

FILE 2813 – October 25, 2024

POST-EMPLOYMENT RESTRICTIONS

FORMER LEGISLATIVE ANALYST REPRESENTING CLIENTS BEFORE THE FLORIDA LEGISLATURE

To: *Mr. Tomas M. Bowling (Tallahassee)*

SUMMARY:

Section 112.313(9)(a)4., Florida Statutes, will not prohibit a Member Services Liaison for the Florida House Majority Office from representing clients before the Florida Senate within two years of leaving employment with the Legislature, but it will prohibit him, during that two-year period, from representing clients before the Florida House. Referenced are CEO 18-2, CEO 16-13, CEO 14-32, CEO 11-24, CEO 11-22, CEO 11-10, CEO 09-8, CEO 00-20, CEO 00-11, CEO 94-20, and CEO 87-2.

QUESTION:

Will a Legislative employee serving in an analyst position with the Florida House Majority Office be prohibited by Section 112.313(9)(a)4., Florida Statutes, from representing clients for compensation before both chambers of the Florida Legislature within two years of leaving employment?

Your question is answered as follows.

In your letter of inquiry and correspondence with our staff, you indicate you currently serve as one of the Member Services Liaisons for the Florida House Majority Office. While this is your position title, you state the Legislature's Office of Human Resources categorizes your position as that of a "legislative analyst." You indicate your duties in the Office involve monitoring the news,

social media, and committee meetings, summarizing bills and amendments, and creating informational graphics and publications. You relate your role is "largely behind the scenes," and that none of your responsibilities requires you to interface with House employees outside of your Office. In particular, you relate that contact with other parts of the chamber—such as with House members or their staff—typically is handled by your Office's Staff Director or Deputy Staff Director. You also state you have no responsibilities that would require you to interface with any member or employee of the Florida Senate.

Given your responsibilities, you inquire how the two-year postemployment restriction in Section 112.313(9)(a)4., Florida Statutes, will apply to you once you leave public employment. You specifically inquire whether the prohibition will prevent you from representing clients for compensation for two years before both chambers of the Legislature, or if it will only prevent you from representing clients for compensation before the Florida House.

Section 112.313(9)(a)4. prohibits a former agency employee from representing persons or entities before his or her former agency for two years after leaving public employment. See CEO 94-20. The prohibition states in relevant part:

(9) POSTEMPLOYMENT RESTRICTIONS, STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a) . . .

2. As used in this paragraph:

a. "Employee" means:

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office,

House Majority Party Office, or House Minority Party Office, or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

* * *

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

(emphasis added). While your position title is Member Services Liaison—which does not appear on the list of Legislative employees in Section 112.313(9)(a)2.a.(IV)—you indicate that the Legislature's Office of Human Resources classifies your position as that of a "legislative analyst." Given this classification, and considering that analysts employed within the House Majority Party Office are listed as "employees," the two-year prohibition in Section 112.313(9)(a)4. will apply to you once you leave public employment.¹ The only question remaining concerns the extent of your "agency" for purposes of the statute, namely whether it covers only the Florida House or extends to the Florida Senate as well.

Preliminarily, we emphasize that, because your employment was with the Legislature, Section 112.313(9)(a)4. will not prohibit you from representing for compensation before other legislative branch entities outside the Legislature. The statute only applies to the "agency" where you were "employed[,]" which means you may represent clients or employers for compensation

¹ To be clear, the sole basis for applying the statute to your position is due to Section 112.313(9)(a)2.a.(IV). Because the Legislature is not part of the State Personnel System, you are not subject to Section 112.313(9)(a)2.a.(I), Florida Statutes, which extends the two-year postemployment representation restriction to former State employees in Senior Management

before other agencies—even other agencies in the legislative branch—without violating the prohibition. See CEO 16-13, Question 2 (stating the term "agency" as used in Section 112.313(9)(a)4. is confined "only to the particular public agency where a person was formerly employed"), CEO 00-20 (finding a former House member could represent clients for compensation before the Public Service Commission, a legislative agency, within two year of leaving his position), and CEO 00-11 (finding the former General Counsel of the Department of Environmental Protection, an executive branch agency, was not restricted by Section 112.313(9)(a)4. from representing clients before the Governor and the Cabinet). Accordingly, Section 112.313(9)(a)4. will not prohibit you from representing clients for compensation within two years of leaving public employment before, for example, the Office of the Auditor General or the Public Service Commission, despite the fact that they are both legislative branch agencies, as you were not "employed" by either entity.

Turning to the extent of your "agency" for purposes of the statute, we have found in the past, when analyzing the applicability of various ethics prohibitions to members of the Legislature, that their "agency" is the entire Legislature, not merely the chamber where they serve. See CEO 09-8 and CEO 87-2 (both opinions stating the "agency" of a serving House member is the Legislature itself). We have extended this finding to the post-office holding restriction for members of the Legislature,² concluding that they are prohibited from lobbying either legislative chamber for two years after leaving office. See CEO 00-20 (determining a former House member may not personally represent clients before any members of the

Service (SMS) and Selected Exempt Service (SES) positions. See CEO 16-11, n.2.

² Section 112.313(9)(a)3., Florida Statutes, applies to members of the Legislature a two-year postemployment restriction concerning representation before their former "government body or

Legislature or Legislative staff for two years after vacating office). It seems logical to conclude the "agency" of a member of the House or Senate is the entirety of the Legislature, as a member's activities and influence presumably extend to both chambers.

More complex are questions concerning the "agency" of legislative staff. In the past, when determining the "agency" of legislative staff for purposes of Section 112.313(9)(a)4., we have cited the opinions mentioned in the preceding paragraph and concluded the staff member's "agency" to be both chambers of the Legislature. For example, CEO 14-32 dealt with a deputy staff director of a House standing committee who inquired about how Section 112.313(9)(a)4. would apply were he to leave his position. Citing CEO 00-20 and CEO 87-2—which, as previously described, pertain to House members—we found the deputy staff director's "agency" to be the entirety of the Legislature, not merely the chamber where he served, for purposes Section 112.313(9)(a)4. And CEO 11-22 addressed a staff director for a Senate standing committee and determined, for purposes of Section 112.313(9)(a)4., that his "agency" was the entire Legislature as well. To support this finding in CEO 11-22, we again cited CEO 00-20 and CEO 87-2, even though the "agency" in question was that of a member of legislative staff and the earlier opinions were issued to House members.

We see no need to revisit the outcomes reached in CEO 14-32 and CEO 11-22. Directors and deputy directors of House or Senate standing committees are positions of elevated importance among legislative staff. It may very well be that their influence extends throughout both legislative chambers, as would warrant treating their "agencies" as the entire Legislature for purposes of Section 112.313(9)(a)4. However, this does not reflect the reality of the position in

agency" that is nearly identical to the prohibition in Section 112.313(9)(a)4.

question here—that of an analyst within a House Office with more limited responsibilities and influence. We find that using these prior opinions that conclude that the "agency" of each member of legislative staff mentioned in Section 112.313(9)(a)2.a.(IV) is the entirety of the Legislature—however great or small their role—paints with too broad a brush here, especially considering that the basis for these opinions were prior findings involving only House members. While there is no question that the two-year prohibition in Section 112.313(9)(a)4. applies to enumerated legislative staff, we find that notice must be taken of each staff member's position and responsibilities when determining if his or her "agency," for purposes of the prohibition, extends beyond the chamber in which they serve.

This approach reflects how the Commission has determined the "agency" of public officers and employees employed by state agencies other than the Legislature. In those situations, we have recognized that the term "agency," as defined in the Code of Ethics, can be narrowly drawn. Section 112.312(2), Florida Statutes defines the term to mean:

. . . any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012.

Accordingly, we have found the term "agency" as used in Section 112.313(9)(a)4. does not necessarily refer to the whole of a department or division, but to the lowest departmental unit within which a public officer's or employee's influence might reasonably be considered to extend. See, among others, CEO 18-2 (finding the "agency" of a former SES employee of the Department of Health to be only certain Department units and boards, not the entirety of the Department); CEO 11-24 (finding the "agency" of a former SES employee of the Department of Children and

Families to be only the Department's Central Region and a certain program office, as that was the extent of the employee's influence); and CEO 11-10 (finding the "agency" of a former SMS employee of Florida Department of Transportation to be only District Seven, and not the other Departmental Districts or the Turnpike Enterprise).

This reasoning seems equally applicable to determining whether the "agency" of a legislative employee—serving in a position listed in Section 112.313(9)(a)2.a.(IV)—should be limited to his or her chamber or encompass the entirety of the Legislature. The employee's position and responsibilities should be analyzed to determine if his or her influence extends beyond the chamber in which he or she is situated. It may be that the "agency" of certain positions enumerated in the statute will continue to be the Legislature as a whole. This may particularly be the case when a position's responsibilities require an employee to interface with both chambers. However, other positions enumerated in the statute have a more limited focus, perhaps not even requiring contact with the other chamber, and this approach will acknowledge that reality.

One example is the situation here, where your responsibilities as a Member Service Liaison for the House Majority Office are limited to the House chamber and do not require you to interact with any office, unit, or member of the Senate. Considering this, as well as the nature of your job responsibilities as previously described, we find your "agency" for purposes of Section 112.313(9)(a)4. to be the House chamber alone. Accordingly, while you will be prohibited from representing persons or entities for compensation before the House for two years after leaving public employment, the statute will not restrict you during that two-year period from representing persons or entities for compensation before the Senate, which is not your agency.

Inasmuch as this opinion finds that the "agency" of a legislative employee for purposes of Section 112.313(9)(a)4. may not always be the entire Legislature, and that such determinations will hinge upon an individualized assessment of the extent of the employee's influence, we recede from those portions of CEO 14-32 and CEO 11-22, and any related opinions, stating otherwise. As a final note, it is well settled that the purpose of Section 112.313(9)(a)4. is to restrict influence peddling, meaning the use of a public position to create opportunities for personal profit once an officer or employee leaves his or her position. See CEO 14-32, CEO 11-22, and CEO 11-10. We believe that acknowledging the limited roles of certain legislative employees does not run counter to this goal. Without an indication that a legislative employee has some type of presence in the other chamber—or, at the very least, contact with the other chamber—the chance is minimal that he or she will have any influence in that other chamber that can be leveraged upon leaving public employment.

Your question is answered accordingly.

LMF/gps/ks

Cc: Mr. Tomas M. Bowling

Steverson, Kathryn

From: Stillman, Kerrie
Sent: Monday, August 26, 2024 1:53 PM
To: Steverson, Kathryn; Zuilkowski, Steven
Subject: FW: Lobbying Ban

We received the following opinion request. Please acknowledge, log, and assign. Thank you.

From: Tom Bowling <tomasbowling@gmail.com>
Sent: Monday, August 26, 2024 1:51 PM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Subject: Lobbying Ban

You don't often get email from tomasbowling@gmail.com. [Learn why this is important](#)

Kerrie Stillman, Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709
850.488.7864

Dear Director Stillman,

I am writing to you to request a formal opinion on whether I am affected by a 2-year lobbying ban, and if so, how.

I currently work as a Member Services Liaison in the Florida House Majority Office. My initial understanding was that after leaving this position, I would be banned from lobbying the Florida House of Representatives for 2 years. Upon further research, however, it seems the Commission on Ethics construes the ban to apply to the Florida Senate as well. Apparently, the thought is that the entire Legislative Branch is a single "agency" despite its bicameral construction.

While talking to colleagues, it came to my attention that a former coworker had gone from a position in the Florida House Speaker's Office directly into lobbying the House in the private sector. After carefully reviewing the lobbying ban, I surmised that this individual must have been deemed exempt due to the specific job title, which was not listed under affected positions. As this individual had more of a "political" role than I do, with greater access to powerful people and more control over policy direction, this led me to wonder if I was also unaffected. After all, there is no explicit mention of "Member Services Liaisons" in the lobbying ban.

Addressing the spirit of the ban, it seems that it was created to prevent a revolving door situation where people go directly from a position in the public sector to lobbying the same people they used to work among, leveraging that personal relationship to their advantage. I can appreciate that. Despite what may be inferred from my title, however, my role in the Florida House is largely behind the scenes. Any contact between the Majority Office staff and Members is typically consolidated through either the staff director or deputy staff director. For this reason, I can understand mitigating the influence of those specific individuals.

I fail to understand the argument that one of the three main branches of government is a single "agency" - particularly when constructed of two distinct legislative bodies. I cannot imagine the Executive Branch is construed as a single "agency" in this context.

After reviewing the circumstances laid forth in this letter, I implore you to consider my position unaffected by the 2-year lobbying ban or at least unaffected for the Florida Senate.

Thank you for your time, and I eagerly await your reply.

Best,

Tomas M. Bowling
303 S Lipona Rd
Apt. 51
Tallahassee, FL 32304
617.697.7904
tomasbowling@gmail.com

Schafer, Grayden

From: Schafer, Grayden
Sent: Monday, September 16, 2024 3:15 PM
To: Schafer, Grayden
Subject: FW: Ethics Inquiry

From: Schafer, Grayden
Sent: Wednesday, September 04, 2024 1:31 PM
To: tomasbowling@gmail.com
Subject: Ethics Inquiry

Mr. Bowling:

I am an attorney at the Florida Commission on Ethics and have been assigned the response to your formal ethics inquiry. I've reviewed your inquiry email—which our office received on August 26—but I have a few questions for you, just to understand the context of your situation. If you would please provide in writing your answers to the questions below by replying to this email. And if you need to have any of these questions clarified, please let me know.

1. Am I correct in understanding that because the Legislature is not part of the State Personnel System, your current position is not considered part of either Senior Management Service (SMS) or Selected Exempt Service (SES)?
2. You indicate your current job title is "Member Services Liaison" for the House Speaker's Office. Does the Legislature's Office of Human Resources categorize your position as that of an analyst?
3. Please provide a description of your job responsibilities/duties as the "Member Services Liaison."
4. Do you have any responsibilities that require you to interface with other House employees outside of the House Speaker's Office? If so, please describe them.
5. Do you have any responsibilities that require you to interface with any office or unit within the Florida Senate? If so, please describe them.

Thank you,

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

From: Tom Bowling <tomasbowling@gmail.com>
Sent: Thursday, September 05, 2024 2:03 PM
To: Schafer, Grayden <SCHAFER.GRAYDEN@leg.state.fl.us>
Subject: Re: Ethics Inquiry

Mr. Schafer,

Thank you for looking into this. My responses are below.

1. That is my understanding as well after reviewing DMS's website -

Who is in SPS: https://www.dms.myflorida.com/workforce_operations/state_human_resource_management
SPS Subcategories:

https://www.dms.myflorida.com/workforce_operations/state_human_resource_management/for_state_personnel_system_employees

2. To confirm, I work for the House Majority Office - not the House Speaker's Office. That said, I called the Legislature's Office of Human Resources, and they do categorize the "Member Services Liaison" position as that of an analyst.

3. Monitoring news, social media, and committee meetings; summarizing bills and amendments; creating informational graphics and publications.

4. Not specific to my position. Although I may cover on an ad hoc basis, those duties are typically handled by our administrative lead if not the staff director or deputy staff director.

5. None come to mind.

Please let me know if you need me to elaborate on anything, and I appreciate your attention once again.

Best,

-Tom Bowling

From: Schafer, Grayden

Sent: Thursday, September 05, 2024 2:07 PM

To: Tom Bowling <tomasbowling@gmail.com>

Subject: RE: Ethics Inquiry

Thank you, Mr. Bowling. I will review your responses and let you know if I need anything else from you.