

JUL 23 2026

**BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS**

**RECEIVED**

**In re: Jackie Espinosa,  
Respondent.**

**Complaint Nos.: 26-034 & 26-035  
(Consolidated)**

**CONFIDENTIAL**

**ADVOCATE'S RECOMMENDATION**

The undersigned Advocate, after reviewing the Complaints, Complaint Amendment, and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

**RESPONDENT/COMPLAINANT**

Respondent, Jackie Espinosa, serves as the Mayor of Kissimmee. Complainants are Claudia Zuco and Lillian Evans of Kissimmee, Florida.

**JURISDICTION**

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.313(7)(a), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on July 8, 2026.

## **ALLEGATION**

Respondent is alleged to have violated Section 112.313(7)(a), Florida Statutes, by having an employment and/or contractual relationship with an entity doing business with her agency.

## **APPLICABLE LAW**

Section 112.313(7)(a), Florida Statutes, provides as follows:

**CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.** (a) 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.

In order to establish a violation of Section 112.313(7)(a), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.
2. Respondent must have been employed by or have had a contractual relationship with a business entity or an agency.
3. Such business entity or state or agency must have been subject to the regulation of, or doing business with, the agency of which the Respondent was an officer or employee.

OR

1. Respondent must have been a public officer or employee.
2. Respondent must have held employment or a contractual relationship that will:

- a) create a continuing or frequently recurring conflict between the Respondent's private interests and the performance of the Respondent's public duties;
- or
- b) impede the full and faithful discharge of the Respondent's public duties.

### **ANALYSIS**

The City of Kissimmee received funds from the Federal Government's American Rescue Plan Act of 2021 (ARPA), and the former Director of Economic Development created a program called Operation Business Boost in 2021 using those funds. (ROI 11) The Government Finance Officers Association website (GFOA.org) details the ARPA guiding principles and states that ARPA provided \$350 billion to state, local, territorial, and tribal governments to support COVID-19 response and recovery efforts. (ROI 12) Eligible uses for these funds included COVID-19 expenditures or negative economic impacts of COVID-19, including assistance to small businesses, households, hard-hit industries, and economic recovery. (ROI 12) Funding was required to be obligated by the end of calendar year 2024 and expended by the end of calendar year 2026. (ROI 12)

David Rodriguez, City Director of Economic Development, advised that after Operation Business Boost completed its program funding, there were ARPA funds remaining that had to be allocated before December 31, 2024. (ROI 13) The City Commission established another "Boost" program to help small businesses within the City. (ROI 13, 19) The Commission, including Respondent, voted to approve the initial allocation of ARPA funds to "Boost 2.0" on December 17, 2024. (ROI 13, 14) The Commission finalized and approved the Boost 2.0 program on September 3, 2025 and on September 17, 2025, Boost 2.0 went live and began accepting applications. (ROI 14)

Rodriguez advised that all businesses that applied for Boost 2.0 went through the same underwriting determination of eligibility process and if the applicant met the criteria, they received the funding. (ROI 14) The criteria to receive Boost 2.0 funding was that the business must be a for-profit, operating and having a physical location within Kissimmee City limits; must be a small business as defined by SBA (e.g., fewer than 500 employees); must have been established before March 11, 2021; only one grant per company (regardless of number of office sites), and the main office would be used to calculate square footage for the grant. (ROI 14)

Owners of multiple businesses, all independent of each other and operating from different addresses (located within the City limits) could apply separately. (ROI 14) Businesses with the same address operating from a multi-tenant building - including businesses under the same ownership - were required to demonstrate having a separate and distinct space within the building and support their respective square footage with a lease or other acceptable documentation. (ROI 14) The same square footage could not be counted in multiple applications and applicants were required to demonstrate a financial hardship caused or exacerbated by COVID-19 and show proof of financial hardship between March 1, 2020 and December 20, 2024. (ROI 14) Applicants were required to have an active Kissimmee Business Tax Receipt and be “active” with the Florida Department of State - Division of Corporations (Sunbiz.com). (ROI 14) They were required to be current on all their taxes, assessments, and fees, could not have had any outstanding delinquent liens or code enforcement violations, and could not be engaged in illegal, restricted on non-compliant activities such as adult entertainment or gambling. (ROI 14) Applicants were required to be a “Brick & Mortar” business legally registered and operating and having a physical location within the City limits and provide a copy of a deed or commercial lease agreement for the business’ brick-and-mortar physical location. (ROI 14) Home-based businesses were allowed to apply if

they were a legally registered business enterprise operated primarily from a residential property located within the City limits where the business owner resides or maintained a legal right to operate. (ROI 14)

Rodriguez advised that every business that applied and met the published criteria was awarded Boost 2.0 grant funds. (ROI 14) He advised that the Boost 2.0 grant awardees were not required to repay any grant funds they received. (ROI 16)

Since November 2024, Respondent has served as the mayor. (ROI 36) Respondent's business, Adanse, LLC, was one of the businesses that applied for Boost 2.0 funds when the application window opened and was awarded \$20,000. (ROI 14) Also, Respondent's husband's two businesses, Kissimmee Diner (DBA Matador Tacos and Tapas),<sup>1</sup> and The Real Estate Gallery, LLC, each received \$15,000 respectively for a total of \$50,000 in Boost 2.0 grant awards for Respondent and her family. (ROI 5) Of the Boost 2.0 grant funds that were disbursed by the City to its local businesses, Respondent and her family's businesses, during the first round of funds disbursed on November 6, 2025, received approximately 6% (\$50,000) of the total \$855,000 disbursed. (ROI 46 Note)

Complainants allege that Respondent is engaged in an employment or contractual relationship with an entity doing business with the City, her agency. (ROI 2) Complainant Zuco opined that Respondent requested that additional funds be allocated towards the small business grants so that she (Respondent) could apply for grants for her businesses. (ROI 6) Although Complainant Zuco only knew of three businesses directly related to Respondent that received the Boost 2.0 grants, she is aware there are other businesses renting space from Respondent that were also awarded grants. (ROI 6) Complainant Evans advised Respondent was not required to repay

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<sup>1</sup> Respondent confirmed that she is the Vice President of the Kissimmee Diner Inc. DBA Matador Taco & Tapas. (ROI 44)

the Boost 2.0 grant funds she received for her business (Adanse, LLC) or for the funds her husband received for his businesses. (ROI 10)

Respondent advised that, at the time of the vote, she had not decided to apply for Boost 2.0 for her businesses. (ROI 41) However, once requirements were publicized, she learned her businesses would be eligible according to the guidelines, so she applied. (ROI 41)

Respondent advised that she voted, alongside all the other Commissioners, to approve Boost 2.0, but they never approved the specific applications or amounts awarded, nor were they in charge of approving the amount received by the applicants as that was handled by Department of Economic Development. (ROI 41) Respondent never voted to approve grants for her businesses. (ROI 44 Note) The award for each business was determined in accordance with the Boost 2.0 Program and was in direct correlation to the businesses' square footage and the criteria discussed in the "Grant Award Tiers" section of the Boost 2.0 Program Overview. (ROI 44 Note, Exhibit I-2)

Respondent confirmed that she also owns the buildings where her businesses are located. (ROI 45) She denied that she only advised her tenants to apply for the Boost 2.0 funds but advised any business owners she encountered to apply for the Boost 2.0 funds. (ROI 45)

Former City Attorney Olga Sanchez de Fuentes confirmed that Respondent voted to approve Boost 2.0 and did not recuse herself from the vote or the discussion. (ROI 32) Sanchez de Fuentes advised that had she known Respondent was planning to apply for Boost 2.0 funding, she (Sanchez de Fuentes) would have advised her against participating in the discussion and the vote. (ROI 32) Sanchez de Fuentes emailed Respondent to let her know that she (Sanchez de Fuentes) felt Respondent taking Boost 2.0 funds was a conflict of interest and she provided her with prior opinions from the Commission on Ethics. (ROI 35, Exhibit F)

In the aforementioned opinions, the Commission has generally opined that it is a conflict for members of boards to apply for grants administered by the board.<sup>2</sup> See CEOs 00-12, 12-14, 23-1. There is sufficient evidence of a violation as Respondent had a conflicting relationship.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes.

### RECOMMENDATION

It is my recommendation that:

There is probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes, by having an employment and/or contractual relationship with an entity doing business with her agency.

Respectfully submitted this 23<sup>rd</sup> day of July, 2026.

  
MELODY A. HADLEY  
Advocate for the Florida Commission  
on Ethics  
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The Capitol, PL-01  
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<sup>2</sup> CEO 20-9 is an instance where the Commission applied Section 112.316, Florida Statutes, to negate a conflict where board members could apply for a grant administered by the Board as there were several specific factors that were unique to the case. In the instant case, the facts do not capture the same nuance as CEO 20-9 that would make it unique enough not to follow the Commission's other opinions.

CEO 00-12 -- August 29, 2000

## CONFLICT OF INTEREST

### COUNTY COMMISSIONER OBTAINING S.H.I.P. FUNDING THROUGH COUNTY DEPARTMENT TO REHABILITATE LOW-COST HOUSING

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

#### SUMMARY:

A prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, where a county commissioner obtains funding through a county program to rehabilitate duplexes that will provide affordable housing to low-income individuals. The commissioner would have a contractual relationship with an agency--the community services department--that is overseen by the county commission. CEO's 98-3, 90-76, 88-52, and 77-88 are referenced.

#### QUESTION:

Is a prohibited conflict of interest created where a county commissioner applies to participate in a housing assistance program to rehabilitate rental property that will provide affordable housing to low-income individuals, where the program is administered by the county?

Your question is answered in the affirmative.

From your opinion request and materials submitted along with it, we are advised that you serve as a member of the Manatee County Board of County Commissioners and that you privately purchased fourteen duplexes that are boarded-up, vacant, and need repairs in order to be habitable. After learning of the County's participation in the State Housing Assistance Program (SHIP), which is administered by the Manatee County Community Development Department, you met with County staff to determine whether there might be funding available to rehabilitate your properties. You write that you were advised by County staff that your project would qualify for funding, and you subsequently submitted an application to receive \$135,500 to rehabilitate the duplexes. If the County provided the funding, under the terms of the program you would make the repairs and be obligated for fifteen years to rent the units to low-income individuals. Approval of the specific amount would come before the County Commission and, you acknowledge, would require your abstention from voting. However, you question whether your participation in the County program itself would create a conflict of interest prohibited by the Code of Ethics for Public Officers and Employees.

The primary provision of the Code of Ethics which is applicable to your inquiry is Section 112.313(7)(a), Florida Statutes, which 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 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 (1997).]

Section 112.313(7)(a) prohibits a public officer from having a contractual relationship with a business entity or agency that is doing business with or regulated by his agency. It also prohibits the public officer from having a contractual relationship which creates a continuing or frequently recurring conflict between his private interests and the performance of his public duties, or which impedes the full and faithful discharge of his public duties.

In CEO 77-88, we opined that a prohibited conflict of interest would be created where a county commissioner entered into a contractual relationship with a county housing assistance office as a landlord in the federal HUD Section 8 housing assistance payments program. That situation violated the first part of Section 112.313(7)(a), we concluded, since he would have a contractual relationship with a county agency that was regulated by the board of county commissioners. In CEO 88-52, we applied the second part of Section 112.313(7)(a) to conclude that it would create a prohibited conflict of interest if a city employee applied for a rental rehabilitation loan through the program in which he worked. We believed that his participation in the rental rehabilitation program created an impediment to the full and faithful discharge of his public duties, as he was directly involved in the administration of the program under which he would obtain the loan, he was competing with other applicants for loan proceeds, and the loan would clearly benefit him by enabling him to rehabilitate his property.

In the situation you have described, there are factual similarities with both CEO 77-88 and CEO 88-52. Like CEO 77-88, the Manatee County Community Services Department is a County agency. If you obtain the funding, you would have a contractual relationship with an agency that is subject to the County Commission's oversight. As in CEO 88-52, there is competition for the funding, and the funding would clearly benefit you by allowing you to make much-needed repairs in the fourteen duplexes and then rent them. The funding is awarded on a first-come, first-served basis and, we are advised, is fully committed as a result of your application and that of other homeowner-applicants.

In another opinion--CEO 98-3--we opined that Section 112.313(7)(a) would be violated where a community redevelopment agency board member applied for a low-cost loan administered by his agency. That opinion cited CEO 88-52, as well as CEO 90-76, to conclude that a prohibited conflict of interest was created where a public officer applied for funding through a program administered by his agency and that "to hold otherwise would provide the opportunity and strongly suggest to the public that a public officer is permitted to benefit privately because of his public position, which is antithetical to the principles underlying the Code of Ethics for Public Officers and Employees."

Accordingly, Section 112.313(7)(a) would be violated where a county commissioner obtains housing rehabilitation funding from a program administered by the county.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on August 24, 2000 and **RENDERED** this 29th day of August.

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Howard Marks, *Chair*

CEO 12-14 – May 9, 2012

## CONFLICT OF INTEREST

### **CITY COMMISSIONER/CRA BOARD MEMBER AND REDEVELOPMENT AREA BOARD MEMBER APPLYING FOR REDEVELOPMENT INCENTIVE GRANTS FROM THE CITY; REDEVELOPMENT AREA BOARD MEMBER CATERING MEALS FOR REDEVELOPMENT AREA BOARD MEETINGS**

To: *Name withheld at person's request (Daytona Beach)*

#### **SUMMARY:**

A prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, where a city commissioner who also sits on the community redevelopment agency applies for redevelopment incentive grants from the city's redevelopment division. However, a redevelopment area board member would not violate Section 112.313(7)(a) if she applied for redevelopment incentive grants from the city's redevelopment division. A prohibited conflict of interest would not be created where the spouse of the city commissioner/CRA member applies for redevelopment incentive grants from the city's redevelopment division, where the city commissioner/CRA member has no interest in her husband's property. Nor would a prohibited conflict of interest be created where tenants of the city commissioner/CRA member apply for redevelopment incentive grants from the city's redevelopment division. A prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, where the redevelopment area board member's café caters meals for meetings of the redevelopment area board on which the member serves, absent the applicability of one of the exemptions listed in Section 112.313(12), Florida Statutes. No prohibited conflict of interest would be created where other city boards or departments purchase food from the redevelopment area board member's café, as long as neither she nor her board have any involvement in the purchasing decision.

#### **QUESTION 1:**

Is a prohibited conflict of interest created were a City Commissioner who also sits as a Community Redevelopment Agency (CRA) Board member, or a Redevelopment Area Board member, to apply for and receive redevelopment incentive grants administered by City staff?<sup>1</sup>

Question 1 is answered in the affirmative for the City Commissioner/Community Redevelopment Agency Board member, and in the negative for the Redevelopment Area Board member.

In your letter of inquiry, you explain that you are seeking this opinion on behalf of Daytona Beach City Commissioner ..., who, along with other members of the City

Commission, serves on the City's Community Redevelopment Agency (CRA), and ..., an appointed member of one of the City's three Redevelopment Area Boards—the Downtown/Ballough Road Redevelopment Area Board.

You explain that the City Commission has designated itself as the CRA. You further explain that the City's Land Development Code (LDC) provides for the creation of three Redevelopment Area Boards. These Boards have no spending authority or budget, and their members are appointed by the City Commission to perform advisory functions for both the City and the CRA. The Redevelopment Area Boards have final authority in certain zoning matters for properties located within their respective boundaries, but do not exercise any final authority in matters under the jurisdiction of the CRA.

The CRA, with advice from the Redevelopment Boards, created various grant programs as incentives to encourage private redevelopment of properties within the targeted redevelopment areas. These grants are available to owners or lessees for residential, commercial, and business façade improvements, leasehold improvements, lease subsidies, upper floor residential conversions, historic preservation, and landscape improvements. The grant programs are administered by staff within the City's Development Services Department, and applications are received on a first-come, first-served basis. If the application meets established criteria, staff approve it without any vote or action by the City Commission, the CRA, or the Redevelopment Area Boards.

With regard to the City Commissioner/CRA member, you indicate that she is a real estate broker with an office located in one of the City's redevelopment areas and she owns interests in properties in other redevelopment areas, including a building leasing space to commercial tenants. The Downtown/Ballough Road Redevelopment Area Board member operates a small café and bakery in leased commercial space in the Downtown/Ballough Road Redevelopment Area, and she may wish to expand her business in the future.

With this preface, you ask whether the City Commissioner/CRA member and the member of the Redevelopment Area Board are eligible to apply for and receive any of the various redevelopment incentive grants to improve properties they own or have interests in, in the targeted redevelopment areas.

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 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 part of Section 112.313(7)(a) prohibits a public officer from having an employment or contractual relationship with a business entity or agency which is subject to the regulation of, or which is doing business with, the public officer's agency. The second part of Section 112.313(7)(a) prohibits a public officer from having an employment or contractual relationship

which creates a continuing or frequently recurring conflict between private interests and the performance of public duties, or which impede the full and faithful discharge of public duties.

In CEO 12-07, we opined that a prohibited conflict of interest would be created under Section 112.313(7)(a) were a member of a CRA to obtain a commercial loan subsidy from the CRA, because he would have a contractual relationship with a business entity doing business with his agency, a prohibited conflict of interest under the first part of Section 112.313(7)(a). Similarly, in CEO 98-3, we concluded that a CRA member could not apply for and receive a façade grant from his own agency. In another opinion, CEO 00-12, we concluded that a prohibited conflict of interest would be created where a county commissioner obtained funding to renovate duplexes through an affordable housing program administered by a county department because he would have a contractual relationship with a county department overseen by the county commission, his agency. Based upon this precedent, we believe that a prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, for the City Commissioner/CRA member to participate in the various grant programs administered by the City's Redevelopment Division.

However, the situation of the Redevelopment Area Board member is not the same as that of the City Commissioner/CRA member. You have indicated that the Redevelopment Area Boards perform advisory functions for both the City Commission and the CRA, and while Redevelopment Area Boards do participate in zoning matters for properties located in their respective redevelopment areas, they do not oversee any City departments or have any formal role in the incentive grants program. In CEO 85-67, we opined that a city heritage conservation board member would not have a prohibited conflict under Section 112.313(7)(a) if a partnership in which he was the general partner applied to the city for a loan to move a historic structure, as long as the board on which he served did not regulate the partnership's activities through the issuance of a certificate of appropriateness. Under this precedent, we find Section 112.313(7)(a) would not be violated by the Redevelopment Area Board member's application for and receipt of an incentive grant since Redevelopment Area Boards play no role in the incentive grants program.

Question 1 is answered accordingly.

## QUESTION 2:

*Is a prohibited conflict of interest created where the spouse of a City Commissioner/CRA member applies for and receives redevelopment incentive grants from the City's Redevelopment Division?*

Question 2 is answered in the negative.

In your letter of inquiry, you explain that the spouse of the City Commissioner/CRA member is a real estate developer who owns an interest in certain property in one or more of the redevelopment areas, and that his spouse, the City Commissioner/CRA member, does not have an interest in the property. You ask whether a prohibited conflict of interest would be created if he or tenants in a building in which he has an interest apply for and receive redevelopment incentive grants.

We have consistently advised that Section 112.313(7)(a), Florida Statutes, does not apply to situations where the spouse of the public official (but not the public official) has an employment or contractual relationship. See CEO 12-02, CEO 92-43, and opinions cited therein. Although the City Commissioner/CRA member would be prohibited from voting on a

matter that benefited her spouse and would be prohibited from corruptly using her office to benefit her spouse, neither Section 112.313(6) nor 112.3143(3), Florida Statutes, create a bar akin to that of Section 112.313(7)(a).

Accordingly, no prohibited conflict of interest is created where the spouse of the City Commissioner/CRA member or his tenants apply for and receive redevelopment incentive grants from the City's Redevelopment Division.

### **QUESTION 3:**

Is a prohibited conflict of interest created where tenants in the building owned by the City Commissioner/CRA member apply for and receive redevelopment incentive grants?

Question 3 is answered in the negative.

You explain that the City Commissioner/CRA member owns an interest in a commercial building in one of the redevelopment areas and leases space in the building to various commercial tenants. You ask whether a prohibited conflict of interest would be created were her tenants to apply for and receive redevelopment incentive grants from the City's Redevelopment Division.

Section 112.313(7)(a) prohibits a public officer from having a contractual relationship with a business entity doing business with or regulated by her agency. In CEO 87-63, we opined that this provision would not be violated where a city councilwoman leased a building she owned to a non-profit corporation, where that non-profit corporation received a grant from the city's department of housing and urban development. We were of the view that it was the department of housing and urban development which was "doing business" with the corporation, not the city council, which only approved the appropriation of grant funds in the city budget. No conflict of interest was found to be present under the second part of Section 112.313(7)(a) either, as the matter only came before the city council once.

Applying this rationale to the situation involving the City Commissioner/CRA member, the tenants of the City Commissioner/CRA member are "doing business" with the City's Redevelopment Division, not the City Commission. Therefore, no conflict would be created under the first part of Section 112.313(7)(a). Nor do we believe that a conflict would be created under the second part of this statute. In CEO 87-63, the matter only came before the city council once; here, we would not expect it to come before the City Commission at all, since staff in the Redevelopment Division apparently administer the incentive grants program in its entirety.

Accordingly, no prohibited conflict of interest would be created where tenants of the City Commissioner/CRA member apply for and receive redevelopment incentive grants from the City's Redevelopment Division.

### **QUESTION 4:**

Is a prohibited conflict of interest created where tenants in the buildings owned by the City Commissioner/CRA member's spouse apply for and receive redevelopment incentive grants?

Question 4 is answered in the negative.

Where tenants of the City Commissioner/CRA member's husband apply for and receive redevelopment incentive grants from the City's Redevelopment Division, we do not believe that a prohibited conflict of interest would be created for the City Commissioner/CRA member. You have represented that the City Commissioner/CRA member has no ownership interest in the building; therefore, she would have not have a contractual relationship with her husband's commercial tenants.

Question 4 is answered accordingly.

#### **QUESTION 5:**

Is a prohibited conflict of interest if the Redevelopment Area Board member caters meals for meetings of the Redevelopment Area Board on which she serves?

Question 5 is answered in the affirmative for catering meetings of the Downtown/Balough Road Development Area Board unless an exemption is applicable, and in the negative for catering meals for other City Boards or departments as long as neither the Downtown/Balough Road Redevelopment Area Board member nor her Board have any involvement in the purchasing decision.

You explain that the Downtown/Balough Road Redevelopment Area Board meets at noon and that the City's Redevelopment Division staff typically purchases a "take-out" lunch for the meeting from a restaurant or café located with the redevelopment area. You ask whether a prohibited conflict of interest is created where the café owned by the Redevelopment Area Board member caters meals for her Redevelopment Area Board meetings.

Section 112.313(3), Florida Statutes, 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.

Section 112.313(3) prohibits a public officer from selling any goods or services to the political subdivision in which she serves or to any agency of that political subdivision. Additionally, Section 112.313(7)(a) prohibits a public officer from having a contractual relationship with a business entity doing business with her agency.

You indicated that the purchase of food is made by staff in the Redevelopment Division, not the Downtown/Balough Road Redevelopment Area Board. This notwithstanding, we are of the view that Sections 112.313(3) and 112.313(7)(a) prohibit the Redevelopment Area Board member from selling to the City the food that will be consumed at her own Board's meetings absent one of the exemptions listed in Section 112.313(12), Florida Statutes. However, meals purchased by other City boards or departments would not violate Sections 112.313(3) or 112.313(7)(a), Florida Statutes, as long as neither the Downtown/Balough Road Redevelopment Area Board nor the Development Area Board member have any involvement in the purchasing decision. In a number of opinions, we have opined that Section 112.313(3), Florida Statutes, does not prohibit a member of a subordinate board from selling goods or services to other boards or departments in the same agency or political subdivision, as long as neither the member nor the member's board has any say in the purchasing decision. See CEO 85-55, where we opined that a city arts advisory committee member could sell photographic supplies to the city, and CEO 85-85, where we opined that a city planning and zoning board member could contract with the city to clear lots located within the city.

With regard to statutory exemptions that may be applicable to negate the conflict regarding the Downtown/Balough Road Redevelopment Area Board, you ask whether the "advisory board" exemption in Section 112.313(12) would be available because Redevelopment Area Boards serve in an advisory function to the City Commission, the City Planning Board, and the CRA. However, according to the information provided, Redevelopment Area Boards do not serve in an advisory capacity on zoning matters; for this reason, we find that they do not meet the definition of "advisory body" in Section 112.312, Florida Statutes.<sup>2</sup> See CEO 10-24, Note 10. Nonetheless, it is possible that other exemptions in Section 112.313(12) may be applicable, particularly Section 112.313(12)(f), Florida Statutes, that allows transactions, in the aggregate, which do not exceed \$500 per calendar year.

Accordingly, a prohibited conflict of interest would be created where the Redevelopment Area Board member caters meals for the meetings of the Redevelopment Area Board on which she serves unless one of the exemptions in Section 112.313(12), Florida Statutes, is applicable. Selling food to other City departments or boards would not violate the Code of Ethics as long as neither the Redevelopment Area Board member nor the Redevelopment Area Board on which she serves are involved in the purchasing decision.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on May 4, 2012 and **RENDERED** this 9th day of May, 2012.

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Robert J. Sniffen, *Chairman*

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[1] Your Question 1 and Question 5 are combined herein.

[2] Section 112.312(1), Florida Statutes, defines "advisory body" to mean

any board, commission, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or \$100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations.

CEO 23-1—March 15, 2023

**CONFLICT OF INTEREST****MEMBER OF CITY COMMISSION ENTERING INTO CONTRACTUAL  
RELATIONSHIP WITH CITY TO RECEIVE PROPERTY  
IMPROVEMENT PROGRAM FUNDS***To: Name withheld at person's request (Margate)***SUMMARY:**

A prohibited conflict of interest would be created under 112.313(7)(a), Florida Statutes, where a City Commissioner receives funds from the City through its property improvement program. The Commissioner would have a contractual relationship with an agency—the City Manager's Office—that is regulated by the City Commission. Referenced are CEO 20-9, CEO 18-4, CEO 12-14, CEO 08-1, CEO 00-12, CEO 95-28, CEO 89-21, and CEO 77-88.

**QUESTION:**

Will a member of a city commission have a prohibited conflict of interest if she receives funds through the city's property improvement program?

This question is answered in the affirmative.

In your letter of inquiry and additional information provided to our staff, you indicate you are inquiring on behalf of a City Commissioner whether she will have a prohibited conflict of interest were she to receive funding through a property improvement program recently launched by the City. To analyze your inquiry, it is first necessary to explain the genesis of the program and how the City allocates funds through it.

You explain that, in April 2022, the City Commission—including the City Commissioner on whose behalf you are seeking this opinion—passed a resolution by which the City agreed to accept over \$10 million in federal funds being offered through the American Rescue Plan Act of 2021. The funds were only to be used for certain municipal and public purposes, with the goal of benefitting the City's citizens and residents. You relate the City then began exploring allowable options for these funds, and that, at a duly-noticed City Commission meeting in September 2022, the possibility of using a portion of them to develop a property improvement program was presented.

The purpose of the program, according to the materials that you provided, was to encourage property and business owners to restore, renovate, and improve their properties, thereby improving the City's visual quality and attractiveness, and increasing property values. Through the proposed program, the City would provide funds to reimburse qualified applicants for certain fixed improvements to the exteriors of their properties, and for any minor interior work necessary to be included as part of a comprehensive exterior renovation.<sup>[1]</sup> You indicate the entire City Commission provided input to the City Manager during the meeting concerning the amount of funding that might be allocated toward the program, who would be eligible to apply, and what types of improvements would qualify for reimbursement.

You relate the City Manager incorporated the Commission's feedback into specific guidelines, and, at a subsequent City Commission meeting held in October 2022, the City Commission unanimously passed a resolution approving the program and allocating \$1.5 million of American Rescue Plan Act funding towards it.

In terms of how the program operates, you indicate the program is offered City-wide, meaning all property owners, residential and commercial, are able to apply. You state a single-family or multi-family (individual owned) homesteaded property may receive a 50% reimbursement grant of up to \$10,000 for eligible improvements.<sup>[2]</sup> You relate the process by which a homesteaded property owner may apply is the following: (1) an applicant submits a program application online, identifying the particular improvements to be made; (2) the application is reviewed by the Assistant to the City Manager, the City's Business Development Coordinator, and one other temporary employee; (3) the application is then sent to the City Manager for final approval or denial;

(4) if approved, the applicant personally pays to have the improvements made; (5) the applicant then submits to the City certain required documentation demonstrating the expenditures for the improvements and confirms the issuance of any final permits and certificates of completion/occupancy; and (6) the City reimburses the applicant directly.

You emphasize several things about the application and reimbursement process. First, the program is only designed for new projects, meaning any improvements already completed are ineligible for funding. Second, even if an application is approved, no formal agreement, lien, loan agreement, or other type of document is executed between the applicant and the City. Third, if an applicant meets the program's eligibility criteria, the allocation of funds is nondiscretionary and automatic. That being said, from what you indicate, the program's financial resources are finite, as the City has allocated only \$1.5 million in funding towards it. And, fourth, the City Manager and his staff are solely responsible for reviewing the applications and allocating the funds.

Turning to the specific inquiry at issue here, you indicate the City Commissioner in question owns a residential single-family home within City limits that is identified as her homestead. Given her eligibility, you state she would like to receive reimbursement funds through the program for certain improvements that she will make to her property. You relate she has not contracted for or made any of these improvements to her property yet—which would render them ineligible for reimbursement—but will do so if her application is approved. You also relate she has already submitted an application to the program, which was accepted under the condition that it not be granted until she receives an opinion from the Commission on Ethics regarding whether her participation in the program constitutes a prohibited conflict of interest. Importantly, you indicate the total amount of funding requested by the applications already received by the City Manager's Office—including the Commissioner's—will deplete the full \$1.5 million allotted to the program, meaning that, if all of the applications received are granted in full, there will be no funds left to offer future applicants. Due to the potential exhaustion of funds, you indicate the City is no longer accepting applications to the program.

Section 112.313(7)(a), Florida Statutes, is the statute most relevant to your inquiry. It states:

**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, any 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 part of the statute prohibits the City Commissioner from having a contractual relationship with a business entity—or an agency—if that entity or agency is doing business with, or is subject to the regulation of, the Commissioner's agency. For purposes of Section 112.313(7)(a), the "agency" of a city commissioner is the city commission. See CEO 18-4 and CEO 08-1, Question 2. The question then is whether—in the event that the City Commissioner's application to the program is approved—she will have a contractual relationship with a business entity or agency that is engaged in a business or regulatory interface with the City Commission.

Concerning whether a contractual relationship will exist, you indicate program applicants will not have any written agreements, liens, or loan agreements with the City, even if their applications are approved, and will not be required to execute any documents with the City. That being said, simply because there will be no written agreement with the City does not definitively mean there will be no contractual relationship for purposes of Section 112.313(7)(a). We have adopted the substantive law of contract in determining the meaning of the term "contractual relationship," and have cited the following definition when interpreting the phrase:

[a]ny agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. [Black's Law Dictionary, Fifth Edition (1979)]<sup>[3]</sup>

See CEO 95-28 and CEO 89-21. In CEO 89-21, we cited alternate, but similar, definitions providing:

The term 'contract' has been defined as a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Another definition is that a 'contract' is an agreement upon a sufficient consideration to do or refrain from doing a particular lawful thing. [11 Fla. Jur. 2d Contracts, Section 1.]

Under these definitions, we find a contractual relationship will exist for purposes of Section 112.313(7)(a) once a program application is approved. At that point, and based on the promise of reimbursement funding, the program applicant will be induced to use his or her private funds to hire contractors, builders, and workers to make improvements to his or her property. If the City then chooses not to reimburse the applicant, despite the initial approval of the application and the applicant's good faith reliance on the City's guarantee of funds, it appears the applicant likely would have legal grounds to demand that the City provide the funding. We note a similar arrangement for reimbursement funding was found to be a contractual relationship in CEO 20-9, which concerned a member of the governing board of a water management district owning a business that was applying to the district for reimbursement of irrigation equipment under a cost-share grant program.

Of course, this contractual relationship will not be sufficient to trigger the prohibition in Section 112.313(7)(a) unless it is with a business entity or agency doing business with or being regulated by the City Commission. Here, from what you describe, program applications are reviewed by the City Manager's staff and then approved by the City Manager, who directs the allocation of funds to recipients. In short, the program appears to create a contractual relationship between the applicant and the City Manager's Office, which is the entity involved in approving and disbursing funds. This is all that is needed to constitute a conflicting contractual relationship for the City Commissioner under the first part of Section 112.313(7)(a), as she will have a contractual relationship (through the approval of the application) with an agency (the City Manager's Office) subject to the regulation of her agency (the City Commission).<sup>[4]</sup>

In the past, when similar circumstances have arisen for members of local governing bodies, we have found a conflict of interest under Section 112.313(7)(a). For example, in CEO 12-14, Question 1, we analyzed whether Section 112.313(7)(a) would prohibit a city commissioner—who also was sitting as a board member of a community redevelopment agency—from applying for and receiving redevelopment incentive grants. The grant programs were created by the community redevelopment agency, were administered by staff of the city's redevelopment division, and were available to, among others, owners or lessees of residential properties. We found a prohibited conflict of interest would exist for the city commissioner under the first part of Section 112.313(7)(a) if she received the grant funding because, by receiving the grants, she would be entering into a contractual relationship with a city department overseen by her agency, the city commission.

Similarly, in CEO 00-12, we found a prohibited conflict of interest would be created under the first part of Section 112.313(7)(a) were a county commissioner to apply, in his private capacity as a landlord, for State Housing Assistance Program (SHIP) funds being administered by the county's community development department. We emphasized the conflict would occur because, in the event that the funding was approved, the county commissioner would have a contractual relationship with a department subject to the county commission's oversight.

And, finally, in CEO 77-88, we addressed a county commissioner who wanted to enter into a contractual relationship, in his private capacity as a landlord, with a county housing assistance office pursuant to payment program sponsored, in part, by the U.S. Department of Housing and Urban Development. Because the county housing assistance office was subject to the regulation of the board of county commissioners, we found the county commissioner would be in violation of the first part of Section 112.313(7)(a) were he to enter into the contract.

The scenario that you present is similar to those addressed in these earlier opinions. In each of them, as here, a member of the governing board of a political subdivision sought to enter into a contractual relationship to receive funding from a department or unit of local government overseen by his or her agency. Consistent with those opinions, the reasoning of which adopted herein, the City Commissioner's proposed acceptance of the program funds meets the elements of the first part of Section 112.313(7)(a), and, therefore, would present a prohibited conflict of interest.

It is worth noting, though, that these opinions involved a public officer serving on the governing body of the political subdivision in question. If a public officer serves on a subordinate board of the political subdivision, and is applying for funding from another board or governmental unit within the political subdivision over which he or she has no regulatory oversight, the statutory prohibition will not be at issue. This is explained in CEO 12-14, Question 1, which addressed whether a board member of a city redevelopment area could apply for an incentive grant administered by a separate city department over which his board had no control. In that circumstance, we concluded the first part of Section 112.313(7)(a) would not apply, as the board member's contractual relationship would not be with an agency regulated by his board.

Nor do these opinions prohibit a member of a governing board of a political subdivision—such as the City Commissioner here—from merely appearing before a subordinate board on his or her own behalf, assuming the appearance does not lead to contractual relationship with that subordinate board. We acknowledge that members of governing boards of local political subdivisions may have personal needs to appear before subordinate boards, and Section 112.313(7)(a) does not prohibit them from making such appearances on their own behalf. In the event that the governing board member enters into a contractual relationship with the subordinate board, though, the statute will apply.

That being said, under the facts presented here, we find the first part of Section 112.313(7)(a) will apply were the City Commissioner to receive funding from the City through the Property Improvement Program. We acknowledge that, in the past, and when warranted by unique circumstances, we have found Section 112.313(7)(a) will not preclude a governing board member from receiving funds through a program administered by his or her agency. However, such determinations hinged upon narrow and specific circumstances that are not present here, such as guaranteed funding for all who apply and no potential for denying anyone the ability to participate. See CEO 20-9. We decline to recognize such unique circumstances here, especially considering that the funding for the program is finite and near exhaustion, and, as such, disbursing funds to the City Commissioner means that not all applications submitted after her own will be granted or even considered. And while we recognize that Section 112.316, Florida Statutes,<sup>[5]</sup> also has been used in certain situations to negate the strict application of the first part of Section 112.313(7)(a), we decline to apply it here, given the unique circumstances presented by this particular program, and her involvement in the program's creation.

Your question is answered accordingly.

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on March 10, 2023, and **RENDERED** this 15th day of March, 2023.

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Glenton "Glen" Gilzean, Jr., *Chair*

<sup>[1]</sup>The materials that you provide indicate eligible improvements include, among others, exterior painting, exterior lighting, signage, landscaping, driveway improvements, roof repair or replacement, and structural repair.

<sup>[2]</sup>While it appears commercial properties, multi-family properties, and certain exteriors owned by a condominium or single-family homeowner association may also apply for and receive reimbursement funds, those types of applicants are not germane to the instant inquiry.

<sup>[3]</sup>More recently, Black's Law Dictionary, Seventh Edition, has defined the term "contract" as "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law."

<sup>[4]</sup>In your inquiry, you argue the first part of Section 112.313(7)(a) is inapplicable as there is no "business entity" involved. You assert that because the City Commissioner will be applying to the program in her private capacity—without the involvement of a "business entity"—the first part of the statute does not apply. However, as noted above, the statute covers situations where the contractual relationship in question is with an "agency" that is doing business with, or is subject to the regulation of, the public officer's agency. This is the scenario at issue here, as the City Commissioner will have a contractual relationship with an agency overseen by, and subject to the regulation of, the City Commission.

[5]Section 112.316 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.

CEO 20-9—October 23, 2020

## CONFLICT OF INTEREST

### MEMBER OF GOVERNING BOARD OF WATER MANAGEMENT DISTRICT HAVING CONTRACTUAL RELATIONSHIP WITH BUSINESS ENTITY APPLYING FOR COST-SHARE GRANT

*To: George T. Reeves, Attorney (Suwannee River WMD)*

#### SUMMARY:

Under the unique circumstances presented, members of the Governing Board of a water management district will not have a conflict of interest under Section 112.313(7)(a), Florida Statutes, if their tenants or businesses apply to their agency for reimbursement of irrigation equipment under a cost-share grant program created by the agency. CEO 88-65, CEO 12-7, and CEO 12-14, are referenced.

#### QUESTION:

Will a member of the governing board of a water management district (WMD) have a prohibited conflict of interest if he or she has a contractual relationship with an agricultural producer that applies for and receives a cost-share grant from the WMD?

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

According to your inquiry, the Governing Board of a water management district (District/WMD) created a grant program in 2012. The grant program allows eligible agricultural producers who control property within the District to purchase approved improvements at their own expense and, subsequent to the purchase, the District will reimburse seventy-five percent of the cost, to a maximum of \$300,000. Approved improvements include retrofitting or modernizing irrigation systems to make them more efficient, saving groundwater in the District. According to you, the upgrades are typically nozzle and end gun changes to irrigation systems, which use less water, and soil moisture probes. In the case of soil moisture probes, the District will also reimburse the service costs of the first few years of monitoring of the probes.

To avail themselves of this program, agricultural producers must submit an application to the District and District staff review the application to ensure the upgrade to be purchased satisfies the goals of the grant program and verify that the agricultural producer is eligible for the grant. Once the staff completes its review, eligible applications are sent to the District's Executive Director or its Governing Board for final approval.<sup>1</sup> Upon that final approval, the District then enters into a contract regarding the reimbursement with the agricultural producer before the agricultural producer makes their purchase and the reimbursement is thereafter issued.

According to you, no eligible applicant has ever been denied reimbursement funding. You state that the District is not placed in the position of prioritizing applications in a competitive environment.

In response to questions from Commission staff, you state that the Governing Board of the District has the authority to change the maximum reimbursement amount and has done so in the past. For example, in April 2019, the District added alternative water supply projects and added variable frequency drives as purchases eligible for cost-share, both reimbursed at seventy-five percent of the cost. In January 2020, the District began allowing cost-share reimbursement for a fourth, fifth, and sixth year of service agreements, reimbursed at a rate of fifty percent of the cost.

You request this opinion on behalf of two members of the Governing Board of the District. One member is not an agricultural producer, but owns property within the District that the member leases to agricultural producers who may attempt to avail themselves of the grant program during the member's tenure on the Governing Board. The other member has, in the past, and may, in the future, be an officer and/or director in the member's family's agricultural company, which may seek to avail itself of the grant program. You ask whether

these two members would have a prohibited conflict of interest if their respective tenants or company received a grant from the District.

Analysis under Section 112.313(7)(a), Florida Statutes, is appropriate. It 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 would prohibit a public officer from having any contractual relationship with a business entity that is regulated by or does business with his or her agency. The second clause of this statute would prohibit a public officer from having a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties.

As a predicate to answering your question, we take this opportunity to reaffirm our longstanding interpretation of Section 112.313(7)(a) that an entity is "doing business" with an agency when it has entered into a contract or other legal arrangement under which one party would have a cause of action against the other if a breach or default were to occur. See, e.g., CEO 12-7 (citing CEO 88-65).

We found a conflict of interest and declined to apply any exemption in CEO 12-7. In that opinion, a city's CRA offered a façade grant that provided up to \$10,000 to allow applicants to improve the exteriors of buildings. We opined that a CRA board member would have a conflict of interest under Section 112.313(7)(a) if his or her business received a façade grant from the CRA. Similarly, in CEO 12-14, a city's CRA offered redevelopment incentive grants to allow property owners and lessees to make residential, commercial, and business façade improvements and other improvements. The grant program was administered by the staff of the city's Development Services Department, who could approve the grant applications without a vote from the city council or the CRA, and the grants were processed on a first-come, first-served basis. Once again, we opined that the CRA board member would have a conflict of interest if he or she, individually or through his or her businesses, received the grant offered by the CRA.

However, we find the situation you present to be distinguishable from these prior opinions because of the particular nature of the grant program in the context of a water management district. We find that Section 112.316, Florida Statutes, applies to exempt any conflict of interest for the two WMD board members because the narrow and specific circumstances that form the basis of their inquiry indicate the public trust is not jeopardized by allowing their businesses or tenants to apply for the cost-share reimbursement grant.

In coming to that conclusion we rely upon all of the following circumstances, the absence of any one of which would result in our finding of a conflict and also our declining to apply Section 112.316 to negate the conflict.

First, we note that, by its nature, a WMD encompasses many, many thousands of acres of agricultural land and many, many farmers who are similarly situated, some of whom very often are members of the governing board of WMDs, no doubt, in great part due to their familiarity with land and agriculture irrigation and related matters. We do not believe it to be the intent of the law to preclude participation by such farmer-WMD board members in programs available to all other farmers in the WMD, especially where, as here, there is no history of denial of participation or lack of funding for any who apply.

Second, we note that the program's history is void of denial of participation or lack of funding because the program has been structured to accept every eligible application, as judged only by objective criteria, rather than discretionary criteria. There are no discretionary criteria by which to judge the applications and, thus, there is no risk that a WMD board member could leverage the application process to achieve a personal benefit not available to similarly-situated applicants.<sup>2</sup>

Third, we note that the program is not a competitive environment among applicants. The program is budgeted such that there are ample funds to admit all foreseeable applicants in the geographic jurisdiction of the WMD without risking the program's solvency.

Fourth, we recognize that the public benefit from applicants achieving participation in this program is substantial. The program aims to achieve water conservation by making agricultural producers more efficient in their water usage; to preclude landowning WMD board members from participation would materially reduce the water conservation by reducing substantial amounts of acreage from the program.

Lastly, we note the circumstances unique to a program administered by a water management district. Unlike, for example, a situation involving someone who is both an attorney and a local public official, who could practice in many municipalities other than the one on which he sits on the governing board, an agricultural producer who is a member of a WMD board does not have the ability to move his or her real estate outside of the WMD, the boundaries of which encompass many counties.

For all these reasons together and for as long as all these circumstances are present and maintained, we find that Section 112.316 operates to negate any conflict of interest the two WMD board members would otherwise create under Section 112.313(7)(a) if their business or tenants applied for a cost-share reimbursement grant from their agency. If any of the circumstances upon which we rely change, we encourage you to seek a new opinion from us.

Your question is answered accordingly.<sup>3</sup>

**ORDERED** by the State of Florida Commission on Ethics meeting in public session on October 23, 2020, and **RENDERED** this 28th day of October, 2020.

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Daniel Brady, *Chair*

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<sup>[1]</sup>In response to a Commission staff inquiry, you inform us that, in practice, the Executive Director, who has contracting authority of up to \$30,000, approves the applications and contracts for reimbursement for \$30,000 or less with no review or action by the Governing Board. If the cost-share agreement will require the expenditure of more than \$30,000 of District funds, then it must be approved by the Governing Board.

<sup>[2]</sup>While the WMD board's decision making in the application process is not discretionary, its involvement in the setting of the terms of the program, such as the reimbursement rates or the maximum reimbursement amount, is entirely discretionary. If the WMD board changes any of the program terms, the board members should no longer rely on this opinion and should seek a new opinion.

<sup>[3]</sup>The members, however, are subject to the voting conflicts law codified in Section 112.3143, Florida Statutes, regarding any vote (measure/matter) that would inure to their special private gain or loss or to that of any person or entity standing in a relationship to the members as listed in the statute. The members are also subject to the prohibition against misusing one's public position found in Section 112.313(6), Florida Statutes.