985 lease, you advise, has a term of thirty (30) years, which is renewable at the option of the lessee for an additional thirty (30) year term. You advise that the lease agreement also provides that the lessee may assign its interest in the leasehold provided that the lessee obtains the prior written consent of the City, which consent shall not be unreasonably withheld. Since the completion of the construction of the marina, the leasehold interest previously has been assigned twice with the City's consent, you advise.

You advise that on May 20, 1996, the current lessee and another company of which a substantial interest is owned by the subject City Councilman entered into an agreement in which the leasehold interest was assigned to the latter corporation, subject to the City's consent. The agreement, you advise, contemplated that the transaction would be closed on July 20, 1996. However, a need to resolve certain environmental issues concerning the leased property resulted in the postponement of the closing date until October 21, 1996. The Councilman was appointed to fill a recently-vacated seat on the City Council on September 19, 1996. You advise that when the matter of the assignment of the leasehold to the assignee company came before the City Council for its consent in early October, the newly appointed member to the City Council abstained from voting. Notwithstanding his abstention, the City Councilman still is concerned about the possible existence of a prohibited conflict of interest due to his owning a substantial interest in a corporation which has become a lessee of City-owned property. The Code of Ethics for Public Officers and Employees provides in relevant part:

DOING BUSINESS WITH ONE'S AGENCY.—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. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

October 1, 1975.

Qualification for elective office.

Appointment to public office.

Beginning public employment.

[Section 112.313(3), Florida Statutes.]

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, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; 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. [Section 112.313(7)(a), Florida Statutes.]

VOTING CONFLICTS.—No county, municipal, or other local public officer shall vote in an official capacity upon any measure which inures to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(3); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. [Section 112.3143(3)(a), Florida Statutes.]

Section 112.313(3), Florida Statutes, prohibits the City Councilman from acting in his official capacity to purchase, rent or lease any goods, realty or services for his agency, the City Council, from a business entity of which he or his spouse or child is an officer, partner, director, or proprietor, or in which he or his spouse or child owns more than a five percent interest, and from selling any services or goods or leasing any realty to the City Council or the City in his private capacity. Because it appears that the assignee company is leasing property from the City, rather than to the City, we are of the opinion that this provision does not apply. See CEO 86-014. Section 112.313(7)(a), Florida Statutes, prohibits the City Councilman from having any employment or contractual relationship with a business entity which is doing business with or is subject to the regulation of the City Council or which creates a continuing or frequently recurring conflict between his private interests and the performance of his public duties. We have repeatedly opined that part-ownership or stock ownership of a corporation constitutes having a contractual relationship with that corporation. See CEO's 80-11, 82-65, 83-48, 86-36, 93-35, and 94-47. Thus, we are of the opinion that by virtue of his ownership interest in the assignee company, the City Councilman has a contractual relationship with that company. Furthermore, it is clear that by accepting the assignment of the lease with the City and, thereby, leasing the City's property, the assignee company is doing business with the City. Consequently, we are of the opinion that the City Councilman has a contractual relationship with a business entity doing business with his agency. Nevertheless, under the circumstances presented, we do not believe that this contractual relationship is prohibited under Section 112.313(7)(a), as long as the terms of the lease agreement remain substantially identical to the terms of the lease agreement that was originally signed by the City.

In CEO 85-40, we found that no prohibited conflict of interest would be created were an officer of a bank doing business with a city as bond trustee and through a banking services agreement to be appointed to serve on the City Council, as the relationship between the banks and the city would be grandfathered in. In support of our finding, we cited CEO 76-118, CEO 77-30, and CEO 82-10, where we found that the Code of Ethics grandfathered in agreements entered into before a public official takes office. We also noted in CEO 85-40 that because future extensions of credit were contemplated by the banking services agreement, the city could continue to take advantage of its line of credit with the bank even after the bank officer was appointed to the City Council, although the bank officer would be prohibited by Section 112.3143, Florida Statutes,

from voting on the future extensions of credit. We also found that since the two-year banking services agreement contemplated a one-year extension by written consent of the city and the bank, an extension of the agreement also would be grandfathered-in, although the bank officer would be prohibited from voting on such an extension here as well. However, we opined that expiration or renegotiation of the banking services agreement, where the terms are substantially different than the original agreement, would bring into play the prohibitions of Sections 112.313(3) and 112.313(7)(a), Florida Statutes. See also CEO 76-118 where we observed

As the essential purpose of s. 112.313(7) is to prevent a public officer from using his official position to secure business for his private employer, no conflict of interest is deemed to exist while the contract is in its executory stage, so long as the annual renegotiation of terms remains substantially the same as those in the original contract.

Similarly, here, where the terms of the lease agreement between the assignee lessee and the City remain the same, we are of the opinion that the lease agreement is grandfathered-in. This is not a situation where the City Councilman is using his official position to secure either business or an advantage or benefit for the assignee company through the use of his public position. Rather, the agreement between the City and the assignee lessee will remain essentially the same.

Although we find that no conflict of interest under Section 112.313(7)(a) is created as a result of the assignment of the lease, we are of the opinion that Section 112.3143(3)(a) prohibits the Councilman from voting on the City's giving its written consent to the assignment of the leasehold. Section 112.3143(3)(a) prohibits the Councilman from voting on a matter which would inure to his special private gain or loss, to the special private gain or loss of a principal by whom he is retained, or to the special gain or loss of his relative or business associate. It also contains an affirmative duty of disclosure so that interested parties and the public will understand why he is abstaining from voting. Inasmuch as the City's approval of the lease assignment would appear to inure to the special gain or loss of the assignee company in which the Councilman owns a substantial interest and, therefore, to the special private gain or loss of the Councilman, he would be prohibited from voting on the assignment of the lease. He also should file his memorandum of voting conflict (CE Form 8B) within 15 days after the vote occurs.

Accordingly, we find that no prohibited conflict of interest is created under Section 112.313(7)(a) by the City's consenting to the assignment of a leasehold of City-owned property to a corporation in which a newly appointed member of the City Council owns a substantial interest where the terms of the lease agreement remain substantially the same as they had been prior to the assignment of the leasehold interest and the Councilman's recent appointment to the City Council.

QUESTION 2:

Would a prohibited conflict of interest be created under the Code of Ethics were the co-investors or business partners of the City Councilman to do business with the City, where the City Councilman neither holds any interest nor is an investor in the business being transacted with the City?

You advise that the City Councilman also is a commercial real estate broker and a business partner with other persons who may do business with the City. For instance, you advise that one of the City Councilman's co-investors in the assignee company is an individual who is negotiating a different lease transaction with the City. In that transaction, the Councilman's co-investor's or business partner's company might become the lessee of another parcel of City-owned property. The Councilman would not be an investor or have any interest in that potential transaction, you advise. However, the Councilman is concerned about whether CEO 94-10 has any application to him such that he would have to consider terminating his business partnerships, you advise.

In CEO 94-1094-10, we found that absent an exemption under Section 112.313(12), Florida Statutes, a prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, were businesses which are insurance clients of a county commissioner's insurance agency to contract with the county commission to provide goods or services to the county. We also found that under Section 112.3143(3)(a) the county commissioner/insurance agent would be prohibited from voting on measures that would inure to the special gain of insurance clients or persons with whom the commissioner jointly owns an office building. For purposes of the voting conflicts law, we found that the county commissioner's insurance clients would constitute principals by whom he is retained and the co-owners of the office building would come under the definition of business associates.

In CEO 94-10 we also observed that despite the existence of an ongoing contract between the insured and the insurance company, as long as an insurance policy is in effect, the insurance agency has a continuing duty to service the insured's account and to keep records. Consequently, we found that the county commissioner remains the agent of the insured throughout the term of the policy. In contrast, once a real estate transaction is completed, the City Councilman's obligation, in his role as real estate broker, to the buyer or seller terminates. Thus, we find that the Councilman would not have a prohibited conflict of interest under Section 112.313(7)(a) were one of his former real estate clients to do business with the City.

However, with respect to your question concerning the Councilman's relationship with his business partners or co-investors who may be doing business with the City, we are of the opinion that, despite the Councilman's having no interest in the business being transacted with the City, he would have a prohibited contractual relationship with a business entity doing business with his agency contrary to the prohibitions of Section 112.313(7)(a) if his business partner or co-investor is a business entity, as that term is defined at Section 112.312(5), Florida Statutes, and the business entity is doing business with the City. The term business entity is defined to mean any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously names or not, doing business in this state.

Under these circumstances, the Councilman would have a contractual relationship with a business entity doing business with his agency. However, if the Councilman's or co-investor's corporation, for example, was doing business with the City and the business partner or co-investor was acting in his or her individual capacity as an investor, rather than on behalf of the corporation, then the Councilman would not have a contractual relationship with a business

entity doing business with his agency and no prohibited conflict of interest under Section 112.313(7)(a) would be created.

In CEO 83-71, we advised that Section 112.313(7) would not prohibit a member of a city housing authority from being engaged in a real estate partnership with an individual who was a partner in the accounting firm which audited the authority's books. We found that the authority member did not have any employment or contractual relationship with the accounting firm; rather, his contractual relationship was with the individual who was a partner in the firm.

Similarly, in CEO 86-37, with respect to a member of a mayor's law firm who was an equity investor in a development company which proposed to lease and develop property owned by the city, we opined that as the investment by the firm member in the development company was made with the firm member's own private funds and was not connected with the mayor's law firm, the mayor's indirect relationship with the proposed developer would be too attenuated to be prohibited by Section 112.313(7).

Accordingly, we are of the opinion that as long as the City Councilman's partners or co-investors with whom he has contractual relationships are not personally doing business with the City, no prohibited conflict of interest would be created. However, as Section 112.3143(3)(a), Florida Statutes, prohibits the Councilman from voting on a matter which would inure to the special private gain or loss of a business associate, he would be prohibited from voting on transaction between the City and the business of his business partner or co-investor.

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 3, 1996 and **RENDERED** this 5th day of December, 1996.

Mary Alice Phelan, *Chair*

CEO 03-4 -- April 25, 2003

CONFLICT OF INTEREST

CITY COUNCIL MEMBER EMPLOYEE OF BUSINESS OPERATING PRO SHOP AT CITY GOLF COURSE

To: *David C. Holloman, Attorney at Law (Arcadia)*

SUMMARY:

Strictly limited to the particular circumstances of this opinion, a prohibited conflict of interest does not exist where a city council member is employed by a business running a pro shop at a city-owned golf course under an agreement with the city. Under Section 112.313(7)(a), Florida Statutes, the member holds employment with a business entity doing business with the city; but a "grandfathering" is present under Section 112.316, Florida Statutes, to negate the conflict. Although the member served on the council when the city became a party to the agreement, he did not begin his private employment until many years later, just before he ended a long period in which he did not serve; and a change in the agreement during the member's current term was handled by the city administrator. CEO's 02-19, 02-14, 96-31, and 82-10 are referenced.

QUESTION:

Does a prohibited conflict of interest exist under Section 112.313(7)(a), Florida Statutes, where a member of a city council is employed by a corporation which operates a pro shop at a city-owned golf course under an agreement between the corporation and the city?

Under the circumstances set forth in your inquiry and strictly limited to the circumstances, this question is answered in the negative.

By your letter of inquiry, a letter from our staff responding to your inquiry, a subsequent letter from you to our staff, and additional materials provided by you to our staff, we are advised that you make inquiry in behalf of Richard P. Fazzone, a member of the City Council of the City of Arcadia ("member"). Further, we are advised that the member held a seat on the Council in 1991 when the City entered into an agreement with a corporation to operate a pro shop serving the City-owned golf course; that he resigned from the Council in 1993; that in July 2001 he became an employee of the corporation, working at the pro shop; that in September 2001 he was elected to the Council, taking office October 1, 2001; and that in September 2002 the City (through action of its administrator and not action of the Council) raised the base rate paid the corporation by the City under the agreement in the amount of fifty dollars per month.

Under the agreement, you advise, the corporation is paid a base rate of two hundred fifty dollars per month (plus one percent of payroll to cover unemployment tax) by the City; the corporation operates the pro shop, pays pro shop employees (including the member), issues W-2 Federal tax forms, collects greens fees, membership fees, and cart rental fees; the corporation handles purchase and sale of all pro shop merchandise, sells food and beverages, and remits sales taxes to the State; and the City's Parks and Recreation Department maintains the golf course.

The Code of Ethics for Public Officers and Employees^[1] provides in part^[2]:

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. [Section 112.313(7)(a), Florida Statutes.]

Although we find that the member holds employment with a business entity (the corporation) which is doing business with his public agency (the City), a situation that seems to meet the prohibition of the first part of the statute, we find that the statute's literal language must be tempered regarding the instant inquiry by Section 112.316, Florida Statutes, which provides: 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.

In so doing, we find that Section 112.316 "grandfathers" the agreement. While our existing decisions seem to require for a "grandfathering" the existence of factors not present regarding the member [see, for example, CEO 96-31, CEO 82-10, CEO 02-14 (Question 2) and CEO 02-19 (footnote 4)], we nevertheless find "grandfathering." In the instant situation, the member was not employed with the corporation when it and the City became parties to the agreement; thereafter the member did not serve on the Council for a long period; he then became an employee of the corporation long after his original Council service but before his recent election to and service on the Council; and recently the City Administrator, not the Council, made the fifty-dollar-per-month change regarding the corporation.

Accordingly, under the limited circumstances of this opinion, we find that no prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, exists for the subject Council Member due to his employment with the corporation

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 24, 2003 and **RENDERED** this 25th day of April, 2003.

Patrick Neal
Chair

[1] Part III, Chapter 112, Florida Statutes.

[2] Section 112.313(3), Florida Statutes, is not at issue because you do not represent that the member's connection to the corporation amounts to anything more than his being a mere employee of the corporation. Section 112.313(3) provides:

DOING BUSINESS WITH ONE'S AGENCY. 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. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of

business or when such offices are on property wholly or partially owned by the legislator. 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.